

**INVESTMENT MANAGEMENT AGREEMENT**

**Between**

**INVESTMENT MANAGER**

**and**

**Alameda County Employees' Retirement Association  
(ACERA)**

**Dated: \_\_\_\_\_, 2017**

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INVESTMENT MANAGEMENT  
AGREEMENT (“AGREEMENT”)  
BETWEEN  
ALAMEDA COUNTY EMPLOYEES’ RETIREMENT ASSOCIATION  
AND  
[INSERT INVESTMENT MANAGER NAME]

, 2017

This Investment Management Agreement (“Agreement”) is made and effective as of \_\_\_\_\_ by and between the Alameda County Employees’ Retirement Association (“ACERA”), through its governing Board of Retirement (“Board”), and *[insert investment manager name]*, \_\_\_\_\_, (“INVESTMENT MANAGER”) located at *[insert address]*.

WHEREAS, ACERA is a public employee retirement system established and operating under the County Employees’ Retirement Law of 1937 (Cal. Govt. Code §§31450 et seq.), the California Constitution, Article XVI, Section 17, and other applicable law; and

WHEREAS, pursuant to applicable law, including without limitation, Section 31595 of the California Government Code, the management of the Alameda County Employees’

Retirement Fund (the “Fund”) is vested in its Board which has plenary authority and fiduciary responsibility for the investment of the Fund, whose assets are trust funds held for the exclusive purpose of providing benefits to participants in the retirement system and their beneficiaries and defraying reasonable expenses of administering the system; and

WHEREAS, pursuant to Section 31594 of the California Government Code, the Board is authorized to invest the Fund in any form or type of investment deemed prudent by the Board and to seek investment advisory services in connection with the management of Fund assets, and the Board has determined that a portion of the Fund should be allocated to investments of the type described in Exhibit A; and

WHEREAS, INVESTMENT MANAGER is engaged in business as an investment adviser, and is so registered as an adviser under the U.S. Investment Advisers Act of 1940, as amended, and qualifies as an investment manager for purposes of applicable provisions of California and federal law; and

WHEREAS, ACERA and INVESTMENT MANAGER have decided to enter into this Agreement for the purpose of retaining INVESTMENT MANAGER to manage certain assets of ACERA, and INVESTMENT MANAGER agrees to provide investment advisory services to ACERA in accordance with the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the above stated recitals, the mutual promises, covenants, representations and conditions contained herein, and the mutual benefits to be derived there from, ACERA and INVESTMENT MANAGER hereby agree as follows:

## I. DEFINITIONS

The following capitalized terms, when used in this Investment Management Agreement, have the following meanings:

ACERA:	As defined in the preamble to this Agreement, the Alameda County Employees’ Retirement Association.
ACERA Policies:	The ACERA Investment Guidelines, Policies and Procedures attached hereto as <u>Exhibit B</u> and incorporated herein by this reference, as the same may be amended by ACERA, in its sole discretion, from time to time.
Advisers Act:	The U.S. Investment Advisers Act of 1940, <i>15 USC §§ 80b-1 et seq.</i> , as amended, and the rules and regulations thereunder.
Agent:	In reference to INVESTMENT MANAGER, any of INVESTMENT MANAGER’s employees, agents, and representatives providing services in connection with this Agreement.
Agreement:	This Investment Management Agreement, as it may be amended from time to time, including all of the Exhibits hereto.

Authorized Person: With respect to ACERA or INVESTMENT MANAGER, the person or persons authorized to act on its behalf hereunder. (See Section IV.B. and Exhibit C.)

Board: As defined in the preamble to this Agreement, the Board of Retirement of ACERA.

Code: The Internal Revenue Code of 1986, *26 USC §§ 1 et seq.*, as amended from time to time.

Consultant: Verus Advisory, Inc. or its successor appointed by ACERA to provide general investment consulting services.

Custodian: State Street Bank and Trust Company, or its successor appointed by ACERA to hold the Managed Assets.

ERISA: The Employee Retirement Income Security Act of 1974, *29 USC §1001 et seq.*, as amended from time to time.

Exchange Act: The Securities Exchange Act of 1934, as amended, and the rules and regulations thereunder.

Form ADV: Securities and Exchange Commission Form ADV, Part II (Investment Manager's Disclosure Statement).

Government Code: The California Government Code, as amended from time to time.

Managed Assets: Those certain assets of ACERA comprised initially of cash or securities in the amount allocated by the Board in an account in ACERA's designated custodian bank under the investment authority and management of INVESTMENT MANAGER as specified in the ACERA Policies, as evidenced by their transfer to the account described in Section II, together with all interest, earnings, accruals, and capital growth thereon, as the same may be invested and reinvested in accordance with this Agreement.

INVESTMENT MANAGER: Defined in the preamble to this Agreement.

Placement Agent: Person(s) or entity hired, engaged or retained by or acting on behalf of the Investment Manager or on behalf of another Placement Agent as a finder, solicitor, marketer, consultant, broker or other intermediary to raise money or investment from, or to obtain access to, ACERA, directly or indirectly.

Specific Guidelines: The Specific Investment Guidelines for Managed Accounts set forth as Exhibit A hereto, which is incorporated herein by this reference.

Transition Period: As defined in Section IX(N), the period of up to ninety (90) days following the effective date of the termination of this Agreement.

Trustees: When used with respect to ACERA, the members of the Board.

## II. APPOINTMENT OF INVESTMENT MANAGER AND ACCEPTANCE OF APPOINTMENT

ACERA hereby (i) appoints INVESTMENT MANAGER as a fiduciary of ACERA with respect to those certain Managed Assets, as well as any other Managed Assets allocated by ACERA, and (ii) authorizes INVESTMENT MANAGER to invest and manage the Managed Assets. INVESTMENT MANAGER hereby accepts such appointment, assumes full responsibility for the investment and management of the Managed Assets, and agrees to execute its duties according to the terms, conditions and standards set forth in this Agreement.

## III. FIDUCIARY STATUS OF INVESTMENT MANAGER: STANDARD OF CARE

INVESTMENT MANAGER acknowledges that this Agreement places it in a fiduciary relationship with ACERA. As a fiduciary, INVESTMENT MANAGER shall discharge each of its duties and exercise each of its powers under this Agreement (i) solely in the best interest of ACERA, and (ii) with the competence, care, skill, prudence and diligence under the circumstances then prevailing and that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims, in conformance with the California Constitution, Article XVI, Section 17, and California Government Code Sections 31594 and 31595, and with the customary standard of care of a professional investment manager providing services for a U.S. employee pension trust, and shall act consistent with its duty of loyalty to ACERA and the Board with respect to the assets that it invests on ACERA's behalf ("Standard of Care.") INVESTMENT MANAGER shall cause any and all of its Agents to adhere to the same Standard of Care, and any agreement between INVESTMENT MANAGER and any such Agent shall provide that ACERA is a specific third party beneficiary of the Standard of Care required under such agreement. INVESTMENT MANAGER shall be liable to ACERA for any claim which arises from or relates to any failure by INVESTMENT MANAGER or any of its Agents to exercise this Standard of Care.

## IV. AUTHORITY

A. Authorized Actions. INVESTMENT MANAGER, as agent and attorney-in-fact with respect to the Managed Assets, when it deems appropriate and without prior consultation with ACERA (subject, however, to the Specific Guidelines), may take any or all of the actions described below, with respect to the Managed Assets. Any action that is permitted under or is in accordance or consistent with the Specific Guidelines, and to take any such other action, or direct the Custodian to take such action, as INVESTMENT MANAGER may deem to be necessary or desirable to carry out the purpose and intent of this Agreement. Except for transaction fees and commissions permitted hereunder and payable in connection with the purchase and sale of

investments, INVESTMENT MANAGER shall bear all costs and expenses incurred in carrying out its duties hereunder. Unless otherwise directed by ACERA in writing, INVESTMENT MANAGER has no authority to exercise voting rights, either itself or by giving another a proxy, with respect to the Managed Assets. INVESTMENT MANAGER hereby acknowledges that it has reviewed and is familiar with the Specific Guidelines and the ACERA Policies. INVESTMENT MANAGER further acknowledges and understands that ACERA may periodically revise the Specific Guidelines and ACERA Policies and, in such event, INVESTMENT MANAGER agrees to be bound by any such revisions upon receipt of written notice from ACERA. INVESTMENT MANAGER is entitled to rely on the most recent Specific Guidelines and ACERA Policies it has received, unless it receives written notice from ACERA to the contrary.

B. Authorized Person. ACERA and INVESTMENT MANAGER shall initially in Exhibit C, and from time to time thereafter, certify to each other the name or names of their respective Authorized Persons and shall furnish each other with a specimen of the signatures of certain Authorized Persons who may have authority to execute specific tasks under this Agreement. Any individual so certified shall be deemed to be an authorized representative who is permitted to advise, inform and direct INVESTMENT MANAGER on ACERA's behalf. An Authorized Persons shall cease to be an authorized representative only on written notice of the fact to the other party. However, until such notice is received by the other party, it may continue to treat such person as an authorized representative. In no event will any Authorized Person of ACERA have any personal liability to INVESTMENT MANAGER for any action taken or not taken by such individual while acting or purporting to act as an Authorized Person of ACERA.

C. Authorized Instructions. All directions and instructions to INVESTMENT MANAGER from ACERA shall be in writing signed by an Authorized Person of ACERA and transmitted as provided herein ("Notices"), provided, however, that INVESTMENT MANAGER may, in its discretion, accept verbal instructions subject to written confirmation of same from such Authorized Person ("Authorized Instructions.") Such Authorized Instructions shall bind INVESTMENT MANAGER upon receipt of written confirmation. If INVESTMENT MANAGER receives instructions or notices from a source other than an Authorized Person, INVESTMENT MANAGER shall not comply with them and shall immediately notify ACERA's Chief Executive Officer, Chief Investment Officer, or other Authorized Person in writing of such unauthorized instructions or notices.

D. Authority to Execute Documents. INVESTMENT MANAGER is authorized to execute documentation relating to investments of the Managed Assets as reasonable in INVESTMENT MANAGER's judgment as a fiduciary on behalf of and for the benefit of ACERA. This documentation may relate to investments to be made or sold, currently held or previously held. The authority shall include without limitation (i) documentation relating to private placements and bank debt, (ii) waivers, consents, amendments or other modifications relating to investments, and (iii) purchase agreements, sales agreements, commitment letters, pricing letters, registration rights agreements, escrow agreements and other investment-related agreements.

E. INVESTMENT MANAGER Relationship With Custodian: INVESTMENT MANAGER shall have the authority to direct the Custodian with respect to the acquisition and disposition (by purchase, sale, exchange, subscription or otherwise) of the Managed Assets.



INVESTMENT MANAGER shall be responsible for directing the Custodian as to the exercise of conversion rights, subscription rights, warrants, or other options relating to the Managed Assets, of which INVESTMENT MANAGER has actual knowledge, whether by written notice or otherwise. As provided in paragraph A above, however, unless otherwise directed by ACERA in writing, INVESTMENT MANAGER has no authority to exercise voting rights. INVESTMENT MANAGER shall not have the right to have securities in the Account registered in its own name or in the name of its nominee, nor shall INVESTMENT MANAGER in any manner acquire or become possessed of any income or proceeds distributable by reason of selling, holding or controlling any Managed Assets in the Account. Accordingly, INVESTMENT MANAGER shall have no responsibility with respect to the collection of income, reclamation of withheld taxes, physical acquisition or the safekeeping of the Managed Assets. All such duties of collection, physical acquisition or safekeeping shall be the sole responsibility of the Custodian in accordance with Article VI hereof.

F. No Authority to Act as Principal. INVESTMENT MANAGER shall not act as a principal in sales and/or purchases of Managed Assets, unless INVESTMENT MANAGER shall have received prior written approval from an Authorized Person for each such transaction.

G. No Authority to Act on Illegal Information. INVESTMENT MANAGER shall not place orders to purchase and/or sell any Managed Assets on the basis of any material information obtained, or utilized, by INVESTMENT MANAGER in violation of the securities laws of the United States, or any other country in which INVESTMENT MANAGER transacts business on ACERA's behalf.

H. Counterparty Agreements. To the extent INVESTMENT MANAGER enters into (or offers to enter into) futures, swaps or other derivatives on behalf of the Board or ACERA, and notwithstanding anything to the contrary herein, INVESTMENT MANAGER shall be prohibited from executing any agreements and/or documents, on behalf of the Board or ACERA, to the extent that such agreements and/or documents (i) result in liabilities or losses that exceed the value of the Managed Assets of the Account or that cannot be satisfied solely from the Managed Assets of the Account, (ii) waive the Board's and ACERA's right to exercise all immunities, defenses, rights or actions arising out of its sovereign status or under the Eleventh Amendment to the United States Constitution, (iii) waive the Board's or ACERA's right to a jury trial, (iv) provide for venue and/or jurisdiction outside of Alameda County, California, and (v) require the applicability of any law other than New York law, if INVESTMENT MANAGER is unable to negotiate the applicability of California law. To the extent Manager enters into (or offers to enter into) futures, swaps or other derivatives on behalf of the Board or ACERA, ACERA shall have a reasonable basis to believe that INVESTMENT MANAGER (a) has sufficient knowledge to evaluate the transaction and risks; (b) is not subject to a statutory disqualification; (c) is independent of the swap dealer or major swap participant with which it will enter into transactions, if applicable; (d) undertakes a duty to act in the best interests of the Fund; (e) will make appropriate and timely disclosures to ACERA; (f) will evaluate, consistent with the Specific Guidelines, fair pricing and the appropriateness of the swap or other derivative product; and (g) will observe applicable restrictions on certain political contributions imposed by the CFTC, the SEC, or any self-regulatory organization subject to the jurisdiction of such regulatory bodies.

## V. SERVICES TO BE RENDERED

INVESTMENT MANAGER shall render the following services:

A. Investment Management. Direct the investment, exchange, liquidation and reinvestment of the Managed Assets pursuant to the objectives, policies and guidelines set out in the ACERA Policies and the Specific Guidelines.

B. Reports. Provide the reports described in ACERA's Compliance Program (see Schedule V to the ACERA Policies) according to the time frame prescribed therein.

C. Attendance at Meetings. Attend Investment Committee and Board meetings as requested by ACERA staff or Board.

D. Investment Advice. Provide investment advice relating to management of the Managed Assets including advice on corporate actions and other security-related matters.

E. Other Services upon Request. Provide specialized investment related services as requested including, but not limited to, conducting investment related research, providing general investment information to ACERA staff or Board, appraising of assets included in the Managed Assets for which market quotations are not available, and conducting investment educational presentations to ACERA staff or Board.

F. Cooperation/Reconciliation. Cooperate with ACERA, the Custodian and the Consultant to maintain records relating to the Managed Assets, including reconciliation of monthly reports in accordance with Exhibit I. ACERA shall instruct its Custodian to provide INVESTMENT MANAGER with periodic financial statements of the Account as INVESTMENT MANAGER may reasonably request. ACERA acknowledges that INVESTMENT MANAGER does not assume responsibility for the accuracy of any information furnished by ACERA or its Custodian, however INVESTMENT MANAGER shall notify ACERA if any statements or information provided to INVESTMENT MANAGER appear *prima facie* inaccurate.

G. Absence of Intellectual Property Rights Infringement. In connection with its performance under this Agreement, INVESTMENT MANAGER shall not knowingly develop, provide or use any program, process, composition, writing, equipment, appliance or device, or any trademark, service mark, logo, idea, or any other work or invention of any nature, or any other tangible or intangible assets, that infringes or will infringe on any patent, copyright, or trademark of any other person or entity, or that is or will be a trade secret of any other person or entity.

## VI. COMPENSATION, FEES, TAXES AND EXPENSES

A. Fees. ACERA shall compensate INVESTMENT MANAGER quarterly for the services performed under this Agreement according to the Fee Schedule and Computation attached hereto as Exhibit D. The fees set forth in Exhibit D shall be the sole compensation owed by ACERA to INVESTMENT MANAGER for services rendered pursuant to this Agreement.

B. Invoices. INVESTMENT MANAGER shall submit to ACERA a quarterly invoice and a copy of that invoice within thirty (30) calendar days of the close of the quarter for which services were provided. Each invoice shall include the quarterly share of INVESTMENT MANAGER's annual fee (prorated for any partial quarter as provided in paragraph C below), as set forth in the Fee Schedule and Computation attached hereto as Exhibit D. Invoices shall only cover work already performed; no compensation shall be paid to INVESTMENT MANAGER in advance of services rendered. Invoices shall be mailed to:

Chief Investment Officer  
Alameda County Employees' Retirement Association  
475 14<sup>th</sup> Street, Suite 1000  
Oakland, CA 94612  
[Email: allinvestments@acera.org](mailto:allinvestments@acera.org)

If ACERA agrees on the amount invoiced, ACERA shall instruct the Custodian to pay the amount invoiced to INVESTMENT MANAGER out of the Managed Assets. If ACERA disagrees with the amount invoiced or questions the method by which the amount was calculated, ACERA shall notify INVESTMENT MANAGER of its disagreement or question, whereupon the parties shall endeavor to resolve the issue.

C. Proration of Fees. In the event this Agreement commences or terminates on a date other than the first or last business day of a calendar quarter, INVESTMENT MANAGER's fees shall be prorated on a daily basis for the portion of the calendar quarter in which INVESTMENT MANAGER provided services.

D. Valuation. For purposes of computing the fees, securities listed on a national securities exchange shall be valued at market as of the last business day of the calendar quarter, or in the event of termination as of the termination date. INVESTMENT MANAGER shall provide documentation of all values and the fee calculation. All values will be based on the Custodian's records and any discrepancies shall be resolved in favor of ACERA absent a manifest error in calculating such values and fees.

E. Taxes and Expenses. INVESTMENT MANAGER agrees to pay directly all applicable taxes and other expenses of operating its business, including, but not limited to, rents, salaries, insurance premiums, federal and state income and payroll taxes. In connection therewith, INVESTMENT MANAGER agrees to indemnify and hold ACERA harmless from any and all liability that ACERA may incur because of INVESTMENT MANAGER's failure to pay such expenses or taxes. INVESTMENT MANAGER shall promptly notify ACERA if, at any time, INVESTMENT MANAGER is notified in writing that ACERA is required to pay taxes to any government or to file any returns or other tax documents with respect to income earned on the Managed Assets under this Agreement. INVESTMENT MANAGER acknowledges that ACERA is relying on INVESTMENT MANAGER for notice of such taxation matters. INVESTMENT MANAGER shall be liable for all penalties and interest due to any failure by INVESTMENT MANAGER to notify ACERA of such tax matters.

## VII. CUSTODY OF MANAGED ASSETS

The Managed Assets shall be managed through a “collective fund” set forth as Exhibit E hereto, which is incorporated herein by this reference. Ownership of the Managed Assets shall remain with ACERA. INVESTMENT MANAGER shall not, under any circumstances, take possession, custody, title, or ownership of any Managed Assets, and acknowledges that it will not receive or take title in or to any Managed Assets. ACERA may make additions to or withdrawals from the Managed Assets at any time, provided that ACERA agrees to give INVESTMENT MANAGER prompt notice of additions and at least five (5) business days’ prior written notice of any intended withdrawals. On and after the effective date of any such withdrawal INVESTMENT MANAGER shall cease to be responsible for the future investment of the withdrawn assets. Notwithstanding the foregoing, INVESTMENT MANAGER shall cooperate in any transition of Managed Assets.

INVESTMENT MANAGER shall not have any responsibility or liability for any act or omission of the Custodian. At INVESTMENT MANAGER’s request, ACERA agrees to instruct the Custodian to:

- (a) Provide INVESTMENT MANAGER with reports regarding the amount of cash and cash equivalents in the account available for investment;
- (b) Settle all investment transactions as directed by INVESTMENT MANAGER; and
- (c) Provide confirmation in writing to INVESTMENT MANAGER of all completed transactions.

Notwithstanding the foregoing, ACERA may suspend INVESTMENT MANAGER’s authority to direct Custodian with regard to any or all of the Managed Assets at any time and for any reason or no reason, effective immediately upon giving written notice to INVESTMENT MANAGER. The removal of Custodian and appointment of any successor custodian shall not effect or cause the termination of this Agreement.

## VIII. SELECT BROKERS AND ESTABLISH ACCOUNTS

A. INVESTMENT MANAGER shall have complete authority and discretion to establish accounts with one or more duly registered broker/dealers. Consistent with ensuring the safety of the Managed Assets, INVESTMENT MANAGER shall engage in a prudent and diligent broker/dealer selection process. Selection of broker/dealers shall be made in accordance with the Advisers Act and the Exchange Act.

B. INVESTMENT MANAGER shall ensure that all orders are placed with only reputable, qualified and financially sound broker/dealers. INVESTMENT MANAGER’s primary objective shall be to select broker/dealers who will provide the most favorable net price and execution for the Managed Assets, but this requirement shall not obligate INVESTMENT MANAGER to recommend any broker/dealer solely on the basis of obtaining the lowest commission rate if the other standards set forth herein with regard to the best interests of ACERA are satisfied. In the selection of broker/dealers with whom to place orders for the purchase or sale of securities for the Managed Assets, the primary objective of INVESTMENT

MANAGER shall be to obtain best execution for the Managed Assets consistent with the investment objectives.

C. INVESTMENT MANAGER's selection of a broker/dealer shall take into account such relevant factors as (1) price and/or commission; (2) the broker/dealer's facilities, reliability and financial responsibility; and (3) the ability of the broker/dealer to effect securities transactions, particularly with respect to such aspects as timing, order size, execution of orders and the ability to complete a transaction through clearance, settlement and delivery; and (4) the quality and availability of research.

D. INVESTMENT MANAGER shall ensure that it has a sufficient number of broker/dealers available to execute trades on behalf of ACERA as a measure to diversify counterparty risk. INVESTMENT MANAGER shall frequently evaluate each counterparty's operating controls (including settlement procedures, trade verification and margining procedures and collateral management procedures) to ensure that any ACERA assets under management are adequately protected. To the extent that information is available, INVESTMENT MANAGER agrees to analyze information on their risk management approach and controls, as well as risk measurement methods and risk measurements and, as requested, prepare a summary report for ACERA. INVESTMENT MANAGER agrees to also analyze each counterparty's capital condition, any materials events which might impact their financial or operational health and regulatory filings.

E. Soft-dollar arrangements or offers may not be the sole consideration in the selection of a broker/dealer as it relates to the Managed Assets.

## IX. SOFT DOLLARS COMMITMENTS

A. In the event that INVESTMENT MANAGER enters into any soft dollar arrangement with respect to any of the Managed Assets, then (1) ACERA shall receive its equitable pro rata share of soft dollar related research and other brokerage services. Such selection of broker-dealers shall be made in accordance with the Advisers Act and the Exchange Act; (2) If an affiliate of INVESTMENT MANAGER is used as broker-dealer, the brokerage rate charged must comply with the standards set forth in this paragraph and shall not exceed the rate the broker-dealer charges comparable accounts for the effectuation of comparable transactions on behalf of unaffiliated third parties; and (3) INVESTMENT MANAGER shall provide ACERA with a monthly statement of each broker-dealer's soft dollars and the total commissions paid to each broker-dealer for the ACERA account, as required by Schedule V to the ACERA Policies, in addition to such other statements and reports as detailed below.

B. From the inception of this Agreement, with respect to the Managed Assets, INVESTMENT MANAGER shall conduct its soft dollar and directed brokerage arrangements in accordance with Chapter 11.5, Governmental Investors, Sections 6930 et seq. of Division 7, Title 1 of the Government Code and Section 28(e) of the Exchange Act. The term "soft dollar and directed brokerage arrangements" shall have the same meaning herein as in Section 6930 of the Government Code.

1. Each securities transaction or brokerage agreement carried out by INVESTMENT MANAGER pursuant to a soft dollar and directed brokerage arrangement shall

be executed at the lowest responsible transaction cost available, as required by Government Code Section 6931.

2. INVESTMENT MANAGER shall maintain complete and detailed records of all billed services provided pursuant to soft dollar and directed brokerage arrangements.

3. The services provided by a broker/dealer pursuant to soft dollar and directed brokerage arrangements shall be for specific services, which from time to time may be amended, such as for computer services, investment consulting services, capital partner information services, investment management fees, custodial fees, and research and brokerage services defined in Section 28(e) of the Exchange Act.

4. INVESTMENT MANAGER shall disclose all of the following: On a monthly basis:

(a) A list of all billed services provided pursuant to soft dollar and directed brokerage arrangements with respect to investment transactions for ACERA.

(b) The justification for providing each of those services.

(c) The maximum percentage of the investment transactions of ACERA planned for use in soft dollar and directed brokerage arrangements.

On an annual basis:

(d) An annual statement of all billed services provided during the previous year under soft dollar and directed brokerage arrangements with respect to investment transactions for ACERA.

(e) A determination of whether each service provided under soft dollar and directed brokerage arrangements with respect to investment transactions for ACERA is proprietary or is being shared by other clients of INVESTMENT MANAGER.

C. Aggregation. INVESTMENT MANAGER may, in its sole discretion, aggregate purchases or sales of any security or instrument effected with respect to the Managed Assets with purchases or sales, as the case may be, of the same security or instrument effected on the same day for the accounts of one or more of INVESTMENT MANAGER's other clients, provided that such aggregation is done in accordance with INVESTMENT MANAGER's Investment Advisors Act of 1940 mandated Compliance Program.

## X. REPRESENTATIONS, WARRANTIES AND COVENANTS

It is understood by the parties that the representations, warranties and covenants set forth herein are being relied upon by ACERA in entering into this Agreement. As such, INVESTMENT MANAGER represents, warrants, and covenants to ACERA as follows:

A. Authorization. INVESTMENT MANAGER has duly authorized, executed and delivered this Agreement and this Agreement constitutes the legal, valid and binding agreement

and obligation of INVESTMENT MANAGER, enforceable against INVESTMENT MANAGER in accordance with its terms, except insofar as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar limitations on creditors' rights generally and general principles of equity.

B. Investment Adviser Status and Qualifications. INVESTMENT MANAGER is registered as an "investment adviser" under the Advisers Act. INVESTMENT MANAGER meets all qualifications set forth in the ACERA Policies to act as an investment manager to the Board. INVESTMENT MANAGER has completed, obtained and performed all registrations, filings, approvals, authorizations, consents, and examinations required by any governmental authority for its services contemplated by this Agreement. INVESTMENT MANAGER shall immediately notify ACERA if at any time during the term of this Agreement it is not so registered, if its registration is suspended, or if it no longer meets any of the qualifications set forth in the ACERA Policies.

C. Investment Manager Under ERISA. INVESTMENT MANAGER it is an "Investment Manager," as defined in Section 3(38) of the Employee Retirement Income Security Act of 1974, as amended, for ACERA with respect to the Managed Assets allocated to INVESTMENT MANAGER for investment, and that INVESTMENT MANAGER shall maintain that status as long as this Agreement is in effect.

D. Investigations and Complaints. INVESTMENT MANAGER confirms that there have been, in the twenty-four (24) preceding months to the date of this Agreement, (a) no complaints, disciplinary actions, investigations, legal proceedings, informal inquiries or communications or arbitration proceedings (collectively "Actions") filed and/or withdrawn, and (b) to INVESTMENT MANAGER's actual knowledge, no such Actions pending, contemplated, or threatened; in each case against INVESTMENT MANAGER or any investment professional engaged by it who has performed, or is expected to perform, any service with respect to this Agreement by any party, including, but not limited to, Actions commenced by any of the following: (1) the Securities and Exchange Commission of the United States, (2) the New York Stock Exchange, (3) the American Stock Exchange, (4) the National Association of Securities Dealers, (5) any Attorney General or any regulatory agency of any state of the United States, (6) any U.S. Government department or agency, or (7) any governmental agency regulating securities of any country in which INVESTMENT MANAGER is doing business. Except as otherwise required by law, ACERA shall maintain the confidentiality of all such information until the investigating entity makes the information public. To the extent permitted by applicable law, INVESTMENT MANAGER shall promptly advise ACERA in writing of any Action relating to or affecting INVESTMENT MANAGER's ability to perform its duties under this Agreement or involving any investment professional employed by INVESTMENT MANAGER who has performed any service with respect to ACERA's Account in the twenty-four (24) preceding months.

E. INVESTMENT MANAGER's Agents. Except as disclosed in its Form ADV, or as disclosed in its Agent's Form ADV, the Agents of INVESTMENT MANAGER who will be responsible for performing under this Agreement are individuals experienced in the performance of the various functions contemplated by this Agreement or otherwise necessary for its performance. None of such Agents have been convicted of any felony, found liable in a civil or administrative proceeding, pleaded no contest, or agreed to any consent decree with respect to

any matter involving a breach of trust, breach of fiduciary duty, fraud, securities law violations or bankruptcy law violations. Upon demand by ACERA, INVESTMENT MANAGER shall replace any Agent assigned to perform services under this Agreement that ACERA determines (i) is unable to effectively execute the responsibilities required by this Agreement, or (ii) is otherwise not acceptable to ACERA, in ACERA's reasonable discretion.

F. Absence of Commissions. INVESTMENT MANAGER has not employed or retained any person or selling agency to solicit or secure this Agreement under any agreement or understanding for a commission, percentage, brokerage, or contingent fee, except for bona fide employees of INVESTMENT MANAGER and INVESTMENT MANAGER's affiliates or bona fide established commercial or selling agencies maintained by INVESTMENT MANAGER for the purpose of securing business. If INVESTMENT MANAGER in any way breaches or violates this warranty, ACERA shall have the right to terminate this Agreement upon one calendar day's written notice and, in ACERA's sole discretion, to deduct from INVESTMENT MANAGER's compensation under this Agreement, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.

G. Absence of Gratuities.

1. Neither INVESTMENT MANAGER nor any of its affiliates has offered or given any gratuities in the form of gifts, entertainment or otherwise in excess of an aggregate amount of \$250/person, during the twelve (12) month period that ends on the date of this Agreement, (i) to any person known by INVESTMENT MANAGER or its affiliates to be an officer, trustee or employee of ACERA, or (ii) to Consultant or any of the Consultant's key employees (as hereafter defined). INVESTMENT MANAGER agrees, for itself and its affiliates, that no gratuities in excess of \$250/annum (determined on a rolling 12-month basis) will be given (x) to any person known by INVESTMENT MANAGER or any of its affiliates to be an officer, trustee or employee of ACERA, (y) to its Consultant or any of the Consultant's key employees, or (z) to any other "additional investment advisor" (as hereafter defined) or "additional key employees" (as hereafter defined). INVESTMENT MANAGER agrees to promptly notify ACERA if its representations set forth above become untrue and, in such event, ACERA may terminate this Agreement as provided herein.

2. INVESTMENT MANAGER, for itself and its affiliates, further acknowledges that it is prohibited from offering or giving any gratuities to any person or organization identified in clauses (x), (y) or (z) above with a view toward securing any favorable treatment concerning the award, performance and/or continuation of this Agreement. INVESTMENT MANAGER has not offered or given any gratuities or financial benefits in the form of gifts, entertainment, campaign contributions, salary, stock, commissions, or otherwise, to any officer, fiduciary, or employee of either ACERA or the County of Alameda, California during the time when ACERA was in the process of selecting a manager to handle the Managed Assets that are the subject of this Agreement and agrees to execute the certification, as further described, in Section below. INVESTMENT MANAGER covenants that no such gratuities or financial benefits will be offered or given to any such person in violation of Government Code Sections 87100, et seq., Government Code Sections 84300, et seq., Government Code Sections 1090, et seq., the ACERA Policies, and/or the ACERA Conflict of Interest Policy, during the time this Agreement is in effect. If it is found by ACERA that INVESTMENT MANAGER has offered or given such gratuities or financial benefits, or has



violated any law or regulation governing the giving of such gratuities or financial benefits, ACERA may immediately terminate this Agreement. If it is found that the INVESTMENT MANAGER or any affiliate has offered or given gratuities prohibited hereunder, then ACERA may terminate this Agreement as provided here.

3. For purposes of this Section, Consultant's "key employees" shall mean [ ]. Notwithstanding the foregoing, ACERA may add additional or substitute investment advisors of ACERA and/or key employees of any such investment advisor after the date hereof upon written notice to the INVESTMENT MANAGER. Upon written notice to INVESTMENT MANAGER, such additional or substitute consultants and/or key employees shall constitute "additional consultants" or "additional key employees" for purposes of this Section but only with respect to periods arising after the date such notice is given.

H. Absence of Conflict of Interest. INVESTMENT MANAGER does not and shall not knowingly employ in any capacity: (1) any ACERA employee or fiduciary who either could influence the award of this Agreement or any competing agreement, or who does or will have any direct or indirect financial interest in this Agreement ("Interested Person") or (2) any spouse or economic dependent of any Interested Person.

I. Disclosure Statement. INVESTMENT MANAGER has delivered to ACERA, at least five (5) business days prior to the execution of this Agreement, INVESTMENT MANAGER's current Form ADV, unless INVESTMENT MANAGER is exempt from the requirement of providing a Form ADV, in which case INVESTMENT MANAGER has provided ACERA with an opinion of counsel explaining the basis for such exemption. INVESTMENT MANAGER further warrants that it will deliver to ACERA a copy of the Disclosure Statement it files with the SEC annually, within thirty (30) days of filing in accordance with ACERA Policies.

J. Certification Concerning Financial Contacts, Placement Agents and Solicitation. No officer, director, member or employee of, or holder of a direct or indirect equity interest in INVESTMENT MANAGER was within the three year period preceding the date hereof (a) an officer or a Board member of ACERA or (b) employed by a Board member or an officer of ACERA. Furthermore, no employee of ACERA or fiduciary whose position in ACERA enables such person to influence the award of this Agreement or any competing agreement, and no spouse or economic dependent of such person is or will be employed in any capacity by INVESTMENT MANAGER herein.

K. Placement Agents Policy and Disclosure. INVESTMENT MANAGER agrees to comply with ACERA's Placement Agent Disclosure Policy ("Placement Agent Policy"), as set forth in Exhibit G to this Agreement, and acknowledges that the Placement Agent Policy shall require the disclosure of any payments to Placement Agents in connection with ACERA investments. INVESTMENT MANAGER agrees to deliver to ACERA any and all certifications "Placement Agent Information Disclosure" statements, as required under Exhibit G hereto with respect to the interests of persons related to ACERA, as specified from time to time by ACERA but in no event any less than required under ACERA's Placement Agent Disclosure Policy. INVESTMENT MANAGER will deliver annually, on the fiscal year basis of ACERA, to ACERA, or more frequently if requested, a certificate in the form of Exhibit H hereto

(“INVESTMENT MANAGER’s Annual Certification Concerning Financial Contacts or Solicitations”) with respect to the interests of persons related to ACERA, as specified from time to time by ACERA.

L. Changes. INVESTMENT MANAGER shall notify ACERA in writing within three (3) business days of any of the following changes: (1) there is any change in INVESTMENT MANAGER’s senior personnel assigned to perform services under this Agreement, or in INVESTMENT MANAGER’s key personnel within INVESTMENT MANAGER’s organization at any time during the term of this Agreement; (2) there is any material change in ownership or control of INVESTMENT MANAGER during the term of this Agreement; (3) INVESTMENT MANAGER becomes aware of any other material change in its business organization during the term of this Agreement, including, without limitation, the filing for bankruptcy relief; or (4) INVESTMENT MANAGER becomes aware that any of its Representations and Warranties in Section VII or the Covenants in Section VIII of this Agreement cease to be materially true during the time that this Agreement is in effect.

For purposes of this Agreement, INVESTMENT MANAGER agrees that a key personnel event shall include, but not be limited to the following:

If after the date hereof, to the extent possible in accordance with applicable laws and regulations, if \_\_\_\_\_, becomes disabled and can no longer maintain their investment responsibilities for INVESTMENT MANAGER, resigns, is released from the employment of INVESTMENT MANAGER or any Affiliate or successor, or for any reason terminates their investment responsibilities for INVESTMENT MANAGER or any Affiliate or successor or becomes unable to maintain their investment responsibilities for INVESTMENT MANAGER, ACERA shall (a) be notified by INVESTMENT MANAGER in no event more than five (5) Business Days from the date of such event, (b) be provided, as soon as is practicable, the opportunity to meet with INVESTMENT MANAGER to discuss the ongoing viability of the strategy, and (c) be provided the right to terminate this Agreement for convenience, without regard to any penalty related to the INVESTMENT MANAGER’s management of the Assets Under Management.

In addition, in the event that there is any material change to key third-party service providers contracted by INVESTMENT MANAGER, INVESTMENT MANAGER hereby agrees that ACERA shall be notified of such changes within twenty (20) Business Days.

M. Cal. Gov’t Code §§7513.95, 31528(b). INVESTMENT MANAGER hereby represents that either (i) no agent, partner or employee of INVESTMENT MANAGER is presently a member or employee of any public retirement system in California, or (ii) any agent, partner or employee of Manager who is presently a member or employee of any public retirement system in California, will not, directly or indirectly, by himself or herself, or as an agent or partner or employee of others, sell or provide to ACERA any investment product that would be considered an asset of the retirement fund.

N. Code of Ethics. INVESTMENT MANAGER has adopted a Code or Codes of Ethics in compliance with applicable law and regulations, including without limitation Rule 204A-1 under the Investment Advisers Act of 1940. INVESTMENT MANAGER shall provide copies of such Code(s) to ACERA promptly upon request. In the event of any conflict or inconsistency between the terms of this Agreement and such Code(s) of Ethics, the terms of this Agreement shall prevail and control.

O. Compliance with Legal Requirements. INVESTMENT MANAGER shall comply with all applicable foreign, international, federal, state, county and local laws, regulations, ordinances, registrations, filings, approvals, authorizations, consents and examinations (“Legal Requirements”), and all provisions required by such Legal Requirements to be included in this Agreement are hereby incorporated by reference.

## XI. REPORTS

A. Written Reports. INVESTMENT MANAGER shall report to ACERA all details regarding trades executed for the Managed Assets in the format, manner and time frame mutually agreed upon by ACERA and INVESTMENT MANAGER. In addition, INVESTMENT MANAGER shall provide ACERA with the periodic written reports described in this Section in a form or forms to be mutually agreed upon from time to time by ACERA and INVESTMENT MANAGER. ACERA agrees that INVESTMENT MANAGER, in the maintenance of its records and preparation of its reports, does not assume responsibility of the accuracy of any information furnished by ACERA, the Custodian or any other person or firm, however INVESTMENT MANAGER shall notify ACERA if any statements or information provided to INVESTMENT MANAGER appear *prima facie* inaccurate. INVESTMENT MANAGER shall provide the following reports:

B. Monthly. Transaction statement, asset (portfolio) statement, and performance for the portfolio and bench mark for the month will be sent to the ACERA’s Chief Investment Officer and the Consultant.

C. Quarterly. Monthly reports described above, plus demonstration of compliance with the Investment Guidelines, performance on the portfolio and benchmark for the quarter, year-to-date, 1 year, 3 years, 5 years and since inception, all of which shall be sent to ACERA’s Chief Investment Officer and the Consultant.

D. Cash Transfers and Property Distributions. INVESTMENT MANAGER shall immediately notify ACERA and the Custodian, in writing, when there is a cash transfer, including but not limited to a dividend, distribution, interest payment, or other distribution of cash or other property, to or for the benefit of ACERA. Such notification shall include the date and the amount and nature of the transfer or distribution, and the wire transfer data (or similar data) relating to the transfer or distribution.

E. Confidentiality of Information. All reports made by INVESTMENT MANAGER and its agents for ACERA under this Agreement (“Work Product”) shall be the property of ACERA, shall be confidential until ACERA makes the Work Product available for public inspection, and shall not be made available by the INVESTMENT MANAGER without the prior written authorization of ACERA, except that Manager may disclose such Work Product as may

be necessary and required by law or regulation or in response to a request from a regulatory authority.

## XII. INSURANCE

A. Insurance and Bonding. Without limiting INVESTMENT MANAGER's indemnity obligations hereunder, for the duration of this Agreement, INVESTMENT MANAGER shall provide and maintain at its own expense the insurance policies described in this Section, to cover its operations and the services which it performs pursuant to this Agreement. Such insurance shall be primary to and not contributing with any other insurance maintained by ACERA and/or the County of Alameda and shall be provided by insurer(s) rated A-, class X, or better by A.M. Best & Company, or otherwise approved in writing by ACERA, and such approval shall not be unreasonably withheld. On or before the commencement date of this Agreement, evidence of such insurance shall be provided to ACERA's Chief Investment Officer or his/her designee, in the form of a certificate of insurance. Such certificate shall describe the nature, amount and term of the insurance provided, and shall be provided on an annual basis as evidence of continuous coverage of the types and amounts of insurance provided for in this Section. In addition, all evidence of insurance shall specify this Agreement and shall be accompanied by a written statement from the insurer that ACERA shall be given at least ten (10) days advanced written notice of any material modification or termination of any policy of insurance. Pursuant to ACERA Policies, INVESTMENT MANAGER shall provide copies of the contractually required insurance policies. Failure by INVESTMENT MANAGER to procure or maintain the insurance described in this Section shall constitute a material breach upon which ACERA may immediately terminate this Agreement. Section shall survive the termination of this Agreement.

INVESTMENT MANAGER shall provide and maintain the following types of insurance policies:

1. Commercial General Liability. INVESTMENT MANAGER shall provide and maintain a Commercial General Liability insurance policy, which names ACERA as an additional insured for its liability arising from INVESTMENT MANAGER's provision of services pursuant to this Agreement. Such policy shall be primary to and not contributing with any other insurance maintained by ACERA. INVESTMENT MANAGER hereby grants to ACERA a waiver of any right to subrogation which any of INVESTMENT MANAGER's insurers may acquire against ACERA by virtue of the payment of any loss under such insurance. INVESTMENT MANAGER shall obtain any endorsement that may be necessary to effect this waiver of subrogation, but this provision applies regardless of whether or not INVESTMENT MANAGER has received a waiver of subrogation endorsement from the insurer. Such policy shall cover legal liability for bodily injury and property damage arising out of INVESTMENT MANAGER's business operations and services that INVESTMENT MANAGER provides pursuant to this Agreement. Such policy shall include, without limitation, endorsements for Property Damage, Premises-Operations, Products/Completed Operations, Contractual, and Personal Injury with a limit of at least Four Million Dollars (\$4,000,000.00) per occurrence and an annual aggregate of at least Ten Million Dollars (\$10,000,000.00). If such insurance is written on a Claims Made Form, such insurance shall be endorsed providing an extended reporting period of not less than five (5) years following termination or expiration of this Agreement.

2. Workers' Compensation. INVESTMENT MANAGER shall provide and maintain throughout the term of this Agreement a program of Workers' Compensation Insurance with statutory limits and Employers Liability Insurance with limits of not less than One Million Dollars (\$1,000,000.00) per accident covering all of INVESTMENT MANAGER's employees.

3. Crime Coverage. INVESTMENT MANAGER shall provide and maintain throughout the term of this Agreement a fidelity or financial institution bond policy with at least the following insuring agreements:

(a) Employee Dishonesty Coverage — Ten Million Dollars (\$10,000,000.00) per loss and aggregate.

(b) Computer Theft Coverage — One Million Dollars (\$1,000,000.00) per loss and aggregate.

Such policy shall provide protection to ACERA against loss by reason of fraud or dishonesty on the part of any employee, agent, or representative of INVESTMENT MANAGER, and shall be in an amount meeting the bonding requirements of Section 412(a) of ERISA, as amended from time to time, if such amounts are from time to time greater than those specified above.

4. Errors and Omissions. INVESTMENT MANAGER shall provide and maintain an Errors and Omissions policy covering INVESTMENT MANAGER and its Agents for errors and omissions arising from the services which INVESTMENT MANAGER provides pursuant to this Agreement. Policy limits for this coverage shall be Ten Million Dollars (\$10,000,000.00) per claim and aggregate.

### XIII. MOST FAVORED NATION

For so long as this Agreement remains effective, INVESTMENT MANAGER shall promptly notify ACERA in writing of any fee agreement or arrangement between INVESTMENT MANAGER and any of its other either new or existing clients whose committed funding during the term of this Agreement is of equal or lesser value and who invest in a similar strategy, and whose account is substantially similar and has similar benchmark(s), that contains terms more favorable than those set forth in this Agreement and its Exhibits. ACERA shall automatically be entitled to receive the benefit of any such more favorable terms at its option. To the extent this circumstance arises, the parties may amend the Fee Schedule and Computation attached hereto as Exhibit D.

### XIV. TERMINATION

A. Term. The term of this Agreement shall commence on the date first set forth above and continue automatically thereafter for successive annual periods ending on the anniversary of the date of this Agreement, unless terminated by either ACERA or INVESTMENT MANAGER pursuant to the provisions of this Article XIV.

B. Termination for ACERA's Convenience. ACERA may terminate this Agreement without cause, at any time, by delivering to INVESTMENT MANAGER a written notice of

termination for convenience specifying the date on which INVESTMENT MANAGER shall cease work hereunder (“Effective Termination Date”). The Effective Termination Date shall be no earlier than the close of business thirty (30) business days after such Notice of Termination is delivered to INVESTMENT MANAGER. In no event shall ACERA’s termination of this Agreement under this Section be deemed a waiver of ACERA’s right to make a claim against INVESTMENT MANAGER for damages resulting from any default by INVESTMENT MANAGER (as described below) which occurred prior to the Effective Termination Date.

C. Termination by ACERA for Default. ACERA may immediately terminate this Agreement by delivering to INVESTMENT MANAGER a written notice of termination for default (“Notice of Termination for Default”) which specifies the Effective Termination Date, under any one of the following circumstances:

a. If INVESTMENT MANAGER materially fails to perform or cause to be performed the services required under this Agreement, or any of the other provisions of this Agreement, within the time specified therefor (or within a reasonable time if no time is specified) and subsequently fails to cure such default within ten (10) calendar days (or such longer period as ACERA may authorize in writing) after receipt of written notice from ACERA specifying such default;

b. Upon notice but without further cure period, if INVESTMENT MANAGER fails to perform according to this Agreement following notice and failure to cure pursuant to paragraph (a) of this Section;

c. Without notice or cure period if INVESTMENT MANAGER materially breaches any of the warranties, representations and covenants made in Article ;

d. Without notice or cure period if INVESTMENT MANAGER files for bankruptcy or is placed into involuntary bankruptcy, becomes insolvent or generally cannot pay its debts as they become due;

e. Without notice or cure period if INVESTMENT MANAGER or any employee of INVESTMENT MANAGER is subject to criminal investigation, indictment or conviction, or is found civilly or criminally liable by a trial court, jury or administrative body in connection with any matter involving breach of trust, breach of fiduciary duty, fraud, theft, or moral turpitude; or

f. Without notice or cure period if INVESTMENT MANAGER attempts or purports to assign this Agreement, or any portion hereof, or any of its rights or obligations hereunder, without obtaining ACERA’s prior written consent.

If ACERA terminates this Agreement for default pursuant to this Section, ACERA shall be entitled to recover from INVESTMENT MANAGER all reasonable damages resulting from such default. The running of any grace period for cure of a default pursuant to this Section shall not limit ACERA’s right to terminate this Agreement for convenience at any time pursuant to Section B. above.

D. Termination for INVESTMENT MANAGER's Convenience. INVESTMENT MANAGER may terminate this Agreement in its entirety without cause at any time by delivering to ACERA a written notice of termination for convenience which specifies the Effective Termination Date. The Effective Termination Date shall be agreed upon by INVESTMENT MANAGER and ACERA, but shall be no earlier than thirty (30) calendar days and no later than ninety (90) calendar days after the Notice of Termination is delivered to ACERA. INVESTMENT MANAGER shall cause ACERA to honor any trades agreed to but not settled before the Effective Termination Date.

E. Termination by INVESTMENT MANAGER for Default. INVESTMENT MANAGER may terminate this Agreement in its entirety upon written Notice of Termination for Default if ACERA materially fails to perform any of its obligations under this Agreement and fails to cure such default within thirty (30) calendar days of receiving INVESTMENT MANAGER's written notice of such default, which notice describes in reasonable detail the nature of the default and INVESTMENT MANAGER's view as to the cure required in order to bring ACERA's performance into material compliance with its obligations under this Agreement.

F. Rights, Remedies and Responsibilities upon Termination. In the event of any termination of this Agreement, all of the terms and conditions herein shall continue to apply through the Effective Termination Date and through any period following such date, during which INVESTMENT MANAGER shall continue to perform the services required under this Agreement in order to complete any transactions pending on the Effective Termination Date and to facilitate an orderly transition to a successor INVESTMENT MANAGER ("Transition Period"). Such Transition Period shall not exceed three (3) months after the Effective Termination Date. The following provisions shall also apply to any termination of this Agreement.

G. Post-Termination Responsibilities. If either party terminates this Agreement, and unless otherwise expressly directed by ACERA, INVESTMENT MANAGER shall take all necessary steps to stop services under this Agreement on the Effective Termination Date.

H. Termination Invoice. Following the Effective Termination Date of this Agreement, INVESTMENT MANAGER shall submit to ACERA, in the form and with any reasonable certifications as may be prescribed by ACERA, INVESTMENT MANAGER's final invoice ("Termination Invoice"). The Termination Invoice shall prorate INVESTMENT MANAGER's fees for work already performed but for which INVESTMENT MANAGER has not been compensated through the Effective Termination Date, in accordance with INVESTMENT MANAGER's then current compensation level, by multiplying said fees by a fraction, the numerator of which is the number of days in the invoice period that INVESTMENT MANAGER managed the Managed Assets and the denominator of which is the total number of days in the invoice period. INVESTMENT MANAGER shall submit such Termination Invoice no later than thirty (30) days after the Effective Termination Date. Upon INVESTMENT MANAGER's failure to submit its Termination Invoice within the time allowed, ACERA may determine, on the basis of information available to it, the amount, if any, due to INVESTMENT MANAGER and such determination shall be deemed final. Subject to Section I. below, after

ACERA has made such determination, or after INVESTMENT MANAGER has submitted its Termination Invoice, ACERA shall authorize payment to INVESTMENT MANAGER.

I. Payment Withheld for Default. ACERA shall not authorize and shall withhold payment for services provided if ACERA terminates this Agreement for default pursuant to Section C. above.

J. Excusable Default. If, after either party issues a Notice of Termination for Default to the other party (pursuant to Sections C. and E. above, as the case may be), the issuing party determines for any reason that the other party was not in default, or that such default was excusable, then the rights and obligations of the parties shall be the same as if a Notice of Termination for Default had not been issued.

K. Good Faith Transfer. Upon any termination of this Agreement by either party and to the extent directed by ACERA, INVESTMENT MANAGER shall continue to serve as an INVESTMENT MANAGER hereunder at the then existing compensation level for the duration of the Transition Period. INVESTMENT MANAGER shall cooperate with ACERA in good faith to effect a smooth and orderly transfer of such services and all applicable records. Upon termination of this Agreement, INVESTMENT MANAGER shall retain all ACERA Records (as that term is defined in Section XXI.A. below) according to the record retention provisions set forth in Section XXI.B. below.

L. Cumulative Nature of Rights and Remedies. The rights and remedies of the parties provided by this Article XIV. are not exclusive, but cumulative and in addition to any other rights and remedies provided by law, in equity or under any of the provisions of this Agreement.

M. Measure of Damages.

a. Damages arising from any default, act or omission under this Agreement shall be determined under the laws of the State of California.

b. If any payment required to be made to a party hereto by the other party is not paid in full when due, including fees payable to INVESTMENT MANAGER pursuant to Section 13 above, the amount due shall include an amount equal to the average Federal Funds rate as published daily in the Wall Street Journal ("Fed Funds Rate"), and compounded to the extent permitted under applicable law from the due date until the date on which payment is made.

This Section M. shall survive the termination of this Agreement.

N. Transition Period. In the event of any termination of this Agreement, all of the terms and conditions herein shall continue to apply through the effective termination date and through any period following such date ("Transition Period"), during which INVESTMENT MANAGER shall continue to perform the services, consistent with the fiduciary obligations required under this Agreement, as directed by ACERA in writing, in order to complete any transactions pending on the effective termination date and to facilitate an orderly transition to a successor. The Transition Period shall not exceed ninety (90) days after the effective termination



date. The expiration of the Transition Period shall not affect any section or subsection that is specifically identified as surviving the termination of this Agreement.

## XV. INDEMNIFICATION

INVESTMENT MANAGER agrees to indemnify, defend at its sole expense, save and hold harmless, ACERA, its trustees, officers, agents and employees from any and all losses, claims, actions, damages, costs, expenses (including, but not limited to, reasonable attorney's fees and court costs), judgments, fines and penalties of any kind whatsoever arising out of, or relating to, any bad faith, negligence, willful misconduct, improper or unethical practice, infringement of intellectual property rights, breach of fiduciary duty, breach of trust, breach of confidentiality, material breach of contract, or material violation of law by INVESTMENT MANAGER or any of its Agents acting in connection with this Agreement. This indemnification shall survive the termination of the Agreement.

If ACERA receives notice of the commencement of any action for which a claim for indemnity under this Section may be made, ACERA shall promptly notify INVESTMENT MANAGER thereof; provided that any delay in notification shall not reduce the extent of indemnity and defense hereunder except to the extent that the delay prejudices INVESTMENT MANAGER. Following receipt of notice of the commencement of any action, INVESTMENT MANAGER shall be entitled to participate in such action, and upon notice delivered to ACERA, to assume the defense thereof, with counsel reasonably acceptable to ACERA, who shall not unreasonably withhold such acceptance. If, however, the defendants in such action include both ACERA and INVESTMENT MANAGER and ACERA shall have reasonably concluded that there may be legal defenses available to it that are different from or additional to those available to INVESTMENT MANAGER, ACERA shall be entitled, at the expense of INVESTMENT MANAGER and upon reasonable notice to INVESTMENT MANAGER, to separate counsel to assert such defenses.

## XVI. SPECIFIC INVESTMENT OBJECTIVES AND PERFORMANCE MEASUREMENT BENCHMARKS

INVESTMENT MANAGER agrees to adhere to the performance objective set forth in the Specific Guidelines. INVESTMENT MANAGER understands that its performance will be measured in accordance therewith, as well as the ACERA Policies. Notwithstanding the Board's goal of keeping cash or cash equivalents below 5%, during the period of initial funding, INVESTMENT MANAGER shall have a reasonable period of time, not to exceed six months, in which to invest the funds.

INVESTMENT MANAGER acknowledges that it has been advised that it will be evaluated by ACERA based upon the factors set forth in the ACERA Policies as well as the Specific Guidelines. ACERA may, from time to time amend the provisions of the Specific Guidelines and the ACERA Policies, without any amendment of this Agreement.

## XVII. RELATIONSHIP OF PARTIES

A. Independent Contractor. INVESTMENT MANAGER shall at all times be acting in the capacity of an independent contractor. This Agreement is not intended, and shall not be construed, to create the relationship of agent, servant, employee, partnership, joint venture, or association as between ACERA and INVESTMENT MANAGER. For all purposes, including but not limited to Workers' Compensation liability, INVESTMENT MANAGER understands and agrees that all persons furnishing services pursuant to this Agreement are deemed employees or agents solely of INVESTMENT MANAGER and not of ACERA.

B. Nonexclusivity. ACERA acknowledges that INVESTMENT MANAGER provides investment advice to other clients and that INVESTMENT MANAGER may give advice or take action on behalf of other clients which differs from that provided to ACERA. ACERA agrees that INVESTMENT MANAGER shall have no obligation to purchase or sell any security on behalf of ACERA, which INVESTMENT MANAGER, its principals, affiliates, or employees purchase or sell for themselves or for other clients provided that, with respect to purchases, over a period of time INVESTMENT MANAGER, to the extent practical, allocates investment opportunities to the Account on a fair and equitable basis relative to other similarly-situated client accounts, and further provided that, with respect to sales, INVESTMENT MANAGER in its reasonable discretion has concluded that such sales would not be in ACERA's best interest. ACERA also acknowledges that in the course of INVESTMENT MANAGER's business or the business of its affiliates, INVESTMENT MANAGER may acquire certain information about corporations or securities which by law INVESTMENT MANAGER is prohibited from divulging or acting upon.

## XVIII. ASSIGNMENT OF CONTRACT

Nothing contained herein shall be construed to permit assignment or transfer by INVESTMENT MANAGER of any rights, obligations or liabilities created by this Agreement and such assignment or transfer is prohibited and void, unless expressly approved in writing in advance by the Board.

## XIX. ACERA CONFLICT OF INTEREST POLICY

INVESTMENT MANAGER acknowledges that all of the Trustees on the Board, and pertinent ACERA staff are bound by the conflict of interest prohibitions and reporting requirements set forth in Government Code Sections 87100 et seq. concerning gifts, by the provisions of the Levine Act, Government Code Sections 84300 et seq. concerning campaign contributions, by the provisions of Government Code Sections 1090 et seq. prohibiting any financial interest in an ACERA contract, by the ACERA Policies, and/or by the ACERA Conflict of Interest Policy, a copy of which is appended hereto as Exhibit F. INVESTMENT MANAGER hereby acknowledges receipt of and hereby agrees to ACERA's Conflict of Interest Policy attached hereto as Exhibit F.

In order that all Trustees and pertinent ACERA staff are able to participate in matters coming before the Board and to avoid conflicts of interest, INVESTMENT MANAGER agrees that it will not make any political contributions, gifts, reimbursement of expenses or provide any

other personal or financial benefit or take any action or make any offer to any ACERA Trustee or staff member that would result in a violation of the provisions of any of the foregoing Government Code Sections, the ACERA Policies, and/or the ACERA Conflict of Interest Policy. Invitations to educational conferences, and similar events including travel and accommodations should be made to the entire Board or ACERA and not directed to individual Trustees or staff. The Board will determine whether to accept such invitations and will be solely responsible for selection of the Trustee, staff member, or other individual who will attend or otherwise participate on behalf of ACERA. All costs or expenses related to the conference or event, including travel and accommodations, will be paid by ACERA.

INVESTMENT MANAGER shall deliver to ACERA on or before March 30th of each year, the Fair Political Policies Commission Form 700.

## XX. CLASS ACTION SETTLEMENTS

INVESTMENT MANAGER shall immediately forward all claims for settlement proceeds, notices or any other documentation relating to any class actions involving any of the Managed Assets that it receives to:

State Street Global Services  
801 Pennsylvania Avenue  
Kansas City, MO 64105  
[Email: PF\\_ACERA@statestreet.com](mailto:PF_ACERA@statestreet.com)  
Phone: (816) 871-1964  
Fax: (617) 769-6604

INVESTMENT MANAGER shall provide written notification to ACERA within three (3) business days of receipt of such material relating to class actions.

## XXI. RECORDS AND AUDITS

A. Record Maintenance. INVESTMENT MANAGER shall keep and maintain all records related to the Managed Assets, including but not limited to transactions, activity, time sheets, cost, billing, accounting and financial records, proprietary data, electronic recordings, correspondence, and any other records created in connection with this Agreement (“ACERA Records”), according to INVESTMENT MANAGER’s record retention standards. INVESTMENT MANAGER agrees to immediately notify ACERA of any change in such standards. INVESTMENT MANAGER shall keep and maintain ACERA Records according to INVESTMENT MANAGER’s record retention schedule for no less than ten (10) years following the expiration or earlier termination of this Agreement.

B. Record Review and Audit. INVESTMENT MANAGER agrees that ACERA, or any duly authorized representative of ACERA, shall have access to and the right to examine, audit, excerpt, copy or transcribe any ACERA Records at any time during the term of this Agreement, or at any time for up to ten (10) years after the expiration or earlier termination of this Agreement. INVESTMENT MANAGER shall retain such records for at least ten (10) years after the expiration or earlier termination of this Agreement. Upon ACERA’s request and on

reasonable notice, INVESTMENT MANAGER shall make such records available for review during normal business hours at INVESTMENT MANAGER's business office. INVESTMENT MANAGER shall make the persons responsible for creating and maintaining ACERA Records available to ACERA during such review for the purpose of responding to ACERA's reasonable inquiries. INVESTMENT MANAGER shall provide ACERA with copies of its audited annual financial statements as described in the ACERA Policies.

## XXII. CONFIDENTIALITY OF ACERA RECORDS

A. INVESTMENT MANAGER agrees to maintain the confidentiality of all ACERA records, which may be obtained in its performance under this Agreement according to all applicable federal, state, county and local laws, regulations, ordinances and directives relating to confidentiality. INVESTMENT MANAGER shall inform all of its Agents of the confidentiality provisions of this Agreement. Upon cancellation, termination or expiration of this Agreement, INVESTMENT MANAGER shall return to ACERA all materials obtained which contain any confidential information. In the course of performance of this Agreement, INVESTMENT MANAGER, its employees, agents, and subcontractors will not publish or disseminate commercial advertisements, press releases, opinions or feature articles, using the name of ACERA or the County of Alameda without the prior written consent of ACERA. INVESTMENT MANAGER may, however, without the prior written permission of ACERA, indicate in its proposals and sales materials that it has been awarded an agreement by ACERA to provide the services described in this Agreement. Notwithstanding the foregoing, INVESTMENT MANAGER may make such records available as required by law or regulation or in response to a request from a regulatory authority.

B. All information and advice furnished by INVESTMENT MANAGER to ACERA hereunder, including their respective agents and employees, shall be treated as confidential and shall not be disclosed to third parties, except as required by law. INVESTMENT hereby acknowledges that ACERA is a public agency subject to state laws, including, without limitation, (i) the California Public Records Act (California Government Code §6250, et seq.) (the "Public Records Act"), which provides generally that all records relating to a public agency's business are open to public inspection and copying unless otherwise exempted under the Public Records Act, and (ii) the Ralph M. Brown Act (California Government Code §54950, et seq.), which provides generally for open meetings for local legislative bodies, and that, as a result, ACERA may be required by law to disclose certain information publicly. If ACERA determines that it is required by law to disclose information relating to INVESTMENT MANAGER, the Managed Assets or the investment of the Managed Assets, any such disclosure shall not constitute a breach or violation of this Agreement. If INVESTMENT MANAGER wishes to oppose any such disclosure, Manager shall assume the opposition to such disclosure(s) or shall indemnify ACERA for all costs incurred (including attorneys' fees) in connection with any opposition to such disclosure.

## XXIII. AMENDMENTS IN WRITING

No alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by the parties hereto.

#### XXIV. LAWS GOVERNING

This Agreement shall be governed by, construed, and enforced in accordance with the laws of the State of California and the United States of America.

#### XXV. ATTORNEYS' FEES

If either or both of the parties initiate any litigation or alternative dispute resolution process to enforce or interpret any of the provisions of this Agreement, then the party not prevailing shall pay to the prevailing party all reasonable costs and expenses incurred therein by the prevailing party including, without limitation, reasonable attorneys' fees, court costs, expert witness fees and costs, travel time and associated costs, copy costs, deposition costs, exhibit costs, costs on appeal, fees and costs associated with execution upon any judgment or order, special transcript costs, and the appointment of a Special Master or discovery referee. These expenses shall be in addition to any other relief to which the prevailing party may be entitled and shall be included in and as part of the judgment or decision rendered in such litigation or alternative dispute resolution process.

#### XXVI. SECTION HEADINGS: INTERPRETATION

The section headings contained herein are for convenience and reference only, and shall not create any additional terms, obligations or commitments on the part of any party hereto.

#### XXVII. ACKNOWLEDGMENT OF RECEIPT OF FORM ADV

ACERA acknowledges that it has received Form ADV from INVESTMENT MANAGER. In the event ACERA received the Form ADV less than 48 hours prior to, but no later than, the date of execution of this Agreement, ACERA shall have the option to terminate its execution of the Agreement.

#### XXVIII. NOTICES

All communications under this Agreement must be in writing and will be deemed duly given and received (i) when delivered personally during actual business hours on a business day, (ii) when sent by facsimile transmission upon telephonic or faxed acknowledgement from the recipient, (iii) when given by mail, three (3) days after being sent by first class mail, or (iv) when given by overnight delivery, one (1) day after being deposited for next-day delivery with Federal Express or another reputable overnight delivery service, and in each case provided that all charges or postage are prepaid, and the notice is properly addressed to the party to receive such notice at that party's address indicated below, or at any other address that either party may designate by proper written notice to the other.

**ACERA**Attention:

Chief Investment Officer  
475 14<sup>th</sup> Street, Suite 1000  
Oakland, CA 94612-1900  
[Allinvestments@acera.org](mailto:Allinvestments@acera.org)

Telephone No. (510) 628-3027  
Facsimile No. (510) 287-5412

**INVESTMENT MANAGER**

Attention: *[insert name] [insert title]*  
*[insert address]*

Telephone No. Facsimile No.

**XXIX. AGENT FOR SERVICE OF PROCESS**

Pursuant to California Code of Civil Procedure, section 416.10, INVESTMENT MANAGER hereby designates the following as its agent for service of process:

*[INSERT AGENT FOR SERVICE OF PROCESS WITH CA ADDRESS]*

INVESTMENT MANAGER may at any time designate a new agent for service in the State of California by providing written notice, duly executed in the same manner as this Agreement, of the full name and address of its new agent. Unless otherwise agreed in writing by ACERA, no attempt to revoke the agent's authority to receive service shall be valid unless ACERA has first received a duly executed designation of a new agent meeting the requirements of California law.

**XXX. EXHIBITS**

The Exhibits attached hereto are incorporated in and made a part of this Agreement by reference. If any conflicts, inconsistencies or ambiguities should arise between or among this Agreement and the incorporated documents, the terms and provisions of this Agreement and not the incorporated documents shall prevail. ACERA shall notify INVESTMENT MANAGER of any changes to any of the Exhibits and INVESTMENT MANAGER shall not be required to comply with any changes to such Exhibits until it has had reasonable time to review and implement such changes.

**XXXI. SEVERABILITY**

If any provision of this Agreement is held by any court to be invalid, void or unenforceable, in whole or in part, the other provisions shall remain unaffected and shall continue in full force and effect.

**XXXII. SURVIVAL**

The following provisions of this Agreement shall survive the termination of this Agreement: Section III (Fiduciary Status of INVESTMENT MANAGER: Standard of Care),

Section XI (Representations and Warranties), Section XIII (Insurance), Section XXII (Records and Audits), Section XXIII (Confidentiality of ACERA Records), and, to the extent applicable to the foregoing sections, Sections I (Definitions), Section XVI (Indemnification), Section XXIV (Amendments), Section XXV (Governing Law), Section XXVI (Attorneys' Fees), and Section XXVII (Section Headings: Interpretation), Section XXIX (Notices), Section XXX (Agent for Service of Process), Section XXXI (Exhibits), Section XXXII (Severability), Section XXXIII (Entire Agreement), and Section XXXV (Dispute Resolution ).

### XXXIII. ENTIRE AGREEMENT

This Agreement and the Exhibits attached hereto constitute the entire agreement of the parties and supersedes all prior or contemporaneous written or oral negotiations, correspondence, and agreements regarding the subject matter hereof. No party has been induced to enter into this Agreement by, nor is any party relying on, any representation or warranty outside those expressly set forth in this Agreement.

### XXXIV. DISPUTE RESOLUTION

The parties to this Agreement agree that any action or claim arising out of or related to this Agreement shall be brought and maintained in the U.S. District Court for the Northern District of California, and further agree to submit to the jurisdiction of that Court. Each party to this Agreement hereby waives any law or rule of court that would allow it to request or demand a change to a different venue from that Court. Neither party hereto waives its right to jury trials.

The undersigned parties hereby agree to the foregoing terms and provisions:

ALAMEDA COUNTY EMPLOYEES'  
RETIREMENT ASSOCIATION

INVESTMENT MANAGER

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

\_\_\_\_\_

\_\_\_\_\_

Chief Executive Officer

Title

Approved as to form:

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

Name

Title



**EXHIBIT A**

**SPECIFIC INVESTMENT GUIDELINES**

**EXHIBIT B**

**ACERA GENERAL INVESTMENT GUIDELINES, POLICIES AND PROCEDURES**

**EXHIBIT C**

**AUTHORIZED PERSONNEL**

**EXHIBIT D**

**FEE SCHEDULE AND COMPUTATION OF FEES**

**EXHIBIT E**

**COLLECTIVE FUND**

**EXHIBIT F**

**ACERA CONFLICT OF INTEREST POLICY**

**EXHIBIT G**

**ACERA PLACEMENT AGENT DISCLOSURE POLICY**

**EXHIBIT H**

**INVESTMENT MANAGER: ANNUAL CERTIFICATION**



**EXHIBIT I**

**ACERA MONTHLY INVESTMENT MANAGER RECONCILIATION PROCEDURE**

