

AGREEMENT FOR ACTUARIAL CONSULTING SERVICES

This Agreement for Actuarial Consulting Services ("Agreement") is made and entered into as of by and between the Los Angeles County Employees Retirement Association ("LACERA"), and [ACTUARIAL CONSULTING FIRM] ("Actuary") and is effective as of [DATE] ("Effective Date").

RECITALS

- A. LACERA is a duly established and existing public retirement system created under the County Employees Retirement Law of 1937, California Government Code Section 31450 et seq.; and
- B. Government Code Section 31453 requires LACERA to secure an actuarial valuation not less than every three years.
- C. LACERA desires to engage an Actuary to perform actuarial consulting services and issued a Request for Proposals on [DATE] ("RFP") for such services; and
- D. Actuary submitted a written proposal on [DATE] in response to the RFP, and made oral representations to LACERA as part of the RFP process, and represented to LACERA that it possesses and will employ, in a fiduciary capacity, the highest degree of competence and expertise essential to provide such actuarial consulting services.
- E. Actuary hereby reaffirms the reliability and accuracy of the written proposal and oral representations made to LACERA in the RFP process.
- F. LACERA has determined, based on Actuary's written proposal submitted in response to the RFP and Actuary's oral representations made to LACERA in the RFP process (collectively, the "Actuary's Proposal"), and LACERA's due diligence, that (i) Actuary is qualified and capable of performing the required actuarial consulting, investigation, and valuation services, (ii) Actuary's fee for such services is competitive, fair and reasonable, and (iii) engaging Actuary to perform the actuarial consulting is in the best interest of the participants and beneficiaries of LACERA.

NOW, THEREFORE, in consideration of the mutual covenants and conditions hereinafter set forth, and intending to be legally bound, the parties agree as follows:

AGREEMENT

1. Definitions.

For purposes of this Agreement, capitalized terms have the meanings set forth in this Section 1.

- A. "Actuarial Work" means any actuarial investigation, valuation, consulting or audit services, review or analysis of any nature whatsoever, for or without compensation.
- B. "Agents" means any employees, agents, or representatives of Actuary acting in connection with this Agreement.
- C. "Agreement" means this Agreement for Actuarial Consulting Services entered into by and between LACERA and Actuary.
- D. "Agreement Date" means the date shown in the preamble of this Agreement.
- E. "Actuary" means [ACTUARIAL CONSULTING FIRM].
- F. "Actuary's Proposal"- means the proposal dated [DATE] submitted by Actuary in response to the RFP, and all attachments thereto and Actuary's oral representations made in the RFP process, incorporated herein and attached as Exhibit E.
- G. "CERL" means the County Employees Retirement Law of 1937, as amended, California Government Code section 31450 et seq.
- H. "Confidential Information" means all information, data and records in any form from any source related to the Actuarial Work, including but not limited to (a) all information and records in any form provided by LACERA and LACERA's agents, employees, representatives, and consultants and subcontractors to Actuary or its Agents, and (b) all transaction, advice, time sheets, cost, billing, accounting and financial records, correspondence, and Work Records, and other information and records in any form created by Actuary or its Agents in connection with the Actuarial Work, and Derivative Works.
- I. "County" means the County of Los Angeles, California.
- J. "County Board" means the County's Board of Supervisors.
- K. "Covered Persons" means LACERA, its trustees, officers, employees, contractors, agents, and representatives, but does not include Actuary.
- L. "Derivative Works" means records, information or data that references, repeats, analyzes, or otherwise relates or refers in any way to LACERA records.
- M. "Effective Termination Date" means the date on which work under this Agreement will formally cease, as specified in any Notice of Termination delivered by one party to the other.
- N. "Employee Association" means any entity representing or compensated by all or any group of current or retired County employees.
- O. "Force Majeure" means any cause, circumstance, or event beyond the control and

without the fault or negligence of Actuary which causes Actuary to fail to perform its obligations hereunder. Such causes, circumstances or events may include, but are not restricted to, acts of God or of the public enemy, acts of any foreign, international, federal or state government (including all subdivisions thereof) in such government's sovereign capacity, fires, floods and earthquakes; but in every case the failure to perform must be beyond the control and without the fault or negligence of Actuary.

- P. "HIPAA Rules" means the Health Insurance Portability and Accountability Act of 1996, as it exists on the date of this Agreement and as amended from time to time during the term of this Agreement, insofar as agreeable to the Statement of Work, including but not limited to the Standards for Privacy of Individually Identifiable Health Information ("Privacy Rule"), 45 CFR Parts 160 & 164, Subparts A & E; Health Insurance Reform: Security Standards ("Security Rule"), 45 CFR Parts 160 & 164, Subparts A & C; Breach Notification for Unsecured Protected Health Information ("Breach Notification Rule"), 45 CFR Parts 160 & 164, Subparts A & D; Health insurance Reform: Standards for Electronic Transactions ("Transactions Rule"), 45 CFR Parts 160 & 162; and HIPAA Administrative Simplification: Enforcement ("Enforcement Rule"), 45 CFR Part 160, Subparts C-E.. This definition shall also include the rules and regulations of the Health Information Technology for Economic and Clinical Health Act ("HITECH Act"), 43 USC Section 17935, as they exist at the time of this agreement and as amended from time to time during the term of this Agreement.
- Q. "LACERA" means the Los Angeles County Employees Retirement Association, an independent public pension fund established under the authority of the County Employees Retirement Law of 1937 (California Government Code Sections 31450 et seq.) and the Public Employees' Pension Reform Act of 2013 (California Government Code Sections 7522, et seq.).
- R. "LACERA Information" means any materials, data, and other information received or developed by Actuary regarding LACERA's membership, assets, obligations, policies, procedures and/or strategies, including, without limitation, LACERA Records.
- S. "LACERA Records" shall be broadly construed to encompass all information and records from any source and in any form, including verbal, written and electronic, whether identified as "confidential" or not, related to the Services, including but not limited to those (a) provided by LACERA and LACERA's agents, employees, representatives, and consultants and subcontractors to Actuary or its Agents, and (b) created by Actuary or its Agents in connection with the Actuary Work, including but not limited to transactions, advice, time sheets, cost, billing, accounting and financial records, charts, drafts, correspondence, data, notes, Work Product, reports, recommendations, working papers and internal communications.
- T. "LACERA's Project Director" means LACERA [NAME], [TITLE].
- U. "Legal Requirements" means all federal, state, county and local laws, rules,

regulations, ordinances, registrations, filings, approvals, authorizations, consents and examinations, presently existing or enacted or promulgated during the term of this Agreement, which may apply to Actuary or LACERA in relation to their performance under this Agreement, including the HIPAA Rules.

- V. "Member Records" means any records or information in any form, hard copy, electronic, or verbal, and any records in any form created by Actuary or its Agents, relating to LACERA's members or beneficiaries to which Actuary or its Agents are exposed from any source or which Actuary or its Agents create when performing under this Agreement, including Personal Health Information as defined by the HIPAA Rules, as it exists as of the date of this Agreement as it may be amended from time to time during the term of this Agreement.
- W. "Notice of Termination for Convenience" means a notice delivered by one party to the other party when the notifying party desires to terminate this Agreement for its convenience, or for any other reason other than Actuary's default.
- X. "Notice of Termination for Default" means a notice delivered by one party to the other party when the notifying party desires to terminate this Agreement due to a default by the other party.
- Y. "Work Product" means all documents, data, and other tangible materials authored or prepared and delivered by Actuary to LACERA under the terms of this Agreement.

2. Performance Requirements and Schedule.

- A. Work to be Performed. Actuary agrees to perform the tasks and provide the services set forth in the manner and form as described in the body of this Agreement and in Exhibits "A & B" (Statements of Work) attached hereto and incorporated herein by reference. Actuary's quality of service will be at least equivalent to that which Actuary provides to other clients it serves in the same capacity. Actuary will be held to the same standard of care, skill, prudence and diligence then prevailing that applies to other experts practicing in a like enterprise and with like aims.
- B. Special Projects. Actuary will perform special projects arising out of, related to, or in connection with the work Actuary performs pursuant to this Agreement as defined and requested by LACERA from time to time. Prior to Actuary commencing any work on the special project, LACERA and Actuary will execute an amendment to this Agreement or an engagement letter containing a description of the special project work to be performed by Actuary and the deliverables to be delivered to LACERA, and the time frame in which the work is to be performed. Actuary will be compensated for its projects at the hourly rates in effect during the fiscal year in which the work is performed.

- C. Quality of Services. Actuary agrees to discharge its duties under this Agreement with the same standard of care, skill, prudence and diligence that applies to other experts practicing in a like enterprise. All services which Actuary provides hereunder shall meet the requirements and standards set forth in this Agreement. Actuary shall promptly correct any errors or omissions in the performance or delivery of its services, at no cost or expense to LACERA, within three (3) business days after request by LACERA's Project Director, but such opportunity to correct errors or omissions will not affect LACERA's right to terminate this Agreement for default set forth in Section 7.C.
- D. Actuary's Work Schedule. Actuary and LACERA's Project Director will agree in advance on Actuary's work schedule.
- (1) Actuary designates [LEAD PROJECT ACTUARIES NAMES & TITLES] to perform the services described in the Statement of Work attached hereto. Actuary will not remove said individual(s) or Actuary's Project Manager from the work without the prior written consent of LACERA's Project Director, which LACERA may reasonably withhold, but such restriction shall not apply to instances of employment termination, serious illness, death, or other cause beyond Actuary's control.
 - (2) Upon request by LACERA's Project Director, Actuary will replace any of Actuary's personnel or subcontractors assigned to perform services under this Agreement, who are in LACERA's opinion, unable to effectively carry out the responsibilities of this Agreement.
- E. Actuary's Work. Actuary's work is prepared for the use and benefit of LACERA in accordance with its statutory and regulatory requirements. Actuary acknowledges that (i) pursuant to CERL section 31453, LACERA has a statutory duty, upon the basis of the investigation, valuation and recommendation of the Actuary, to recommend to the County Board changes in the rates of interest, in the rates of contributions of members, and County appropriations as are necessary; and (ii) pursuant to CERL section 31454 the County Board must adjust the rates of interest, the rates of contributions of members, and County appropriations in accordance with that recommendation. Notwithstanding the following, Actuary does not intend for the County or other third parties to rely upon Actuary's Work Product for guidance or advice about LACERA. Actuary does not intend to benefit or to have any legal duty to participating employers or any other third party recipient of its Work Product, and Actuary will include a legend on its reports so stating. LACERA agrees not to remove any such disclaimer language from Actuary's Work Product. Except as required under applicable law or by order of court of competent jurisdiction, LACERA agrees not to provide Actuary's Work Product to third parties without Actuary's prior written consent. Actuary does not authorize LACERA to include Actuary's name or reports in any offering, memorandum, prospectus, securities filing, or solicitation of investment.
- F. Resolution of Conflicting Provisions. This Agreement, and the term "Agreement" as used herein, includes Exhibits, attachments, and/or any future amendments which are incorporated herein as a part of this Agreement. The provisions of these documents will be interpreted so as to harmonize their meaning and intent. In the

event of any conflict or inconsistency between this Agreement, the Exhibits incorporated herein and any amendments thereto, said conflict or inconsistency shall be resolved by giving precedence in the following order:

- (1) Each amendment in descending order by date of execution;
- (2) Agreement, including the Exhibits and Attachments.

3. Project Responsibility.

A. Actuary's Project Manager. [NAME], a principal and consulting actuary for Actuary, is Actuary's Project Manager. Actuary's Project Manager:

- (1) has full authority to act for Actuary on all matters relating to the daily operation of this Agreement;
- (2) will be reasonably available during LACERA's normal working hours for telephone contact and to meet with LACERA personnel designated to discuss Actuary's performance; and
- (3) personally attend specified meetings of the LACERA Board of Investments to present the report and findings of Actuary's Work.
- (4) Upon request by LACERA's Project Director, Actuary shall meet with LACERA's Project Director to determine a mutually acceptable resolution in the event that any of Actuary's Employees assigned to perform services under this Agreement, are in LACERA's reasonable opinion, unable to effectively carry out the responsibilities of this Agreement.
- (5) Alternate Project Manager. Actuary shall inform LACERA in writing of the person appointed, if any, as its Alternate Project Manager, which appointment shall be subject to LACERA's advance written approval. The Alternate Project Manager shall act in the Project Manager's absence or unavailability and shall assume the same responsibilities as the Project Manager.
- (6) Actuary's Agents shall comply with all applicable rules and regulations of LACERA's premises while on LACERA's premises, including security requirements.

B. LACERA's Project Director. LACERA's Project Director is LACERA's Chief Executive Officer or his designee.

- (1) LACERA's Project Director is responsible for:

- (a) providing overall management and coordination of this Agreement acting as liaison for LACERA;
- (b) insuring that the provisions and objectives of this Agreement are met;
- (c) providing direction to Actuary in all matters relating to policy information, information requirements, and procedural requirements; and
- (d) Authorizing Actuary from to time to time to perform special projects contemplated in the Statement of Work.

(2) LACERA's Project Director is not authorized to make changes in the terms and conditions of this Agreement, and is not authorized to obligate LACERA in any respect whatsoever, beyond those duties and responsibilities delegated to the LACERA Project Director in this Agreement.

(3) LACERA's Project Director or any person delegated responsibility for the administration of this Agreement by LACERA's Project Director will not have any personal liability to Actuary for any action taken or not taken by such individual while acting or purporting to act as LACERA's Project Director or delegate of such Project Director.

4. Independent Contractor Status. In performing under this Agreement, Actuary is acting in the capacity of an independent contractor. This Agreement is not intended, and may not be construed, to create the relationship of agent, servant, employee, partnership, joint venture, or association as between Actuary and LACERA. The employees and agents of one party shall not be, or be construed to be, the employees or agents of the other party for any purpose whatsoever. Nothing in this Agreement will cause LACERA to be responsible for any action, omission or inaction of Actuary. LACERA shall have no liability or responsibility for the payment of any salaries, wages, unemployment benefits, disability benefits, Federal, State, or local taxes, or other compensation, benefits, or taxes for any personnel provided by or on behalf of Actuary. For all purposes, including but not limited to Workers' Compensation liability, Actuary understands and agrees that all persons furnishing services to LACERA pursuant to this Agreement are deemed employees solely of Actuary and not of LACERA.

5. Compensation and Payment.

A. Compensation. Actuary shall be compensated for services rendered under this Agreement in the manner described in this Section 5.A.

(1) Exhibits A – Statement of Work: Retirement Plan Consulting; Exhibit C Fee Schedule – Hourly Fee Schedule; Exhibit C: Compensation – Not-to-Exceed Fee Schedule

(2) Exhibit B – Statement of Work: OPEB Program Consulting; Exhibit C:

Compensation – Hourly Fee Schedule; Exhibit C: Compensation – Not-to-Exceed Fee Schedule

- B. Expenses. Actuary's expenses are included in the compensation described in Section 5.A and therefore Actuary is not entitled to any separate reimbursement for any expenses incurred by it in discharging its duties under this Agreement, unless otherwise agreed by LACERA.
- C. Invoices and Payment. All invoices are subject to the review of LACERA's Project Director. Actuary will be compensated for its projects at the hourly rates in effect during the fiscal year in which the work is performed. Approved invoices will be paid within thirty (30) days of receipt.
- D. Non-Compensable Services. Actuary agrees that should work be performed outside the scope of the Statement of Work described in Exhibits "A & B" hereto, without the prior written consent of LACERA in accordance with Section 19.A (Changes and Amendments) to this Agreement, such work will be deemed to be a gratuitous effort on the part of Actuary, and Actuary will have no claim against LACERA for such work, and LACERA will have no obligation to pay for such work.
- E. Extra Work. LACERA may from time to time request that Actuary perform work not included in the Statement of Work. Actuary shall not commence such work until a full estimate of the cost has been submitted by Actuary and approved by LACERA in writing. Actuary shall be paid for such work on a project by project basis, under a separate fee arrangement prepared by Actuary and approved in writing by LACERA prior to the commencement of such work. The hourly rates for such work will fall within the ranges shown on Exhibit C (Fee Schedule), with the actual hourly rate to be negotiated by the parties in good faith based upon the experience and expertise of Actuary's personnel performing such work.
- F. No Third Party Compensation. LACERA, and not any third party, will compensate Actuary for its services rendered under this Agreement. Actuary will not accept any compensation or benefit of any type whatsoever, including without limitation any fee, commission, gifts, percentage, soft dollar and other consideration or benefits, direct or indirect, from any third party for performing or in connection with the services and delivering the deliverables contemplated by this Agreement, including audits of actuaries, or otherwise in connection with the work performed under this Agreement. This obligation is ongoing and Actuary will provide written confirmation on an annual basis.
- G. Liability for Failure to Perform. Unless otherwise specified in Exhibit A & B (Statement of Work), Actuary acknowledges that it shall be liable to LACERA for any actual loss incurred by LACERA as a result of Actuary's negligent or intentional failure to perform under the terms of this Agreement subject to the limitation of liability set forth in Section 9 below.

6. Term and Termination.

A. General Term.

- (1) The term of this Agreement commences on the Agreement Date and unless terminated by LACERA or Actuary as permitted in this Agreement, continues for the valuation years ending June 30, 2024 through June 30, 2029.
- (2) At its option, LACERA may extend the term of this Agreement for two additional one year terms covering the fiscal years ending June 30, 2030 and June 30, 2031 (the "Extended Term"), by providing written notice to Actuary on or before October 1, 2029 (the "Extension Notice"). LACERA and Actuary agree that if LACERA gives the Extension Notice, the parties will negotiate in good faith to reach agreement – without being obligated to reach agreement - on Actuary's compensation during the Extended Term. If the parties are unable to sign a written amendment agreeing upon compensation during the Extended Term by June 30, 2031, then LACERA will be deemed to have rescinded the Extension Notice. The Agreement may be terminated during any extension of the original term in accordance with Section through 6.H below.

B. Termination by LACERA for Convenience. LACERA may terminate this Agreement in its entirety or terminate portion(s) of the work described in the Statement of Work without cause at any time by delivering to Actuary a written Notice of Termination for Convenience specifying the extent to which Actuary's services are terminated and the Effective Termination Date. The Effective Termination Date may be no earlier than ten (10) calendar days after such Notice of Termination for Convenience is delivered to Actuary. The exercise of LACERA's rights under this Section 6.B does not constitute a waiver of LACERA's right to make a claim against Actuary for damages resulting from any default by Actuary which occurred prior to the Effective Termination Date.

C. Termination by LACERA for Default. LACERA may immediately terminate this Agreement, or terminate portion(s) of the work described in the Statement of Work, by delivering to Actuary a written Notice of Termination for Default which specifies the Effective Termination Date, under any one of the following circumstances:

- (1) Upon notice but without cure period, if Actuary fails to perform the work specified in Exhibits "A through E" hereto within the time specified herein or any extension thereof;
- (2) If Actuary fails to perform any other provision of this Agreement, or so fails to make progress as to endanger performance of this Agreement in accordance with its terms, and in either of these two circumstances fails to cure such default within ten (10) calendar days (or such longer period as LACERA may authorize in writing) after receipt of written notice from LACERA of such default, which notice describes in reasonable detail the nature of the default and LACERA's view as to the cure required in order

to bring Actuary's performance into compliance with its obligations under this Agreement;

- (3) Upon notice but without further cure period, if Actuary repeatedly fails to perform according to this Agreement following notice and failure to cure pursuant to Section 6.C.(2) hereof;
- (4) Upon notice but without opportunity to cure if Actuary breaches any of the warranties, representations and covenants made in Section 10 (Actuary's Representations, Warranties and Covenants) below,
- (5) Upon notice but without opportunity to cure if Actuary is subject to civil or criminal 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
- (6) Upon notice but without opportunity to cure if Actuary attempts or purports to assign this Agreement, or any portion hereof, or any of its rights or obligations hereunder, without obtaining LACERA's prior written consent.

D. Termination by LACERA for Insolvency. LACERA may immediately terminate all or any part of this Agreement by delivering to Actuary a written Notice of Termination for Default which specifies the Effective Termination Date, under any one of the following circumstances:

- (1) Actuary becomes insolvent. Actuary will be deemed insolvent if it has ceased to pay its debts in the ordinary course of business or cannot pay its debts as they become due, whether it has committed an act of bankruptcy or not, and whether or not it is insolvent within the meaning of the United States Bankruptcy Code (11 U.S. Code § 101 et seq.);
- (2) Actuary files a voluntary petition under any bankruptcy, reorganization or insolvency law and relief from the automatic stay is obtained by LACERA;
- (3) Actuary applies for or consents to appointment of a trustee or receiver to take possession of all or substantially all its assets;
- (4) Actuary consents to, or files an answer admitting the jurisdiction of the court and the material allegations of, an involuntary petition filed under any bankruptcy, reorganization or insolvency law; or
- (5) An involuntary proceeding of bankruptcy, reorganization or insolvency is commenced against Actuary and not dismissed within thirty (30) days after commencement.

E. Termination by LACERA for Non-Appropriation of Funds. Notwithstanding anything contained in this Agreement to the contrary, services rendered by Actuary in a fiscal year are payable by LACERA only from the funds appropriated for such

services as a separate line item entry in LACERA's approved budget for such fiscal year. If this Agreement extends into succeeding fiscal years beyond the fiscal year of the Agreement Date and LACERA does not appropriate funds for Actuary's services under this Agreement as a specific line item entry in the approved budget for any succeeding fiscal year, this Agreement will terminate automatically in accordance with the provisions of Section 6.B above (Termination by LACERA for Convenience), as of the end of the then current fiscal year. LACERA will make a good faith effort to notify Actuary in writing of such non-appropriation as soon as practicable.

- F. Termination by Actuary for Default. Actuary may terminate this Agreement in its entirety, but not in part, upon written Notice of Termination for Default if LACERA materially fails to perform any of its obligations under this Agreement and fails to cure such default within thirty (30) calendar days of receiving Actuary's written notice of such default, which notice describes in reasonable detail the nature of the default and Actuary's view as to the cure required in order to bring LACERA's performance into compliance with its obligations under this Agreement.
- G. Termination by Actuary for Convenience. Actuary may terminate this Agreement in its entirety, but not in part, upon written Notice of Termination to LACERA at least 180 days before the desired effective date of termination.
- H. Force Majeure. Actuary shall not be liable, and may not be terminated for default, pursuant to Section 6.C or Section 6.D above, if Actuary's failure to perform under this Agreement arises solely from causes of Force Majeure.
- I. Rights, Remedies and Responsibilities upon Termination. If this Agreement is terminated, all of the terms and conditions of this Agreement shall continue to apply through the Effective Termination Date. The following provisions also apply to any termination of this Agreement.
 - (1) Post-Termination Responsibilities. If LACERA terminates this Agreement, and unless otherwise expressly directed by LACERA, Actuary will: (i) take all necessary steps to stop providing services under this Agreement on the Effective Termination Date, or sooner, as provided in the Notice of Termination, and (ii) continue to perform those services, if any, which are not terminated.
 - (2) Recovery of Reasonable Damages Upon Default. If LACERA terminates this Agreement in whole or in part for default pursuant to Section or Section 6.D above, LACERA is entitled to recover from Actuary all reasonable damages resulting from such default, except as otherwise limited herein. By way of example and not limitation, LACERA may procure, upon such terms and in such manner as LACERA may deem appropriate, services similar to those terminated, and Actuary will be liable to LACERA for the cost of procuring such similar services and any excess cost of such similar services.

- (3) Payment when Terminated for Convenience. If LACERA terminates this Agreement for convenience pursuant to Section 6.B above, LACERA will pay Actuary for work already performed but for which Actuary has not been compensated through the Effective Termination Date.
- (4) Payment Withheld for Default. LACERA shall not authorize and shall withhold payment for services provided if LACERA terminates this Agreement for default pursuant to Section 6.C or Section 6.D above. In the event the damages caused by such default are less than the withheld payment for services, the amount withheld in excess of the damages shall be paid to Actuary.
- (5) Excusable Default. If, after LACERA issues a Notice of Termination for Default pursuant to Section 6.C or Section 6.D above, it is determined for any reason that Actuary was not in default, or that such default was excusable, then the rights and obligations of the parties will be the same as if LACERA had issued a Notice of Termination for Convenience pursuant to Section 6.B.
- (6) Good Faith Transfer. Upon any termination of this Agreement by either party and to the extent directed by LACERA, Actuary will cooperate with LACERA in good faith to affect a smooth and orderly transfer of such services and all applicable records to a successor designated by LACERA. Upon termination of this Agreement, Actuary shall retain all LACERA Records (as that term is defined in Section 12 below) according to the record retention provisions set forth in Section 12 below, or if required by LACERA, promptly deliver the LACERA Records to LACERA or to such other party designated by LACERA.
- (7) Cumulative Nature of Rights and Remedies. The rights and remedies provided by this Section 6 are not exclusive, but cumulative and in addition to any other rights and remedies provided by law, in equity or under any other provisions of this Agreement. The running of any grace period for cure of a default pursuant to Section 6.C or Section 6.D above does not limit LACERA's right to terminate this Agreement for convenience at any time, pursuant to Section 6.B above.

7. Indemnification of LACERA.

A. Definitions. As used in this Section:

- (1) "Claims" means any and all third party liabilities, losses, injuries, suits, costs, charges, judgments, fines, penalties, expenses (including, without limitation, defense costs, expert witness fees and attorneys' fees), claims, demands, recoveries, settlements, or damages, arising out of, related to, or in connection with (1) Actuary's fraud, willful misconduct, grossly negligent performance of services hereunder, or Actuary's grossly negligent acts or omissions, (2) any bodily injury, death, personal injury or property damage in connection with Actuary's performance of, or failure to

perform, services hereunder, or (3) Actuary's actual or alleged infringement of intellectual property rights, including infringement of any patent, trade secret, service mark, copyright.

- (2) "LACERA Covered Persons" means LACERA, its officers, trustees, fiduciaries, employees and agents, but does not include Actuary or its Agents.
- (3) "Actuary Action" means any actuarial calculation, decision or other action taken, omitted or suffered by any Actuary Personnel in the course of performing the services hereunder.
- (4) "Actuary Personnel" means Actuary, its officers, trustees, shareholders, employees and agents.

B. Covered Persons Indemnification. Actuary will defend, at its expense, indemnify, save, and hold harmless the LACERA Covered Persons from and against any and all Claims arising out of, related to, or in connection with any Actuary Action. The passive negligence of any LACERA Covered Person will relieve Actuary of its obligations to defend and indemnify to the proportional extent of such LACERA negligence. Actuary's obligations to defend and indemnify shall survive the termination of this Agreement.

C. Notice of Claim. LACERA will give Actuary prompt written notice of any Claim for which any LACERA Covered Person is entitled to indemnification pursuant to this Section. Any delay of notice will not be a defense to providing indemnity except to the extent of actual material prejudice resulting therefrom. Actuary shall control the defense or settlement of the Claim; but, no such settlement or compromise shall be entered into unless, as part of such settlement or compromise, the third party executes a full and complete release of the LACERA Covered Persons without recourse to the LACERA Covered Persons for any amount, claim or other obligation whatsoever respecting such Claim. Actuary will not have the right to settle or compromise any such Claim without the consent of the LACERA Covered Persons, which consent can be reasonably withheld, if such settlement or compromise involves the issuance of injunctive or other non-monetary relief binding upon any of the LACERA Covered Persons or a plea of *guilty* or *nolo contendere* on the part of any of the LACERA Covered Persons in any criminal or quasi-criminal proceeding, or which involves any admission of liability or culpability on the part of the LACERA Covered Persons, or which has any collateral estoppel effect on any of the LACERA Covered Persons.

D. Independent Obligation. Actuary's obligation to defend the LACERA Covered Persons at Actuary's expense is in addition to, and separate from, Actuary's obligation to indemnify under this Section. In the event that Actuary fails to comply with any of the indemnification or insurance requirements of this Agreement, and such failure to comply results in any costs to LACERA, Actuary shall pay full compensation for all costs incurred by LACERA.

8. [Reserved]

9. Insurance.

A. General Insurance Requirements. Without limiting Actuary's indemnification obligations under Section 7 above and during the term of this Agreement, Actuary shall provide and maintain, and shall require all of its subcontractors to maintain, the following programs of insurance specified in this Agreement. Such insurance shall be primary to and not contributing with any other insurance or self-insurance programs maintained by LACERA, and such coverage shall be provided and maintained at Actuary's own expense. Such insurance shall not require any deductible or contribution from LACERA.

B. Evidence of Insurance: Prior to commencing services under this Agreement and annually thereafter, Actuary shall cause certificate(s) or other evidence of coverage, and such other information as may be required by LACERA concerning coverage, satisfactory to LACERA in its sole discretion to be delivered to:

[NAME]
LACERA
300 N. Lake Avenue, Suite [XXX]
Pasadena, CA 91101

Such certificates or other evidence shall:

- (a) Specifically identify this Agreement.
 - (b) Clearly evidence all coverages required in this Agreement.
 - (c) Contain the express condition that LACERA is to be given written notice by mail at least forty-five (45) days in advance of cancellation for all policies.
 - (d) Include copies of the additional insured endorsement to the commercial general liability policy, adding LACERA, its trustees, officers and employees as additional insureds for activities arising from this Agreement.
- (1) Insurer Financial Ratings. Insurance is to be provided by an insurance company with an A.M. Best rating of not less than A-X, unless otherwise approved by LACERA.
 - (2) Failure to Maintain Coverage. Failure by Actuary to maintain the required insurance, or to provide evidence of insurance coverage as required herein, shall constitute a material breach of the contract upon which LACERA may immediately terminate or suspend this Agreement. LACERA, at its sole option, may seek to obtain damages from Actuary resulting from said breach.
 - (3) Compensation for LACERA Costs: In the event that Actuary fails to comply with any of the indemnification or insurance requirements of this

Agreement, and such failure to comply results in any costs to LACERA, LACERA may seek damages as compensation for such costs.

- (4) Survival of Obligations. Actuary's obligations under this Section 9 shall survive expiration or termination of this Agreement.
- C. Commercial General Liability. Actuary shall provide and maintain a Commercial General Liability insurance policy, which names LACERA as additional insured. Such policy shall cover legal liability for bodily injury and property damage arising out of Actuary's business operations and services that Actuary provides pursuant to this Agreement. Such policy shall include, without limitation, endorsements for Property Damage, Premises-Operations, Products/Completed Operations, Contractual, and Personal/Advertising Injury with a limit of at least Five Million Dollars (\$5,000,000) per occurrence and an annual aggregate of at least Fifteen Million Dollars (\$15,000,000). If such insurance is written on a Claims Made Form, such insurance shall be maintained continually for or endorsed providing an extended reporting period of not less than five (5) years following termination or expiration of this Agreement.
 - D. Auto Liability. Actuary shall provide and maintain a comprehensive auto liability insurance policy endorsed for all "owned", "non-owned", and "hired" vehicles, or coverage for any "auto", with a combined single limit of not less than One Million Dollars (\$1,000,000) per accident.
 - E. Workers' Compensation. Actuary shall bear sole responsibility and liability for furnishing Workers' Compensation benefits to Actuary's employees for injuries arising from or connected with any services provided to LACERA under this Agreement. Actuary shall provide and maintain a program of Workers' Compensation, in an amount and form to meet all applicable statutory requirements. In all cases, workers' compensation insurance also shall include Employer's Liability Insurance with limits of not less than One Million Dollars (\$1,000,000), each accident, and One Million Dollars (\$1,000,000), disease, covering all of Actuary's employees.
 - F. Cyber Liability Insurance. Limiting any of the obligations or liabilities of Actuary, Actuary shall carry and maintain, at its own expense including any applicable deductibles or retention, Cyber Liability insurance with limits of not less than Five Million Dollars (\$5,000,000) for each occurrence and an annual aggregate of Ten Million Dollars (\$10,000,000) covering claims involving privacy violations, information theft, damage to or destruction of electronic information, intentional and/or unintentional release of private information, alteration of electronic information, extortion and network security. The policy coverage shall include, but not be limited to:
 - (1) Privacy Liability Coverage. This coverage shall include LACERA and its members for breaches of their private information in the case of a data breach.
 - (2) Notification Costs. This coverage shall cover the costs of notifying third parties and LACERA members potentially affected by a data breach.

- (3) Crisis Management. This coverage shall include the costs of managing the public relations outfall from most data breach scenarios.
 - (4) Credit/Identity Monitoring. This coverage shall include coverage for affected members for at least 24 months or the minimum legally required period, whichever is longer.
 - (5) Theft and Fraud Coverage. This coverage shall include the costs of theft or destruction of the LACERA's data and theft of funds.
 - (6) Network and Business Interruption. This coverage shall include any expense due to an intentional interruption of the LACERA's computer systems.
 - (7) Data Loss and Restoration. This coverage shall include the costs of diagnosing and repairing the cause of the loss and restoring all data.
 - G. Errors and Omissions. Actuary shall provide and maintain insurance covering liability arising from any error, omission, negligent or wrongful act of the Actuary, its officers, employees or Agents, with limits of at least Ten Million Dollars (\$10,000,000) per claim and an annual aggregate of at least Twenty Million Dollars (\$20,000,000). The coverage also shall provide an extended one-year reporting period commencing upon termination or cancellation of this Agreement.
 - H. Cooperation Regarding Insurance. LACERA may elect to procure insurance against loss or damage it may sustain in connection with Actuary's performance under this Agreement. Actuary will promptly cooperate with any reasonable request for information regarding Actuary which is required to obtain such insurance.
 - I. Limitation of Liability. In the event of any claim arising from services provided by Actuary at any time, the parties agree Actuary, its officers, directors, agents and employees, shall not be liable to LACERA, under any theory of law including negligence, tort, breach of contract or otherwise, for any damages in excess of Ten Million Dollars (\$10,000,000). The foregoing limitations shall not apply in the event of (i) the gross negligence, fraud, or willful misconduct of Actuary; or (ii) Actuary's indemnity obligations set forth in Section 7 above.
10. Actuary's Representations, Warranties and Covenants. Actuary makes the following representations, warranties, covenants and agreements contained in this section with the understanding that LACERA has relied upon them in determining to enter into this Agreement and is relying on them during the term of the Agreement, and that they constitute a material inducement to LACERA to enter into this Agreement and continue the Agreement in full force and effect. The representations, warranties, covenants and agreements contained in this Section 10 shall survive the expiration or termination of this Agreement.

A. Authorization.

- (1) Actuary is duly organized, validly existing, and in good standing under the laws of the state of its organization and is qualified to do business in California, and has full corporate power and authority to carry on its business as it has been and is conducted.
- (2) The execution and delivery of this Agreement and the consummation of the transactions contemplated by this Agreement are within the power of the Actuary and have been duly authorized by all necessary corporate and other action. Actuary has duly authorized, executed and delivered this Agreement, and this Agreement constitutes the legal, valid and binding agreements and obligations of Actuary, enforceable against Actuary 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.
- (3) Actuary is not subject to or obligated under any law, rule or regulation of any governmental authority, or any order, injunction or decree, or any agreement, that would be breached or violated by Actuary's execution, delivery or performance of this Agreement.
- (4) Actuary has completed, obtained, and performed all registrations, filings, approvals, licenses, authorizations, consents, or examinations required by any government or governmental authority for entry into this Agreement and performance of its acts contemplated by this Agreement, and Actuary shall maintain such proper authorizations while this Agreement is in force.

B. Contingent Fees. Neither Actuary nor any of its affiliates has paid or agreed to pay any fee or commission, including broker's fees, finder's fees, third party marketing fees, consulting fees, placement fees, or similar fees, to any entity or person in connection with the negotiation or execution of the Agreement by LACERA, except for bona fide employees of Actuary. If Actuary in any way breaches or violates of this warranty, LACERA shall have the right to immediately terminate this Agreement for default and, in LACERA's sole discretion, to deduct from Actuary's compensation under this Agreement, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.

C. Gratuities. Neither Actuary nor any of its affiliates has offered or given any gratuities in the form of gifts, entertainment or otherwise, to any officer, fiduciary, or employee of LACERA or the County with a view toward securing this Agreement or securing any favorable determination made concerning the award of this Agreement. Actuary covenants that no such gratuities will be offered or given to any such person with a view toward securing any favorable determination concerning the performance, continuation, or amendment of this Agreement. If it is found that such gratuities have been offered or given by Actuary, LACERA may terminate this Agreement upon one (1) calendar day's written notice; *however*, the facts upon which LACERA bases such findings will be at issue and may be

reviewed in any competent court sitting in the County. In the event of such termination, LACERA may pursue the same remedies against Actuary as it could pursue in the event of default by Actuary.

- D. Conflicts of Interest with Persons Related to LACERA. Actuary does not and shall not employ in any capacity: (i) any LACERA or County employee or fiduciary who could either influence the award of this Agreement or any competing agreement, or does or will have any direct or indirect financial interest in this Agreement (“Interested Person”), and (ii) any spouse or economic dependent of any Interested Person.
- E. Recruiting. During the term of this Agreement and for one calendar year thereafter, Actuary’s pension practices, and any employee of Actuary providing services to LACERA, will not intentionally induce or persuade any employee or independent actuary to LACERA to join Actuary. The provisions of this section do not restrict the right of Actuary to solicit or recruit generally in the media and do not prohibit Actuary from hiring an employee of LACERA who answers any advertisement or who otherwise voluntarily applies for hire without having been initially personally solicited or recruited by Actuary.
- F. Intellectual Property. No 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 whatsoever developed, provided or used by Actuary in connection with its performance under this Agreement, infringes or will infringe on any patent, copyright, or trademark of any other person or entity, or is or will be a trade secret of any other person or entity. If any claim of infringement of any intellectual property right is made against LACERA, Actuary will indemnify, defend and hold harmless all LACERA Covered Persons as provided in Section 7 above; *however*, Actuary will not be liable for any such claim which is based upon: (i) LACERA's use of a version of the work at issue that is not the then current release of such work, if such claim would have been avoided by using the then current release, or (ii) LACERA's use of Actuary's work in combination with any program or data that is not Actuary's, if such claim would have been avoided by using Actuary's work exclusively. In addition, following notice of any such Claim, Actuary may, at its expense, either procure for LACERA the right to continue to use the allegedly infringing work, or replace or modify such work to make it non-infringing but functionally equivalent.
- G. [Reserved]
- H. Actuary and its Agents.
- (1) Actuary’s Agents who will be responsible for performing under this Agreement are individuals experienced in the performance of the various functions contemplated by this Agreement.
 - (2) Actuary’s firm and its senior professional staff assigned to perform services under this Agreement possess and will at all times during this Agreement possess and maintain in good standing such licenses as are required to

perform the work contemplated by this Agreement.

- (3) To the best of actuary's knowledge upon reasonable investigation neither Actuary nor its Agents have been convicted of any crime or found liable in a civil or administrative proceeding or pleaded no contest, or agreed to any consent decree with respect to any matter involving infringement of intellectual property rights, breach of fiduciary duty, willful misconduct, fraud, bad faith, improper or unethical practice, or violation of any Legal Requirement.
- (4) Actuary has registered and will maintain in good standing during the term of this Agreement registration with such governmental and professional authorities and boards as necessary to perform the work contemplated by this Agreement.
- (5) Actuary shall to the extent permitted by applicable law, promptly notify LACERA in writing if any judicial, administrative or other proceeding is commenced against Actuary or any member of Actuary's professional staff assigned to perform services under this Agreement during the term of this Agreement.

- I. Employment Eligibility Verification. Actuary fully complies with all Federal statutes and regulations regarding employment of aliens and others and all its employees performing work under this Agreement meet the citizenship or alien status requirements set forth in Federal statutes and regulations. Actuary will obtain from all employees performing work hereunder, all verification and other documentation of employment eligibility status as required by Federal statutes and regulations as they currently exist and as they may be hereafter amended. Actuary will retain all such documents for the period prescribed by law. Actuary will indemnify, defend and hold harmless all LACERA Covered Persons from and against any alleged employer sanctions and other liability which may be assessed against Actuary or LACERA in connection with any alleged violation of any Federal statutes or regulations pertaining to the eligibility for employment of any persons performing work under this Agreement.
- J. Investigations and Complaints. To the extent permitted by applicable law, Actuary shall promptly advise LACERA in writing of any civil or criminal investigation, examination, complaint, disciplinary action or other proceeding involving Actuary, any of its subsidiaries or affiliates, any of Actuary's Agents, or any professional employed by Actuary who has performed any services with respect to LACERA in the twelve (12) preceding months, which is commenced by any of: (1) the AICPA, (2) PCAOB, (3) PICPA, (4) any Attorney General or any regulatory agency of any State in the United States, (5) any State or U.S. government department or agency, or (6) any governmental agency regulating securities of any country in which Actuary does business. Except as otherwise required by law, LACERA shall maintain the confidentiality of all such information until the investigating entity makes the information public.

- K. Certification Regarding Financial Contacts and Solicitations. Actuary shall promptly advise LACERA if any member of the LACERA Boards or key staff of the Boards (as such Board members and key staff are identified in writing by the Chief Executive Officer from time to time), or any elected or appointed official of Los Angeles County, or any person claiming to represent or have influence with either Board or with any member of the Boards contacts Actuary with respect to a financial transaction or solicitation which is not solely on behalf of LACERA's business with Actuary, and shall deliver to LACERA on or before January 31st of each year, or more frequently if requested, the certification and information required by Exhibit "D" attached hereto.
- L. Penetration Testing. Actuary certifies that it has completed penetration testing on the systems that would house LACERA data, performed by an independent firm within the year previous to execution of this Agreement. Actuary certifies that any vulnerabilities identified in that testing have been subsequently remedied as suggested by the testing firm
- M. IT Security Controls Report. Actuary shall provide an initial Security Controls Report in the form attached hereto as Exhibit F within six (6) months of executing the Agreement. All subsequent Security Controls Reports that are required after this first report shall be performed and submitted annually. The questionnaires are to focus on security as it applies to the technologies impacting services provided in relation to this Agreement. If a control is found to be not consistent with industry standards, Actuary will develop a remediation plan within forty-five (45) days. Actuary will implement the plan and inform LACERA of the change within a mutually agreed upon and reasonable time.
- (1) The Security Controls Reports shall report in writing on the Actuary's and any subcontractor's system(s) and the suitability of the design and operating effectiveness of controls, information functions and/or processes applicable to the environment in which Actuary receives and maintains LACERA Records, including the security requirements.
 - (2) The scope of the Security Controls Report shall include work performed by any subcontractors that provide essential support to Actuary for the information functions or processes for the services offered to LACERA under the Agreement. Actuary shall ensure the audit includes all subcontractors operating in the performance of the Agreement.
 - (3) All Security Controls Reports, including those of Actuary and any subcontractors, shall be performed at no additional expense to LACERA.
 - (4) Actuary and any subcontractors shall promptly provide a complete copy of the final Security Controls Report(s) to the Contract Monitor upon completion of each Security Controls Report engagement.
 - (5) Actuary and any subcontractor shall provide to LACERA, within forty-five (45) calendar days of the issuance of each Security Controls Report, a documented corrective action plan that addresses each audit finding or

exception contained in a Security Controls Report. The corrective action plan shall identify in detail the required remedial action by Actuary or subcontractor(s) along with the implementation date(s) for each remedial action.

- (6) If Actuary or any subcontractor fails to obtain an annual Security Controls Report, LACERA shall have the right to retain an independent audit firm that is mutually agreeable, to perform such an audit engagement for such a report. The audit will include the controls, information functions, and processes utilized or provided by Actuary and any relevant subcontractor under the Agreement. Actuary and any subcontractor agree to allow the independent audit firm to access its facilities for purposes of conducting this audit engagement. They will provide the necessary support and cooperation to the independent audit firm that is required to perform the audit engagement of the Security Controls Report. The independent audit firm will be engaged by LACERA's legal department and subject to the same confidentiality requirements provided for in this Agreement, and any disclosure will be on a need-to-know basis only for the purpose of the Security Controls Report. LACERA will invoice Actuary for the expense of the report(s), or deduct the cost from future payments to the Actuary.

N. Reserved.

- O. Data Breach Verification. Actuary shall provide an annual written, signed attestation that to the best of its knowledge, no data breach, hacking, or incidental divulging of any data has occurred, and that no data has been compromised ("Incident"). The attestation shall verify that adequate internal policies and procedures exist to prevent data theft and unauthorized access.

Actuary shall provide an annual system penetration test in support of the attestation made in Section 12.1 above. Actuary shall provide the results of penetration tests to LACERA.

Actuary at its own cost, shall comply with California Civil Code § 1798.29(e) and California Civ. Code § 1798.82(f). In the event of a security breach of more than 500 records, the Actuary shall electronically submit a single sample copy of that security breach notification, excluding any personally identifiable information, to the Attorney General.

Actuary at its own cost, shall notify any California resident whose unencrypted personal information, as defined, was acquired, or reasonably believed to have been acquired, by an unauthorized person as required by California Civil Code §1798.29(a) and California Civ. Code §1798.82(a).

Notwithstanding the legal notification requirements in the preceding paragraphs, Actuary will immediately, which means no more than 48 hours after discovery, notify LACERA upon its discovery of any Incident whether such Incident includes LACERA data or not.

- P. Annual Certification and Notice of Changes. Actuary shall certify in writing no later than January 31 of each year that each of the representations, warranties and covenants made in this Section are true as of December 31 of the prior year, or shall state in writing the facts that render such representations, warranties and covenants no longer true. Actuary shall notify LACERA in writing within three business days of any of the following changes: (i) Actuary becomes aware that any of its representations, warranties and covenants set forth herein cease to be materially true at any time during the term of this Agreement; (ii) there is any change in Actuary's senior personnel assigned to perform services under this Agreement, or in Actuary's key personnel within its organization; (iii) there is any change in ownership or control of Actuary of more than five percent of the issued and outstanding shares of Actuary; or (iv) Actuary becomes aware of any other material change in its business organization, including without limitation the filing for bankruptcy relief.

11. Governmental Provisions.

- A. Compliance with Legal Requirements. In performing under this Agreement, Actuary agrees to comply with all Legal Requirements, and all provisions required thereby to be included in this Agreement are hereby incorporated by reference.
- B. Assurance of Compliance with Civil Rights Laws. Actuary hereby assures LACERA that Actuary complies with Subchapter VII of the Civil Rights Act of 1964, (42 U.S. Code Sections 2000(e) through 2000(e)(17)), to the end that no person shall, on grounds of race, creed, color, sex, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under this Agreement or under any project, program, or activity undertaken pursuant to this Agreement.
- C. Nondiscrimination in Employment. Actuary will take all necessary action to ensure that job applicants are employed, and that its employees are treated during employment, without regard to their race, color, religion, sex, age, marital status, sexual orientation, disability, medical condition, ancestry or national origin. For purposes of this Section 9.D, the term "employment" shall include, but not be limited to the following: employment, upgrading, promotion, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.
- D. Compliance with Wage and Hour Laws. Actuary shall indemnify, defend and hold harmless LACERA and Covered Persons from any and all liability including but not limit to, wages overtime pay, liquidated damages, penalties, court costs, and reasonable attorneys' fees arising under any wage and hour law including, but not limited to, the Federal Fair Labor Standards Act for services performed by Actuary's employees for which LACERA may be found jointly or solely liable.

12. Records and Audits.

A. Record Keeping

- (1) Actuary shall maintain accurate and complete records related to the performance of Actuary or its Agents under this Agreement, including but not limited to any pertinent transaction, activity, dates and time spent providing services under this Agreement, invoices billed to LACERA, proprietary data, financial records, word documents, employment records and any other records created by Actuary or its Agents in connection with this Agreement (collectively, the "Work Records"). In performing this Agreement, Actuary shall fully document all work efforts including the development of any materials prepared for LACERA in connection with each task. Such documentation shall include, but not be limited to, the source of data, and schedules, narratives, and other work product supporting the conclusions reached and resultant recommendations. Actuary shall also maintain accurate and complete employment and other records relating to its performance of this Agreement.
- (2) Actuary shall keep and maintain such Work Records for no less than six (6) years following the termination of this Agreement.

B. Record Review and Audit. Actuary agrees that LACERA, or any duly authorized representative of LACERA, including any successor Actuary designated by LACERA, will have access to and the right to examine, audit, excerpt, copy or transcribe any Work Records at a mutually agreed upon time during the term of this Agreement, or at a mutually agreed upon time for up to six (6) years after the termination of this Agreement. LACERA agrees that any such review and audit will be conducted in a manner to minimize interference with Actuary's normal business activities. At a mutually agreed upon time, Actuary will make the Work Records available for review and audit during normal business hours. Actuary will make the persons responsible for creating and maintaining the Work Records available to LACERA during such review and audit for the purpose of responding to LACERA's reasonable inquiries. LACERA will pay all costs associated with such audit, other than any costs incurred by Actuary to make personnel available as required by the preceding sentence; however, if the audit reveals that Actuary has materially violated any of the provisions of this Agreement, Actuary will pay all costs associated with such audit

C. Audit Settlement. If such audit finds that LACERA's dollar liability for such work is less than payment made by LACERA, then the difference will be either repaid by Actuary to LACERA by cash payment upon demand or, at the option of LACERA, deducted from any amounts otherwise due to Actuary from LACERA. If such audit finds that LACERA's dollar liability for such work is more than the payments made by LACERA, then the difference will be paid to Actuary by LACERA; however, the total payments shall not exceed the maximum amount payable by LACERA under Section 6 for work performed through the period covered by the audit.

13. Confidentiality Proprietary Rights.

- A. LACERA's Proprietary Rights. All LACERA Records are the sole property of LACERA, and upon the expiration or earlier termination of this Agreement, Actuary will promptly deliver to LACERA or destroy, all finished or unfinished materials, documents, data, reports and other information prepared by Actuary under this Agreement all LACERA Records; however, Actuary may retain an archival copy of any LACERA Records, including any documents received from LACERA or its Back Office Operations related to the Consulting Services, in accordance with its professional standards and retention policy subject to the confidentiality obligations herein. Actuary shall make the sole determination of documents to be maintained by Actuary as Actuary's Working Papers. Both parties hereto acknowledge that Actuary retains the right to use its experience, expertise and knowledge on similar projects for other clients, so long as Actuary protects LACERA's interests in all of its confidential records and property.
- B. Member Records. Actuary acknowledges that when performing under this Agreement, Actuary may be exposed to Member Records and that such Member Records are considered confidential and protected from public disclosure by law. Actuary will maintain the confidentiality of all Member Records according to all applicable federal, state, county and local laws, regulations, ordinances and directives relating to confidentiality including California Government Code section 31532 and the Health Insurance Portability and Accountability Act of 1996, enacted by the U.S. Congress as Public Law 104-191, as amended ("HIPAA"), and the regulations promulgated with respect thereto Actuary agrees and represents that it is aware of HIPAA Rules and regulations and will perform its duties to the standard of a "Business Associate" in CFR Section 164.504 *et seq.* of the final Privacy Rule issued by the Department of Health and Human Services ("HHS") in its performance of the Agreement, even if Actuary does not meet the definition of a Business Associate. Actuary is required to follow all HIPAA Rules including but not limited to:
- (1) Not use or further disclose the information other than as permitted or required by the contract or as required by law. (45 CFR Section 164.504 (e)(2)(ii)(A));
 - (2) Use appropriate safeguards and comply, where applicable, with Subpart (c) of this Section 13 with respect to electronic protected health information, to prevent use or disclosure of the information other than as provided for by its contract. (45 CFR Section 164.504 (e)(2)(ii)(B));
 - (3) Report to the covered entity any use or disclosure of the information not provided for by its contract of which it becomes aware, including breaches of unsecured protected health information as required by 45 CFR Section 164.410. (45 CFR Section 164.504 (e)(2)(ii)(C));
 - (4) In accordance with Section CFR 164.502(e)(1)(ii), ensure that any subcontractors that create, receive, maintain, or transmit protected health information on behalf of the business associate agree to the same

restrictions and conditions that apply to the business associate with respect to such information. (45 CFR Section 164.504 (e)(2)(ii)(D));

- (5) Make available protected health information in accordance with Section CFR 164.524. (45 CFR Section 164.504 (e)(2)(ii)(E));
- (6) Make available protected health information for amendment and incorporate any amendments to protected health information in accordance with CFR Section 164.526. (45 CFR Section 164.504 (e)(2)(ii)(F));
- (7) Make available the information required to provide an accounting of disclosures in accordance with CFR Section 164.528. (45 CFR Section 164.504 (e)(2)(ii)(G));
- (8) To the extent the business associate is to carry out a covered entity's obligation under this subpart, comply with the requirements of this subpart that apply to the covered entity in the performance of such obligation. (45 CFR Section 164.504 (e)(2)(ii)(H));
- (9) Make its internal practices, books, and records relating to the use and disclosure of protected health information received from, or created or received by the business associate on behalf of, the covered entity available to the Secretary for purposes of determining the covered entity's compliance with this subpart. (45 CFR Section 164.504 (e)(2)(ii)(I)); and
- (10) At termination of the contract, if feasible, return or destroy all protected health information received from, or created or received by the business associate on behalf of, the covered entity that the business associate still maintains in any form and retain no copies of such information or, if such return or destruction is not feasible, extend the protections of the contract to the information and limit further uses and disclosures to those purposes that make the return or destruction of the information infeasible. (45 CFR Section 164.504 (e)(2)(ii)(J)).
- (11) Authorizing LACERA to terminate its contract with Actuary for cause if Actuary violates HIPAA Rules.
- (12) Any other restrictions to which LACERA is subject under plan documents that have been communicated to Actuary.

C. LACERA's Policies, Procedures and Strategies. Actuary will protect the security of and keep confidential all materials, data, and other information received by Actuary regarding LACERA's assets and investments, and its policies, procedures and strategies for the evaluation, acquisition, development, management and disposition of same.

D. Protection of Confidential and Proprietary Rights.

- (1) Actuary shall maintain the confidentiality of all Confidential Information using whatever security measures are necessary to protect all such material, physical and electronic data and information from loss or damage by any cause, including, but not limited to, fire and theft. LACERA maintains the right to control the release of the LACERA Records and Derivative Works and therefore, Actuary's obligations under this Section apply even if some portion of the LACERA Records or Derivative Works, becomes known to the general public or to a third party. Actuary agrees that the Confidential Information will be used by Actuary only for the purpose of providing the Consulting Services and not for the benefit of a third party. Only representatives and Agents of Actuary who need to review the Confidential Information in connection with providing the Consulting Services may access and view the Confidential Information. Actuary shall inform all of its Agents of the confidentiality provisions of this Agreement. Actuary will notify LACERA orally and in writing within three (3) business days after Actuary learns that the confidentiality of the Confidential Information in Actuary's possession has been compromised through dissemination, disclosure or impermissible use, or it is reasonably possible that it has been compromised and will use best efforts to assist LACERA in minimizing the damage from such disclosure. Actuary shall indemnify, defend and hold harmless LACERA from and against any Claims arising from or relating to the unauthorized disclosure of any Confidential Information by Actuary or its Agents. Both the confidentiality and indemnity obligations of Actuary under this Section will survive expiration or termination of this Agreement.
- (2) Actuary's obligations under this Section do not apply to any Confidential Information that (1) LACERA has given written authorization to Actuary to release, but only to the extent of such authorization; (2) was in the public domain at the time of LACERA's communication thereof to Actuary; (3) enters the public domain through no breach of this Section subsequent to the time of LACERA's communication thereof to Actuary; (4) was in Actuary's possession free of any obligation of confidentiality at the time of LACERA's communication thereof to Actuary; (5) is developed by Actuary without reference to the information of LACERA; and (6) is required by law or order of court of competent jurisdiction to be disclosed, but only to the extent and for the purposes of such required disclosure, and only if Actuary gives LACERA, if legally permissible, prompt notice of the request for disclosure and cooperates with LACERA in obtaining a protective order against disclosure.
- (3) Actuary is solely responsible for any authorized or unauthorized collection, storage, disclosure and use of, and access to the Confidential Information in its possession or in the possession of its service providers, contractors, or Agents. At LACERA's written request, Actuary will provide LACERA with a summary of its data privacy, security, and disaster recovery policies and procedures that apply to the Confidential Information. Subject to

reasonable notice by LACERA, Actuary shall allow LACERA to conduct a privacy and security assessment or audit of Actuary's security program and systems and procedures that are applicable to the Consulting Services. Such audit may be conducted onsite by LACERA or a third party agreed upon by LACERA and Actuary or through surveys and interviews, at the option of LACERA, and at LACERA's own expense, provided that Actuary shall cooperate with any such assessment or audit and shall, at its own expense, provide all necessary support, personnel and information needed to ensure the successful completion of the assessments or audits. In the event Actuary has any security reviews of its own systems, including vulnerability and penetration assessments, it will give LACERA a summary of any report generated by such review and notice of any current findings that are likely to adversely impact the Confidential Information, and will keep LACERA timely informed of its remediation efforts.

- E. Duty to Inform Agents. Actuary will inform all of its Agents of the confidentiality provisions of this Agreement.
- F. Actuary's Proprietary Materials.
 - (1) Actuary shall retain all rights, title and interest (including, without limitation, all copyrights, patents, service marks, trademarks, trade secret and other intellectual property rights) in and to all technical or internal designs, methods, ideas, concepts, know-how, techniques, generic documents and templates ("Tools") that have been previously developed by Actuary or such Tools developed during the course of the provision of the services provided such Tools do not contain and/or are not based upon or derived from any LACERA Confidential Information or proprietary data. Rights and ownership by Actuary of its Tools shall not extend to or include all or any part of LACERA's proprietary data or LACERA's confidential information. To the extent that Actuary may include in the Work Product any Tools, Actuary agrees that LACERA shall be deemed to have a fully paid up perpetual license to make copies of the Tools as part of this Agreement for its internal business purposes and provided that such Tools cannot be modified or distributed outside LACERA without the written permission of Actuary or except as otherwise permitted herein.
 - (2) Absent Actuary's written consent authorizing disclosure, LACERA will use all reasonable means to protect and maintain the confidentiality of any of Actuary's materials which Actuary considers to be proprietary, so long as:
 - (i) Actuary clearly and prominently marks all such material with a restrictive legend and
 - (ii) public disclosure of such material is not required by law.In the event an action is commenced against LACERA under the California Public Records Act or otherwise which challenges LACERA's refusal to disclose Actuary's proprietary material, Actuary will defend LACERA in the action, and will pay any judgment for damages or attorneys' fees that may be entered as a result of LACERA's refusal to disclose Actuary's confidential material.

- G. Open Meetings Acts. Actuary acknowledges that its work may be included in materials presented or discussed at meetings of LACERA's Board of Investments which are open to the public in accordance with the Ralph M. Brown Act (California Government Code section 54950 et seq.), and that such materials are not exempt from disclosure under the California Public Records Act (California Government Code section 6250 et seq.)

14. Conflicts and Disqualification.

- A. Definitions: For purposes of this Section 15 "Actuary" means [ACTUARIAL CONSULTING FIRM] that are performing the Actuarial Work under this Agreement.

- B. Regarding Los Angeles County.

- (1) Actuary acknowledges that:

- (a) Los Angeles County is the plan sponsor of the pension trust fund administered and the other postemployment benefits program (retiree health care), both by LACERA, and an actual or potential conflict of interest may arise in the event Actuary should perform any Actuarial Work for Los Angeles County or any Employee Association during the term of this Agreement and any renewals hereof; and
- (b) Actuary's making available to Los Angeles County or any Employee Association, intentionally or otherwise, any LACERA Information could substantially impact LACERA's ability to effectively administer the pension trust fund and the other postemployment benefits program.

- (2) Actuary represents and warrants that:

- (a) Actuary has not been requested by the Los Angeles County Board or any Employee Association to perform, and has not performed for Los Angeles County or any Employee Association, any Actuarial Work related to LACERA or to pension issues or to retiree health care issues;
- (b) During the term of this Agreement, Actuary will not perform any Actuarial Work related to LACERA or to pension issues or to retiree health care for Los Angeles County or any Employee Association;
- (c) No Actuarial Work performed for LACERA and no LACERA Information will be made available to Los Angeles County or any Employee Association by Actuary.

- (3) As a material inducement to LACERA to enter into this Agreement, Actuary agrees that during and after the term of this Agreement and all renewals hereof, if any, Actuary shall not, without the prior written consent of LACERA, which consent LACERA may withhold in its sole and absolute discretion:
- (a) intentionally or otherwise make available any LACERA Information to the County or any Employee Association; and
 - (b) perform any Actuarial Work related to pension issues or to retiree health care issues to LACERA for the County or any Employee Association.

C. Regarding Other LACERA Actuarial Work. Actuary acknowledges that during the term of this Agreement and any renewals hereof, Actuary is disqualified from bidding on and performing any actuarial audit services for or on behalf of LACERA. Actuary is permanently disqualified from bidding on requests for proposals to perform audits of the actuarial services it performs for or on behalf of LACERA. Actuary is disqualified from performing the duties of the actuarial auditor.

15. Seminars and Training Programs. In the event Actuary conducts seminars, training sessions or similar events which are generally made available to Actuary's clients, LACERA shall be invited to attend upon comparable terms and conditions as such other clients. If Actuary offers to pay the cost of such events and/or the travel or lodging expenses incurred by its clients in connection with attending such events and if LACERA is willing to accept reimbursement, Actuary shall reimburse LACERA for such expenses on a comparable basis as Actuary reimburses the expenses of its other clients.

16. Publicity.

- A. Non-Disclosure of Details. Actuary shall not disclose the existence this Agreement to any person or entity except as may be otherwise provided in this Section 15 or required by law.
- B. Publicizing the Relationship. In recognizing Actuary's need to identify its services and related clients to sustain itself, LACERA shall not inhibit Actuary from publishing its role under this Agreement within the following conditions:
 - 1. Actuary shall develop all publicity material in a professional manner;
 - 2. Actuary shall not publish or disseminate commercial advertisements, press releases, or feature articles using the name of LACERA without the prior consent of LACERA's Project Director. LACERA shall not unreasonably withhold consent, and approval by LACERA may be assumed in the event no adverse comments are received in writing within two weeks after submission of written request for consent.
- C. Actuary's Proposals and Sales Materials. Actuary may, without the prior written consent of LACERA, indicate in its proposals and sales materials that it has been

awarded this Agreement with Los Angeles County Employees Retirement Association, provided that the requirements of this Section 15 shall apply.

17. Ethical Wall, Conflicts Management, and Disqualification.

- A. Actuary's Obligations. Actuary represents and warrants that it has implemented necessary procedures to help assure that no actual conflict of interest arises during the term of this Agreement with respect to its provision of the Actuarial Work, and that Actuary shall at all times discharge its duties in a manner consistent with the Standard of Care it owes to LACERA. Actuary agrees to notify LACERA in writing within ten business days of Actuary's actual knowledge of any happenings that render this representation untrue or inaccurate during the term of this Agreement. Actuary will establish an ethical wall between Actuary's Agents providing service under this Agreement and Actuary's Agents providing service to LACERA under any separate agreement, will maintain logical separation in the electronic systems intended to restrict access to LACERA information and documents to such Agents and will take such other steps as LACERA reasonably requests to mitigate any actual or perceived conflict of interest. In addition, Actuary will maintain hard copies of LACERA information and documents in its possession in a secure manner intended to restrict access to LACERA information and documents to such Agents. Upon written request by LACERA, Actuary shall furnish LACERA with a written statement of disclosure of any actual or potential conflicts of interest, including but not limited to, a statement of economic interests.

- B. Conflict of Interest with Persons Related to LACERA. Actuary does not and shall not knowingly employ in any capacity (1) any LACERA or County employee or fiduciary who either could influence the award of this Agreement or any third-party agreement, or who does or will have any direct or indirect financial interest in this Agreement ("Interested Person") and (2) any spouse or economic dependent of any Interested Person.

- C. Certification Regarding Financial Contacts and Solicitations. Actuary represents that during the period from [DATE] to the effective date of this Agreement, no member of the LACERA Boards or key staff of the Boards or any elected or appointed official of Los Angeles County, or any person claiming to represent or have influence with either Board or with any member of the Boards contacted Actuary with respect to any transaction, solicitation, or contract that was not solely on behalf of LACERA's business with Actuary. In addition, Actuary shall immediately advise LACERA if any member of the LACERA Boards or key staff of the Boards (as such Board members and key staff are identified in writing by the Chief Investment Officer from time to time), or any elected or appointed official of Los Angeles County, or any person claiming to represent or have influence with either Board or with any member of the Boards contacts Actuary with respect to any transaction, solicitation, or contract that is not solely on behalf of LACERA's business with Actuary, and shall deliver to LACERA on or before January 31 of each year, or more frequently if requested, the certification and information required by Exhibit D (Certification Regarding Financial Contracts and Solicitations) attached hereto.

- D. Material Inducement to LACERA. Actuary acknowledges that its representation above constitutes a material inducement to LACERA to enter into this Agreement and the breach by Actuary of its obligations under this Section constitutes a material breach upon which LACERA may immediately terminate or suspend this Agreement (or any services to be provided by Actuary) for default, pursuant to Section 8.D.(ii) above.
18. Surviving Provisions. The parties agree that the provisions and obligations with respect to Section 6 (Term and Termination), Section 7 (Indemnification of LACERA), Section 9 (Insurance), Section 10 (Actuary's Representations, Warranties and Covenants), Section 12 (Records and Audits), Section 13 (Confidentiality; Proprietary Rights), Section 14 (Conflicts and Disqualification), Section 17 (Ethical Wall, Conflicts Management, and Disqualification), and any other provisions which expressly survive or by their nature are intended to survive expiration or termination of this Agreement, will survive any expiration or termination of this Agreement.
19. General Provisions.
- A. Changes and Amendments. LACERA reserves the right to change the Statement(s) of Work under this Agreement, or to amend such other terms and conditions as reasonably necessary subject to the following conditions:
1. Any change which does not affect the scope of work, period of performance, payments, or any term or condition included under this Agreement, requires a change notice prepared and signed by LACERA's Project Director and Actuary's Project Manager.
 2. Any change which affects the scope of work, period of performance, payments, or any term or condition included in this Agreement, requires a negotiated written modification to the Agreement executed by authorized officials of LACERA and Actuary.
- B. Notices. All notices, requests, demands or other communications required or desired to be given under this Agreement or under any law now or hereafter in effect are to be in writing, addressed as provided below. Such notices, if properly addressed, will be deemed received (i) on the day delivered, if delivered to the recipient (ii) on the business day transmitted, if transmitted by email to the address shown below (but on the next business day after transmittal if transmitted on a non-business day or after 5:00 p.m. recipient's time), (ii) one business day after delivery to a reputable overnight courier, with delivery charges for next business day delivery paid by or charged to the sending party, or (iii) five calendar days after deposit in the U.S. Mail, first class registered or certified mail, postage prepaid:

To LACERA:

[NAME]
 [TITLE]
 LACERA
 300 N. Lake Ave., Ste. [XX]

To Actuary:

Pasadena, CA 91101

With a copy to:
Chief Counsel
LACERA
300 N. Lake Ave., Ste. [XX]
Pasadena, CA 91101

With a copy to: _____
General Counsel

Either party may notify the other of its change in address in the manner provided above. Notwithstanding the prescribed method of delivery set forth above, actual receipt of written notice by the natural person designated above shall constitute notice given in accordance with this Agreement on the date received, unless deemed earlier given pursuant to the foregoing paragraph.

C. Compliance with LACERA Communication Policy. Actuary agrees to comply with the following communication policy adopted by the Board:

All formal notices required to be given to LACERA by a service provider pursuant to the service provider’s contract with LACERA shall be addressed and delivered in accordance with the terms and conditions of the contract.

A service provider, or person or entity related to a service provider, shall provide to LACERA’s Chief Executive Officer a copy of all written communications to LACERA (other than purely personal or social correspondence, routine announcements, generally distributed newsletters, and the like) related to LACERA’s business. If the communication relates to an actual or potential contract dispute, a copy shall also be provided to LACERA’s Chief Counsel.

The addresses for LACERA’s Chief Executive Officer and Chief Counsel are:

Chief Executive Officer
LACERA
300 N. Lake Ave., Ste. [XX]
Pasadena, CA 91101

Chief Counsel
LACERA
300 N. Lake Ave., Ste. [XX]
Pasadena, CA 91101

D. Dispute Resolution; Attorneys' Fees, Costs, and Expenses.

(1) Mediation: If a dispute arises over any matter arising out of or relating to this Agreement (whether in contract, tort, or both) the parties agree first to try in good faith to settle the dispute voluntarily with the aid of an impartial mediator.

(a) Commencing Mediation: A dispute will be submitted to mediation by one party delivering a written notice requesting mediation (the “Notice of Mediation”) to the other party. The Notice of Mediation must be sent in accordance with the notice requirements herein.

- (b) Selection of Mediator: The mediator will be selected by agreement of the parties. If the parties cannot agree on a mediator within 30 days after the Notice of Mediation is sent, the mediator will be selected by the Center for Public Resources (“CPR”) at the request of either party.
- (c) Location of Mediation: The mediation will be held in Los Angeles County, California, at a time and place selected by the mediator and mutually agreed upon by the parties.
- (d) Conduct of Mediation: At least five days before the date of the mediation, each party will provide the mediator with a statement of its position and copies of all supporting documentation. Each party shall send to the mediation a person who has authority to bind the party. Each party has the right to be represented at the mediation by legal counsel of its choice.
- (e) Confidentiality of Mediation: The mediation will be treated as a settlement discussion and therefore will be confidential, and except as required by law and the next two sentences, neither party may disclose the content or results of any mediation hereunder without the prior written consent of the other party. Each party may disclose the content and results of any mediation to its employees who need to know such information, and to its directors, trustees, auditors and legal counsel. Each party may also disclose the content and results of any mediation to the extent necessary to comply with applicable accounting standards with respect to its annual financial reports, and to allow its auditors to issue an unqualified opinion that the party’s financial statements present fairly, in all material respects, the net assets of the party in conformity with accounting principles generally accepted in the United States.
- (f) Termination of Mediation: If the mediation does not result in a settlement within six months after the Notice of Mediation is sent, either party may terminate the mediation process by delivering a written notice of termination (the "Notice of Mediation Termination") in writing to the other party. The Notice of Mediation Termination must be sent in accordance with the notice requirements herein.
- (g) Costs of Mediation: Each party will bear its own costs in the mediation. The fees and expenses of the mediator will be shared equally by the parties.
- (h) Tolling Statutes of Limitation during Mediation: All applicable statutes of limitation (and laches or any other time-bar defenses) will be tolled for the period commencing on the date the Notice of Mediation is sent, and ending sixty days after the date on which the Notice of Mediation Termination is sent.

- (2) In any legal proceeding which arises out of or relates to this Agreement (whether in contract, tort, or any other legal or equitable theory or combination of theories), 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 proceeding.
- E. Section Headings; Interpretation. Caption and section headings used in this Agreement are for convenience and reference only and do not affect in any way the meaning, construction or interpretation of this Agreement. Each party hereto and its counsel have participated fully and equally in the review and negotiation of this Agreement. The language in all parts of this Agreement shall in all cases be construed according to its fair meaning, and not strictly for or against any party hereto, and shall be deemed to be jointly drafted. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party does not apply in interpreting this Agreement.
- F. Entire Agreement. This Agreement, Actuary's Proposal, and any and all Exhibits, Schedules and Appendices attached hereto contain the final, complete, entire and exclusive statement of the terms of the agreement between the parties pertaining to the subject matter of this Agreement, and supersedes all other previous oral and written agreements or understandings, and all contemporaneous oral and written negotiations, commitments, understandings and communications between the parties, relating to the subject matter of this Agreement.
- G. Actuary's Proposal, Exhibits, Schedules and Appendices. Actuary's Proposal, and the Exhibits, Schedules and Appendices 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 following precedence shall be used to interpret the requirements of this Agreement:
- (1) first, each amendment in descending order by date of execution
 - (2) second, the terms of this Agreement;
 - (3) third, the terms of the Exhibits, Schedules and Appendices according to the order in which they appear; and
 - (4) fourth, Actuary's Proposal.

- H. Severability. The provisions of this Agreement are severable, and if any one or more provisions may be determined to be illegal or otherwise unenforceable, in whole or in part, the remaining provisions or parts thereof shall nevertheless be binding and enforceable and the invalid, illegal or unenforceable provision shall be replaced by a mutually acceptable valid, legal and enforceable provision which comes closest to the intent of the parties.
- I. Waiver. The waiver of any breach of any provision of this Agreement by either party does not constitute a waiver of any preceding or subsequent breach of such provision or of any other provision of this Agreement. The failure or delay of either party to exercise any right given to the party under this Agreement does not constitute a waiver of such right, nor does any partial exercise of any right given hereunder preclude further exercise of such right.
- J. Governing Law and Venue.
- (1) This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California without regard to principles of conflicts of laws.
 - (2) Any party bringing a legal action or proceeding against any other party arising out of or relating to this Agreement or the transactions it contemplates (whether in contract, tort, equity, or otherwise), shall bring the legal action or proceeding in either the United States District Court sitting in the County of Los Angeles, California or in any court of the State of California sitting in the County of Los Angeles, California.
 - (3) Each party to this Agreement consents to the exclusive jurisdiction of any United States District Court sitting in the County of Los Angeles, California and any court of the State of California sitting in the County of Los Angeles, California, and their appellate courts for the purpose of all legal actions and proceeding arising out of or relating to this Agreement or the transactions it contemplates.
- K. Assignment and Delegation. Actuary may not assign any of its rights or delegate or subcontract any of its duties hereunder without LACERA's prior written consent, which consent may be granted or withheld in LACERA's sole discretion. Any attempted assignment or delegation in violation of this provision is void and entitles LACERA to terminate this Agreement. Despite LACERA's consent, no assignment releases Actuary of any of its obligations or alters any of its primary obligations to be performed under this Agreement. Payments to any assignee under this Agreement shall be subject to set-off, recoupment, or other reduction for any claim that LACERA may have against Actuary. If Actuary is a partnership, this Agreement inures to the benefit of the surviving or remaining partners of such partnership.

L. Restrictive Agreements.

- (1) For purposes of this Section 17.L., "Restrictive Agreements" means any non-competition agreement, non-solicitation agreement, and any other agreement between Actuary and any of its Agents, including, without limitation, those individuals responsible for performing the services contemplated by this Agreement, whether entered into prior or subsequent to this Agreement, which purports to restrict any Agent whose working relationship with Actuary terminates voluntarily or involuntarily ("Former Agent"), from soliciting actuarial consulting, investigation, valuation, or actuarial audit business or any other business from LACERA, or from entering into any contractual relationship with LACERA for actuarial consulting, investigation, valuation, or actuarial audit business or any other business purpose (collectively, "Business Activity"), by (i) prohibiting such Business Activity by the Former Agent for any period of time, (ii) requiring the payment of money or other consideration by the Former Agent to Actuary to enter into such Business Activity, or (iii) requiring any other act or abstention from action by the Former Agent in connection with such Business Activity.
- (2) Actuary acknowledges that Restrictive Agreements infringe upon the Board's fiduciary duty to select actuaries to perform statutorily mandated and other actuarial services for LACERA.
- (3) Actuary agrees such Restrictive Agreements shall not be applicable to any Business Activity between LACERA and any Former Agent. Actuary shall not enforce any such Restrictive Agreement against any Former Agent to the extent such Former Agent engages in a Business Activity with LACERA.

M. Notice of Delays. Except as otherwise provided herein, when either party has knowledge that any actual or potential situation is delaying or threatens to delay the timely performance of this Agreement, that party will, within fifteen (15) days, give notice thereof, including all relevant information with respect thereto, to the other party.

N. Time of the Essence. Time is of the essence in respect to all provisions of this Agreement that specify a time for performance.

O. Joint and Several Liability. If Actuary consists of more than one person or entity, the liability of each such person or entity signing this Agreement as Actuary is joint and several.

P. Cooperation in Contract Administration. Actuary shall cooperate with such consultants as LACERA may retain from time to time to assist LACERA in the administration of this Agreement, including, without limitation, actuaries, attorneys, and accountants. This provision shall survive termination of this Agreement.

- Q. Word Usage. Unless the context clearly requires otherwise, (i) the plural and singular number each include the other; (ii) the masculine, feminine, and neuter genders each include the others; (iii) "or" is not exclusive; (iv) "includes" and "including" are not limiting; (v) "hereof, " "herein, " and other variants of "here" refer to this Agreement as a whole; and (vi) "default" and "breach" are used interchangeably.
- R. Execution in Counterparts; Facsimile Signatures. The parties may execute this Agreement in any number of duplicate originals, each of which constitutes an original, and all of which, collectively, constitute only one agreement. The parties may execute this Agreement in counterparts, each of which constitutes an original, and all of which, collectively, constitutes only one agreement. Any party delivering an executed counterpart of this Agreement by facsimile or e-mail shall also deliver a manually executed counterpart of this Agreement, but the failure to do so does not affect the validity, enforceability or binding effect of this Agreement.
- S. Recitals Incorporated. The recitals set forth at the beginning of this document are incorporated in and made a part of this Agreement.

[Signatures follow on next page]

IN WITNESS WHEREOF, LACERA has caused this Agreement to be subscribed on its behalf by its duly authorized officer, and Actuary has caused this Agreement to be subscribed on their behalf by its duly authorized officer(s), as of the Agreement Date.

LACERA:

Actuary:

LOS ANGELES COUNTY EMPLOYEES
RETIREMENT ASSOCIATION

By: _____
Name: [NAME]
Title: [TITLE]

By: _____
Name: _____
Title: _____

Approved as to form for LACERA:

Approved as to form for Actuary:

By: _____
Name: [NAME]
Title: [TITLE]
Company: LACERA Legal Department

By: _____
Name: _____
Title: _____
Company: _____

Exhibits to Actuarial Consulting Services Agreement

A. Statement of Work: Retirement Plan Consulting

- Project 1: Actuarial Valuation
- Project 2: Triennial Experience and Assumptions Study
- Project 3: Supplemental Targeted Adjustment for Retirees (STAR) Valuation
- Project 4: Actuarial and Governmental Table Updates
- Project 5: Section 415(b) Limitations Testing
- Project 6: Risk Assessment Reporting
- Project 7: GASB 67 Financial Statement Disclosure Reporting
- Project 8: GASB 68 Financial Statement Disclosure Reporting
- Project 9: Actuarial Consulting
- Project 10: Special Projects (Actuarial Consulting Under Time and Material Billing Billing)

**Refer to the RFP Materials document – “Attachment H - Actuarial Consulting Services Statements of Work” for details.*

B. Statement of Work: OPEB Program Consulting

- Project 1: Actuarial Valuation and Consulting
- Project 2: Triennial Experience and Assumptions Study
- Project 3: GASB 75 Financial Statement Disclosure Reporting for the Los Angeles County, LACERA, and Superior Court
- Project 4: GASB 75 Financial Statement Disclosure Reporting for SCAQMD

**Refer to the RFP Materials document – “Attachment H - Actuarial Consulting Services Statements of Work” for details.*

C. Fee Schedule

**Refer to the RFP Materials document – “Attachment J - Fee Schedule Template” for details.*