



**THIS EXHIBIT D IS THE GENERAL FORM AND CONTENT OF THE CONTRACT LACERA INTENDS TO USE. IN SUBMITTING A PROPOSAL WITHOUT COMMENT ON THE CONTRACT, THE BIDDER WILL BE DEEMED TO HAVE AGREED TO EACH CLAUSE IN THE AGREEMENT BELOW (AND TO NOT SEEK ANY MODIFICATIONS TO THE AGREEMENT), UNLESS BIDDER'S PROPOSAL IDENTIFIES AN OBJECTION OR INCLUSION, SETS FORTH THE BASIS FOR THE OBJECTION OR INCLUSION, AND PROVIDES SUBSTITUTE LANGUAGE TO MAKE THE CLAUSE ACCEPTABLE TO BIDDER OR TO ADDRESS AN ISSUE BIDDER FEELS IS NOT ADDRESSED BY THE AGREEMENT. LACERA RESERVES THE RIGHT TO MAKE CHANGES TO THE CONTRACT PRIOR TO EXECUTION.**

**EXHIBIT D  
SAMPLE CONTRACT PROVISIONS**

**AUDIT SERVICES AGREEMENT**

This Audit Services Agreement ("Agreement") is made and entered into as of \_\_\_\_\_, 2009, at Pasadena, California, by and between the Los Angeles County Employees Retirement Association ("LACERA"), and \_\_\_\_\_, a \_\_\_\_\_ ("AUDITOR"), for a one-time audit of LACERA's Pharmacy Benefits Manager, Caremark, LLC ("Caremark"), for the July 1, 2008 through June 30, 2009 plan year.

**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. LACERA's Prescription Benefit Services Agreement with Caremark authorizes LACERA to secure the services of a qualified auditor to perform an audit of Caremark; and
- C. LACERA desires to engage an auditor to perform the audit, and issued a request for proposals ("RFP") for such services;
- D. AUDITOR submitted a proposal in response to the RFP, and desires to perform the audit services, and has represented to LACERA that it is qualified to perform the aforesaid services; and
- E. LACERA has determined, based upon AUDITOR's proposal submitted in response to the RFP and LACERA's due diligence, that AUDITOR is qualified to perform the audit services and desires to retain AUDITOR for that purpose.

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

## **AGREEMENT**

### 1. Definitions

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

"Agents" means any employees, agents, or representatives of AUDITOR acting in connection with this Agreement.

"Agreement" means this Audit Services Agreement entered into by and between LACERA and AUDITOR, including the Exhibits and Attachments attached hereto.

"Agreement Date" means the date shown in the preamble of this Agreement.

"AUDITOR" means \_\_\_\_\_, a \_\_\_\_\_.

"Board" means LACERA's Board of Retirement or Board of Investment, or both, as the context requires.

"CERL" means the County Employees Retirement Law of 1937, as amended, California Government Code section 31450 et seq.

"Committee" means any committee of the Board of Retirement or the Board of Investments, or both Boards, including without limitation the Insurance, Benefits and Legislative Committee, Operations Oversight Committee and the Audit Committee, and their successors.

"Covered Persons" means LACERA, its trustees, officers, and employees, agents, and contractors, excluding AUDITOR and its Agents.

"Effective Termination Date" means the date on which all or a specified portion of the work under this Agreement will formally cease, as specified in any Notice of Termination delivered by LACERA to AUDITOR.

"Force Majeure" means any cause, circumstance, or event beyond the control and without the fault or negligence of AUDITOR that causes AUDITOR 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 AUDITOR.

"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.).

"LACERA's Project Manager" means Lita Payne, Director, Retiree Health Care for LACERA.

"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 AUDITOR in relation to its performance under this Agreement, including the Sarbanes Act.

"Member Records" means any records relating to LACERA's members and/or, beneficiaries to which AUDITOR or its Agents may be exposed when performing under this Agreement, including PHI (as defined in Section 13.A.(2)(a)).

"Notice of Termination for Convenience" means a notice delivered by LACERA to AUDITOR when desiring to terminate this Agreement (or a portion of the work to be performed by AUDITOR) for its convenience.

"Notice of Termination for Default" means a notice delivered by LACERA to AUDITOR when desiring to terminate this Agreement (or a portion of the work to be performed by AUDITOR) due to a default by AUDITOR.

"Sarbanes Act" means the Sarbanes-Oxley Act of 2002, as amended from time to time.

"Work Records" is defined in Section 12.A(2).

## 2. Applicable Documents

A. Exhibits Incorporated Exhibits A, B, and C described below (collectively, "Exhibits"), are attached to and incorporated herein as a part of this Agreement, except that, notwithstanding any language contained in said Exhibits and Attachments to the contrary, the audit shall be for the plan year July 1, 2008 through June 30, 2009.

B. Conflicts in Agreement Conflicts in the definition or interpretation of any work, responsibility, service, schedule or contents of a deliverable product between the body of this Agreement and the Exhibits and Attachments shall be resolved by giving precedence first to the body of the Agreement, and then to the Exhibits and Attachments according to the following priority:

- (1) Exhibit A – Statement of Work;

(2) Exhibit B – AUDITOR’s Fee Schedule; and

(3) Exhibit C – Certification Concerning Financial

Contacts and Solicitations.

3. Description of Services

A. Work to be Performed AUDITOR agrees to perform the work and provide the services set forth in this Agreement, in the manner and form described in this Agreement. The quality of service provided by the AUDITOR under this Agreement shall be at least equivalent to that which AUDITOR provides to other clients it serves in the same capacity. AUDITOR shall be held to the standard of care, skill, prudence and diligence that applies to other experts practicing in a like enterprise.

B. AUDITOR’s Key Deliverables

(1) AUDITOR must deliver five draft copies of the AUDITOR’s final opinion, any financial statements, footnotes and supplementary information described in this Agreement for the designated plan year no later than \_\_\_\_\_.

(2) AUDITOR must deliver five final copies of AUDITOR’s final opinion, footnotes and supplementary information described in this Agreement for the designated plan year no later than \_\_\_\_\_.

C. Conferences and Meetings

(1) Entrance conference Prior to commencing the audit, AUDITOR shall attend an entrance conference at LACERA’s offices with LACERA staff.

(2) Exit conference(s) AUDITOR shall attend one or more exit conference(s), as determined by LACERA in its sole discretion, with LACERA staff to review the AUDITOR’s draft of the final report. If requested by LACERA from time to time, AUDITOR shall also discuss findings and recommendations from the report with the Board of Retirement’s Insurance, Benefits and Legislative Committee and LACERA’s Board of Retirement at regularly scheduled Board meetings. AUDITOR will make additional presentations to the Boards and their Committees as required.

(3) Time and Attendance Conferences described in this Section 3 shall be held at LACERA’s offices during normal business hours, on dates reasonably determined by LACERA’s Project Manager. AUDITOR’s Project Manager and such of its Agents as LACERA’s Project Manager deems necessary and appropriate shall attend the conferences described in this Section 3.

D. Corrections to Work AUDITOR’s services and deliverables will meet the requirements and standards set forth in this Agreement. AUDITOR will promptly correct any errors or omissions in the provision of such services and deliverables, at no cost or

expense to LACERA, within five (5) business days after request by LACERA's Project Manager. In the event of any excused interruption or service, or excused failure to perform as herein agreed, AUDITOR agrees to use its best efforts to immediately restore or reasonably provide such services to LACERA.

E. Conduct on Party's Premises The employees and agents of each party shall, while on the premises of the other party, comply with all rules and regulations of the premises, including, but not limited to, security requirements.

4. Project Responsibility

A. AUDITOR's Project Manager AUDITOR's Project Manager is \_\_\_\_\_, a \_\_\_\_\_ of AUDITOR. AUDITOR shall inform LACERA in writing of the name of any alternate Project Manager or designee within a reasonable time after his or her selection, and the appointment of such individual(s) shall be subject to LACERA's approval, which may be withheld in its sole discretion.

(1) AUDITOR's Project Manager

(a) is responsible for the AUDITOR's day-to-day activities related to the work to be performed by AUDITOR under this Agreement;

(b) has full authority to act for AUDITOR on all matters relating to the daily operation of this Agreement; and

(c) will be reasonably available during LACERA's normal working hours for telephone contact and to meet with LACERA personnel designated to discuss AUDITOR's performance.

B. Additional AUDITOR Personnel

(1) In addition to AUDITOR's Project Director, AUDITOR designates \_\_\_\_\_, [insert names and titles] to perform the work described in this Agreement. AUDITOR may not replace or remove said individual(s), AUDITOR's Project Manager (or any alternate or designee), or any other engagement partners, managers, supervisory staff, or specialists assigned to perform the work without the express prior written consent of LACERA's Project Director, which consent LACERA may withhold in its discretion; however, such restriction shall not apply to instances of promotion, employment termination, assignment to another office more than 75 miles from LACERA's principal place of business, serious illness, death, or other causes beyond AUDITOR's control.

(2) LACERA has the absolute right, during the period of AUDITOR's performance under this Agreement, to approve or disapprove any of AUDITOR's assigned personnel designated as Project Manager, engagement partners, managers, other senior supervisory staff, or specialists, or any proposed changes in these categories of AUDITOR's personnel. AUDITOR shall provide the LACERA Project

Manager, or his designee, with a résumé of the proposed replacement(s) and an opportunity to interview the person(s) prior to LACERA approving or disapproving the proposed change.

(3) Upon request by LACERA's Project Manager, AUDITOR will replace any of AUDITOR's personnel or Agents assigned to perform services under this Agreement, who are in LACERA's opinion, unable to effectively carry out the responsibilities of this Agreement.

C. LACERA's Project Manager LACERA's Project Manager is Lita Payne, Director of Retiree Health Care. LACERA's Project Manager or designee shall, on a regular basis, interface with AUDITOR's Project Manager.

(1) LACERA's Project Manager 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) approving invoices submitted prior to payment for work performed and deliverables delivered in accordance with this Agreement, which approval will not be unreasonably withheld; and

(d) providing direction to AUDITOR in all matters relating to policy, information requirements, and procedural requirements.

(2) LACERA's Project Manager 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 Manager in this Agreement.

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

## 5. Independent Contractor Status

In performing under this Agreement, AUDITOR is at all times acting in the capacity of an independent contractor. This Agreement is not intended, and shall not be construed, to create the relationship of agent, servant, employee, partnership, joint venture, or association as between LACERA and AUDITOR. 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. AUDITOR shall be solely liable and responsible for providing to, or on behalf of, all persons

performing work pursuant to this Agreement all compensation and benefits. 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 AUDITOR. AUDITOR understands and agrees that all persons furnishing services pursuant to this Agreement are, for purposes of workers' compensation liability, employees solely of AUDITOR and not employees of LACERA.

6. Compensation and Payment

A. Compensation LACERA shall compensate AUDITOR for services rendered under this Agreement at the rates set forth in Exhibit C hereto.

B. Expenses AUDITOR's expenses are included in the compensation described in Section 5.A and therefore AUDITOR 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

(1) Upon completion and acceptance of all deliverables required by this Agreement, AUDITOR shall invoice LACERA for the agreed fee as set forth in Exhibit C hereto.

(2) Each/any invoice AUDITOR submits to LACERA's Project Manager will be in compliance with the fee structure set forth in Exhibit C.

(3) Each/any invoice shall clearly reflect and provide reasonable detail of the services and other sources of payment for which claim is made, and shall be sent to LACERA's Project Manager for review. Approved invoices will be paid within thirty (30) days of receipt.

D. Non-Compensable Services AUDITOR agrees that should work be performed outside the scope of the work described in this Agreement, without the prior written consent of LACERA in accordance with Section 16.A (Changes and Amendments) to this Agreement, such work will be deemed to be a gratuitous effort on the part of AUDITOR, and AUDITOR will have no claim against LACERA for such work, and LACERA will have no obligation to pay for such work.

7. Term and Termination

A. General Term Subject to the termination provisions set forth in Sections 7.B through 7.E below, the term of this Agreement commences on the Agreement Date and continues until the completion of the work set forth in this Agreement.

B. Termination by LACERA for Convenience LACERA may terminate this Agreement, or any portion of the services to be performed by AUDITOR, without cause at any time by delivering to AUDITOR a written Notice of Termination for Convenience specifying the extent to which AUDITOR's services are terminated and the Effective Termination Date. The Effective Termination Date may be no earlier than ten calendar days after such Notice of Termination for Convenience is sent to AUDITOR. LACERA's termination of this Agreement under this Section 7.B is not a waiver of LACERA's right to make a claim against AUDITOR for damages resulting from any default or breach by AUDITOR which occurred prior to the Effective Termination Date.

C. Termination by LACERA for Default LACERA may immediately terminate this Agreement, or any portion of the services to be performed by AUDITOR, by delivering to AUDITOR a written Notice of Termination for Default that specifies the Effective Termination Date, under any one of the following circumstances:

(1) Upon notice but without cure period, if AUDITOR fails to perform the work specified in this Agreement within the time specified herein or any extension thereof;

(2) If AUDITOR 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 specifying such default;

(3) Upon notice but without further cure period, if AUDITOR repeatedly fails to perform according to this Agreement following notice and failure to cure pursuant to Section 7.C.(2) hereof;

(4) Without notice or cure period if AUDITOR materially breaches any of the warranties, representations, agreements, and covenants made in Section 10 (AUDITOR's Representations, Warranties and Covenants), if AUDITOR fails to maintain the insurance required under Section 9.B, or if AUDITOR fails to comply with the terms of Section 11.A (Compliance with Legal Requirements);

(5) Without notice or cure period if AUDITOR is subject to criminal indictment or conviction, or is found civilly or criminally liable by a trial court, jury or administrative body, or enters a plea of guilty or *nolo contendere*, in connection with any matter involving breach of trust, breach of fiduciary duty, fraud, or theft; or

(6) Without notice or cure period if AUDITOR 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 this Agreement, or any portion of the services to be performed by AUDITOR, by

delivering to AUDITOR a written Notice of Termination for Default that specifies the Effective Termination Date, under any one of the following circumstances:

(1) AUDITOR becomes insolvent. AUDITOR 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) AUDITOR files a voluntary petition under any bankruptcy, reorganization or insolvency law;

(3) AUDITOR applies for or consents to appointment of a trustee or receiver to take possession of all or substantially all its assets;

(4) AUDITOR 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 AUDITOR and not dismissed within thirty days after commencement.

E. Termination by LACERA for Non-Appropriation of Funds

Notwithstanding anything contained in this Agreement to the contrary, services rendered by AUDITOR 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 AUDITOR'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, as if LACERA had issued a Notice of Termination for Convenience under Section 7.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 AUDITOR in writing of such non-appropriation as soon as practicable.

F. Force Majeure AUDITOR may not be terminated for default, pursuant to Section 7.C or Section 7.D above, if AUDITOR's failure to perform under this Agreement arises solely from causes of Force Majeure.

G. 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, AUDITOR will: (i) take

all necessary steps to stop providing services under this Agreement on the Effective Termination Date, or sooner, to the extent stated 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 7.C or Section 7.D above, LACERA is entitled to recover from AUDITOR all reasonable damages resulting from such default. 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 AUDITOR will be liable to LACERA for any excess cost of such similar services.

(3) Payment when Terminated for Convenience If LACERA terminates this Agreement for convenience pursuant to Section 7.B above, LACERA will pay AUDITOR for work already performed but for which AUDITOR has not been compensated through the Effective Termination Date, according to the terms of Section 6, after AUDITOR has returned all items described in Section 12.A to LACERA.

(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 7.C or Section 7.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 AUDITOR.

(5) Excusable Default If, after LACERA issues a Notice of Termination for Default pursuant to Section 7.C or Section 7.D above, it is determined for any reason that AUDITOR 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 7.B.

(6) Good Faith Transfer Upon any termination of this Agreement by LACERA, and to the extent directed by LACERA, AUDITOR will cooperate with LACERA in good faith to effect a smooth and orderly transfer of such services and all applicable records to a successor designated by LACERA. AUDITOR will respond promptly to reasonable inquiries of such successor auditor with respect to the Work Papers and matters of continuing accounting significance to LACERA. Upon termination of this Agreement, AUDITOR will retain all Work Records according to the record retention provisions set forth in Section 12 below.

(7) Cumulative Nature of Rights and Remedies The rights and remedies provided by this Section 7 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 7.C or Section 7.D above does not limit LACERA's right to terminate this Agreement for convenience at any time, pursuant to Section 7.B above.

8. Indemnification

A. Indemnification of LACERA AUDITOR agrees to indemnify, defend, save, and hold harmless the Covered Persons from and against any and all liabilities, losses, injuries, suits, costs, charges, judgments, fines, penalties, expenses (including defense costs and attorneys' fees) and claims for damages of any nature whatsoever, including loss of funds, bodily injury, death, personal or advertising injury, or property damage (including any workers' compensation suits, liability or expense arising from or connected with work performed by or on behalf of AUDITOR by any person pursuant to this Agreement, or any damage to AUDITOR's property), which arise from the improper conduct of the AUDITOR or its Agents, whether based on contract or tort theory, including:

(1) Any bad faith, negligence, willful misconduct, improper or unethical practice by AUDITOR or its Agents;

(2) Any breach of any representation or warranty made by AUDITOR in this Agreement;

(3) The breach of any covenant, agreement or obligation of AUDITOR contained in this Agreement or any other instrument contemplated by this Agreement, including, infringement of intellectual property rights, breach of trust, breach of confidentiality, or violation of any Legal Requirement;

(4) Any actual or alleged infringement of intellectual property rights, including infringement of any patent, trade secret, service mark, copyright; and

(5) Any misrepresentation contained in any statement or certificate furnished by or on behalf of AUDITOR pursuant to this Agreement.

B. Notice of Claim Covered Persons shall give AUDITOR prompt notice of any claim for which Covered Persons are entitled to indemnification pursuant to this Section 8, and AUDITOR shall control the defense or settlement thereof; provided, 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 Covered Persons without recourse to any Covered Persons for any amount, claim or other obligation whatsoever respecting such claim. AUDITOR shall have no right to settle or compromise any such claim without the consent of Covered Persons, which consent can be withheld for any reason or no reason, if such settlement or compromise involves the issuance of injunctive or other non-monetary relief binding upon Covered Persons or a plea of guilty or *nolo contendere* on the part of Covered Persons in any criminal or quasi-criminal proceeding, or which involves any admission of liability or culpability on the part of Covered Persons, or which has any collateral estoppel effect on Covered Persons.

9. Insurance

A. General Insurance Requirements Without limiting AUDITOR's obligations under Section 8.A hereof, AUDITOR will provide and maintain at its own expense during the term of this Agreement the programs of insurance programs specified in this Agreement. Such insurance will be primary and not contributing with any other insurance of self-insurance programs maintained by LACERA, and AUDITOR agrees to provide and maintain such insurance at its own cost and expense.

(1) Evidence of Insurance Certificate(s) or other evidence of coverage satisfactory to LACERA shall be delivered to:

Lita Payne  
Director, Retiree Health Care  
LACERA  
300 N. Lake Avenue, Suite 120  
Pasadena, CA 91101-4199

prior to commencing services under this Agreement. 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 insureds for all activities arising from this Agreement.

(2) Insurer Financial Ratings Insurance is to be provided by an insurance company acceptable to LACERA with an A.M. Best rating of not less than A-, X, unless otherwise approved by LACERA.

(3) Failure to Maintain Coverage AUDITOR's failure to maintain the required insurance, or to provide evidence of insurance coverage acceptable to LACERA, shall constitute a material breach of the contract upon which LACERA may immediately terminate or suspend this Agreement. LACERA, at its sole option, may obtain damages from AUDITOR resulting from said breach.

(4) Compensation for LACERA Costs In the event that AUDITOR 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, AUDITOR shall pay full compensation for all costs incurred by LACERA.

(5) Cooperation Regarding Insurance LACERA may elect to procure insurance against loss or damage it may sustain in connection with AUDITOR's performance under this Agreement. AUDITOR will promptly cooperate with any reasonable request for information regarding AUDITOR which is required to obtain such insurance.

(6) Survival of Obligations AUDITOR's obligations under this Section 9 shall survive expiration or termination of this Agreement.

B. Commercial General Liability AUDITOR 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 AUDITOR's business operations and services that AUDITOR 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 One Million Dollars (\$1,000,000) per occurrence and an annual aggregate of at least Three Million Dollars (\$3,000,000). If such insurance is written on a Claims Made Form, such insurance shall be endorsed providing an extended reporting period of not less than five (5) years following termination or expiration of this Agreement.

C. Auto Liability AUDITOR 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.

D. Workers' Compensation AUDITOR shall bear sole responsibility and liability for furnishing Workers' Compensation benefits to AUDITOR's employees for injuries arising from or connected with any services provided to LACERA under this Agreement. AUDITOR 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 AUDITOR's employees.

E. Errors and Omissions AUDITOR shall provide and maintain insurance covering liability arising from any error, omission, negligent or wrongful act of the AUDITOR, its officers, employees or Agents, with limits of at least Five Million Dollars (\$5,000,000) per claim and an annual aggregate of at least Ten Million Dollars (\$10,000,000). The coverage also shall provide an extended one-year reporting period commencing upon termination or cancellation of this Agreement.

10. AUDITOR's Representations, Warranties and Covenants AUDITOR makes the following representations, warranties, covenants and agreements contained in this Section 10 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.

A. Authorization

(1) AUDITOR 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 AUDITOR and have been duly authorized by all necessary corporate and other action. AUDITOR has duly authorized, executed and delivered this Agreement, and this Agreement constitutes the legal, valid and binding agreements and obligations of AUDITOR, enforceable against AUDITOR 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) AUDITOR 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 AUDITOR's execution, delivery or performance of this Agreement.

(4) AUDITOR 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 AUDITOR shall maintain such proper authorizations while this Agreement is in force.

B. Contingent Fees Neither AUDITOR 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 AUDITOR. If AUDITOR in any way breaches or violates this warranty, LACERA shall have the right to immediately terminate this Agreement for default and, in LACERA's sole discretion, to deduct from AUDITOR's compensation under this Agreement, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.

C. Gratuities AUDITOR has not offered or given any gratuities in the form of gifts, entertainment or otherwise, to any officer, fiduciary, or employee of AUDITOR, LACERA or the County of Los Angeles, California ("County") with a view toward securing this Agreement or securing any favorable determination made concerning the award of this Agreement. AUDITOR covenants that no such gratuities

will be given to any such person with a view toward securing any favorable treatment concerning the performance and/or continuation of this Agreement. If it is found that AUDITOR has offered or given such gratuities, LACERA may terminate this Agreement upon one (1) calendar day's written notice; *provided, however*, that the facts upon which LACERA bases such findings shall be at issue and may be reviewed in any competent court sitting in the County of Los Angeles, California.

D. Conflicts of Interest With Persons Related to LACERA AUDITOR does not and shall not knowingly 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 who 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 (1) calendar year thereafter, AUDITOR will not induce or persuade any employee or independent auditor to LACERA to join AUDITOR.

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 AUDITOR in connection with its performance under this Agreement, infringes or will infringe on any patent, copyright, trademark or service mark 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, AUDITOR will indemnify, defend and hold harmless all LACERA Covered Persons as provided in Section 8 above; *however*, AUDITOR 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 AUDITOR's work in combination with any program or data that is not AUDITOR's, if such claim would have been avoided by using AUDITOR's work exclusively. In addition, following notice of any such Claim, AUDITOR may, at its expense, either procure for LACERA the right to continue to use the allegedly infringing work, or replace or modify such work, so long as such replacement or modification is at least the functional equivalent of the allegedly infringing work.

G. AUDITOR and its Agents

(1) AUDITOR’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) AUDITOR’s firm and its entire professional staff assigned to perform services under this Agreement are properly licensed to practice as certified public accountants in the State of California and are in good standing with such licensing authorities.

(3) Neither AUDITOR 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) AUDITOR has registered with the Public Company Accounting Oversight Board established by the Sarbanes Act, within the time prescribed by the U.S. Securities and Exchange Commission, and remains in good standing with such Oversight Board.

(5) AUDITOR shall to the extent permitted by applicable law, promptly notify LACERA in writing:

(a) If any judicial, administrative or other proceeding is commenced against AUDITOR or any member of AUDITOR's professional staff assigned to perform services under this Agreement during the term of this Agreement; or

(b) If any investigation, examination, complaint, disciplinary action, judicial, administrative, or other proceeding relating to or affecting AUDITOR's ability to perform its duties under this Agreement or involving any professional employed by AUDITOR who has performed any service with respect to this Agreement, is commenced by any of the following: (i) the Securities and Exchange Commission of the United States ("SEC"); (ii) the Public Company Accounting Oversight Board; (iii) any Attorney General or any regulatory agency of any state of the United States; (iv) any U.S. Government department or agency, (v) any stock exchange; or (vi) any governmental agency regulating the accounting industry or accountants in any country in which AUDITOR is doing business. Except as otherwise required by law, LACERA shall maintain the confidentiality of all such information until the investigating entity makes the information public.

(6) AUDITOR will deliver to LACERA's Project Manager, prior to commencing any work under this Agreement, (i) a copy of the report on the firm's internal quality control procedures; and in written form, (ii) any material issues raised by the most recent internal quality control review, or peer review, of the firm, or by any inquiry or investigation by governmental or professional authorities.

H. Employment Eligibility Verification AUDITOR 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. AUDITOR 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. AUDITOR will retain all such documents for the period prescribed by law. AUDITOR 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 AUDITOR 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.

I. Certification Concerning Financial Contacts or Solicitations

AUDITOR agrees to comply with the provisions of and deliver all reports set forth in Exhibit D, Certification of Contractors Concerning Financial Contacts or Solicitations, attached hereto.

J. Re-certification Regarding Minimum Qualifications

AUDITOR certifies that each of the statements set forth in the Minimum Qualification (“MCC”) submitted by AUDITOR to LACERA as part of its proposal submitted in response to LACERA’s Request for Proposals for Audit of its Prescription Benefit Manager is true and accurate as of the date of this Agreement. AUDITOR will notify LAERA in writing within three business days after any statement in the MCC is no longer true or accurate.

K. Changes with Respect to AUDITOR

AUDITOR shall notify LACERA in writing within three (3) business days of any of the following changes:

(1) AUDITOR 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;

(2) There is any change in AUDITOR's personnel described in Section 4 assigned to perform services under this Agreement, or in AUDITOR’s key personnel within its organization;

(3) There is any change in ownership or control of AUDITOR of more than five percent of the issued and outstanding shares, partnership interests, or membership interests of AUDITOR, or in the power to direct the principal business management and activities of AUDITOR, whether through ownership or voting securities, by agreement, or otherwise; and

(4) AUDITOR 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, AUDITOR 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 AUDITOR hereby assures LACERA that AUDITOR 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 AUDITOR agrees to 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 11.C, 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.

12. Records and Audits

A. Recordkeeping

(1) AUDITOR shall maintain accurate and complete financial records of its activities and operations relating to this Agreement in accordance with generally accepted accounting principles. In performing this Agreement, AUDITOR shall fully document all work efforts including the development of any materials prepared 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. AUDITOR shall also maintain accurate and complete employment and other records relating to its performance of this Agreement.

(2) All such material described in (1) immediately above, including, but not limited to, all financial records, work documents, employment records, and proprietary data and information in whatever format, electronic or otherwise (collectively, the "Work Records"), shall be kept and maintained by AUDITOR and shall be made available to LACERA during the term of this Agreement and any extension thereof and for a period of seven (7) fiscal years thereafter unless AUDITOR is notified in writing by LACERA of the need to extend the retention period or unless written permission is given by LACERA to dispose of any such material prior to such time. All such material shall be maintained by AUDITOR at the AUDITOR's main office located at \_\_\_\_\_ and at AUDITOR's expense, will be made available to LACERA and its agents upon request, and delivered to LACERA's offices located at 300 North Lake Avenue, Suite 120, Pasadena, CA 91101.

B. Record Review and Audit AUDITOR agrees that LACERA, or any duly authorized representative of LACERA, including any successor auditor designated by LACERA, will have access to and the right to examine, audit, excerpt, copy or transcribe any Work Records at any time during the term of this Agreement, or at any time for up to seven 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 AUDITOR's normal business activities. Upon reasonable advance notice to AUDITOR (which in no event be more than three business days), AUDITOR will make the Work Records available for review

and audit during normal business hours. AUDITOR 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 AUDITOR to make personnel available as required by the preceding sentence; however, if the audit reveals that AUDITOR has materially violated any of the provisions of this Agreement, AUDITOR will pay all costs associated with such audit.

C. Audit Settlement If representatives of LACERA conduct an audit of AUDITOR regarding the work performed under this Agreement, and 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 AUDITOR to LACERA by cash payment upon demand or, at the option of LACERA, deducted from any amounts otherwise due to AUDITOR 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 AUDITOR by LACERA; however, the total payments shall not exceed the maximum not-to-exceed price for the relevant fiscal year.

13. Confidentiality; Proprietary Rights

A. LACERA's Confidential and Proprietary Materials

(1) LACERA's Proprietary Rights All materials, documents, data, reports, and other information developed under this Agreement become the sole property of LACERA, and upon the expiration or earlier termination of this Agreement, AUDITOR will promptly deliver to LACERA all finished or unfinished materials, documents, data, reports and other information prepared by AUDITOR under this Agreement; however, AUDITOR may retain possession of all working papers prepared by AUDITOR, and LACERA shall have the right during and subsequent to the term of this Agreement to inspect any and all such working papers, make copies thereof, and use the working papers and the information contained therein. Both parties hereto acknowledge that AUDITOR retains the right to use its experience, expertise and knowledge on similar projects for other clients, so long as AUDITOR protects LACERA's interests in all of its confidential records and property.

(2) Member Records AUDITOR acknowledges that when performing under this Agreement, AUDITOR may be exposed to Member Records and that such Member Records are considered confidential and protected from public disclosure by law. AUDITOR 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. If LACERA determines that AUDITOR is a "business associate" as defined in Section 160.103 of the Final Privacy issued by the Department of Health and Human Services ("HHS") in accordance with the Health Insurance Portability and Accountability Act of 1996, as amended, AUDITOR agrees to enter into a "business associate contract" with LACERA within 30 days of the Agreement Date, which contract will, at minimum:

- (a) Describe the permitted and required uses and disclosure of protected health information (as defined in 45 CFR 164.501, "PHI") by AUDITOR;
- (b) Prohibit AUDITOR from disclosing PHI beyond the permitted uses and disclosures;
- (c) Require AUDITOR to implement safeguards to prevent the improper use and disclosure of PHI;
- (d) Require AUDITOR to report to LACERA any improper use or disclosure of PHI;
- (e) Require AUDITOR make PHI available in compliance with member's rights to access, amend, and receive an accounting related to such information;
- (f) Require AUDITOR to return or destroy PHI upon termination of LACERA's business relationship with AUDITOR;
- (g) Require AUDITOR to make its books and records available to HHS for purposes of determining LACERA's compliance with HIPAA;
- (h) Impose the above standards on any and all of AUDITOR's subcontractors; and
- (i) Authorize LACERA to terminate its contract with AUDITOR for cause if AUDITOR violates a material term of the business associate contract.

(3) Protection of Confidential and Proprietary Rights

- (a) AUDITOR shall protect the security of and keep confidential all material, data and information received or produced under this Agreement. Further, AUDITOR shall use whatever security measures are necessary to protect all such material, data and information from loss or damage by any cause, including, but not limited to, fire and theft.
- (b) AUDITOR shall not disclose to any party any information identifying, characterizing or relating to any risk, threat, vulnerability, weakness or problem regarding data security in LACERA's computer systems, or to any safeguard, countermeasure, contingency plan, policy or procedure for data security contemplated or implemented by LACERA, without LACERA's prior written consent.

(4) Duty to Inform Agents AUDITOR will inform all of its Agents of the confidentiality provisions of this Agreement.

B. AUDITOR's Proprietary Materials

(1) Absent AUDITOR's written consent authorizing disclosure, LACERA will use reasonable means to protect and maintain the confidentiality of any of AUDITOR's materials which AUDITOR considers to be proprietary, so long as:

(a) AUDITOR clearly and prominently marks all such material "confidential;" and

(b) Public disclosure of such material is not required by law, including the California Public Records Act (Cal. Government Code Section 6250 et seq., and the Ralph M. Brown Act, Cal. Government Code section 54950, collectively the "Acts"), or by the order of any tribunal having jurisdiction.

(2) If an action is commenced against LACERA under the Acts or otherwise that challenges LACERA's refusal to disclose AUDITOR's proprietary material, AUDITOR will defend LACERA in the action at AUDITOR's expense, if requested by LACERA, and will pay any judgment for damages or attorneys' fees that may be entered as a result of LACERA's refusal to disclose AUDITOR's confidential material.

(3) LACERA's obligations under subsection (1) do not apply to:

(a) Any confidential information that LACERA can demonstrate has become public information through no breach of this Agreement by LACERA;

(b) Any confidential information that LACERA receives from a third party on a non-confidential basis; and

(c) Any confidential information that LACERA develops independently without any use of AUDITOR's confidential information; and

(d) The Work Records.

(4) For the avoidance of doubt, nothing in this Section 13.B precludes LACERA from sharing AUDITOR's confidential information with LACERA's Board members, employees, consultants, advisors, attorneys and persons with similar responsibilities and duties on a need-to-know basis.

#### 14. Publicity

A. Non-Disclosure of Details AUDITOR shall not disclose any details in connection with this Agreement to any person or entity except as may be otherwise provided in this Section 14 herein or required by law.

B. Publicizing the Relationship In recognizing AUDITOR's need to identify its services and related clients to sustain itself, LACERA shall not inhibit AUDITOR from publishing its role under this Agreement within the following conditions:

(1) AUDITOR shall develop all publicity material in a professional manner;

(2) AUDITOR 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. AUDITOR's Proposals and Sales Materials AUDITOR 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 14 shall apply.

15. Surviving Provisions The parties agree that the provisions and obligations with respect to Section 6 (Term and Termination), Section 8 (Indemnification), Section 9 (Insurance), Section 10 (AUDITOR's Representations, Warranties and Covenants), Section 12 (Records and Audits), Section 13 (Confidentiality; Proprietary Rights) and other provisions which by their nature are intended to survive expiration or termination of this Agreement will survive any expiration or termination of this Agreement.

16. General Provisions

A. Changes and Amendments LACERA reserves the right to change any portion of the work, services, or deliverables 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 signed by LACERA's Project Manager and AUDITOR'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 AUDITOR.

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 facsimile to the number 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), (iii) 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 (iv) five calendar days after deposit in the U.S. Mail, first class registered or certified mail, postage prepaid.

To LACERA:

Lita Payne  
Director, Retiree Health Care  
LACERA  
300 N. Lake Ave., Ste. 120  
Pasadena, CA 91101-2601  
Phone No. 626-564-6000 ext. 3391  
Fax No.

With copy to:

**Gregg Rademacher**  
Chief Executive Officer  
LACERA  
300 N. Lake Ave., Ste. 820  
Pasadena, CA 91101-2601  
Phone No. 626-564-6000 ext. 3497  
Fax No. 626-564-6110

To AUDITOR:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Phone No. \_\_\_\_ - \_\_\_\_ - \_\_\_\_  
Fax No. \_\_\_\_ - \_\_\_\_ - \_\_\_\_

With copy to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Phone No. \_\_\_\_ - \_\_\_\_ - \_\_\_\_  
Fax No. \_\_\_\_ - \_\_\_\_ - \_\_\_\_

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 AUDITOR 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 investment-related services provided to LACERA, a copy shall also be provided to LACERA's Chief Investment Officer. 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:

Gregg Rademacher  
Chief Executive Officer  
LACERA  
300 N. Lake Ave., Ste. 820  
Pasadena, CA 91101

David L. Muir  
Chief Counsel  
LACERA  
300 N. Lake Ave., Ste. 620  
Pasadena, CA 91101

D. Attorneys' Fees, Costs and Expenses In any legal proceeding which arises out of or relates to this Agreement (whether in contract, tort or any other legal theory whatsoever), 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 paragraph 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 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. 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, and any and all Exhibits, Schedules and Appendices attached to this Agreement, contains the entire and exclusive statement of the terms of the agreement between the parties pertaining to the subject matter of this Agreement, and supersedes all 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. Severability If any provision of this Agreement is held by any court to be void, illegal, invalid, or unenforceable, in whole or in part, the remaining terms and provisions will not be affected thereby, and each of such remaining terms and provisions of this Agreement will be valid and enforceable to the fullest extent permitted by law, unless a party shows by a preponderance of the evidence that the invalidated provision was an essential economic term of the agreement or that an essential purpose of this Agreement would be defeated by the loss of the void, illegal, invalid or unenforceable provision.

H. Waiver No waiver of a breach, failure of any condition, or any right or remedy contained in or granted by the provisions of this Agreement shall be effective unless it is in writing and signed by the party waiving the breach, failure, right, or remedy. No waiver of any breach, failure, right, or remedy shall be deemed a waiver of any other breach, failure, right, or remedy, whether or not similar, or preceding or subsequent, nor shall any waiver constitute a continuing waiver unless the writing so specifies.

I. Governing Law and Venue

(1) This Agreement is 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 relating to or arising out of this Agreement (whether in contract, tort or any other legal theory whatsoever), must bring the legal action or proceeding in either the United States District Court sitting in the County of Los Angeles County, 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 proceedings arising out of or relating to this Agreement or the transactions it contemplates.

J. Assignment and Delegation AUDITOR may not assign any of its rights or delegate or subcontract any of its duties under this Agreement without LACERA's prior written consent, which consent may be granted or withheld in LACERA's sole discretion. Despite LACERA's consent, no assignment releases AUDITOR of any of its obligations or alters any of its primary obligations to be performed under this Agreement, unless such consent expressly provides for such release or alteration. 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 AUDITOR. If AUDITOR is a partnership, this Agreement inures to the benefit of the surviving or remaining partners of such partnership. Any attempted assignment or delegation of this Agreement shall be void and shall entitle LACERA to terminate this Agreement for default in accordance with Section 6.C, *infra*.

K. 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 five business (5) days, give notice thereof, including all relevant information with respect thereto, to the other party.

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

M. Joint and Several Liability If AUDITOR (or any permitted assignee) consists of more than one person or entity, the liability of each such person or entity signing this Agreement as AUDITOR is joint and several.

N. 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; and (v) “hereof,” “herein,” and other variants of “here” refer to this Agreement as a whole; and (vi) “default” and “breach” are used interchangeably.

O. Recitals The Recitals set forth above are incorporated into the body of this Agreement.

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

Q. 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 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.

[Signatures follow on next page.]

IN WITNESS WHEREOF, the Los Angeles County Employees Retirement Association has caused this Agreement to be subscribed on its behalf by its duly authorized officer, and \_\_\_\_\_ has caused this Agreement to be subscribed on their behalf by its duly authorized officer(s), as of the day, month, and year first written above.

LACERA:

AUDITOR:

LOS ANGELES COUNTY EMPLOYEES  
RETIREMENT ASSOCIATION

\_\_\_\_\_  
a \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

APPROVED AS TO FORM:  
LACERA Legal Office

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Christine Roseland  
Associate Staff Counsel

Exhibit A (of RFP Exhibit D – Sample Contract)

Statement of Work: LACERA Audit for Plan Year July 1, 2008 through June 30, 2009

Exhibit B (of RFP Exhibit D – Sample Contract)  
**AUDITOR's Fee Schedule**



## CERTIFICATION REGARDING FINANCIAL CONTACTS AND SOLICITATIONS

\_\_\_\_\_ (“Auditor”) acknowledges that the Los Angeles County Employees Retirement Association (LACERA) is responsible for the administration of the employees’ retirement trust fund. The members of LACERA’s Board of Retirement and the Board of Investments (hereinafter referred to as the “Boards”) are the sole and exclusive trustees and fiduciaries of this statutory trust.

Auditor agrees to assist the Boards in discharging their mutual fiduciary obligations and to affirmatively assist in identifying potential conflicts of interests. Auditor hereby acknowledges that the Boards are directing Auditor to file an annual certification regarding contacts that may represent potential conflicts of interest and further agrees to furnish the annual certification.

In the event any person described below (a “Designated Person”) contacts Auditor with respect to a financial transaction or solicitation which is not solely on behalf of LACERA’s business with Auditor, Auditor shall promptly report by telephone and in writing such contact to the Chairman of the Boards and the Chief Executive Officer. For purposes of reporting contacts, a “solicitation” includes, as an example and without limitation, a request for contribution to any campaign for any elected seat on either Board, or for a seat on the Board of Supervisors of Los Angeles County, made by or on behalf of a Designated Person. A Designated Person is:

- (1) Any member of either Board;
- (2) Any candidate for an elected seat on either Board;
- (3) Any member of the Board of Supervisors of Los Angeles County;
- (4) Any candidate for a seat on the Board of Supervisors of Los Angeles County;
- (5) Any of the LACERA Executive Staff designated on Attachment No. 1 hereto; and
- (6) Any person claiming to represent or to have influence with any person described in (1) through (5) above.

LACERA may amend Attachment No. 1 from time to time by written notice to Auditor.

Auditor further agrees to furnish an annual certification, attested to by a responsible officer of Auditor. The certification shall describe each contact reportable under the foregoing paragraph, listing the date(s) of such contact, the person making the contact and the subject matter of the contact. The certification shall state that except as specifically described in the certification, Auditor has not been contacted by or on behalf of a Designated Person with respect to a financial transaction or solicitation which is not solely on behalf of LACERA’s business with Auditor. Such certification shall be filed annually by January 31 of each year for the preceding calendar year.