**CONSULTING MASTER SERVICES AGREEMENT**

THIS CONSULTING MASTER SERVICES AGREEMENT (this **“Agreement”**) is made and entered into as of the \_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_, 201\_\_ (the **“Effective Date”**), by and between the STATE OF WISCONSIN INVESTMENT BOARD (**“SWIB”**) and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (**“Consultant**,**”** and together with SWIB, each a **“Party”** and together, the **“Parties”**).

RECITALS:

WHEREAS Consultant is in the business of providing investment operations consulting services;

WHEREAS SWIB may elect to retain Consultant from time to time to provide investment operations consulting services to SWIB; and

WHEREAS the Parties desire to set forth the terms that will govern SWIB’s retention of Consultant.

NOW, THEREFORE, in consideration of the undertakings and mutual covenants herein contained, the Parties agree as follows:

# **ARTICLE I**

# **SERVICES TO BE PROVIDED**

## From time to time, SWIB may retain consultant to provide certain services (the “Services”) pursuant to a mutually agreed statement of work (“SOW”). Each SOW will be signed by the Parties and include a description of the project, an outline of the deliverables, a completion schedule, a fee schedule, and any other details that the Parties wish to set forth regarding the Services. Each SOW will be deemed to form a part of this Agreement, and accordingly, the terms of this Agreement will apply to each SOW and will govern the provision of Services by Consultant.

# **ARTICLE II****COMPENSATION**

## The fee schedule included in each SOW will detail the fees to be paid by SWIB to Consultant. The fees will be based on the then-current rate sheet on file with SWIB and any expenses that SWIB expressly agrees to pay in the SOW. Such fees shall represent full compensation for all of Consultant’s services and expenses incurred in the performance of the Services under the SOW, unless otherwise expressly approved in writing by SWIB. Except as may be specifically set forth in a fee schedule or otherwise agreed in writing by SWIB, SWIB shall not reimburse Consultant for any costs and expenses relating to the performance by Consultant of any Services or for the general operation of Consultant’s business, including but not limited to expenses related to travel, administration, employment, legal services, insurance, rent, telecommunications, computers, and utilities. Fees are payable gross of any applicable withholding tax. As a condition to the payment of the fees specified in any SOW, Consultant shall provide SWIB with invoices providing such detail and substantiation as shall be reasonably requested by SWIB. SWIB will pay any fees due and owing within 30 days of receiving the invoice for such fees from Consultant.

**ARTICLE III**

**REPRESENTATIONS AND WARRANTIES OF CONSULTANT**

Consultant represents and warrants to SWIB that:

##  3.1 Due Organization/Registration. Consultant is duly organized, validly existing and in good standing under the laws of the state of its incorporation or organization.

##  3.2 Power and Authority. Consultant has the requisite power and authority to enter into this Agreement and to carry out its obligations hereunder. The execution and delivery of this Agreement has been duly authorized by Consultant and no other actions on the part of Consultant are necessary to authorize this Agreement. This Agreement constitutes the valid and binding obligation of Consultant, enforceable in accordance with its terms, subject to laws of general applicability relating to or affecting creditor’s rights and to general principles of equity.

## No Violation. Neither the execution of this Agreement nor the performance of the Services or the acts contemplated hereby, nor compliance by Consultant with any provisions hereof, will (a) violate any provision of the charter documents of Consultant; (b) violate any statute or law or any judgment, decree, order, regulation or rule of any court or governmental authority applicable to Consultant; (c) violate, conflict with, constitute a default under, permit the termination of, or require the consent of any person under, any agreement to which Consultant may be bound; or (d) violate the intellectual property rights or other rights of a third party.

## 3.4 Authorizations. Consultant has completed, obtained and/or performed all registrations, filings, approvals, licenses, authorizations, consents or examinations required by any government or governmental authority for its acts contemplated by this Agreement.

3.5 No Bad Actor. Neither Consultant nor any of its owners, shareholders, partners, members, managers, directors, officers, agents, employees, affiliates, or other persons responsible for performing any Services (each, a “**Consultant Related Party**”) is or has been the subject of, or a defendant in, and, to the best of Consultant’s knowledge, there is not threatened against Consultant or any Consultant Related Party: (i) an investigation, examination, enforcement action, prosecution or other proceeding (or settlement in lieu thereof) brought by a governmental authority relating to a violation of securities, tax, fiduciary, bankruptcy, or criminal laws or regulations, or (ii) an action or proceeding (or settlement in lieu thereof) containing an allegation of a breach of trust or fiduciary duty, fraud, violation of securities, tax, fiduciary, bankruptcy or criminal laws or regulations, or any act or omission involving moral turpitude. Consultant covenants that it will notify Client within five (5) days in the event any such action or prosecution is initiated or threatened during the term of this Agreement.  SWIB may require that Consultant perform a background or criminal history investigation on any Consultant Related Party before such person is permitted to perform Services under this Agreement or any SOW. Upon SWIB’s request, Consultant will provide SWIB with a copy of the background or criminal history report. If any Consultant Related Party is not acceptable to SWIB in its sole discretion, SWIB shall have no obligation to Consultant under this Agreement or any applicable SOW with respect to the services of such person, and SWIB may request immediate replacement of such person. Failure to provide a replacement that is suitable to SWIB in its sole discretion shall constitute a basis for SWIB to terminate the Agreement or any applicable SOW on the terms set forth in the last sentence of Section 7.1.

## 3.6 Personnel. The primary representatives of Consultant responsible for discharging Consultant’s duties and obligations under this Agreement or performing any Services are individuals experienced in the performance of the various functions contemplated by this Agreement and have not been convicted of any crime or found liable in a civil or administrative proceeding or pleaded *nolo contendere* or agreed to any consent decree with respect to any matter involving breach of trust or fiduciary duty, fraud, securities law violations, bankruptcy law or regulations, or any act or omission involving moral turpitude.

## 3.7 Consultant Response. All responses and information that Consultant provided to SWIB in Consultant’s \_\_\_\_\_\_ \_\_\_, 201\_\_ response (the “Response”) to SWIB’s Investment Operations Consultancy Questionnaire are true and correct as of the Effective Date and do not omit any material facts or information. Consultant shall promptly notify SWIB in the event any of the responses or information becomes untrue or incorrect during the term of this Agreement. In selecting Consultant to perform Services, SWIB is relying upon the information and responses Consultant provided in the Response. The inaccuracy of any information provided by Consultant (including any omission of a material fact necessary in order to make the information provided, taken as a whole, not misleading) will constitute a breach of this representation and a material breach of this Agreement.

 3.8 No Improper Benefit.

1. To the best of Consultant’s knowledge, no officer or employee of SWIB has or will receive, directly or indirectly, from Consultant or from anyone acting on Consultant’s behalf, anything of substantial economic value for his or her private benefit in connection with this Agreement.
2. Consultant has disclosed in writing to SWIB any and all of its compensation arrangements and vehicles for the exchange of consideration, directly or indirectly, with funds, fund managers, other consultants, service providers, actuaries, brokers, research firms, custodians, administrators or any other providers whose services are marketed to or retained by pension funds or whose services Consultant is in a position to recommend to clients. This shall include arrangements and vehicles involving affiliates or related entities and shall explicitly cover sponsorship or production of conferences and similar events, as well as identification of the parties and amounts of consideration involved. In addition, Consultant has disclosed any and all direct or indirect political or other campaign contributions to Wisconsin state-level candidates or officials since January 1, 2001. Consultant has disclosed any significant personal or business relationships of the firm or its key personnel or any other circumstances that could conflict with the Consultant’s duty to provide unbiased advice to SWIB. Consultant will notify SWIB in writing if, during the course of providing its services hereunder, there are any material changes in this disclosure. Violation of this Section by Consultant shall entitle SWIB to terminate this Agreement.
3. Consultant has no interest and shall not acquire any interest, direct or indirect, in any entity which would conflict in any manner or degree with the performance or services required under this Agreement.

## 3.9 Survival of Representations and Warranties. The representations and warranties made herein shall be continuing representations and warranties throughout the term of this Agreement, as amended or extended from time to time.

# **ARTICLE IVREPRESENTATIONS AND WARRANTIES OF SWIB**

SWIB hereby represents and warrants to Consultant that:

## 4.1 Due Organization. SWIB is an independent statutory agency of the State of Wisconsin, organized pursuant to Section 15.76 of the Wisconsin Statutes.

## 4.2 Power and Authority. SWIB has the requisite power and authority to enter into this Agreement and to carry out its obligations hereunder. The execution and delivery of this Agreement has been duly authorized by SWIB and no other proceedings on the part of SWIB are necessary to authorize this Agreement. This Agreement constitutes the valid and binding obligation of SWIB, enforceable in accordance with its terms, subject to laws of general applicability relating to or affecting creditor’s rights and to general principles of equity.

 4.3 No Violation. Neither the execution of this Agreement, nor compliance by SWIB with any provisions hereof, will (a) violate any statute or law or any judgment, decree, order, regulation or rule of any court or governmental authority applicable to SWIB; or (b) violate, conflict with, constitute a default under, permit the termination of, or require the consent of any person under, any agreement to which SWIB may be bound.

 4.4 Survival of Representations and Warranties. The representations and warranties made herein shall be continuing representations and warranties throughout the term of this Agreement, as amended or extended from time to time.

# **ARTICLE VCOVENANTS**

## 5.1 Confidentiality.

## (a) Restrictions on Disclosure. At all times during and after the term of this Agreement, Consultant will maintain in strict confidence and will not disclose, or permit to be disclosed, Confidential Information (as defined below) to any other person, provided that Consultant may disclose Confidential Information to its Representatives (as defined below) to the extent such Representatives need to know such information in connection with the performance of the Services on the condition that, prior to disclosure of any Confidential Information to a Representative:

## (i) Consultant informs Representative of the confidential nature of the Confidential Information and the purpose for which it may be used, and

## (ii) either:

##  (A) Representative executes and delivers to SWIB the Confidentiality Acknowledgement attached hereto as Exhibit A (which Confidentiality Acknowledgement shall not limit Consultant’s confidentiality obligations under this Agreement), or

## (B) Consultant delivers to SWIB a copy of the confidentiality agreement that Representative signed in connection with Representative’s employment or retention with Consultant, which confidentiality agreement shall contain confidentiality obligations and use restrictions applicable to the Confidential Information that are at least as restrictive as the obligations and restrictions set forth in this Agreement.

Definitions:

“**Confidential Information**” means (a) all SWIB information, books, records, documents, data, or materials concerning any aspect of the business or affairs of SWIB and the Services that is not publicly known or otherwise publicly available, whether obtained from SWIB or a third party in connection with this Agreement, including without limitation, information related to SWIB’s investments, trade secrets; know-how; copyrights; hardware; software; processes; documentation; market opportunities; business affairs; financial, technical, commercial or any other information related to investment strategies, portfolio information, data access, case study examples, or other investment activities; and (b) any information that Consultant or a Representative observes while at SWIB’s facilities, or receives or learns about SWIB or its operations while meeting with SWIB representatives. Confidential Information shall also include the Work Product (as defined below) and any analyses, compilations, studies, notes or other materials prepared by Consultant or its Representatives that reveal, reference or are based on the information or material received from or learned about SWIB, or observed while at SWIB’s facilities. Confidential Information does not include information that is or becomes publicly available through no breach of this Agreement by Consultant or which is required to be disclosed by law or court order; provided, however, that if Consultant or its Representatives are required to disclose Confidential Information by law or court order, Consultant shall promptly notify SWIB (and in any event prior to disclosing such Confidential Information unless prohibited by law) so that SWIB may seek an appropriate injunction or protective order.

“**Representatives**” means Consultant’s officers, directors, employees, consultants, advisors, attorneys, auditors, accountants, subcontractors, and agents.

## (b) Limitation on Use. Consultant agrees that it shall not use, and that it shall not permit any other person to use, the Confidential Information for any purpose other than as necessary to perform the Services. It is understood and agreed that this Agreement does not (1) create or grant any express or implied license to use the Confidential Information for any reason or purpose other than as necessary to perform the Services, or (2) grant Consultant any other rights in the Confidential Information.

## (c) Notice of Breach. Consultant shall promptly notify SWIB in the event any Confidential Information is used or disclosed in violation of the terms of this Agreement. Consultant shall be responsible for any breach of the obligations herein by any of its Representatives, and any breach by a Representative will be treated as a breach by Consultant for the purposes of this Agreement.

## (d) Equitable Relief. Consultant agrees that any violation of the provisions of this Section would likely be highly injurious to SWIB, and accordingly, Consultant agrees that, in addition to any other rights and remedies that may apply, SWIB may enforce its rights under this Section by applying to any court of law or equity of competent jurisdiction for specific performance and/or injunctive or other relief.

## (e) Retention/Destruction. Consultant agrees that upon the termination of this Agreement, Consultant shall, at SWIB’s election, return all Confidential Information to SWIB or provide SWIB with a written certification that the Confidential Information has been destroyed.

## 5.2 Standard of Performance. In selecting Consultant to perform Services, SWIB is relying upon the information and responses Consultant provided in the Response. Consultant shall perform the Services in the manner of one who is a recognized specialist in the types of services to be performed, and in accordance with industry standards and practices. Consultant shall devote such time, effort, skill, and resources as may be necessary to carry out its obligations under this Agreement and each SOW. The execution of an SOW by Consultant shall constitute a representation by Consultant that it has experience, skill, and resources necessary to perform the Services in accordance with the standards set forth in this Agreement and any additional or difference standards set forth in an SOW. Time is of the essence in each SOW, and all deadlines are binding and may be modified only by subsequent written agreement of the Parties. Consultant shall carry out its duties and responsibilities hereunder in accordance with, and be limited in the exercise of its rights by, the provisions of all applicable federal, state, county and city statutes, ordinances and regulations.

## 5.3 Notice of Breach; Change of Control. Consultant shall promptly, and in any case within five (5) calendar days of Consultant’s knowledge thereof, notify SWIB in writing if any of the representations and warranties of Consultant set forth in this Agreement shall cease to be true at any time during the term of this Agreement. Consultant shall promptly, and in any case within five (5) calendar days of the occurrence thereof, notify SWIB in writing of (i) any material change in Consultant’s Senior Staff (hereinafter defined), (ii) any substantial change in control of Consultant, or (iii) any other material change in Consultant’s business or organizational structure. All written notices shall contain such information about newly assigned Senior Staff as is requested by the SWIB. For purposes hereof, the term “Senior Staff” shall mean those persons who will exercise a major administrative role or major policy or consultant role to the provision of the Services.

## 5.4 Intellectual Property. Consultant agrees that any and all data and work product delivered to SWIB in the performance of the Services (the “Work Product”) shall be the sole and exclusive property of SWIB and a “work for hire.” Work Product includes, but is not limited to, discoveries, formulae, ideas, improvements, inventions, methods, models, processes, techniques, findings, advice, conclusions, recommendations, reports, designs, plans, diagrams, drawings, software, databases, documents, surveys, studies, computer programs, films, tapes, and/or sound reproductions. If for any reason the Work Product would not be considered a “work for hire” under applicable law, Consultant hereby sells, assigns, and transfers unto SWIB, its successors and assigns, the entire right, title, and interest in and to the Work Product, and in all works based upon, derived from, or incorporating the Work Product, and in and to all income, royalties, damages, claims, and payments now or hereafter due or payable with respect thereto, and in all causes of action, either in law or in equity for past, present, or future infringement based on the intellectual property rights, and in and to all rights corresponding to the foregoing throughout the world. Consultant agrees to take whatever action may be necessary or desirable, in SWIB’s sole discretion and at SWIB’s request, to effectuate this intent of the Parties, including the execution of further documents evidencing such ownership rights in SWIB.

 5.5 Books and Records. Consultant shall (i) keep accurate books and records relating to its performance of the Services and the fees and expenses charged to SWIB under each SOW, and (ii) permit SWIB or the State of Wisconsin Legislative Audit Bureau during the term of this Agreement and for a period of at least five (5) years thereafter to inspect Consultant’s books and records relating to the Services and the fees and expenses charged to SWIB under each SOW. Consultant shall bear the costs associated with the retention of records, and the cost of duplicating and sending copies of any records requested by SWIB.

 5.6 Open Records. Consultant acknowledges that SWIB is subject to the open records laws of the State of Wisconsin, as contained in Chapter 19, Wisconsin Statutes. SWIB recognizes that Consultant’s records and reports may contain information that is proprietary or is otherwise subject to confidentiality restrictions. SWIB shall keep such information confidential and shall use its commercially reasonable efforts to prevent any of its employees, agents or representatives from disclosing, without the prior consent of Consultant, any such confidential information contained in the reports or documents received from Consultant which is identified as confidential in writing by Consultant when such report or document is delivered to SWIB. SWIB’s obligations hereunder shall not apply to (i) any disclosure to the extent SWIB determines disclosure is required by applicable law, legal process or court order; or (ii) any disclosure to SWIB’s auditors and professional advisors to the extent necessary to perform their duties. If SWIB notifies Consultant that its counsel has determined disclosure is required of information identified as confidential, Consultant may, at its own expense, seek a restraining order to preclude SWIB from producing such information. Nothing in this Agreement is intended to waive or override any grounds for denial of public access to records under Wisconsin’s open records laws.

## 5.7 Consultant Insurance. Consultant shall maintain on its own behalf workers’ compensation insurance in amounts equal to all statutory requirements and at least $500,000 of employer liability insurance. Consultant shall also carry, on its own behalf, commercial general liability insurance (with broad form endorsement) of at least $2 million with combined single limit per occurrence for bodily injury, death, and property damage and other liability. This requirement may be met by a lower primary coverage and umbrella coverage for the balance thereof. Consultant shall also carry, on its own behalf, professional liability insurance of at least $5 million. All insurance carriers providing such insurance shall be rated A XII or above by Best’s Rating Guide unless such insurance carrier is otherwise approved in writing by SWIB. Consultant shall furnish a true and correct copy of each paid-up policy evidencing such insurance or a certificate of the insurer, certifying that such policy has been issued, providing the coverage required by SWIB, as soon as practicable, but in no event later than thirty (30) days following the date hereof. Each policy shall provide that the same may not be cancelled or materially changed without sixty (60) days prior written notice to SWIB. In all events, Consultant shall, within three (3) business days of receiving any notice from an insurance carrier cancelling or materially changing the coverage provided by such policy, send a copy of such notice to SWIB. Consultant shall notify SWIB in writing of any claims under any required insurance policies which, if valid, would have the effect of materially reducing the amount of insurance available under such policies or reducing the amount of insurance available under such policies to an amount lower than the limits provided herein and of any material developments relating to such claims.

## 5.8 Identification Number. Consultant’s federal tax identification number is set forth below its signature at the end of this Agreement.

## 5.9 SWIB Policies. In the event a Representative provides Services on-site at SWIB’s offices, Consultant and such Representative may be subject to additional SWIB policies, which policies shall be available to Consultant and Representative upon request.

## 5.10 Nondiscrimination in Employment. In connection with the performance of its obligations under this Agreement, Consultant shall not discriminate against any employee or applicant for employment because of age, race, religion, color, handicap, sex, physical condition, developmental disability (as defined in Section 51.01 (5), Wisconsin Statutes), sexual orientation or national origin. Consultant shall take affirmative action to insure equal employment opportunities.

# **ARTICLE VIINDEMNIFICATION; LIMITATIONS ON DAMAGES**

## 6.1 Indemnification by Consultant. Consultant shall indemnify, defend and save harmless each of the State of Wisconsin, SWIB, and the members, trustees, directors, officers, agents and employees thereof (each, an “Indemnitee”) from and against all losses, costs, liabilities, damages or deficiencies, including interest, penalties and attorneys’ fees and disbursements, arising from, based on or resulting from a breach of any representation, warranty, covenant or agreement of Consultant contained in this Agreement or acts or omissions constituting willful misconduct, gross negligence, fraud, or reckless disregard of duties by Consultant or any of its affiliates, agents or employees, or breach of any other agreement or document delivered by Consultant in connection with this Agreement, except to the extent that such loss, cost, liability, damage or deficiency results from a breach of a representation, warranty, covenant or agreement of SWIB contained in this Agreement, or an act or omission (other than one based upon the advice of Consultant) constituting bad faith, willful misconduct, gross negligence or reckless disregard by SWIB of its obligations under this Agreement.

## 6.2 Defense of Claims. Consultant shall be responsible for any costs, expenses, judgments, damages, liability and losses incurred by an Indemnitee with respect to any and all indemnified claims, and Consultant, at Consultant’s sole cost and expense, shall assume the defense of any and all indemnified claims, with counsel reasonably acceptable to the Indemnitee; provided, however, that an Indemnitee shall have the right to retain its own counsel, with the fees and expenses to be paid by Consultant, if the Indemnitee reasonably believes that representation of such indemnitee by the counsel retained by Consultant would be inappropriate due to actual or potential differing interests between such Indemnitee and any other party represented in such proceeding by counsel retained by Consultant, or in the event Consultant does not promptly assume defense of the claim. Any delay by the Indemnitee in delivering written notice to Consultant after Indemnitee receives notice of an indemnified claim shall not relieve Consultant of any liability to the Indemnitee unless, and then only to the extent that, such delay is actually prejudicial to Consultant’s ability to defend such action, and the failure to deliver written notice to Consultant will not relieve Consultant of any other liability that it may have to any Indemnitee. The settlement of a claim without the prior written consent of Consultant shall not release Consultant from liability with respect to such claim if Consultant has unreasonably withheld consent to such settlement or has failed to provide or pay for a defense thereof as provided herein.

 6.3 Limitations on Damages. UNDER NO CIRCUMSTANCES WILL A PARTY BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, INCIDENTAL, PUNITIVE, EXEMPLARY, SPECIAL OR CONSEQUENTIAL DAMAGES, INCLUDING WITHOUT LIMITATION LOST PROFITS, ARISING OUT OF, BASED ON, RESULTING FROM OR IN CONNECTION WITH THIS AGREEMENT, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. SWIB’S AGGREGATE, CUMULATIVE LIABILITY RELATING TO THIS AGREEMENT SHALL BE LIMITED TO CONSULTANT’S ACTUAL, RECOVERABLE DIRECT DAMAGES, IF ANY, WHICH IN NO EVENT SHALL EXCEED THE TOTAL AMOUNT OF FEES ACTUALLY PAYABLE TO CONSULTANT UNDER THE SOW(S) GIVING RISE TO THE CLAIM. RECOVERY OF THIS AMOUNT SHALL BE CONSULTANT’S SOLE AND EXCLUSIVE REMEDY.

# **ARTICLE VII****TERM OF AGREEMENT; TERMINATION**

* 1. Term. The term of this Agreement shall commence on the Effective Date and end sixty (60) days after either Party delivers to the other Party written notice of its desire to terminate the Agreement. In the event of breach of contract by Consultant, SWIB may give written notice of the details of such breach to Consultant and this Agreement shall terminate ten (10) days thereafter, if such breach is not sooner cured. SWIB may, for any reason or no reason, terminate the Services to be provided under any SOW entered into subject to this Agreement upon ten (10) days written notice, except as may otherwise be provided for in such SOW, but in such event this Agreement shall otherwise remain in effect.

## Consultant’s Obligations upon Termination. Upon termination of the term of this Agreement, subject to the provisions of Section 7.4, all duties and obligations of either Party shall cease and this Agreement shall be null and void. Upon such termination, but in no event later than twenty (20) days following such termination, Consultant shall deliver to SWIB all property and documents of SWIB then in the custody of Consultant.

## 7.3 Offset Rights on Termination. Upon the termination of this Agreement, all damages, losses and costs of SWIB shall be deducted from any sum due Consultant hereunder and the balance, if any, shall be paid to Consultant upon demand.

## 7.4 Obligations which Survive Termination. The termination of the term of this Agreement shall not relieve Consultant of (a) its liability under the indemnification provisions in Article VI; (b) its obligations under Section 5.1; or (c) any other obligations that would reasonably be expected to survive termination of this Agreement. In addition, the Parties’ respective rights to bring claims arising in connection with the statements and obligations set forth in this Agreement shall survive any termination of the term of this Agreement.

# **ARTICLE VIII****AUDIT REVIEW**

SWIB shall have the absolute right to undertake a periodic audit review of Consultant’s Work Product, the fees payable hereunder, and Consultant’s compliance with provisions of this Agreement. Such audit review may be undertaken directly by SWIB, the State of Wisconsin Legislative Audit Bureau, or by third parties engaged by SWIB, including accountants and consultants. Consultant shall cooperate fully with SWIB, the Legislative Audit Bureau, or any such third party in connection with the audit review, including providing the necessary space for auditors to conduct the audit. All adjustments, payments, and reimbursements determined by SWIB or its representatives to be necessary by such audit review shall be effected promptly by the appropriate party.

# **ARTICLE IX****MISCELLANEOUS**

## 9.1 Notices. Each notice, request, demand, approval or other communication which may be or is required to be given under this Agreement shall be in writing in English and shall be deemed to have been properly given when delivered personally at the address set forth below for the intended Party during normal business hours at such address, when sent by facsimile transmission to the respective facsimile transmission numbers of the Parties set forth below, or when sent by recognized overnight courier service or by United States registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

If to Consultant:

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

If to SWIB by delivery:

State of Wisconsin Investment Board

Attention: Senior Procurement Specialist

121 East Wilson Street

Madison, Wisconsin 53703

If to SWIB by Mail:

State of Wisconsin Investment Board

Attention: Accounts Payable

P.O. Box 7842

Madison, Wisconsin 53707-7842

 Notices shall be given to such other addressee or address, or both, or by way of such other facsimile transmission number, as a particular Party may from time to time designate by written notice to the other Party given in accordance with this Section. Each notice, request, demand, approval or other communication which is sent in accordance with this Section shall be deemed given and received for all purposes of this Agreement as of three (3) business days after the date of deposit thereof for mailing in a duly constituted United States post office or branch thereof, one business day after deposit with a recognized overnight courier service or upon confirmation of receipt of any facsimile transmission. Notice given to a Party by any other method shall only be deemed to be given and received when actually received in writing by such Party.

## 9.2 Entire Agreement. In addition to the terms hereof, this Agreement consists of (a) the exhibits and schedules hereto; (b) each SOW entered into the Parties from time to time; (c) all documents expressly incorporated herein by reference; and (d) the terms of the Response. This Agreement contains the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior agreements, written or oral, with respect thereto. In the event of any conflicts, inconsistencies or ambiguities among this Agreement and any SOW or other documents incorporated herein by reference, this Agreement shall govern.

## 9.3 Amendments and Waivers. This Agreement may be amended, modified, superseded, canceled, renewed or extended, and the terms and conditions hereof may be waived, only by a written instrument signed by SWIB and Consultant or, in the case of a waiver, the Party waiving compliance. No delay on the part of any Party in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any waiver on the part of any Party of any right, power or privilege hereunder, nor any single or partial exercise of any right, power or privilege hereunder, preclude any other or further exercise thereof or the exercise of any other right, power or privilege hereunder.

## 9.4 Cumulative Remedies. The rights and remedies herein provided are cumulative and are not exclusive of such other rights and remedies as are available to or otherwise inuring to the benefit of the Parties in equity or at law.

## 9.5 Counterparts/Binding Effect. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which shall together constitute one and the same instrument. This Agreement and the rights, covenants, conditions and obligations of the Parties hereto and any instrument or agreement executed pursuant hereto shall be binding upon the Parties and their respective successors, assigns and legal representatives. The exchange of executed signature pages by facsimile transmission, by electronic mail in “portable document format” (“.pdf”) form, or by any other electronic means intended to preserve the original graphic and pictorial appearance of a document, shall constitute effective execution and delivery of this Agreement and may be used in lieu of the original signatures for all purposes.

## 9.6 Further Assurances. Each Party shall execute such further documents and other papers and perform such further acts as may be reasonably required or desirable to carry out the provisions hereof.

## 9.7 Publicity. No publicity release or announcement concerning this Agreement or the transactions contemplated herein shall be issued by Consultant without advance written approval of the form and substance thereof by SWIB. Such restrictions, however, shall not apply to any disclosure required by regulatory authorities, applicable law or the rules of any securities exchange which may be applicable.

## 9.8 Incorporation of Amendments to Applicable Laws. Any reference to the Wisconsin Statutes or other laws or to any regulations or administrative pronouncements thereunder, shall be deemed to include a reference to any amendments thereof and any successor provisions thereto.

## 9.9 Assignment/Delegation. Neither this Agreement nor any rights, duties, or obligations hereunder may be assigned or delegated by either Party without the prior written consent of SWIB or Consultant, as applicable.

## 9.10 Section Headings. The section headings of this Agreement are for convenience of reference only and shall not be deemed to alter or affect any provision hereof.

## 9.11 Governing Law and Venue. This Agreement shall be administered, construed and enforced according to the laws of the State of Wisconsin (without regard to any conflict of laws provisions) to the extent such laws have not been preempted by applicable federal law. Any suit brought hereunder shall be brought in the state or federal courts sitting in Madison, Wisconsin, the Parties hereby waiving any claim or defense that such forum is not convenient or proper. Each Party agrees that any such court shall have *in personam* jurisdiction over it and consents to service of process in any manner authorized by Wisconsin law.

## 9.12 Severability. Should one or more provisions of this Agreement be held by any court to be invalid, void or unenforceable, the remaining provisions shall nevertheless continue in full force.

## 9.13 Independent Contractor. In the performance of this Agreement, Consultant and its employees and agents, for all purposes herein, shall be deemed to be acting as independent contractors and not as officers, employees or agents of the State of Wisconsin or SWIB. SWIB and Consultant are not partners or joint venturers with each other under this Agreement, and nothing herein shall be construed so as to make them such partners or joint venturers or impose any liability as such on either of them.

## 9.14 Disclosure. Pursuant to Section 19.45 of the Wisconsin Statutes, if a state public official or an organization in which a state public official holds at least a ten percent (10%) interest is a Party to this Agreement, this contract is voidable by the State of Wisconsin unless appropriate disclosure is made to SWIB and to the State of Wisconsin Ethics Board, 44 East Mifflin Street, Suite 601, Madison, Wisconsin 53703-2800 (Telephone (608) 266-8123).

## 9.15 Responsible Persons. SWIB shall have the right, from time to time, to cause Consultant to reassign any employee who is providing Services under this Agreement with whom SWIB is not satisfied, and to provide a replacement employee therefor.

## 9.16 No Third Party Beneficiary. By execution of this Agreement, SWIB and Consultant do not intend to create any rights of any kind in any third parties, other than successors and assigns of the Parties, to the extent permitted hereby.

## 9.17 Legal Representation and Construction. Each Party hereto has been represented by legal counsel in connection with the negotiation and drafting of this Agreement. The Parties acknowledge that each Party and its counsel have reviewed this Agreement, and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting Party shall not be employed in the interpretation of this Agreement.

## 9.18 Exculpation. SWIB’s obligations under this Agreement are obligations of SWIB only, and Consultant agrees that no trustee, employee, agent or beneficiary of SWIB or the Fund shall have any personal obligation under this Agreement or personal liability for SWIB’s obligations. Consultant agrees that it will make no personal liability claim against any such trustee, employee, agent or beneficiary, but will seek recourse only against assets of SWIB.

[Signature page follows]

IN WITNESS WHEREOF, the Parties have executed and delivered this Consulting Master Services Agreement as of the Effective Date.

STATE OF WISCONSIN INVESTMENT BOARD

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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

[CONSULTANT]

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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

**FEIN:**

**Exhibit A
Confidentiality Acknowledgement**

As an employee or contractor of [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_] (“Consultant”), I understand that Confidential Information (defined below) of the State of Wisconsin Investment Board (“SWIB”) may be disclosed to me in connection with my work for Consultant.

By signing below, I agree that:

* I will not, at any time, disclose any Confidential Information to anyone other than Consultant and persons authorized by Consultant, or as might be required by law.
* I will not use any Confidential Information for my own purposes, for personal gain, or for any other purpose other than as necessary in the course of my work for Consultant.
* Any copies made of Confidential Information will be solely in the course of my work for Consultant and will either be destroyed or returned to SWIB when no longer needed.
* I will promptly notify SWIB in the event I become aware that any Confidential Information has been, or I have reason to believe that Confidential Information might be, used or disclosed in violation of the terms of this Confidentiality Acknowledgement.
* Violation of the confidentiality obligations could expose me and/or Consultant to legal liability.

“Confidential Information” means (a) all SWIB information, records, data, or materials concerning any aspect of the business or affairs of SWIB that is not publicly known or otherwise publicly available, including without limitation, trade secrets; know-how; copyrights; hardware; software; processes; documentation; market opportunities; business affairs; financial, technical, commercial or any other information related to investment strategies, portfolio information, data access, case study examples, or other investment activities; and (b) any information that a I observe while at SWIB, or receive or learn about SWIB or its operations while meeting with SWIB representatives. Confidential Information shall also include all analyses, compilations, studies, notes or other materials prepared by me that reveal, reference or are based on the information or material received from, learned about or observed while at SWIB.

I understand that I am not an employee, contractor, or agent of SWIB, and that this Confidentiality Acknowledgment will not be construed as a contract of employment.

Print Name: