

**JOINT EXERCISE OF POWERS AGREEMENT**

**DATED AS OF FEBRUARY 24, 2005**

**(Amended April 16, 2008)**

**(Amended August 4, 2009)**

**CREATING THE  
INVESTMENT TRUST OF CALIFORNIA,  
doing business as**



**A JOINT POWERS AUTHORITY**

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TABLE OF CONTENTS

	<u>Page</u>
ARTICLE I. CREATION; PURPOSE, DEFINITIONS AND REPRESENTATIONS .....	2
<b>Section 1.1</b> Creation of <i>CalTRUST</i> .....	2
<b>Section 1.2</b> Purpose.....	2
<b>Section 1.3</b> Definitions.....	2
<b>Section 1.4</b> Addition of Public Agencies as Members; Withdrawal of Members. ....	4
<b>Section 1.5</b> Representations, Warranties, Covenants and Agreements of the Members .....	4
ARTICLE II. GOVERNING BOARD; MEETINGS OF THE BOARD.....	5
<b>Section 2.1</b> Board of Trustees.....	5
<b>Section 2.2</b> Number, Qualification, Election and Term of Trustees.....	5
<b>Section 2.3</b> Resignation and Removal. ....	5
<b>Section 2.4</b> Vacancies .....	5
<b>Section 2.5</b> Quorum .....	6
<b>Section 2.6</b> Manner of Acting .....	6
<b>Section 2.7</b> Meetings of the Board.....	6
<b>Section 2.8</b> Committees .....	7
<b>Section 2.9</b> Fees and Compensation .....	7
ARTICLE III. OFFICERS.....	7
<b>Section 3.1</b> Officers .....	7
<b>Section 3.2</b> Treasurer .....	7
<b>Section 3.3</b> Election of Officers.....	8
<b>Section 3.4</b> Removal of Officers.....	8
<b>Section 3.5</b> Resignation of Officers.....	8
<b>Section 3.6</b> Vacancies in Offices .....	8
<b>Section 3.7</b> Fees and Compensation .....	8
ARTICLE IV. POWERS .....	8
<b>Section 4.1</b> General Powers .....	8
<b>Section 4.2</b> Specific Powers.....	8
<b>Section 4.3</b> Approval Powers of Members .....	10
ARTICLE V. ADMINISTRATIVE, INVESTMENT ADVISORY AND OTHER SERVICES FOR CALTRUST.....	10
<b>Section 5.1</b> Administrative, Investment Advisor and Approval of Agreements. ....	10
<b>Section 5.2</b> Investment Advisor for the Shares Program.....	11
<b>Section 5.3</b> Compensation of Investment Advisor for Shares Program and Others.....	12
<b>Section 5.4</b> Other Activities of Investment Advisor for Shares Program.....	12
<b>Section 5.5</b> Custodian for the Shares Program. ....	12

TABLE OF CONTENTS  
(continued)

	<u>Page</u>
<b>Section 5.6</b> Other Services to <i>Ca</i> TRUST .....	13
<b>Section 5.7</b> Authorization to Execute .....	13
<b>ARTICLE VI. SHARES PROGRAM</b> .....	13
<b>Section 6.1</b> Shares of Beneficial Interest .....	13
<b>Section 6.2</b> Series of Shares.....	14
<b>Section 6.3</b> Rights of Participants.....	15
<b>Section 6.4</b> Register of Shares .....	15
<b>Section 6.5</b> Transfer of Shares .....	16
<b>ARTICLE VII. REDEMPTIONS OF SHARES WITHIN SHARES PROGRAM</b> .....	16
<b>Section 7.1</b> Redemptions .....	16
<b>Section 7.2</b> Suspension of Right of Redemption .....	16
<b>Section 7.3</b> Redemptions to Reimburse <i>Ca</i> TRUST for Loss on Nonpayment for Shares or for Other Charges .....	17
<b>Section 7.4</b> Redemptions in Kind .....	17
<b>Section 7.5</b> Reporting.....	17
<b>Section 7.6</b> Minimum Investment.....	17
<b>ARTICLE VIII. DETERMINATION OF NET ASSET VALUE, NET INCOME, DISTRIBUTIONS AND ALLOCATIONS</b> .....	18
<b>Section 8.1</b> Shares Program .....	18
<b>ARTICLE IX. MEETINGS OF PARTICIPANTS; APPROVAL POWER OF PARTICIPANTS</b> .....	18
<b>Section 9.1</b> Voting .....	18
<b>Section 9.2</b> Action Without Meeting .....	18
<b>Section 9.3</b> Notice of Action.....	18
<b>Section 9.4</b> Meetings.....	18
<b>Section 9.5</b> Proxies.....	18
<b>Section 9.6</b> Inspectors. ....	19
<b>Section 9.7</b> Record Date for Participant Notice, Voting and Giving Consents.....	19
<b>Section 9.8</b> Approval Powers of Participants .....	20
<b>Section 9.9</b> Meeting Agendas. ....	21
<b>ARTICLE X. LIMITATIONS OF LIABILITY OF MEMBERS, PARTICIPANTS, TRUSTEES AND OTHERS</b> .....	21
<b>Section 10.1</b> No Personal Liability of Members, Participants, Trustees and Others.....	21
<b>Section 10.2</b> Indemnification of Participants in Shares Program .....	21
<b>Section 10.3</b> Bad Faith of Trustees and Others.....	22
<b>Section 10.4</b> Indemnification of Trustees and Others from Third-Party Actions .....	22
<b>Section 10.5</b> Indemnification of Trustees and Others for Successful Defense.....	22

TABLE OF CONTENTS  
(continued)

	<u>Page</u>
<b>Section 10.6</b> Advance of Expenses.....	22
<b>Section 10.7</b> Exclusions and Limitations of Indemnification of Trustees and Others.....	23
<b>Section 10.8</b> Obligations under Law.....	23
<b>Section 10.9</b> Required Approval.....	23
<b>Section 10.10</b> Insurance.....	23
<b>Section 10.11</b> Fiduciaries of Employee Benefit Plan .....	24
<b>Section 10.12</b> No Duty of Investigation and Notice in <i>CalTRUST</i> Instruments.....	24
<b>Section 10.13</b> Reliance on Experts .....	24
<b>Section 10.14</b> Immunity from Liability .....	24
<b>Section 10.15</b> Further Restriction of Duties and Liabilities .....	24
 ARTICLE XI. DURATION, TERMINATION AND AMENDMENT .....	 24
<b>Section 11.1</b> Duration .....	25
<b>Section 11.2</b> Termination of <i>CalTRUST</i> . .....	25
<b>Section 11.3</b> Amendment Procedure.....	25
<b>Section 11.4</b> Merger, Consolidation and Sale of Assets.....	26
 ARTICLE XII. RECORDS AND REPORTS .....	 26
<b>Section 12.1</b> Maintenance and Inspection of Records .....	26
<b>Section 12.2</b> Inspection by Trustees .....	26
<b>Section 12.3</b> Financial Statements and Audits.....	26
 ARTICLE XIII. GENERAL MATTERS .....	 27
<b>Section 13.1</b> Checks, Drafts, Evidence of Indebtedness.....	27
<b>Section 13.2</b> Execution of Instruments .....	27
<b>Section 13.3</b> Fiscal Year .....	27
<b>Section 13.4</b> Principal Office.....	27
<b>Section 13.5</b> Accountability.....	27
 ARTICLE XIV. MISCELLANEOUS .....	 27
<b>Section 14.1</b> Governing Law .....	27
<b>Section 14.2</b> Counterparts .....	28
<b>Section 14.3</b> Certificates .....	28
<b>Section 14.4</b> Provisions in Conflict with Law or Regulations.....	28
<b>Section 14.5</b> Notices .....	28
<b>Section 14.6</b> Index and Headings for Reference Only.....	28
<b>Section 14.7</b> Successors in Interest.....	28
 SCHEDULE A INITIAL MEMBERS.....	 A-1
 SCHEDULE B LIST OF MEMBERS .....	 B-1

## JOINT EXERCISE OF POWERS AGREEMENT

This **JOINT EXERCISE OF POWERS AGREEMENT**, dated as of February 24, 2005 (this “Agreement”), amending and restating that certain declaration of trust, dated as of January 9, 2003 and amended and restated as of June 3, 2003, is entered into by each Public Agency (as defined below) set forth on Schedule A hereto (the “Initial Members”). Capitalized terms used in this Agreement shall have the meanings given such terms in Section 1.3 of this Agreement, unless otherwise defined.

### WITNESSETH

**WHEREAS**, pursuant to the Act, two or more Public Agencies may by agreement jointly exercise any power common to the contracting parties; and

**WHEREAS**, each Member is a “Public Agency” as that term is defined in Section 6509.7 of the Act, which, as of the date of this Agreement, is defined as “the federal government or any federal department or agency, this state, another state or any state department or agency, a county, county board of education, county superintendent of schools, city, public corporation, public district, or regional transportation commission of this state or another state, or any joint powers authority formed pursuant to this [Article 1] by any of these agencies,” and includes “a nonprofit corporation whose membership is confined to public agencies or public officials;” and

**WHEREAS**, each Member is also either a political subdivision of a state, or an agency, authority, or instrumentality of the United States, a state or any political subdivision of a state, as those terms are used in the Investment Company Act of 1940; and

**WHEREAS**, the Act authorizes the Members to create a joint exercise of powers entity separate from the Members to exercise the common powers of the Members, as specified in this Agreement, and to act as administrator of this Agreement; and

**WHEREAS**, by this Agreement, each Member desires to create and establish the Investment Trust of California, doing business as *CalTRUST*, for the purposes set forth herein to exercise the powers provided herein and to act as administrator of this Agreement; and

**WHEREAS**, the Act authorizes a joint powers authority, such as *CalTRUST*, to issue shares of beneficial interest to participating Public Agencies; and

**WHEREAS**, by this Agreement, *CalTRUST* will establish and administer an investment program for the benefit of its Participants, such program to be known as the Shares Program; and

**WHEREAS**, pursuant to the Law, Public Agencies may purchase shares of beneficial interest issued by a joint powers authority organized pursuant to Section 6509.7 of the Act; and

**WHEREAS**, the Shares Program involves the investment by Public Agencies in shares of beneficial interest issued by *CalTRUST* in accounts containing authorized investments that are owned by *CalTRUST*.

NOW, THEREFORE, the Members, for and in consideration of the mutual promises and agreements herein contained, do agree as follows:

**ARTICLE I.  
CREATION; PURPOSE, DEFINITIONS AND REPRESENTATIONS**

**Section 1.1 Creation of CalTRUST.** There is hereby created pursuant to the Act a public agency and entity to be known as the “Investment Trust of California,” doing business as “CalTRUST.” As provided in the Act, CalTRUST shall be a public agency and entity separate and apart from the Members. The debts, liabilities and obligations of CalTRUST shall not constitute debts, liabilities or obligations of the Members.

**Section 1.2 Purpose.** This Agreement is made pursuant to the Act to provide for the exercise by CalTRUST of those powers referred to in the recitals hereof and for CalTRUST to administer the exercise of those powers. The purpose of CalTRUST is to consolidate investment activities of the Participants and thereby reduce duplication, achieve economies of scale and carry out coherent and consolidated investment strategies through the Shares Program (as described in Articles VI and VII hereof). The Public Agencies that purchase Shares from CalTRUST through the Shares Program are collectively referred to herein as “Participants”, and individually, as a “Participant”.

**Section 1.3 Definitions.** As used in this Agreement, the following terms shall have the following respective meanings unless the context otherwise requires:

“Act” shall mean Title 1, Division 7, Chapter 5 of the California Government Code (commencing with § 6500), the Joint Exercise of Powers Act, as it may be amended from time to time.

“Affiliate” shall mean, as to any person, any other person who owns beneficially, directly or indirectly, at least 5% of the outstanding capital stock or equity interest of such person or of any other person who controls, is controlled by or is under common control with such person, or is an officer, retired officer, director, employee, partner or trustee of such person or of any other person who controls, is controlled by or is under common control with such person.

“Agreement” shall mean this Joint Exercise of Powers Agreement as it may from time to time be amended in accordance with the provisions hereof.

“Bad Faith” shall have the meaning set forth in Section 10.3 hereof.

“Board of Trustees” or “Board” shall mean the governing board of CalTRUST.

“CalTRUST” shall mean the Investment Trust of California, doing business as CalTRUST, created by this Agreement.

“Custodian” shall mean the entity engaged by CalTRUST to serve as the custodian for the Shares Program pursuant to the terms of the Custody Agreement.

“Custody Agreement” shall mean a custody agreement pursuant to which *CalTRUST* shall engage a custodian to provide certain services to *CalTRUST* for the Shares Program, including but not limited to maintaining a securities custody account for all cash, securities and other property that may be delivered to the Custodian from time to time upon the terms and conditions set forth therein.

“Disqualification” shall have the meaning set forth in Section 2.3(b) hereof.

“Information Statement” shall mean the information statement or other disclosure document relating to the Shares Program as such Information Statement may be revised from time to time.

“Initial Members” shall have the meaning set forth in the preamble hereto.

“Investment Advisor” shall mean the entity engaged by *CalTRUST* to serve as the investment advisor to the Shares Program pursuant to the terms of the Investment Advisory Agreement.

“Investment Advisory Agreement” shall mean an investment advisory agreement pursuant to which *CalTRUST* shall engage an investment advisor to provide certain services to *CalTRUST* for the Shares Program.

“Investment Policy” shall mean the investment policies and objectives of *CalTRUST* relating to the Shares Program, as such Investment Policy may be revised from time to time in accordance herewith.

“Law” means Title 5, Division 2, Part 1, Chapter 4 of the California Government Code (commencing with § 53600), as it may be amended from time to time.

“Members” shall mean the Initial Members and each Public Agency that becomes a Member pursuant to the terms of Section 1.4 hereof.

“Member Trustee” shall have the meaning set forth in Section 2.2 hereof.

“Non-Interested Trustees” shall have the meaning set forth in Section 10.6 hereof.

“Participants” shall have the meaning set forth in Section 1.2 hereof.

“Public Agency” shall have the meaning given to such term from time to time in Section 6509.7 (or any successor or amended provision) of the Act. As of the date of this Agreement, “Public Agency” is defined in Section 6509.7 of the Act as “the federal government or any federal department or agency, this state, another state or any state department or agency, a county, county board of education, county superintendent of schools, city, public corporation, public district, or regional transportation commission of this state or another state, or any joint powers authority formed pursuant to this article by any of these agencies,” and includes “a nonprofit corporation whose membership is confined to public agencies or public officials.”

“Ralph M. Brown Act” shall mean Title 5, Division 2, Part 1, Chapter 9 of the California Government Code, as it may be amended from time to time.

“Series” shall have the meaning set forth in Section 6.1 hereof.

“Shares” shall have the meaning set forth in Section 6.1 hereof.

“Shares Program” shall mean the investment program provided to Participants by CalTRUST whereby Public Agencies invest in Shares.

“Shares Register” shall have the meaning set forth in Section 6.4 hereof.

#### **Section 1.4 Addition of Public Agencies as Members; Withdrawal of Members.**

(a) **Addition of Members.** A Public Agency may become a Member by taking appropriate action to authorize and approve the execution and delivery by such Member of this Agreement, signing a counterpart of this Agreement and furnishing CalTRUST with satisfactory evidence that such actions have been taken.

(b) **Withdrawal.** A Member may withdraw from this Agreement upon written notice to the Secretary of the Board. The Secretary of the Board shall forward a copy of such written notice of withdrawal to the Investment Advisor. Any such withdrawal shall be effective only upon receipt of the written notice of withdrawal by the Secretary of the Board who shall acknowledge receipt of such notice of withdrawal in writing to such withdrawing Member and shall file such notice as an amendment to this Agreement effective upon such filing.

(c) **List of Members.** Schedule B sets forth a list of all Members and shall be amended from time to time upon additional Public Agencies becoming Members and upon Public Agencies withdrawing as Members.

**Section 1.5 Representations, Warranties, Covenants and Agreements of the Members.** Each Member represents, warrants, covenants and agrees to and with CalTRUST and the other Members, but only as to itself, as follows:

(a) **Organization as Public Agency.** The Member is duly organized and validly existing as a Public Agency with the common powers referred to in the recitals hereof, and each of the recitals hereof is true as it relates to such Member. The Member has full legal right, power and authority to enter into this Agreement, to observe and perform its obligations hereunder and to become a Member hereunder. By all necessary official actions the Member has duly authorized and approved the execution hereof and the observance and performance of its obligations hereunder.

(b) **Binding and Enforceable.** This Agreement constitutes a legal, valid and binding obligation of the Member enforceable against the Member in accordance with its terms, except as enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws or equitable principles relating to or limiting creditors rights generally, and by the application of equitable remedies in appropriate cases.

**ARTICLE II.**  
**GOVERNING BOARD; MEETINGS OF THE BOARD**

**Section 2.1 Board of Trustees.** CalTRUST shall be governed by the Board of Trustees.

**Section 2.2 Number, Qualification, Election and Term of Trustees.** The number of Trustees shall be fixed from time to time by resolution of the Board; *provided, however*, that the number of Trustees shall not be fewer than three (3) and not greater than fifteen (15). At least seventy-five percent (75%) of the Trustees shall be members of the governing body, officers or personnel of the Members (each, a “Member Trustee”). The Trustees shall be appointed by the Board and approved by a majority of the Members. Except in the event of resignations, Disqualifications or removals pursuant to Section 2.3, each Trustee shall hold office until his or her successor is appointed by the Board and approved by a majority of the Members.

**Section 2.3 Resignation and Removal.**

(a) **Resignation.** Any Trustee may resign by an instrument in writing signed by such Trustee and delivered to the other Trustees, and such resignation shall be effective upon such delivery, or at a later date according to the terms of the instrument.

(b) **Disqualification.** A Trustee will cease to be qualified as a Trustee in the event, and as of the date, such Trustee dies, is judged incompetent, or, in the case of a Member Trustee, is no longer a member of the governing body, officer or personnel of a Member, or becomes incapable of performing the duties of the office of Trustee, a guardian or conservator is appointed for such Trustee, or such Trustee is otherwise disqualified from acting as a Trustee by reason of applicable law (each, a “Disqualification”).

(c) **Removal by Trustees.** Any Trustee may be removed, with or without cause, by the action of two-thirds (2/3) of the remaining Trustees.

(d) **Removal by Court.** The Superior Court of the County of Sacramento, California, may at the suit of any Member or of any Participant holding at least 10% of the aggregate of the then outstanding Shares, remove from office any Trustee in case of fraudulent or dishonest acts or abuse of authority or discretion with reference to CalTRUST and may bar from reelection as a Trustee of CalTRUST any Trustee so removed for a period determined by the Court.

**Section 2.4 Vacancies.** The term of office of a Trustee shall terminate and a vacancy shall occur in the event of the resignation, Disqualification or removal of a Trustee. No such vacancy shall operate to annul this Agreement. In the case of a vacancy, including a vacancy existing by reason of an increase in the number of Trustees by the Board, a majority of the remaining Trustees shall fill such vacancy by the appointment of such other person as they in their discretion shall see fit and as is qualified as provided herein. If there shall be no remaining Trustee, a majority of the Members may appoint a Trustee who is qualified as provided herein. An appointment of a Trustee may be made in anticipation of a vacancy to occur at a later date by reason of resignation, provided that such appointment shall not become effective prior to such resignation. Whenever a vacancy in the number of Trustees shall occur, until such vacancy is filled as provided in this Section 2.4, the Trustees in office, regardless of their number, shall

constitute the Board and shall have all the powers granted to the Board and shall discharge all the duties imposed upon the Board by this Agreement. No person appointed hereunder shall commence his or her term of office until such person has accepted such appointment in writing.

**Section 2.5 Quorum.** A majority of the Trustees shall constitute a quorum for the transaction of business, except that less than a quorum may adjourn meetings from time to time.

**Section 2.6 Manner of Acting.** Subject to the Ralph M. Brown Act and except as otherwise provided herein, any action required or permitted to be taken by the Board may be taken by a majority of the Trustees present at a meeting of Board (a quorum being present), or by a teleconference during which at least a quorum of the members of the Board participate from locations within California and which meets all other requirements of Section 54953 of the California Government Code.

**Section 2.7 Meetings of the Board.**

(a) All meetings of the Board, including, without limitation, regular, adjourned regular, special and adjourned special meetings shall be called, noticed, held and conducted in accordance with the provisions of the Ralph M. Brown Act. In addition, the Secretary shall cause notice of each meeting of the Board to be sent to each Trustee, each Member and each Participant. The Board shall hold at least one regular meeting each year, and may provide for the holding of regular meetings at more frequent intervals. In addition, the Board or a committee of Trustees appointed in accordance with Section 2.8 shall hold regular meetings each month at which meetings the investment performance of the Shares Program and related items shall be presented. The date upon which, and the hour and place at which, each such regular meeting shall be held shall be fixed by the Board. The Secretary of CalTRUST shall cause minutes of all meetings of the Board to be kept and shall, as soon as possible after each meeting, cause a copy of the minutes to be forwarded to each Trustee and to any Member or Participant (if such Member or Participant so requests CalTRUST in writing).

(b) If the Board receives, on behalf of one or more Members or Participants, a request to include an item of business on the agenda for a regular Board or committee meeting at least ninety six (96) hours prior to such meeting, such item of business shall be included on the agenda for that meeting. If the request to include an item of business on the agenda is received less than ninety six (96) hours prior to such meeting, such item of business shall not be included on the agenda for that meeting, but shall be included on the agenda for the following regular meeting of the Board, unless the Board otherwise determines to include such item of business on the agenda in accordance with the Ralph M. Brown Act. Any Board agenda that includes an item of business requested by any Member or Participant shall be distributed to all Members and Participants pursuant to Section 14.5 or as otherwise permitted by the Ralph M. Brown Act.

(c) If the Secretary of CalTRUST receives, on behalf of one or more Members or Participants, a request to call a special meeting of the Board or a particular committee to consider an urgent item of business raised by a Member or Participant, the Secretary shall promptly forward such request to each Trustee, and the Board may, in its sole discretion, determine whether or not to call a special meeting to consider such item of business. If the Board does determine to call a special meeting, the item of business raised by the Member or Participant

shall be included on the agenda. The Board may, at its discretion, include any other items of business raised by a Member or Participant so long as such items are raised not less than twenty four (24) hours prior to the time set for the meeting and in sufficient time for the item to be included on the agenda distributed with notice of such special meeting. If the Board does not call a special meeting to consider the item of business raised by a Member or Participant, such item of business shall be included on the agenda of the next regular Board meeting if the Board received the request from the Secretary in accordance with Section 2.7(b). Any Board agenda that includes an item of business requested by any Member or Participant shall be distributed to all Members and Participants pursuant to Section 14.5 or as otherwise permitted by the Ralph M. Brown Act.

**Section 2.8 Committees.** The Board may create one or more committees and appoint members of the Board to serve on such committees. Each committee shall consist of two or more Trustees who serve at the pleasure of the Board. The creation of a committee and appointment of members to it shall be approved by a majority of all of the Trustees serving on the Board when the action is taken. The provisions of this Agreement which govern meetings, notice and waiver of notice, and quorum and voting requirements of the Board shall apply to committees of the Board as well.

**Section 2.9 Fees and Compensation.** Trustees may receive such compensation, if any, for their services and such reimbursement of expenses as may be fixed or determined by the Board. This Section 2.9 shall not be construed to preclude any Trustee from serving *CalTRUST* in any other capacity as an officer, agent, employee, or otherwise and receiving compensation for those services.

### **ARTICLE III. OFFICERS**

**Section 3.1 Officers.** The officers of *CalTRUST* shall be the President, Secretary and Treasurer (as defined below) and such other officers as the Board may determine. Any number of offices may be held by the same person.

**Section 3.2 Treasurer.** The Board shall appoint one or more of its officers or employees to serve as treasurer, auditor and controller of *CalTRUST* (the “Treasurer”) pursuant to Section 6505.6 of the Act. Except for moneys held by any custodian or depository in connection with the Shares Program and except as may otherwise be specified by resolution of the Board, the Treasurer of *CalTRUST* is designated as the depository of *CalTRUST* to have custody of all of the money of *CalTRUST*, from whatever source, and, as such, shall have the powers, duties and responsibilities specified in Sections 6505, 6505.5 and 6509.5 of the Act. The Treasurer shall draw checks to pay demands against *CalTRUST* when the demands have been approved by the Board. The Treasurer is designated as the public officer or person who has charge of, handles, or has access to any property of *CalTRUST*, and such officer shall file an official bond with the Secretary of *CalTRUST* in the amount specified by resolution of the Board but in no event less than Ten Million Dollars (\$10,000,000). The Treasurer is hereby authorized and directed to prepare or cause to be prepared an audit as required pursuant to Section 6505 of the Act every year (unless the Board, in accordance with the Act, elects otherwise) during the term of this Agreement. The Treasurer is hereby directed to report in writing on the first day of July,

October, January and April of each year to the Board, the Members and the Participants, which report shall describe the amount of money held by the Treasurer for *CalTRUST*, the amount of receipts since the last such report, and the amount paid out since the last such report.

**Section 3.3 Election of Officers.** The officers of *CalTRUST* shall be elected by the Board to serve at the pleasure of the Board until such officer is re-elected or a successor to such office is elected by the Board. The officers shall have such authority and perform such duties as the Board may from time to time determine, subject to the rights, if any, of an officer under any contract of employment.

**Section 3.4 Removal of Officers.** Subject to the rights, if any, of an officer under any contract of employment, any officer may be removed, either with or without cause, by the Board.

**Section 3.5 Resignation of Officers.** Any officer may resign at any time by giving written notice to the Board. Any resignation shall take effect as of the date of the receipt of that notice or at any later time specified in that notice, and unless otherwise specified in that notice, the acceptance of the resignation shall not be necessary to make it effective. Any resignation is without prejudice to the rights, if any, of *CalTRUST* under any contract to which the officer is a party.

**Section 3.6 Vacancies in Offices.** A vacancy in any office because of death, resignation, removal or any other cause shall be filled in the manner prescribed herein for regular appointment to that office. The President may make temporary appointments to a vacant office pending action by the Board.

**Section 3.7 Fees and Compensation.** Officers may receive such compensation, if any, for their services and such reimbursement of expenses as may be fixed or determined by the Board.

#### **ARTICLE IV. POWERS**

**Section 4.1 General Powers.** *CalTRUST* shall have the power, in its own name, to exercise the common powers of the Members referred to in the recitals hereof and to exercise all additional powers given to a joint powers entity under the Act and any other applicable law for any purpose authorized under this Agreement. Pursuant to Section 6508 of the Act, *CalTRUST* shall have the power, in its own name, to do any or all of the following: to make and enter into contracts, or to employ agents and employees, to acquire, construct, manage, maintain or operate any building, works or improvements, or to acquire, hold or dispose of property or to incur debts, liabilities or obligations and sue and be sued in its own name. Pursuant to Section 6509.7 of the Act, *CalTRUST* shall have the power, in its own name, to issue shares of beneficial interest in the securities and obligations authorized by the Law. *CalTRUST* is authorized, in its own name, to do all acts necessary for the exercise of said powers for said purposes. Such powers shall be exercised subject only to such restrictions upon the manner of exercising such powers as are imposed upon a county in the exercise of similar powers, as provided in Section 6509 of the Act.

**Section 4.2 Specific Powers.** Consistent with, derived from and subject to the general powers of *CalTRUST* granted in Section 4.1, *CalTRUST* shall have the following specific powers:

(a) **Investments.** *CalTRUST* shall have the power to subscribe for, invest in, reinvest in, purchase or otherwise acquire, own, hold, pledge for settlement purposes only, sell, assign, transfer, exchange, distribute, lend or otherwise deal in or dispose of investments of every nature and kind, provided such investment is (in the sole and absolute discretion of *CalTRUST*) consistent with the applicable law and the Investment Policy, and to exercise any and all rights, powers and privileges of ownership or interest in respect of any and all such investments of every kind and description, including without limitation, the right to consent and otherwise act with respect thereto, with power to designate one or more persons, firms, associations or corporations to exercise any of such rights, powers and privileges in respect of any of such investments.

Subject to Section 9.8, the Investment Policy may be revised from time to time by resolution of the Board, provided that the Investment Policy shall at no time permit investments not authorized for legal investment under the Law. Promptly upon the Board's approval of any amendment to the Investment Policy, the Board shall cause the amended Investment Policy to be delivered to each Participant.

(b) **Issuance and Redemption of Shares.** *CalTRUST* shall have the power to issue, sell, repurchase, redeem, retire, cancel, acquire, hold, resell, reissue, dispose of, transfer, and otherwise deal in Shares, or any Series of Shares by means of the Shares Program, and subject to the provisions hereof, to apply to any such repurchase, redemption, retirement, cancellation or acquisition of Shares, or any Series of Shares, any funds or property of *CalTRUST* with respect to such Shares, or Series of Shares, whether capital or surplus or otherwise, to the full extent now or hereafter permitted by applicable law.

(c) **Legal Title.** Legal title to all *CalTRUST* property shall be vested in *CalTRUST*, except that *CalTRUST* shall have power to cause legal title to any *CalTRUST* property to be held in the name of any other person as nominee, on such terms as *CalTRUST* may determine, *provided, however*, that the interest of *CalTRUST* therein is appropriately protected.

(d) **Delegation.** *CalTRUST* shall have power to delegate from time to time to officers, employees or agents of *CalTRUST* the doing of such things and the execution of such instruments in the name of *CalTRUST* or otherwise as *CalTRUST* may deem expedient, to the same extent as such delegation is permitted by applicable law.

(e) **Collection and Payment.** *CalTRUST* shall have power to collect all property due to *CalTRUST*; to pay all claims, including taxes, against *CalTRUST* property; to prosecute, defend, compromise or abandon any claims relating to *CalTRUST* property; to foreclose any security interest securing any obligation by virtue of which any property is owed to *CalTRUST*; and to enter into releases, agreements and other instruments.

(f) **Expenses and Limits Thereon.** *CalTRUST* shall have the power to incur and pay any reasonable expenses that in the opinion of *CalTRUST* are necessary or incidental to carry out any of the purposes of this Agreement.

(g) **Litigation.** *CalTRUST* shall have the power to engage in and to prosecute, defend, compromise, abandon, or adjust, by arbitration or otherwise, any actions, suits,

proceedings, disputes, claims, and demands relating to *CalTRUST* or *CalTRUST* property, and, out of *CalTRUST* property, to pay or to satisfy any debts, claims or expenses incurred in connection therewith, including those of litigation, and such power shall include without limitation the power of *CalTRUST*, in the exercise of its good faith business judgment, consenting to dismiss any action, suit, proceeding, dispute, claim, or demand, derivative or otherwise, brought by any person, including a Member or Participant, whether or not *CalTRUST* or any of the Trustees may be named individually therein or the subject matter arises by reason of business for or on behalf of *CalTRUST*.

(h) **Miscellaneous Powers.** *CalTRUST* shall have the power to: (i) employ or contract with such persons as *CalTRUST* may deem desirable for the transaction of the affairs of *CalTRUST*, including such agents or employees as *CalTRUST* considers appropriate; (ii) to the extent permitted by applicable law, enter into joint ventures, partnerships and any other combinations or associations; (iii) purchase, and pay for out of *CalTRUST* property, insurance policies insuring the Trustees, officers, employees, agents, Members, investment advisers, distributors, or independent contractors of *CalTRUST* against all claims arising by reason of holding any such position or by reason of any action taken or omitted by any such person in such capacity, whether or not constituting negligence, or whether or not *CalTRUST* would have the power to indemnify such person against such liability; (iv) to the extent permitted by applicable law, indemnify any person with whom *CalTRUST* has dealings to such extent as *CalTRUST* shall determine, including, without limitation, any administrator of *CalTRUST*; (v) determine and change the fiscal year of *CalTRUST* and the method by which its accounts shall be kept; and (vi) adopt a seal for *CalTRUST*, but the absence of such seal shall not impair the validity of any instrument executed on behalf of *CalTRUST*.

(i) **Other Powers.** In addition to the specific powers set forth above, *CalTRUST* shall also have all other powers consistent with the Act and reasonably necessary from time to time to carry out the purposes of *CalTRUST* as set forth in Section 1.2 hereof.

**Section 4.3 Approval Powers of Members.** The following matters alone shall require the approval of all or a certain percentage of the Members as provided herein: (a) termination of *CalTRUST* as provided in Section 11.2, (b) merger, consolidation or sale of assets of *CalTRUST* as provided in Section 11.4, and (c) such additional matters relating to *CalTRUST* as may be required by this Agreement or as *CalTRUST* may consider necessary or desirable. In addition, if a certain percentage approval is not specified herein, approval of at least a majority of the Members shall be required.

## **ARTICLE V. ADMINISTRATIVE, INVESTMENT ADVISORY AND OTHER SERVICES FOR CALTRUST**

### **Section 5.1 Administrative, Investment Advisor and Approval of Agreements.**

(a) **Supervision of *CalTRUST*.** The Board is responsible for the general policies of *CalTRUST* and for such general supervision of the business of *CalTRUST* conducted by all officers, agents, employees, advisers, managers or independent contractors of *CalTRUST* as may be necessary to insure that such business conforms to the provisions of this Agreement.

However, the Board shall not be required personally to conduct all the business of *CalTRUST*, and consistent with the Board's ultimate responsibility as stated above, *CalTRUST* shall have the power to appoint, employ or contract with any person (including one or more of the Trustees or any corporation, partnership or trust in which one or more of them may be directors, officers, stockholders, partners or trustees) as *CalTRUST* may deem necessary or proper for the transaction of the business of *CalTRUST*. *CalTRUST* may in its discretion, from time to time, enter into an administrative, investment advisory, or other management contract on behalf of *CalTRUST* whereby the other party to such contract shall undertake to furnish *CalTRUST* such management, investment advisory or supervisory, administrative, accounting, legal, statistical, research, and promotional facilities and services, and such other facilities and services, if any, as the *CalTRUST* may in its discretion determine.

(b) **Investment Advisor Qualifications.** Any investment advisor retained by *CalTRUST* shall meet all of the criteria set forth in Section 6509.7 of the Act, as such provision may be amended from time to time, which, as of the date hereof, requires that:

(i) the investment advisor shall be registered or exempt from registration with the Securities and Exchange Commission;

(ii) the investment advisor shall not have less than five (5) years of experience investing in the securities and obligations authorized by the Law; and

(iii) the investment advisor shall have assets under management in excess of five hundred million dollars (\$500,000,000).

## **Section 5.2 Investment Advisor for the Shares Program.**

(a) **Authority.** *CalTRUST* may exercise broad discretion in allowing the Investment Advisor to administer and regulate the operations of the Shares Program, to act as agent for *CalTRUST*, to execute documents on behalf of *CalTRUST*, and to make decisions which conform to general policies and general principles established by *CalTRUST*. In furtherance of the Shares Program, *CalTRUST* may authorize the Investment Advisor to effect purchases, sales, loans or exchanges of securities of *CalTRUST* on behalf of *CalTRUST* or may authorize any officer, employee or Trustee to effect such purchases, sales, loans or exchanges pursuant to recommendations of the Investment Advisor, all without further action by *CalTRUST*. Any such purchases, sales, pledges and exchanges shall be deemed to have been authorized by *CalTRUST*.

(b) **Best Efforts.** With respect to *CalTRUST*'s activities under the Shares Program, the Investment Advisor shall be required to use its best efforts to present a continuing and suitable investment program to *CalTRUST* which is consistent with the applicable law and the Investment Policy, but neither the Investment Advisor nor any Affiliate of the Investment Advisor shall be obligated to present any particular investment opportunity to *CalTRUST* even if such opportunity is of a character which, if presented to *CalTRUST*, could be taken by *CalTRUST*.

(c) **Termination of Services.** *CalTRUST* shall have the right to terminate the Investment Advisory Agreement (i) at any time and without penalty, upon at least sixty (60) days' prior written notice to the Investment Advisor, or (ii) immediately upon written notice to

the Investment Advisor, for cause in the event of breach of the Investment Advisory Agreement, negligence or willful misconduct by the Investment Advisor, which breach is not cured within ten (10) days after written notice of such breach has been provided. *CalTRUST* may, at any time, solicit bids to enter into a new agreement with a different independent contractor to carry out the duties set forth in the Investment Advisory Agreement.

**Section 5.3 Compensation of Investment Advisor for Shares Program and Others.** *CalTRUST* shall have the power to determine the compensation and other terms of employment or contract of the Investment Advisor or any other person employed or contracted by *CalTRUST*; *provided, however*, that any determination to employ or contract with any Trustee or any person of which a Trustee is an Affiliate, shall be valid only if made, approved or ratified by a majority of the Trustees who are not Affiliates of such person.

**Section 5.4 Other Activities of Investment Advisor for Shares Program.** The Investment Advisor shall not be required to administer the investment activities of the Shares Program as its sole and exclusive function and may have other business interests and may engage in other activities similar or in addition to those relating to the Shares Program, including the rendering of services and advice to other persons and the management of other investments (including investments of the Investment Advisor and its Affiliates); *provided* that such other business interests do not conflict with the best interests of *CalTRUST*.

**Section 5.5 Custodian for the Shares Program.**

(a) *CalTRUST* shall have the power to determine the compensation and other terms of employment or contract of the Custodian; *provided, however*, that any determination to employ or contract with any Trustee or any person of which a Trustee is an Affiliate, shall be valid only if made, approved or ratified by a majority of the Trustees who are not Affiliates of such person. The scope and terms of the Custodian's engagement by *CalTRUST* will be defined and circumscribed in the Custody Agreement. *CalTRUST* shall have the right to terminate the Custody Agreement (i) at any time and without penalty, upon at least sixty (60) days' prior written notice to the Custodian, or (ii) immediately upon written notice to the Custodian, for cause in the event of breach of the Custody Agreement, negligence or willful misconduct by the Custodian. *CalTRUST* may, at any time, solicit bids to enter into a new agreement with a different independent contractor to carry out the duties set forth in the Custody Agreement.

(b) **Custodian Qualifications.** Any custodian retained by *CalTRUST* shall meet the following criteria:

(i) the custodian shall be a bank or trust company, in good standing, duly authorized to exercise trust powers and subject to supervision or examination by a federal or state banking authority; and

(ii) the custodian shall have combined capital and surplus in excess of fifty million dollars (\$50,000,000).

Notwithstanding the foregoing, a custodian that does not meet the requirement of clause (ii) above may be retained as the custodian for *CalTRUST* if its obligations under the Custody

Agreement are guaranteed by an Affiliate which meets all of the qualifications set forth above, and such guaranty is acceptable in form and substance to *CalTRUST*.

**Section 5.6 Other Services to *CalTRUST*.** *CalTRUST* may from time to time enter into contracts or agreements with independent contractors in the discretion of *CalTRUST* to carry out the following functions: (i) transfer agent, record keeper and dividend disbursing agent; (ii) administrator, to maintain the books and records of the Shares Program and to supervise all aspects of *CalTRUST*'s operations, including periodically updating the Information Statement for the Shares Program, to prepare *CalTRUST*'s tax returns and periodic reports to Members or Participants, including preparation of monthly, quarterly and annual reports of financial performance to be made available to Members or Participants, to compute the daily net asset value and yield for the Shares Program, to provide office space, equipment and facilities necessary for *CalTRUST*'s operations and to provide such other administrative services as *CalTRUST* may require; (iii) distributor, to act as *CalTRUST*'s sales agent for the distribution of the Shares; (iv) customer service agent, to provide information to Public Agencies which are Members or Participants or are interested in becoming Members or Participants; (v) custodian bank, to hold all money and securities constituting *CalTRUST* property; (vi) independent certified public accountants, to perform an annual audit and provide such other services as *CalTRUST* may require; and (vii) legal counsel. The foregoing specific list shall not prevent *CalTRUST* from employing other persons to provide such advice, assistance or services as *CalTRUST* may from time to time require to carry out the purposes of *CalTRUST* as set forth in Section 1.2 hereof.

**Section 5.7 Authorization to Execute.** By executing this Agreement, each Member hereby authorizes *CalTRUST* to execute a Custody Agreement with a Custodian meeting the requirements hereof and an Investment Advisory Agreement with an Investment Advisor meeting the requirements hereof. *CalTRUST* is duly authorized to enter into a Custody Agreement and an Investment Advisory Agreement.

## **ARTICLE VI. SHARES PROGRAM**

**Section 6.1 Shares of Beneficial Interest.** The interests of the Participants in the Shares Program established hereunder shall be divided into transferable units to be called Shares of beneficial interest, \$0.01 par value (the "Shares"). The number of Shares authorized hereunder is unlimited. Subject to Section 6.2, the Board may establish and designate from time to time any number of series of Shares (each, a "Series"), the proceeds of which may be invested in separate, independently managed accounts. Each Share of any Series shall represent an equal proportionate share in *CalTRUST* assets with respect to such Series with each other Share in such Series. The Board may divide or combine the Shares of any Series into a greater or lesser number of Shares of such Series without thereby changing the proportionate interests in *CalTRUST* assets with respect to such Series.

(a) **Initial Series of Shares.** There is hereby established and designated three (3) initial Series of Shares to be known as: (i) the "*CalTRUST* Short-Term Fund" Series, (ii) the "*CalTRUST* Medium-Term Fund" Series, and (iii) the "*CalTRUST* Long-Term Fund" Series.

All Shares issued hereunder, including without limitation, Shares issued in connection with a dividend in Shares or a division of Shares, shall be fully paid and nonassessable.

**(b) Money Market Fund Series of Shares.** In addition, there is hereby established and designated the “CalTRUST Money Market Fund” Series. All shares issued hereunder, including without limitation, Shares issued in connection with a dividend in Shares or a division of Shares, shall be fully paid and nonassessable.

**Section 6.2 Series of Shares.** The following provisions shall be applicable to each Series of Shares established and designated by the Board:

**(a) Number and Classification.** The number of shares of each Series that may be issued shall be unlimited. The Board may classify or reclassify any unissued shares of any Series or any Shares previously issued and reacquired into one or more Series that may be established and designated from time to time. Shares reacquired by CalTRUST shall be canceled and restored to the status of authorized and unissued Shares undesignated as to Series.

**(b) Series Assets.** All consideration received by CalTRUST for the issue or sale of Shares of a particular Series, together with all assets in which such consideration is invested or reinvested, all income, earnings, profits and proceeds thereof, including any proceeds derived from the sale, exchange or liquidation of such assets, and any funds or payments derived from reinvestment of such proceeds in whatever form the same may be, shall irrevocably belong to that Series for all purposes, subject only to the rights of creditors, and shall be so recorded upon the books of account of CalTRUST. In the event that there are any assets, income, earnings, profits, or proceeds thereof, or funds or payments which are not readily identifiable as belonging to any particular Series, the Board shall allocate them among any one or more of the Series established and designated from time to time in such manner and on such basis as they, in their sole discretion, deem fair and equitable. Each such allocation by the Board shall be conclusive and binding upon the Participants of the Shares Program in all Series for all purposes.

**(c) Series Liabilities.** The assets belonging to each particular Series shall be charged with the liabilities of CalTRUST in respect of that Series, as with all expenses, costs, charges and reserves attributable to that Series, and any general liabilities, expenses, costs, charges or reserves of CalTRUST which are not readily identifiable as belonging to any particular Series shall be allocated and charged by the Board to and among any one or more of the Series established and designated from time to time in such manner and on such basis as the Board in its sole discretion deem fair and equitable. Each allocation of liabilities, expenses, costs, charges and reserves by the Board shall be conclusive and binding upon the Participants of the Shares Program in all Series for all purposes.

**(d) Dividends and Distributions.** All dividends and distributions on Shares of a particular Series shall be distributed pro rata to the Participants in that Series in proportion to the number of Shares of that Series held by such Participants at the date and time of record established pursuant hereto for the payment of such dividends or distributions.

**(e) Liquidation.** In the event of the liquidation of a particular Series, the Participants in that Series which is being liquidated shall be entitled to receive, when and as declared by the

Board, the excess of the assets belonging to that Series over the liabilities belonging to that Series. The Participants of the Shares Program in any Series shall not be entitled thereby to any distribution upon liquidation of any other Series. The assets so distributable to the Participants in any Series shall be distributed among such Participants in proportion to the number of Shares of that Series held by them and recorded on the books of *CalTRUST*. The liquidation of any particular Series in which there are Shares then outstanding may be authorized by an instrument in writing approved by the Board, without the approval of the outstanding voting Shares of that Series.

(f) **Conversion and Exchange.** The Board shall have the authority to provide that the Participants in any Series shall have the right to convert or exchange the Shares of such Series for or into Shares of one or more other Series in accordance with such requirements and procedures as may be established by the Board.

(g) **Designations.** The Board shall have the power to determine the designations, preferences, privileges, limitations and rights, including approval and dividend rights, of each Series of Shares. Subject to the provisions of this Section 6.2, all Shares of all Series shall have identical rights and privileges, except insofar as variations thereof among Series shall have been determined and fixed by the Board.

(h) **Additional Series.** The establishment and designation of any Series of Shares in addition to the three (3) initial Series established and designated in Section 6.1 shall be effective upon the execution by the Board of an instrument setting forth such establishment and designation and the relative rights, preferences, approval powers, restrictions, limitations as to dividends, qualifications, and terms and conditions of redemption of such Series or as otherwise provided in such instrument. At any time that there are no Shares outstanding of any particular Series previously established and designated, the Board may by written instrument approved by the Board abolish that Series and the establishment and designation thereof. Each instrument referred to in this Section 6.2(h) shall constitute an amendment to this Agreement.

**Section 6.3 Rights of Participants.** The ownership of *CalTRUST* property of every description and the right to conduct the affairs of *CalTRUST* herein before described are vested exclusively in *CalTRUST*, and the Participants shall have no interest therein other than the beneficial interest conferred by their Shares, and they shall have no right to call for any partition, division, dividend or distribution of any property, profits, rights or interests of *CalTRUST* nor can they be called upon to assume any losses of *CalTRUST* or suffer an assessment of any kind by virtue of their ownership of Shares. The Shares shall be personal property giving only the rights specifically set forth in this Agreement. The Shares shall not entitle the holder to preference, preemptive, appraisal, conversion or exchange rights, except as the Board may determine.

**Section 6.4 Register of Shares.** A register for the Shares Program (the “Shares Register”) shall be kept at the principal executive office of *CalTRUST* or at such place as the Board shall designate containing the names and addresses of all Participants of the Shares Program and the number and Series of Shares held by them respectively and a record of all transfers thereof. Such register shall be conclusive as to which Participants are the holders of the Shares and which Participants shall be entitled to receive distributions or otherwise to exercise or enjoy the rights

of Participants of the Shares Program. No Participant shall be entitled to receive payment of any distribution, nor to have rights given to it as herein provided, until its correct name and address has been given to the transfer agent, record keeper or such other officer or agent of *CalTRUST* as shall keep the Shares Register. The Board, in its discretion, may but need not authorize the issuance of Share certificates and promulgate appropriate rules and regulations as to their use.

**Section 6.5 Transfer of Shares.** Shares shall be transferable on the Shares Register only by the record holder thereof or by its agent thereunto duly authorized in writing, upon delivery to the transfer agent or record keeper of a duly executed instrument of transfer, together with such evidence of the genuineness of each such execution and authorization and of other matters as may reasonably be required. Upon such delivery, the transfer shall be recorded on the Shares Register. Until such record is made, the Participant of record shall be deemed to be the holder of such Shares for all purposes hereunder and neither *CalTRUST* nor any transfer agent or record keeper nor any trustee, officer, employee or agent of *CalTRUST* shall be affected by any notice of the proposed transfer. No Shares may be transferred to a transferee other than a Participant or *CalTRUST* itself. Any attempted transfer to any other person shall be void and of no effect.

## **ARTICLE VII. REDEMPTIONS OF SHARES WITHIN SHARES PROGRAM**

**Section 7.1 Redemptions.** In case any Participant of the Shares Program at any time desires to dispose of its Shares, it may deposit a written request or other such form of request as the Board may from time to time authorize, at the office of the transfer agent or record keeper or at the office of any bank or trust company, either in or outside of California which is a member of the Federal Reserve System and which the transfer agent or record keeper has designated in writing for that purpose, to have the Shares redeemed by *CalTRUST* at the net asset value thereof per Share next determined after such deposit as provided in Article VIII. Payment for redemption shall be made to the Participant within the number of business days specified in the Information Statement for the Shares Program, as most recently amended or supplemented, unless the date of payment is postponed pursuant to Section 7.2, in which event payment may be delayed beyond such period.

**Section 7.2 Suspension of Right of Redemption.** The Board may declare a suspension of the right of redemption or postpone the date of payment or redemption for the whole or any part of any period (i) during which the New York Stock Exchange is closed other than customary weekend and holiday closings, (ii) during which trading on the New York Stock Exchange is restricted, (iii) during which the Bond Market Association has declared the market closed when the New York Stock Exchange is open, or (iv) during which an emergency exists as a result of which disposal by *CalTRUST* of securities owned by it is not reasonably practicable or it is not reasonably practicable for the value of *CalTRUST*'s net assets to be determined. Such suspension shall take effect at such time as the Board shall specify but not later than the close of business on the business day next following the declaration of suspension, and thereafter there shall be no right of redemption or payment on redemption until the Board shall declare the suspension at an end, except that the suspension shall terminate in any event on the first day on which the New York Stock Exchange shall have reopened or the period specified in (ii) or (iv) shall have expired (as to which the determination of the Board shall be conclusive). In the case of a suspension of the right of redemption, a Participant may either withdraw its request for

redemption or receive payment based on the net asset value existing after the termination of the suspension. Notwithstanding the provisions of Section 14.5, notice of the suspension of the right of redemption shall be deemed duly given upon the posting of such notice in a prominent location on the homepage of the CalTRUST website.

**Section 7.3 Redemptions to Reimburse CalTRUST for Loss on Nonpayment for Shares or for Other Charges.** CalTRUST shall have the power to redeem Shares owned by any Participant (i) to the extent necessary to reimburse CalTRUST for any loss it has sustained by reason of the failure of such Participant to make full payment for Shares purchased by such Participant, (ii) to the extent necessary to collect any charge relating to a transaction effected for the benefit of such Participant which is applicable to Shares as provided in the Information Statement for the Shares Program, as most recently amended or supplemented, or (iii) as otherwise deemed necessary by the Board for CalTRUST to comply with applicable law in connection with the affairs of CalTRUST. Any such redemption shall be effected at the redemption price determined in accordance with Section 7.1. CalTRUST shall notify the Participant whose Shares are being redeemed, in writing, prior to redeeming any Share pursuant to this Section.

**Section 7.4 Redemptions in Kind.** Payment for Shares redeemed pursuant to Section 7.1 may, at the option of the Board, in its complete discretion be made in cash, or in kind, or partially in cash and partially in kind. In case of payment in kind, the Board, or its delegate, shall have absolute discretion as to what security or securities shall be distributed in kind and the amount of the same, and the securities shall be valued for purposes of distribution at the figure at which they were appraised in computing the net asset value of the Shares.

**Section 7.5 Reporting.** In accordance with the terms of the Investment Advisory Agreement, the Investment Advisor shall provide, or cause the Custodian and/or any agent of the Investment Advisor or the Custodian to provide, information to each Participant, at least monthly, describing such Participant's investments through the Shares Program, including but not limited to the type of investment, issuer, date of maturity, par and dollar amount invested on all securities, investments and moneys held by the Participant, and shall additionally include a description of any of the Participant's funds, investments, or programs that are under the management of any subcontractor to the Investment Advisor (but only if such subcontracting is permitted by this Agreement and the Investment Policy or consented to by the Members) or are part of any securities lending program, as well as a current market value of such Participant's Shares as of the date of the report and shall include the source of this same valuation.

**Section 7.6 Minimum Investment.** The Board shall have the power to fix the minimum investment for Participants of the Shares Program expressed in dollars or Shares, or both. Whenever a Participant's investment is less than the minimum established by the Board, CalTRUST may redeem the Shares of such Participant, *provided, however*, that thirty (30) days prior notice is given to such Participant. If the Board changes the minimum investment to an amount greater than the investment of any Participant at the time that such change becomes effective, the investment of such Participant shall not be redeemed without such Participant's consent.

**ARTICLE VIII.  
DETERMINATION OF NET ASSET VALUE, NET INCOME, DISTRIBUTIONS AND  
ALLOCATIONS**

**Section 8.1 Shares Program.** The Information Statement for the Shares Program, as most recently amended or supplemented, sets forth such bases and times for determining the per Share net asset value of the Shares, the net income, and the declaration and payment of distributions, as the Board, in its absolute discretion, may prescribe and deem necessary or desirable.

**ARTICLE IX.  
MEETINGS OF PARTICIPANTS; APPROVAL POWER OF PARTICIPANTS**

**Section 9.1 Voting.** The Participants entitled to vote or take action at any meeting or without a meeting of Participants shall be determined in accordance with this Article IX. The Participants' vote may be by voice vote or by ballot. Shares of each Series shall be voted and shall be counted based on the relative net asset value of each Share, and all Shares of all Series shall be voted together as one class, except for matters that relate exclusively to a particular Series for which only holders of Shares of that Series shall vote. Any Participant may vote part of the Shares in favor of the proposal and refrain from voting the remaining Shares or, vote them against the proposal, but if the Participant fails to specify the number of Shares which the Participant is voting affirmatively, it will be conclusively presumed that the Participant's approving vote is with respect to the total Shares that the Participant is entitled to vote on such proposal.

**Section 9.2 Action Without Meeting.** Any action which may be taken at any meeting of Participants may be taken without a meeting and without prior notice if a consent in writing setting forth the action so taken is signed as provided in this Section 9.2. Any action taken at any meeting or by signed consent, may be taken upon the vote or written consent of the holders of outstanding Shares having not less than the minimum number of votes necessary to authorize or take that action at a meeting at which all Shares entitled to vote on that action were present and voted. All such written consents shall be filed with the Secretary or such other designated officer of CalTRUST and shall be maintained in CalTRUST's records. A Participant's written consent may be revoked by a writing received by the Secretary or such other designated officer of CalTRUST before written consents of the value of Shares necessary to authorize the proposed action have been filed with the Secretary or such other designated officer of CalTRUST.

**Section 9.3 Notice of Action.** The Secretary or such other designated officer of CalTRUST shall give prompt notice to all Participants of any action approved: (a) by the Participants without a meeting, (b) that amends or terminates the Custody Agreement or Investment Advisory Agreement, (c) that amends the Investment Policy or this Agreement or (d) pursuant to Section 9.8 hereof. This notice shall be given in the manner specified in Section 14.5.

**Section 9.4 Meetings.** To the extent required by law, meetings of Participants shall be governed by and held in accordance with the provisions of the Ralph M. Brown Act.

**Section 9.5 Proxies.** Every person entitled to vote on any matter shall have the right to do so either in person or by one or more agents authorized by a written proxy signed by the person and

filed with the Secretary or such other designated officer of CalTRUST. A proxy shall be deemed signed if the Participant's name is placed on the proxy (whether by manual signature, typewriting, telegraphic transmission or otherwise) by the Participant or the Participant's attorney-in-fact. A validly executed proxy which does not state that it is irrevocable shall continue in full force and effect unless (i) revoked by the person executing it before the vote pursuant to that proxy by a writing delivered to CalTRUST stating that the proxy is revoked or by a subsequent proxy executed by, or attendance at the meeting and voting in person by the person executing that proxy; or (ii) written notice of the death or incapacity of the maker of that proxy is received by CalTRUST before the vote pursuant to that proxy is counted; *provided, however,* that no proxy shall be valid after the expiration of eleven (11) months from the date of the proxy unless otherwise provided in the proxy.

### **Section 9.6 Inspectors.**

(a) **Appointment.** Before any meeting of Participants, the Board may appoint any persons, other than Trustees whose appointment is to be approved at such meeting, to act as inspectors at the meeting or its adjournment. If no inspectors are so appointed, the chair of the meeting may, and on the request of any Participant or a Participant's proxy shall, appoint inspectors at the meeting. The number of inspectors shall be either one (1) or three (3). If inspectors are appointed at a meeting on the request of one or more Participants or proxies, the holders of at least a majority of the outstanding Shares or their proxies present at the meeting shall determine whether one (1) or three (3) inspectors are to be appointed. If any person appointed as inspector fails to appear or fails or refuses to act, the chair of the meeting may, and on the request of any Participant or a Participant's proxy shall, appoint a person to fill the vacancy.

(b) **Duties.** These inspectors shall:

(i) Determine the number of Shares outstanding and the voting power of each, the Shares represented at the meeting, the existence of a quorum and the authenticity, validity and effect of proxies;

(ii) Receive votes, ballots or consents;

(iii) Hear and determine all challenges and questions in any way arising in connection with the right to vote;

(iv) Count and tabulate all votes or consents;

(v) Determine when the polls shall close;

(vi) Determine the result; and

(vii) Do any other acts that may be proper to conduct the election or vote with fairness to all Participants.

### **Section 9.7 Record Date for Participant Notice, Voting and Giving Consents.**

(a) **Fixed Record Date.** For purposes of determining the Participants entitled to notice of any meeting or to vote or entitled to give consent to action without a meeting, the Board may fix in advance a record date which shall not be more than fifteen (15) days nor fewer than seven (7) days before the date of any such meeting.

(b) **Deemed Record Date.** If the Board does not so fix a record date:

(i) **For Meetings.** The record date for determining Participants entitled to notice of or to vote at a meeting of Participants shall be at the close of business on the business day next preceding the day on which notice is given or if notice is waived, at the close of business on the business day next preceding the day on which the meeting is held.

(ii) **For Written Consent.** The record date for determining Participants entitled to give consent to action in writing without a meeting, when no prior action by the Board has been taken, shall be the day on which the first written consent is requested, or, when prior action of the Board has been taken, shall be at the close of business on the day on which the Board adopts the resolution relating to that action.

**Section 9.8 Approval Powers of Participants.** Any amendment to the Investment Policy shall require: (a) the approval of Participants or their proxies holding at least a majority of the outstanding Shares or (b) the negative consent of the Participants. To obtain the negative consent of the Participants, the following negative consent procedure shall be followed: (x) the Secretary shall provide each Participant with a notice in accordance with Section 14.5 at least sixty (60) days prior to the date of such proposed action explaining the nature of such proposed action and this negative consent procedure; (y) the Secretary shall provide each Participant who did not respond to the initial notice with a notice at least thirty (30) days prior to the date of such proposed action explaining the nature of such proposed action and this negative consent procedure; (z) if Participants owning at least fifty percent (50%) of the Shares do not object to the proposed action in writing within sixty (60) days after the initial notice, the proposed action shall become effective with respect to all Participants; *provided, however*, any Participant that objects in writing to the action within sixty (60) days after receiving the initial notice shall be permitted to redeem its Shares as set forth herein.

## **Section 9.9 Meeting Agendas.**

(a) **Regular Board Meetings.** If a Participant desires an item of business to be included on the agenda for the next scheduled regular Board meeting, the Participant may request that such item of business be included on the agenda in accordance with the provisions of Section 2.7(b) hereof.

(b) **Participant Meetings.** A Participant may notify the Secretary if such Participant desires an item of business to be included on the agenda for the next scheduled regular Participant meeting. For such item of business to be included on the agenda, the Secretary must receive the request at least ninety six (96) hours prior to such regular meeting. If the request to include an item of business on the agenda is not received at least ninety six (96) hours prior to such meeting, such item of business shall not be included on the agenda for that meeting, but shall be included on the agenda for the following regular meeting of the Participants, unless the Board otherwise determines to include such item of business on the agenda in accordance with the Ralph M. Brown Act.

(c) **Special Board or Participant Meetings.** Any Participant may notify the Administrator if such Participant desires the Board to call a special meeting of the Board or of Participants to consider an urgent item of business raised by a Participant, provided that the Board is not required to call a special meeting to consider such item of business. Any such request shall be made in accordance with the provisions of Section 2.7(c) hereof.

## **ARTICLE X.**

### **LIMITATIONS OF LIABILITY OF MEMBERS, PARTICIPANTS, TRUSTEES AND OTHERS**

**Section 10.1 No Personal Liability of Members, Participants, Trustees and Others.** Except in the case of fraud or willful misconduct, no Member, Participant and, subject to Section 10.3, no Trustee, officer, employee or agent of CalTRUST, acting in its capacity as a Member, Participant, Trustee, officer, employee or agent of CalTRUST, as applicable, shall be subject to any personal liability whatsoever to any person in connection with property or the acts, obligations or affairs of CalTRUST, and all such persons shall look solely to CalTRUST property for satisfaction of claims of any nature arising in connection with the affairs of CalTRUST. Except in the case of fraud or willful misconduct, no Member, Participant, Trustee, officer, employee, or agent, as such, of CalTRUST who is made a party to any suit or proceeding to enforce any such liability, shall be held to any personal liability. The debts, liabilities and obligations of CalTRUST shall not be the debts, liabilities and obligations of any Member, Participant, Trustee, officer, employee or agent of CalTRUST, unless otherwise provided in this Agreement; *provided, however*, that in such case, such debts, liabilities and obligations shall be limited to the value of CalTRUST's assets. Nothing contained in this Section 10.1 shall release the Investment Advisor, the Custodian or any of their respective officers, employees or agents from personal liability in connection with their engagement by or services to CalTRUST.

**Section 10.2 Indemnification of Participants in Shares Program.** CalTRUST shall indemnify and hold each Participant harmless from and against all claims and liabilities to which such Participant may become subject by reason of its being or having been a Participant in the

Shares Program and shall reimburse such Participant for all legal and other expenses reasonably incurred by it in connection with any such claim or liability; *provided, however*, that: (a) such Participant was acting in accordance with all legal and policy requirements and investment objectives applicable to such Participant, including any limitations that the Participant has adopted or is subject to which are more restrictive than state law, (b) such indemnity or reimbursement shall be made from assets (or proceeds thereof or income therefrom) of the one or more Series of Shares of *CalTRUST* in respect of which such claim or liability arose and not from the assets (or proceeds or income therefrom) of any other Series of Shares of *CalTRUST*, and (c) no indemnification shall be made for any Participant's negligence or willful misconduct. The rights accruing to a Participant under this Section 10.2 shall not exclude any other right to which such Participant may be lawfully entitled, nor shall anything herein contained restrict the right of *CalTRUST* to indemnify or reimburse a Participant in any appropriate situation even though not specifically provided herein.

**Section 10.3 Bad Faith of Trustees and Others.** No Trustee, officer or employee of *CalTRUST* shall be liable to *CalTRUST*, or to any Member, Participant, Trustee, officer, employee or agent thereof for any action or failure to act, except for his or her own bad faith, willful misfeasance, gross negligence or reckless disregard of duty (collectively, "Bad Faith").

**Section 10.4 Indemnification of Trustees and Others from Third-Party Actions.** *CalTRUST* shall indemnify any person who was or is a party or is threatened to be made a party to any proceeding (other than an action by or in the right of *CalTRUST*) by reason of the fact that such person is or was a Trustee, officer or employee of *CalTRUST*, against expenses, judgments, fines, settlements and other amounts actually and reasonably incurred in connection with such proceeding, if it is determined that such person acted in good faith and reasonably believed: (i) in the case of conduct in his or her official capacity as a Trustee of *CalTRUST*, that his or her conduct was in *CalTRUST*'s best interests, (ii) in all other cases, that his or her conduct was at least not opposed to *CalTRUST*'s best interests, and (iii) in the case of a criminal proceeding, that he or she had no reasonable cause to believe the conduct of such person was unlawful. The termination of any proceeding by judgment, order, settlement, conviction or upon a plea of *nolo contendere* or its equivalent shall not of itself create a presumption that the person did not act in good faith and in a manner that such person reasonably believed to be in the best interests of *CalTRUST* or that such person had reasonable cause to believe such person's conduct was unlawful.

**Section 10.5 Indemnification of Trustees and Others for Successful Defense.** To the extent that a Trustee, officer or employee of *CalTRUST* has been successful on the merits in defense of any proceeding referred to in Section 10.4 or in defense of any claim, issue or matter therein, before the court or other body before which the proceeding was brought, such person shall be indemnified against expenses actually and reasonably incurred in connection therewith.

**Section 10.6 Advance of Expenses.** Expenses incurred in defending any proceeding may be advanced by *CalTRUST* before the final disposition of the proceeding upon a written undertaking by or on behalf of the Trustee, officer or employee of *CalTRUST*, to repay the amount of the advance if it is ultimately determined that he or she is not entitled to indemnification, together with at least one of the following as a condition to the advance: (i) security for the undertaking; or (ii) the existence of insurance protecting *CalTRUST* against

losses arising by reason of any lawful advances; or (iii) a determination by a majority of the Trustees who are not parties to the proceeding (“Non-Interested Trustees”), or by independent legal counsel in a written opinion, based on a review of readily available facts, that there is reason to believe that such person ultimately will be found entitled to indemnification.

**Section 10.7 Exclusions and Limitations of Indemnification of Trustees and Others.** Notwithstanding the foregoing, no indemnification or advance shall be made under Sections 10.4 to 10.6:

(a) **Bad Faith.** For any liability arising by reason of Bad Faith of a Trustee, officer or employee of *CalTRUST*.

(b) **Improper Personal Benefit.** In respect of any claim, issue, or matter as to which a Trustee, officer or employee of *CalTRUST* shall have been adjudged to be liable on the basis that personal benefit was improperly received by him or her, whether or not the benefit resulted from an action taken in such person’s official capacity.

(c) **Otherwise Prohibited.** In any circumstances where it appears that it would be inconsistent with any condition expressly imposed by a court, any provision of this Agreement, or any agreement in effect at the time of accrual of the alleged cause of action asserted in the proceeding in which the expenses were incurred or other amounts were paid which prohibits or otherwise limits indemnification or advance.

(d) **Limited to *CalTRUST*’s Assets.** In any amount, individually or in the aggregate, that exceeds the value of *CalTRUST*’s assets. If there are concurrent indemnifications of multiple Participants under this Article IX, such indemnifications shall be made on a pro rata basis up to the value of *CalTRUST*’s assets.

**Section 10.8 Obligations under Law.** Notwithstanding anything herein or in the Investment Advisory Agreement to the contrary, nothing herein or therein is intended to relieve any Member or Participant of any obligation it has under State or Federal law to monitor, review, evaluate or provide oversight with respect to the Shares Program, the Investment Advisor, or its participation in *CalTRUST*.

**Section 10.9 Required Approval.** No indemnification or advance shall be made under Sections 10.4 to 10.6 unless and until it is determined, by a majority of the Non-Interested Trustees, or by independent legal counsel in a written opinion, based on a review of readily available facts, that indemnification of a Trustee, officer, employee or agent of *CalTRUST* is proper in the circumstances because such person has met the applicable standard of conduct set forth in Sections 10.4 to 10.6, as applicable, and such indemnification is not excluded by reason of Section 10.7.

**Section 10.10 Insurance.** *CalTRUST* shall purchase and maintain insurance on behalf of each Trustee, officer, employee or agent of *CalTRUST* against any liability asserted against or incurred by such person in such capacity or arising out of such person’s status as such, but only to the extent that *CalTRUST* would have the power to indemnify such person against that liability hereunder, unless *CalTRUST* determines that such insurance is not cost effective for *CalTRUST* or is otherwise impracticable.

**Section 10.11 Fiduciaries of Employee Benefit Plan.** This Article X does not provide indemnification or release from liability with respect to any proceeding against any trustee, investment advisor or other fiduciary of an employee benefit plan in such person's capacity as such, even though such person may also be a Trustee, officer, employee or agent of *CalTRUST*. Nothing contained in this Article X shall limit any right to indemnification to which such a trustee, investment advisor, or other fiduciary may be entitled by contract or otherwise which shall be enforceable to the extent permitted by applicable law other than this Article X.

**Section 10.12 No Duty of Investigation and Notice in *CalTRUST* Instruments.** No purchaser, lender, transfer agent, record keeper or other person dealing with any Trustee, officer, employee or agent of *CalTRUST* shall be bound to make any inquiry concerning the validity of any transaction purporting to be made by such Trustee, officer, employee or agent or be liable for the application of money or property paid, loaned, or delivered to or on the order of such Trustee, officer, employee or agent. Every obligation, contract, instrument, certificate, Share or other security of *CalTRUST* and undertaking, and every other document executed in connection with *CalTRUST*, shall be conclusively presumed to have been executed or done by the executors thereof only in their capacity as Trustees under this Agreement or in their capacity as officers, employees or agents of *CalTRUST*. Every written obligation, contract, instrument, certificate, Share or other security of *CalTRUST* or undertaking made or issued by any Trustee shall recite that it is executed by such Trustee not individually, but in the capacity as Trustee under this Agreement, and that the obligations of any such instruments are not binding upon any of the Trustees, Members or Participants individually, but bind only *CalTRUST* property, but the omission of such recital shall not operate to bind the Trustees, Members or Participants individually.

**Section 10.13 Reliance on Experts.** Each Trustee, officer, employee and agent of *CalTRUST* shall, in the performance of his or her duties, be fully protected with regard to any act or any failure to act resulting from reliance in good faith upon the books of account or other records of *CalTRUST*, upon an opinion of counsel, or upon reports made to *CalTRUST* by any of its officers or employees or by the investment adviser, administrator, transfer agent, record keeper, custodian, distributor accountants, appraisers or other experts or consultants selected with reasonable care by the Trustees, officers, employees or agents of *CalTRUST*.

**Section 10.14 Immunity from Liability.** All of the privileges and immunities from liability, all exemptions from laws, ordinances and rules, and all pension, relief, disability, workmen's compensation, and other benefits which apply to the activity of the trustees, officers, employees or agents of the Members when performing their functions within the territorial limits of their respective Public Agencies, shall apply to them to the same degree and extent while engaged in the performance of any of their functions and duties associated with *CalTRUST*.

**Section 10.15 Further Restriction of Duties and Liabilities.** Without limiting the foregoing provisions of this Article X, the Trustees, officers, employees and Members of *CalTRUST* shall in no event have any greater duties or liabilities than those imposed by applicable law as shall be in effect from time to time.

## ARTICLE XI. DURATION, TERMINATION AND AMENDMENT

**Section 11.1 Duration.** *CalTRUST* shall continue without limitation of time but subject to the provisions of this Article XI.

**Section 11.2 Termination of CalTRUST.**

(a) **By Vote.** *CalTRUST* may be terminated by the vote of the majority of the Trustees, subject to approval of not less than two-thirds (2/3) of the Members.

(b) **Winding Up Activities.** Upon the termination of *CalTRUST*:

(i) *CalTRUST* shall carry on no activities except for the purpose of winding up its affairs;

(ii) The Board shall proceed to wind up the affairs of *CalTRUST* and all of the powers of *CalTRUST* and the Board under this Agreement shall continue until the affairs of *CalTRUST* shall have been wound up, including the power to fulfill or discharge the contracts of *CalTRUST*, collect its assets, sell, convey, assign, exchange, transfer or otherwise dispose of all or any part of *CalTRUST* property to one or more persons at public or private sale for consideration which may consist in whole or in part of cash, securities or other property of any kind, discharge or pay its liabilities, and do all other acts appropriate to liquidate its business; *provided, however,* that any sale, conveyance, assignment, exchange, transfer or other disposition of all or substantially all *CalTRUST* property shall require approval in accordance with Section 11.4; and

(iii) After paying or adequately providing for the payment of all liabilities, and upon receipt of such releases, indemnities and refunding agreements as they deem necessary for their protection, the Board may distribute the remaining *CalTRUST* property, in cash or in kind or partly in cash and partly in kind, among the Participants according to their respective beneficial interests.

(c) **Effect of Termination.** After termination of *CalTRUST* and distribution to the Participants as herein provided, the Board shall approve the execution of and lodge among the records of *CalTRUST* an instrument in writing setting forth the fact of such termination, and the Trustees shall thereupon be discharged from all further liabilities and duties hereunder, and the rights and interests of all Participants shall thereupon cease.

**Section 11.3 Amendment Procedure.**

(a) **By the Board; By Participants.** This Agreement may be amended by the Board, except to the extent an amendment would adversely affect (i) the Shares Program in which case the amendment shall be subject to approval by a majority of the Shares or (ii) one or more Series of Shares, in which case the amendment shall be subject to approval by a majority of the Shares of any Series affected by such amendment. Among other things, the Board may also amend this Agreement without such Participant approval to change the name of *CalTRUST* or any Series, to establish and designate additional Series, to supply any omission herein or to correct or supplement any ambiguous defective or inconsistent provision hereof, or if they deem it necessary, to conform this Agreement to the requirements of applicable laws or regulations or to eliminate or reduce any taxes which may be payable by *CalTRUST*, the Members or the

Participants, or as otherwise provided herein, but the Trustees shall not be liable for failing to do so.

(b) **By the Board and Super Majority of Shares.** No amendment may be made under this Section 11.3 which would change any rights with respect to any Share by reducing the amount payable thereon upon liquidation of *CalTRUST* or by diminishing or eliminating any approval rights pertaining thereto, except with the vote of a majority of the Trustees and the approval of the holders of two-thirds (2/3) of the Shares outstanding and the holders of two-thirds (2/3) of the Shares of any Series affected by such amendment. Nothing in this Agreement shall permit its amendment to impair the exemption from personal liability of the Members, Participants, Trustees, officers, employees and agents of *CalTRUST* or to permit assessments upon Participants.

(c) **Certificate of Amendment.** A certificate signed by the Secretary of *CalTRUST* setting forth an amendment and reciting that it was duly approved by the Board and/or the Participants shall be conclusive evidence of such amendment when lodged among the records of *CalTRUST*.

**Section 11.4 Merger, Consolidation and Sale of Assets.** To the extent permitted by law, *CalTRUST* may merge into or consolidate a Series of Shares with any other corporation, association, trust or other organization or may sell, lease or exchange all or substantially all of the Series' property, including its goodwill, upon such terms and conditions and for such consideration when and as authorized by the Board and approved by a majority of the Shares of any Series affected.

## **ARTICLE XII. RECORDS AND REPORTS**

**Section 12.1 Maintenance and Inspection of Records.** The accounting books and records with respect to the Shares Program and the minutes of proceedings of the Board and the Participants shall be kept at such place or places designated by the Board or in the absence of such designation, at the principal executive office of *CalTRUST*. The minutes shall be kept in written form and the accounting books and records shall be kept either in written form or in any other form capable of being converted into written form. The minutes and accounting books and records shall be open to inspection upon the written demand of any Member or Participant at any reasonable time during usual business hours for a purpose reasonably related to the Member or Participant's interests as a Member or Participant, as applicable. The inspection may be made in person or by an agent or attorney and shall include the right to copy and make extracts.

**Section 12.2 Inspection by Trustees.** Every Trustee shall have the absolute right at any reasonable time to inspect all books, records, and documents of every kind and the physical properties of *CalTRUST*. This inspection by a Trustee may be made in person or by an agent or attorney and the right of inspection includes the right to copy and make extracts of documents.

**Section 12.3 Financial Statements and Audits.** A copy of any financial statements and any income statement of *CalTRUST* for each quarterly period of each fiscal year and accompanying balance sheet of *CalTRUST* as of the end of each such period that has been prepared by

*Cal*TRUST shall be kept on file in the principal executive office of *Cal*TRUST for at least twelve (12) months and each such statement shall be exhibited at all reasonable times to any Member or Participant demanding an examination of any such statement or a copy shall be mailed to any such Member or Participant. The quarterly income statements and balance sheets referred to in this Section shall be accompanied by the report, if any, of any independent accountants engaged by *Cal*TRUST or the certificate of an authorized officer of *Cal*TRUST that the financial statements were prepared without audit from the books and records of *Cal*TRUST. An annual audit of the accounts and records of *Cal*TRUST shall be made, and the report thereon filed and kept, in accordance with the provisions of Section 6505 of the Act.

### **ARTICLE XIII. GENERAL MATTERS**

**Section 13.1 Checks, Drafts, Evidence of Indebtedness.** All checks, drafts, or other orders for payment of money, notes or other evidences of indebtedness issued in the name of or payable to *Cal*TRUST shall be signed or endorsed in such manner and by such person or persons as shall be designated from time to time by resolution of the Board.

**Section 13.2 Execution of Instruments.** The Board, except as otherwise provided herein, may authorize any officer or officers, agent or agents, to enter into any contract or execute any instrument in the name of and on behalf of *Cal*TRUST and this authority may be general or confined to specific instances; and unless so authorized or ratified by the Board or within the agency power of an officer, no officer, agent, or employee shall have any power or authority to bind *Cal*TRUST by any contract or engagement or to pledge its credit or to render it liable for any purpose or for any amount.

**Section 13.3 Fiscal Year.** The fiscal year of *Cal*TRUST shall be fixed and refixed or changed from time to time by resolution of the Board. The fiscal year of *Cal*TRUST shall initially end on June 30 of each year.

**Section 13.4 Principal Office.** The Board shall fix and, from time to time, may change the location of the principal executive office of *Cal*TRUST at any place within the State of California.

**Section 13.5 Accountability.** Pursuant to Section 6505 of the Act, *Cal*TRUST shall establish and maintain such funds and accounts as may be required by good accounting practice, and there shall be strict accountability of all funds and reports of all receipts and disbursements.

### **ARTICLE XIV. MISCELLANEOUS**

**Section 14.1 Governing Law.** This Agreement is executed and delivered in the State of California and with reference to the laws thereof, and the rights of all parties and the validity and construction of every provision hereof shall be subject to and construed according to the laws of the State of California.

**Section 14.2 Counterparts.** This Agreement may be executed in several counterparts, each of which shall be deemed to be an original, and such counterparts, together, shall be constituted one and the same instrument, which shall be sufficiently evidenced by any such original counterpart.

**Section 14.3 Certificates.** Any certificate executed by an individual who, according to the records of CalTRUST, appears to be a Trustee hereunder, or Secretary or assistant secretary or such other designated officer of CalTRUST, certifying to: (i) the number or identity of Trustees, Members or Participants, (ii) the due authorization of the execution of any instrument or writing, (iii) the form of any vote passed at a meeting of the Board, (iv) the number of Trustees present or voting at any meeting, (v) the identity of any officers appointed by the Board, or (vi) the existence of any fact or facts which in any manner relate to the affairs of CalTRUST, shall be conclusive evidence as to the matters so certified in favor of any person dealing with the Trustees and their successors.

**Section 14.4 Provisions in Conflict with Law or Regulations.** The provisions of this Agreement are severable, and if the Board shall determine, with the advice of counsel, that any of such provisions is in conflict with applicable laws and regulations, including, without limitation, the Act, the Law or the Ralph M. Brown Act, the conflicting provisions shall be deemed superseded by such laws or regulations to the extent necessary to eliminate such conflict; *provided, however,* that such determination shall not affect or render invalid any of the remaining provisions of this Agreement. If any provision of this Agreement shall be held invalid or unenforceable in any jurisdiction, such invalidity or unenforceability shall pertain only to such provision in such jurisdiction and shall not in any manner affect such provision in any other jurisdiction or any other provision of this Agreement in any jurisdiction.

**Section 14.5 Notices.** Any and all notices and communications to which a Member or Participant may be entitled shall be deemed duly given or made if delivered by e-mail or facsimile or other electronic means providing a record of delivery, or, if so requested by such Member or Participant, in person or mailed, postage prepaid, addressed to the Member or Participant of record at its address as recorded in the account records for CalTRUST or the Shares Program. In addition to any other notice or communication to which a Member or Participant may be entitled, each Member and Participant shall be entitled to notice of any amendment to this Agreement, the Investment Policy or of any matter which is approved by the Participants (whether by negative consent or otherwise).

**Section 14.6 Index and Headings for Reference Only.** The index and headings preceding the text, articles and sections hereof have been inserted for convenience and reference only and shall not be construed to affect the meaning, construction or effect of this Agreement.

**Section 14.7 Successors in Interest.** This Agreement shall be binding upon and inure to the benefit of the Members and their successors and assigns. Participants shall be third-party beneficiaries of this Agreement.

\* \* \*

**IN WITNESS WHEREOF**, the undersigned, a majority of Trustees, have executed this Agreement as of the date first herein above set forth.

COUNTY OF SONOMA

By: /s/ Thomas G. Ford  
Title: Treasurer/Tax Collector

COUNTY OF SOLANO

By: /s/ Charles Lomeli  
Title: Treasurer/Tax Collector/County Clerk

WESTLANDS WATER DISTRICT

By: /s/ Dave Ciapponi  
Title: Assistant General Manager

**SCHEDULE A  
INITIAL MEMBERS**

Solano County

Sonoma County

Westlands Water District

**SCHEDULE B  
LIST OF MEMBERS**

Butte County

Contra Costa County

Monterey County

Rio Alto Water District

Riverside County

San Mateo County Transit District

Solano County

Sonoma County

Westlands Water District

Yuba County

City of Pinole

Pinole Redevelopment Agency

City of National City

City of Chino

Chino Redevelopment Agency

Santa Barbara County

San Diego County

West Valley Mosquito and Vector Control District

Water Facilities Authority

ALPHA Fund