

# Discretionary Investment Management Agreement

Legal Name of Account ("Account") \_\_\_\_\_

This AGREEMENT is made by and between \_\_\_\_\_

\_\_\_\_\_ ("Client"),

and Palo Capital, Inc. ("Adviser"), a registered investment adviser and California Corporation, and is effective upon the date on which it is signed by Adviser. Client employs Adviser as investment adviser for the Account, and Adviser agrees to serve in that capacity, on the following terms and conditions.

**1. Account Management.** Adviser shall have full, discretionary power to supervise and direct the investment of all assets in the Account held at the Custodian described in Section 3 hereof. Client authorizes Adviser to, without prior consultation with Client: (i) buy, sell or otherwise trade securities including, but not limited to, common or preferred stock of U.S. or foreign companies, real estate investment trusts, convertible stocks or bonds, options, warrants, rights, corporate, municipal, or government bonds, and notes or bills; and (ii) take all necessary action to effect securities transactions for the Account. This grant of discretion shall remain in full force and effect until terminated pursuant to Section 14 of this Agreement. Termination of this grant of discretion shall constitute a termination of this Agreement.

**Taxable Accounts.** If the Account is taxable, Client agrees that: (i) Client will be responsible for all tax liabilities arising from transactions in the Account; and (ii) for any securities transferred to Adviser for management, Adviser will have no responsibility for considering the tax consequences of sale for any security for which Client has not provided to Adviser the cost basis and purchase dates.

**2. Investment Objectives & Strategies.** Adviser shall make and implement investment decisions in accordance with the investment objectives and strategies stated in Appendix A, which shall include all applicable guidelines and restrictions, except for any amendments to Appendix A as Client shall provide Adviser in writing and as are accepted by Adviser. Client shall promptly notify Adviser in writing if Client considers any investments made for the Account to violate any Account objectives or restrictions. Client agrees to notify Adviser promptly, in writing, of any changes to the information provided by Client, including any change to investment objectives, risk tolerance, investment time horizon, and any investment policies or restrictions. Adviser shall have no liability for Client's failure to provide Adviser with accurate and complete information.

**3. Custody of Assets.** Client has appointed or will appoint a bank or registered broker-dealer to act as a separate custodian (the "Custodian") to take possession of the cash, securities and other assets in the Account. Adviser shall have no access to the assets in the Account or to the income produced therefrom, and shall not be responsible for any acts or omissions of the Custodian. Client shall assume responsibility for ensuring that the Custodian sends Client a statement no less often than quarterly indicating all amounts disbursed from the Account (including the amount of any fees paid to Adviser), all transactions occurring in the Account during the statement period, and a summary of the Account positions and value at the end of the period. Client has directed or will direct the Custodian to send copies of the Account statements to Adviser.

**4. Reporting.** Adviser shall provide Client quarterly and annual Accounts statements showing the assets in the accounts, their current value, a summary of transactions, and investment performance. The Custodian will have responsibility for providing to Client transaction confirmations, account statements, and annual tax forms.

**5. Fees.** The Account shall be charged in arrears the Advisory Fee(s) set forth in Appendix B to this Agreement. Account additions and withdrawals during the quarter are subject to proration.

a. **Payment Method.** Adviser is authorized to invoice the Custodian directly for its fees, with copy of the invoice to Client. Client agrees to instruct the Custodian to pay such fees directly to Adviser from Client's Account. Adviser shall send to Client a quarterly statement showing the amount of the Advisory Fee due, the Account value on which the fee is based, and the method by which the fee is calculated. Client shall be responsible for verifying the accuracy of the fee calculation. Custodian shall not determine whether the fee is calculated properly. If Adviser manages one or more tax-qualified-accounts and a taxable account for Client, fees for

tax-qualified accounts will be invoiced to a taxable account unless Client provides other written instructions to Adviser.

b. Computing Market Value. In computing the market value of any investment of the Account, each security listed on a national securities exchange shall be valued at the last sale price on the valuation date. Listed stock not traded on such date and any unlisted stock regularly traded in the over-the-counter market shall be valued at the latest available bid price reflected by quotations furnished to Adviser by such sources as it may deem appropriate. Any other security shall be valued in such manner as shall be determined in good faith by Adviser to reflect its fair value.

c. Other Fees and Charges. Client shall be solely responsible for all commissions and other transaction charges, and any charge relating to the custody of Account securities. The Advisory Fee covers only the investment management services provided by Adviser and does not include brokerage commissions, mark-ups and mark-downs, dealer spreads or other costs associated with the purchase and sale of securities, interest, taxes, or other Account expenses, for all of which Client shall be solely responsible for. Client understands that, in addition to the fees paid to Adviser pursuant to this Agreement, each mutual fund in which Client may invest pursuant to this Agreement also bears its own investment advisory fees and other expenses that are disclosed in each fund's prospectus.

**6. Notification of Additions or Withdrawals.** Client agrees to notify Adviser in writing, or instruct Custodian to notify Adviser in writing and in advance each time funds or securities are deposited to, or withdrawn from the Account. Client further agrees to hold Adviser harmless from and against any liability, cost or lost opportunity that may arise from Client's or Custodian's failure to provide Adviser notification in writing of deposits to or withdrawals from the Account in advance of each such deposit or withdrawal.

**7. Transaction Procedures.** Adviser has full power and discretion to select such brokers or dealers to execute transactions for the Account as Adviser reasonably believes will provide the best execution, and to negotiate and determine any commission rates to be paid for such transactions. Adviser shall use its best efforts to have transactions executed at prices that are advantageous to Client and at commission rates that are reasonable in relation to the benefits received. Adviser may consider a number of factors when selecting a broker or dealer to effect a transaction, including its financial strength and stability, the efficiency with which the transaction will be effected, and the value of research products and services that a broker lawfully may provide to assist Adviser in the exercise of its investment

discretion. Adviser may pay a broker who provides research services commissions that are competitive, but that are higher than the lowest available rate that another broker might charge, if Adviser determines in good faith that the commissions are reasonable in relation to the value of the brokerage and research services provided.

If Adviser believes that the purchase or sale of a security is in Client's best interest along with the best interest of its other clients, Adviser may, but shall not be obligated to, aggregate the securities to be sold or purchased to obtain favorable execution or lower brokerage commissions, to the extent permitted by applicable laws and regulations. Adviser shall allocate securities so purchased or sold, as well as the expense incurred in the transaction, in the manner that it considers to be equitable and consistent with its fiduciary obligations to Client and its other clients. Client authorizes Adviser to assign the Account the average price resulting from such aggregated trades and acknowledges that clients participating in an aggregate order may be charged different commission rates.

Brokers or dealers that Adviser selects to execute transactions may from time to time refer clients to Adviser. Adviser shall not make commitments to any broker or dealer to compensate that broker or dealer through brokerage or dealer transactions for client referrals; however, a potential conflict of interest may arise between Client's interest in obtaining best price and execution and Adviser's interest in receiving referrals.

**8. Proxies and Other Legal Notices.** Unless the parties otherwise agree in writing, Adviser shall have no obligation or authority to take any action or render any advice with respect to the voting of proxies solicited by or with respect to issuers of securities held by an Account. Client expressly retains the authority and responsibility for, and Adviser is expressly precluded from rendering any advice or taking any action with respect to, the voting of any such proxies.

**9. Legal Proceedings.** Adviser shall not render advice or take any action with respect to securities or other investments, or the issuers thereof, which become subject to any legal proceedings, including bankruptcies. Client hereby expressly retains the right and obligation to take such legal action relating to any such investments held in the Account.

**10. Risk Acknowledgment & Liability Limitation.** Client represents that no party to this Agreement has made any guarantee, either oral or written, as to the future performance of the Account, the success of any investment decision or strategy that Adviser may use, or that Client's investment objectives will be achieved. Client understands that: (i)

investment decisions made for the Account by Adviser are subject to various market, currency, economic and business risks; (ii) those investment decisions will not always be profitable; and (iii) the value of the Account will fluctuate due to market conditions and other factors. Adviser shall not be liable for any error in judgment and/or for any investment losses in the Account in the absence of malfeasance, negligence or violation of applicable law. Adviser shall not be responsible for any loss incurred by reason of any act or omission of Client, custodian, any broker-dealer, or any other third party. Nothing in this Agreement shall constitute a waiver or limitation of any rights Client may have under applicable state or federal law, including without limitation state and federal securities laws.

**11. Services to Other Clients.** Adviser acts as adviser to other clients and may give advice, and take action, with respect to any such client which may differ from the advice given, or the timing or nature of action taken, with respect to the Account. Adviser shall have no obligation to purchase or sell for the Account, or to recommend for purchase or sale by the Account, any security which Adviser may purchase or sell for any other clients. Client recognizes that transactions in a specific security may not be accomplished for all client accounts at the same time or at the same price.

**12. Disclosures.** Client acknowledges receipt of Adviser's Form ADV Part II prior to signing this Agreement and of Adviser's Privacy Policy. Client also acknowledges that Client has reviewed and understands the risk factors and the fees associated with the Account.

**13. Minimum Account Size.** The minimum amount of assets to be invested in the Account is \$300,000. For purposes of this minimum, Adviser may in its sole discretion aggregate the assets of accounts owned by members of Client's immediate family living in the same household. Should the market value of the Account fall below the stated minimum, Adviser shall have the right to terminate the Agreement or to require that additional assets be deposited to bring the Account value up to the required minimum.

**14. Termination.** Either party may terminate this Agreement at any time by delivery of written notice to the other party. Client's death, disability or incompetency will not automatically terminate or change the terms of this Agreement. However, Client's executor, guardian, attorney-in-fact or other authorized representative may exercise the termination provisions stated herein on behalf of Client.

If Client terminates this Agreement within five (5) business days of its signing, termination shall be effective immediately upon delivery of written termination notice, and Client shall

receive a full refund of any fees and expenses paid. Any investment decision taken prior to such termination shall be at Client's risk.

If this Agreement is terminated after five business days of its signing, termination shall be effective as of the last day of the month after the month in which the termination notice was delivered, and fees shall be owed up until the effective date of termination.

Termination shall not affect liabilities or obligations incurred or arising from transactions initiated under this Agreement prior to such termination, including the provisions regarding arbitration, which shall survive any expiration or termination of this Agreement. Upon termination, Client shall have the exclusive responsibility to monitor the securities in the Account, and Adviser shall have no further obligation to act or advise with respect to those assets.

#### **15. Representations.**

Adviser represents that it is registered as an investment adviser with the State of California and is authorized and empowered to enter into this Agreement.

Client represents and confirms that: (i) Client has full power and authority to enter into this Agreement; (ii) the terms hereof do not violate any obligation by which Client is bound, whether arising by contract, operation of law, or otherwise; and (iii) this Agreement has been duly authorized and shall be binding according to its terms.

If a trustee or other fiduciary enters into this Agreement, such trustee or fiduciary represents that the services to be provided by Adviser are within the scope of the services and investments authorized by the governing instruments of, and/or laws and regulations applicable to Client. Such trustee or fiduciary further represents and warrants that he or she is duly authorized to negotiate the terms of this agreement and to enter into and renew this Agreement. The trustee or fiduciary shall provide Adviser with copies of the governing instruments authorizing establishment of the Account. The trustee or fiduciary warrants that he or she will advise Adviser of any material change in his or her authority or in the propriety of maintaining the Account.

If Client is a corporation, partnership or limited liability company, the signatory on behalf of Client represents that the execution of this Agreement has been duly authorized by appropriate corporate action. Client undertakes to advise Adviser of any event that might affect this authority or the propriety of this Agreement.

**16. No Assignment.** This Agreement shall be binding on Client's heirs, executors, successors, administrators, conservators, and permitted assigns. Client may not assign (as that term is defined under the Investment Advisers Act of 1940, as amended) his or her rights or delegate his or her obligations under this Agreement, in whole or in part, without the prior written consent of Adviser. Adviser may not assign (as that term is defined under the Investment Advisers Act of 1940, as amended) this Agreement without Client's consent.

**17. Arbitration.** Any controversy or dispute that may arise between Client and Adviser concerning any transaction or the construction, performance or breach of this Agreement shall be settled by binding arbitration. Arbitration shall be pursuant to the rules then applying of the American Arbitration Association, except to the extent set forth herein. The arbitration panel shall consist of at least three individuals, with at least one panelist having knowledge of investment advisory activities. The parties agree that any arbitration proceeding shall be held in Orange County, California, and judgment upon the award rendered may be entered into in any court, state or federal, having jurisdiction. The parties are waiving their right to seek remedies in court, including the right to a jury trial, except to the extent such a waiver would violate applicable law. This provision does not constitute a waiver of any right provided under the Investment Advisers Act of 1940, as amended.

**18. Attorney's Fees.** The prevailing party in any dispute, whether or not the litigation or arbitration proceeds to final judgment or determination, shall be entitled to recover all of its reasonable attorney's fees, costs, and expenses.

**19. Governing Law.** This Agreement and all of the terms herein shall be construed and governed according to the laws of the State of California, without giving effect to principles of conflict of laws, provided that there is no inconsistency with federal laws.

**20. Confidential.** All information and advice furnished to the other party shall be confidential and shall not be disclosed to any other party except as required for performance of duties under this agreement or as required by law.

**21. Amendments.** Adviser shall have the right to amend this Agreement by modifying or rescinding any of its existing provisions or by adding new provisions. Any such amendment shall be effective thirty (30) days after Adviser has notified Client in writing of the change, or such later date as is established by Adviser, unless Client first delivers a notice of termination to Adviser. All other amendments must be in writing and signed by Adviser.

**22. Notice.** Any notice required or permitted to be given pursuant to this Agreement shall be deemed to have been duly given when delivered in person, transmitted by email or facsimile with hard copy sent by U.S. mail, or by overnight courier postage prepaid. All notices or communications to Client shall be sent to the address contained in the most recent Client Questionnaire pertaining to the Account.

**23. No waiver.** No waiver of any provision of this Agreement shall be deemed a waiver of any other provision, or a continuing waiver of the provision waived.

**24. Severability.** If any part of this Agreement is found to be invalid or unenforceable by statute, rule, regulation, decision of a tribunal, or otherwise, it shall not affect the validity or enforceability of the remainder of this Agreement. To this extent, the provisions of this Agreement shall be deemed to be severable.

**25. Entire Agreement.** This Agreement represents the parties' entire understanding with regard to the matters specified herein. No other agreements, covenants, representations or warranties, express or implied, oral or written, have been made by any party to any other party concerning the subject matter of this Agreement.

**DISCRETIONARY INVESTMENT MANAGEMENT AGREEMENT SIGNATURE PAGE**

All principals of Client must sign. Corporate officers, limited liability company members, partners, and fiduciaries must indicate the capacity in which they are acting.

This Agreement may be executed in counterparts and shall be binding on the parties as if executed in one document.

**CLIENT ACKNOWLEDGES RECEIPT OF A COPY OF THIS AGREEMENT,  
INCLUDING THE ARBITRATION CLAUSE AT PARAGRAPH 17.**

Client and Adviser have executed this Agreement on the dates set forth below. By signing below, each party acknowledges that it has received, read, understands, and agrees to be bound by and fulfill the obligations set forth in this Agreement.

CLIENT

CLIENT

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name (Print)

\_\_\_\_\_  
Name (Print)

\_\_\_\_\_  
Title or Capacity

\_\_\_\_\_  
Title or Capacity

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

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

FOR PALO CAPITAL, INC.

\_\_\_\_\_  
By Kevin F. O'Grady

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

**On completion, mail this document to:**

Palo Capital, Inc.  
31 Ocean Heights  
Newport Beach CA, 92657  
949.715.2126

A counter-signed copy will be returned to you by mail.



**APPENDIX B**  
**ADVISORY FEES**

**Schedule 1: Asset-Based Fee Only**

Advisory fees for Balanced and Equity Income Accounts, and for Capital Appreciation Accounts for which the Client does not elect Schedule 2, are charged in accordance with Schedule 1 below. Schedule 1 Fees are charged quarterly in arrears based on the average daily balance of the Client's assets under management during the quarter.

First \$500,000	1.35% per annum
Next \$500,000	1.25% per annum
Next \$1.0 million	1.00% per annum
Next \$2.0 million	0.90% per annum
Amounts above \$4.0 million	0.75% per annum

For purposes of the tiers within all fee schedules, Adviser will generally allow aggregation of assets from different accounts held by members of Client's immediate family living in the same household, subject to review of the specific circumstances. Client should not assume aggregation of accounts with different ownership until such aggregation has been approved in writing by Adviser.

**Schedule 2: Asset & Performance-Based Fees**

In Capital Appreciation accounts, clients who qualify under state and federal securities regulations including Rule 205-3 of the Advisers Act may elect to have fees charged based on a combination of assets under management and performance. To qualify, clients generally must have a minimum net worth of \$1,500,000 or \$750,000 under management with Adviser. Clients electing this option are charged the Schedule 2 Reduced Asset-Based Fee and the Schedule 2 Performance-Based Fee shown below.

*Schedule 2 Reduced Asset-Based Fee*

First \$500,000	0.85% per annum
Next \$500,000	0.75% per annum
Next \$1.0 million	0.55% per annum
Next \$2.0 million	0.45% per annum
Amounts above \$4.0 million	0.35% per annum

*Schedule 2 Performance-Based Fee*

The Schedule 2 Performance-Based Fee, is charged annually in arrears, and equals twenty-five percent (25%) of the amount by which the Account's total return exceeds the total return which the account would have had if its

return had equaled the total return for the S&P500 index as published by Standard & Poors for the applicable period.

Illustration

- Account value start of year = \$100,000
- Account appreciation during year = \$8,000
- S&P500 total return for year = 6%
- Account appreciation assuming 6% return = \$6,000
- Excess return = \$8,000 - \$6,000 = \$2,000
- Performance-Based Fee = 25% of \$2,000 = \$500

If the account return is negative, no performance fee is charged, even if the return is better (less negative) than the return for the benchmark index. Total return includes realized and unrealized capital gains, dividends and other income. The determination of total return on the client account is after brokerage commissions and any custodian fees, but before taxes and the Asset-Based Fee.

Proration. In calculating the Performance-Based Fee, adjustment is made for deposits and withdrawals during the quarter, with comparison made to the percentage change in the S&P500 index during the portion of time the applicable funds were under management.

Performance Fee Election. To elect Schedule 2, Client must complete Appendix B-1 "Election of Performance-Based Fee." Election is effective upon acceptance by Adviser. Election may be changed up until the first business day of the calendar quarter, but may not be changed for the remainder of that quarter.

**Fixed Income Accounts**

Fixed Income Accounts are charged an asset-based fee according to the following schedule:

First \$500,000	0.50% per annum
Next \$500,000	0.40% per annum
Next \$1.0 million	0.35% per annum
Amounts above \$2.0 million	0.30% per annum

**Reduced Fees for Cash & Money Market Funds.**

If the average daily balance for cash and money market funds in an Account charged under either Schedule 1 or 2 exceeds 20% of the account's average daily value, the asset-based fee on cash/money market funds in excess of 20% of the account's average daily value will be 0.20%.

APPENDIX B-1 (Optional)

ELECTION OF FEE SCHEDULE 2: ASSET & PERFORMANCE BASED FEE

Complete this page only if you elect Fee Schedule 2. To choose Fee Schedule 1, simply ignore this Appendix B-1. Schedule 1 is the default and will apply to all Capital Appreciation, Balanced, and Equity Income Accounts unless this Election is completed and is accepted by Palo Capital.

\_\_\_\_\_  
Legal Name of Account ("Account")

Client hereby elects to have Advisory Fees for the above referenced Account, which is managed by Adviser under Adviser's "Capital Appreciation" strategy, charged in accordance with Schedule 2 as described under Appendix B: Advisory Fees.

Client acknowledges client's understanding of each of the following:

1. Client declares that Client has a net worth of more than \$1,500,000.
2. Client may withdraw this election at any time. If withdrawn on or before the first business day of a calendar quarter, the Account will be charged for that quarter in accordance with Schedule 1. If withdrawn after the first business day of a quarter, that quarter (as well as the prior quarter) will be charged in accordance with Schedule 2, and subsequent quarters will be charged under Schedule 1. Client may change fee schedules only one time in a calendar year.
3. If the Account's total return exceeds the benchmark stated in Appendix B and the return is not less than zero, election of the Schedule 2 - Asset & Performance-Based Fee may result in a higher fee in comparison to the fee that would have resulted under the Schedule 1 - Asset-Based Fee Only.
4. Use of a performance-based fee may create an incentive for Adviser to take additional risks in comparison to a fee based only on asset value.
5. This Election is subject to Client's meeting the requirements related to the use of performance-based fees under state and federal securities regulations, including Rule 205-3 of the Advisers Act.
6. This Election will be effective only upon acceptance by Adviser.

CLIENT

CLIENT

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name (Print)

\_\_\_\_\_  
Name (Print)

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

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

FOR PALO CAPITAL, INC.

\_\_\_\_\_  
By Kevin F. O'Grady

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