Appendix A: Written Response Packet

Investment cONSULTANT SERVICES Agreement

This Investment Consultant Services Agreement (the "Agreement"), is entered into this \_\_\_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_\_\_\_, by and between the FLORIDA PREPAID COLLEGE BOARD ("the Board"), an agency of the State of Florida, and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ ("Contractor"), a corporation doing business under the laws of the State of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ and doing business in the State of Florida.

## Background

* + - * 1. The Florida Prepaid College Board (“Board”) administers two Qualified Tuition Programs for the State of Florida pursuant to Section 529 of the Internal Revenue Code: the Stanley G. Tate Florida Prepaid College Program (“Prepaid Program”) and the Florida 529 Savings Program (“Savings Program”). The Prepaid Program allows Florida families to prepay the cost of college tuition, required fees, and dormitory housing at a state college or university in Florida at a price lower than the projected future cost of enrollment. The Savings Program allows families nationwide to invest for future higher education expenses.
        2. In addition, Section 1009.986, Florida Statutes, provides that the Florida ABLE Savings Program (Florida ABLE) shall be operated through Florida ABLE, Inc., a direct support organization established by, and operated pursuant to a contract with the Board.

In consideration of the services to be performed and the payments to be made, together with the mutual covenants and conditions hereinafter set forth, the parties agree as follows:

## Representations and Warranties

The Contractor represents and warrants that:

* + - 1. It is a corporation duly organized, validly existing, and in good standing under the laws of the United States and the State of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ and has the power and authority to carry on its business as now being conducted and has the power and authority to execute, deliver, and perform this Agreement; and
      2. It is duly qualified and in good standing in such other states of the United States, as well as in such foreign countries or political subdivisions thereof, as is necessary to perform this Agreement; and
      3. It has taken all actions necessary to authorize the execution, delivery, and performance of this Agreement, and this Agreement is a valid and binding obligation of the Contractor enforceable against it in accordance with its terms except as may be limited by federal and state laws affecting the rights of creditors generally and except as may be limited by legal or equitable remedies; and
      4. It has made, obtained, and performed all other registrations, filings, approvals, authorizations, consents, licenses, or examinations required by any government or governmental authority, domestic or foreign, or required by any other person, corporation or other entity in order to execute, deliver, and perform this Agreement; and
      5. To the best of the Contractor’s knowledge, neither the execution, delivery, nor performance of this Agreement by the Contractor will violate any law, statute, order, rule, or regulation of, or judgment, order or decree by, any federal, state, local, or foreign court or governmental authority, domestic or foreign, to which the Contractor is subject nor will the same constitute a breach of, or default under, provisions of any agreement or contract to which it is a party or by which it is bound.
      6. It is lawfully organized and constituted under all federal, state and local laws, ordinances and other authorities of its domicile and is otherwise in full compliance with all legal requirements of its domicile.
      7. It is possessed in the legal authority and capacity to enter into and perform this Agreement.
      8. It has been duly authorized to operate and do business in all places where it will be required to conduct business under this Agreement; that it has obtained, at no cost to the State of Florida, all necessary licenses and permits required in connection with this Contract; and that it will fully comply with all laws, decrees, labor standards and regulations of its domicile and wherever performance occurs during the performance of this Agreement.
      9. It has no present interest nor will acquire any interest which would conflict in any manner with the Contractor’s duties and obligations under this Agreement.

## Scope of Services

Pursuant to the authority of Section 1009.971(5)(d), Florida Statutes, the Contractor will serve as an investment consultant for the Prepaid Program, Savings Program and Florida ABLE. In this capacity, the Contractor will provide the following services:

* + - 1. **On-going Investment Consultant Services**:

For the Prepaid Program, Investment Program and Florida ABLE, the Contractor shall:

Interface with the Board’s investment custodians to obtain the information necessary to validate investment performance calculated by the Board’s custodian and prepare the reports required pursuant to this Description of Services.

Prepare separate monthly reports (gross and net of fees where applicable) for the Prepaid Program, Investment Plan and Florida ABLE which will be delivered to Board offices within fifteen (15) days from the end of the prior month, and must contain, at a minimum:

Monthly, quarter to date, fiscal year to date, 1 year, 3 year, 5 year, and inception to date performance summary by investment manager, as compared to the benchmark.

Monthly, quarter to date, fiscal year to date, 1 year, 3 year, 5 year and inception to date performance summary by investment option, as compared to the benchmark (Investment Plan and Florida ABLE only).

Financial reconciliation by investment manager.

Asset distribution across investment managers/investment options.

Prepare a separate, comprehensive quarterly investment performance and analysis report (gross and net of fees where applicable) for the Prepaid Program, Investment Plan and Florida ABLE which will be delivered to Board offices within forty-five (45) days from the end of the prior calendar quarter, and must contain, at a minimum:

A review of the current market environment, including a summarization of the most recent events in the financial markets and a review of the performance of the major market indexes.

Total Fund analysis for total program, each asset class and individual managers (Asset Allocation, Peer Rankings, Return Attribution Analysis, etc.).

A review of the investment results in the context of their objectives and benchmarks, along with specific commentary on factors affecting performance.

Quarter, fiscal year to date, 1 year, 3 year, 5 year, and inception to date performance summary by investment manager, as compared to the benchmark.

Quarter, fiscal year to date, 1 year, 3 year, 5 year and inception to date performance summary by investment option, as compared to the benchmark (Investment Plan and Florida ABLE only).

Financial reconciliation by investment manager.

Fee analysis for each investment manager.

Executive Summary to be presented to Board members.

Attend all meetings and workshops of the Board, the Board’s investment committee and the Florida ABLE Board. Participation in these meetings will be, at a minimum:

Make in-person presentations of the quarterly investment performance and analysis reports and other topics, as required by the Board.

Be generally prepared to comment on agenda items and to answer questions raised during those meetings and workshops.

Consult by telephone and in person on an unlimited basis with the Board and its staff on matters of investment policy, portfolio design and structure, investment strategy, investment risk, asset allocation, program structure, current investment managers and the selection of new investment managers. Make the Contractor’s collective knowledge, experience and research available to the Board and its staff on these and other investment related topics. In connection with such services and as required by the Board, the Contractor will provide written materials including presentations, report production and documentation.

Advise the Board and its staff orally and in writing on various matters related to the Board’s investment portfolios and activities, including, without limitation thereto, performance matters, investment policy, portfolio design and structure, investment strategy, investment risk, asset allocation, program structure, current investment managers and the selection of new investment managers. If written advice is requested, then such written advice shall be limited to presentations, letters and/or memoranda that convey the essence of the Contractor’s advice on a particular matter.

Review the Board’s Comprehensive Investment Plans and Guidelines and other Board policies concerning investments and investment managers and advise the Board regarding any suggested changes or enhancements.

Make available to the Board and its staff all of the Contractor’s ongoing research, including topical papers, client memoranda or current issues for institutional investors.

Stay informed about and have knowledge regarding, without limitation thereto, the Board’s investment policies, the Board’s asset allocation policies as well as portfolio rebalancing and asset allocation activity, benchmarks used for the Board’s various investment portfolios and asset classes, rates of portfolio turnover and management fees for the Board’s individual investment portfolios and investment managers to maintain an understanding of the investment structure for the Board’s investment portfolios and the Trust Fund.

On a monthly basis or as otherwise required by the Board, review the Board’s investment managers’ disclosure of any non-compliance with the Comprehensive Investment Plans and report recommendations for corrective actions to the Board.

On a quarterly basis, report to the Board on any investment manager failing to meet any performance objective provided for in the Board’s Investment Guidelines or any similar successor document.

For the Prepaid Program the Contractor shall:

The Contractor will conduct one asset liability modeling study of the Prepaid Program during the initial term of this procurement and, if this procurement is renewed, one asset liability modeling study during the term of the first renewal. The asset liability modeling study will provide a fundamental review of the strategic relationship between the overall investment program and the liabilities for which they serve. The focus will be to provide the Board with the information required to manage the risk associated with the Prepaid Program. It will relate the risk/reward trade-offs of various investment programs to the liabilities relative to interest rate risk and tuition inflation scenarios. The process will guide the Board to an investment structure which balances the objective of surplus growth with the concern for surplus volatility.

Assess the Prepaid Program custom fixed income benchmark and provide recommendations on changes, as needed.

Lead the construction of the fixed income customized benchmark for the Prepaid Program using the appropriate liability profile as determined by the Prepaid Program’s actuary and Board.

Lead the construction of the Option Adjusted Spread (based on the Board’s current asset allocation for the liability driven investment benchmark) and Treasury Spot Yield Curve figures (based on Treasuries in the liability driven investment benchmark) to be provided to the Board’s Actuary for each actuarial run.

For the Savings Program and Florida ABLE the Contractor shall:

The Contractor shall work with the Board’s investment managers to develop and periodically revise and update the information and descriptive statements concerning the investment portfolios and the investment strategies used for the investment portfolios and investment options for inclusion in any prospectus or disclosure booklets. The Contractor is responsible for coordinating and overseeing this effort and for verifying the accuracy of the descriptions and information included within the prospectus or disclosure statement concerning the investment portfolios and the investment strategies used for the investment portfolios and investment options included. The Board may specify the requirements for such information (including compliance with the disclosure standards adopted by the College Savings Plan Network) or descriptive statements and the times when such information or statements must be submitted to the Board. Any such information and disclosure statements are subject to the prior written approval of the Board and the Board may require changes to the information or descriptive statements. The Board will work cooperatively with the Contractor to ensure the information and descriptive statements included in any prospectus or disclosure statement are accurate in all material respects and are not misleading.

Monthly, prepare the performance summary tables that are uploaded to the websites.

Annually, assess and provide recommendations on the Investment Plan and Florida ABLE investment option and fee structures.

Update the performance summary information for the Investment Plan which is provided with account statements to Investment Plan account owners.

* + - 1. **Investment manager searches**:

The Contractor shall provide not more than seven (7) investment manager searches and one (1) search for an investment custodian/trustee, during the initial term of this procurement. The same amount of searches will be provided during any renewal period. The investment manager searches shall include the following services:

The Contractor shall assist the Board in developing procurement requests for selection of investment managers including the minimum criteria each Contractor should meet to be considered and the criteria that the Board will use to evaluate responsive proposals from prospective investment managers.

Regardless of the number of respondents to the Board’s procurement requests for investment managers, the Contractor shall:

Perform quantitative and qualitative screenings of each respondent and prioritize them as Tier 1, 2 and 3 with Tier 1 being the highest recommended respondents. Include a summary with a description of the screening process and comments, conclusions and recommendations for each respondent.

Prepare a firm level overview of each respondent including, at a minimum: Firm history, key professionals with experience, asset structure (separate accounts, pooled, mutual funds), asset growth and assets under management by product.

Prepare a product overview for each respondent including, at a minimum: product history, key professionals with experience, asset growth, number of accounts by type (separate accounts, pooled, mutual funds), philosophy, research process, security selection, portfolio construction and sell discipline.

Prepare a comparison for each respondent’s investment return data with the appropriate benchmark data for each of the time periods included in the procurement request.

Provide peer universe performance rankings of each respondent (produce floating bar charts for 1, 3, and 5 year periods as available based on respondent-provided investment returns). Each respondent will be ranked relative to one another and against the relevant respondent’s investment manager universe.

Provide risk statistics for each respondent versus the benchmark and peer universe. Examples include: alpha, sharpe ratio, standard deviation, downside risk, tracking error, beta, r-squared, up market capture and down market capture.

Provide portfolio characteristics for each respondent versus the benchmark and peer universe. Examples include: weighted market cap, sector allocation, credit quality allocation, number of holdings, and style.

Provide an assessment of how closely the respondent’s proposed investment product fits with the proposed investment mandate.

At the Boards request, the Contractor shall participate in all site visits by the Board’s staff for selected respondents in addition to any presentations respondents provide to the Board or the Board’s staff.

* + - 1. **Special Consultation and Advisory Services:**

As required by the Board, the Contractor must provide special consultation and advice to the Board regarding various unanticipated investment matters, not otherwise included within these Description of Services. The Board and the Contractor shall agree upon the precise scope of these services and the estimated billable hours required to complete the assignment in writing prior to the Contractor beginning work on each project. Compensation paid to the Contractor for such services may not exceed a maximum of $50,000 per year.

* + - 1. **Decision Making Authority:**

During the performance by the Contractor of the services, the Board will retain and exercise all decision-making authority with respect to the management and administration of the Prepaid Program, Investment Program, Florida ABLE and the investments relating thereto.

* + - 1. **Control and Reporting:**

The Contractor shall perform the services under the direction and control of the Board. At a minimum, the Contractor’s contract manager shall meet with the Executive Director, Deputy Executive Director or Director of Finance and Accounting each quarter for the purpose of reviewing progress and providing necessary guidance in solving problems which arise. Prior to each meeting, the Contractor shall submit brief, written summaries of progress which outline the work accomplished during the reporting period, work to be accomplished during the subsequent reporting period and real or anticipated problems/issues which should be brought to the attention of the Board.

* + - 1. All services provided under this Contract for the Prepaid Program, Savings Program and Florida ABLE shall be provided in accordance with the ITN. All provisions of the ITN, the Questions and Answers regarding the ITN, and the Contractor’s Proposal submitted in response to the ITN are incorporated by reference and attached to this Contract as Restated Composite Exhibit “B”. In the event of any conflict in the opinion of the Board, between any provision of this Contract and the ITN, the Questions and Answers regarding the ITN or the Contractor’s Proposal, this Contract shall govern the conduct of the Board and the Contractor. In the event of any conflict, in the opinion of the Board, between the ITN and the Contractor’s Proposal, the ITN shall govern the conduct of the Board and the Contractor. In the event of any conflict in the opinion of the Board, between the ITN and the Questions and Answers regarding the ITN, the Questions and Answers regarding the ITN shall govern the conduct of the Board and the Contractor. In the event of any conflict, in the opinion of the Board, between Questions and Answers regarding the ITN and the Contractor’s Proposal, the Questions and Answers regarding the ITN shall govern the conduct of the Board and the Contractor.

## Covenants

The Contractor will immediately notify the Board (i) if it fails to comply with or will for any reason be unable to comply with any term, condition or provision of this Agreement; (ii) of any material change in the Contractor's partners, directors, or employees who exercise investment consultant services with respect to this Agreement or to any other material adverse change in the Contractor's condition, financial or otherwise, or in its business, corporate organization, or any such change which is or might be materially adverse to the Contractor; and (iii) following the occurrence of any happening or event which would cause any representation or warranty of the Contractor in Paragraph 1 hereof, to be no longer true and correct in all respects (assuming solely for the purpose of this covenant of notification that all such representations and warranties are deemed to be reiterated and brought down during each successive day during this Agreement) provided that nothing in the preceding sentence will detract from or modify any representation or warranty made by the Contractor in Paragraph 1 hereof.

## Consideration

* + - 1. The compensation of the Contractor for its services hereunder will be calculated and paid in such manner as will be agreed upon, from time to time, by the Contractor and the Board in accordance with Exhibit “A" hereto. All out of pocket expenses of the Contractor, including without limitation, mailing and telephone expenses, travel expenses, salaries, and overhead costs, are to be paid for by the Contractor.
      2. If the Contractor enters any agreement or contract with any other customer by which the Contractor agrees to provide equivalent services for a lower fee or price, or additional services for a comparable fee or price, the Contractor will provide written notice thereof to the Board within thirty (30) days of the date the Contractor enters such agreement or contract with another customer and will agree to amend the Agreement, resulting from the ITN to provide the equivalent fee or price or additional service to the Board.

## No Assignments

No assignment, transfer, or conveyance of this Agreement will be made by the Contractor without the prior written consent of the Board.

## Term of Contract

* + - 1. The duration of this Agreement shall be for five (5) years beginning \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, or such later date designated by the Board. It is the intent of the Board to review and define necessary services at the end of five (5) years. The Board reserves the option to renew the contract or any portion of the Agreement under the terms and conditions set forth in this ITN, or other such conditions as may be negotiated between the parties, for five (5) additional one (1) year periods. Renewal may be divided into increments or may be executed for a complete term. Renewal shall be contingent upon, among other things, availability of funds, continued need and satisfactory performance by the Contractor. Moreover, the contract is subject to an annual performance evaluation of the successful firm.
      2. No provision for the automatic renewal or extension of this Agreement is effective. Any renewal or extension will be in writing and executed by both parties to this Agreement. If the Board elects to renew this Agreement, the Board may prepare and submit to the Contractor for execution a renewal agreement containing all of the then-existing terms of this Agreement (except for any additional renewal period), and the Contractor shall execute said renewal agreement without any amendment (except for amendments required to update the Agreement to comply with changes of law or regulatory requirements) and return it to the Board.
      3. This Agreement will be subject to termination pursuant to Paragraph 23.

## Independent Contractor

* + - 1. The Board and Contractor represent that they are acting in their individual capacities and not as employees, partners, or associates of one another.
      2. The Contractor will establish and assume direct responsibility for acting as the service provider for the Board in accordance with the provisions of the ITN. Accordingly, the Contractor shall designate a Contract Manager whose primary responsibility is to work with the Board staff in making certain that all contract terms are strictly observed. At any time during the term of the contract, the Board reserves the right to reject the Contractor’s choice of Contract Manager and may terminate the contract if a Contract Manager acceptable to the Board cannot be made available by the Contractor.

## Indemnifications

* + - 1. The Contractor will act as an independent contractor and not as an employee of the Board in the performance of the tasks and duties which are the subject of this contract. The Contractor shall be liable, and agrees to be liable for, and shall indemnify, defend, and hold the Board harmless from all claims, suits, judgments, or damages (including litigation costs and reasonable attorney's fees) arising from the Contractor’s fraud, negligence or misconduct, or any subcontractor’s fraud, negligence or misconduct, of the tasks and duties which are the subject of this Agreement, including, but not limited to:
         1. Obtaining consent of any nature whatsoever;
         2. Protecting the Board against claims for the unauthorized use of name or likeness of any person, libel, slander, defamation, disparagement, piracy, plagiarism, unfair competition, idea misappropriation, infringement of copyright title, patent, slogan or other property rights and any invasion of the right of privacy. “Misconduct” shall mean any violation of Florida law, Board rules, or directives, state or federal securities laws and regulations implementing same, or the Board’s Comprehensive Investment Plan; and
         3. Actions arising under Chapter 119, F.S.
      2. The Contractor will notify the Board in writing immediately of any claim or suit against the Contractor arising from or related to the Contractor’s tasks and duties which are the subject of this Agreement. The Contractor shall not settle, compromise, mediate, agree to dismiss, or voluntarily agree to the entry of any judgment, temporary injunction or permanent injunction, in any claim or suit against the Contractor arising from or related to the Contractor’s tasks and duties which are the subject of this contract without the prior written authorization of the Board. Nothing in this Agreement authorizes the Contractor to waive the Board’s immunity from suit under the Eleventh Amendment to the United States Constitution.
      3. The provisions of this Paragraph shall survive the termination of this Agreement.
      4. Federal and state securities laws may impose liabilities under certain circumstances on investment advisers, managers or fiduciaries who act in good faith, and nothing herein shall constitute a waiver or limitation of any right that the Board may have under any such federal or state securities laws.

## Personnel

The Board may interview the personnel assigned by the Contractor to perform the services required under this Agreement. The Board may require the replacement of any personnel of the Contractor believed to be unable to carry out the responsibilities of the contract at any time. The Contractor shall warrant that personnel assigned to perform tasks under the Agreement will not be replaced or reassigned except as is reasonably necessary.

## Modification of Contract

This Agreement represents the entire agreement of the parties. Any alterations, variations, changes, modifications or waivers of provisions of this Agreement will only be valid when they have been reduced to writing, duly signed by each of the parties hereto, and attached to the original of this Agreement.

## Subcontractor

The Contractor may enter into written subcontracts for performance of its duties under this Agreement. All subcontractors will be subject to the prior written approval of the Board. The Board may disapprove any subcontractor if such disapproval would be in the best interests of the Board. The Board may inspect and acquire any of the subcontract documents executed between the Contractor and any subcontractor. No subcontract which the Contractor enters into with respect to performance under this Agreement will in any way relieve the Contractor of any responsibility for performance of duties stipulated in this Agreement. The Board reserves the right to communicate directly with any subcontractor’s Project Manager regarding performance of tasks required under this Agreement.

## Ownership of Materials

All materials and data produced for the Board under this Agreement will be owned by the Board unless otherwise agreed to in writing by the Board.

## Approval of Work

* + - 1. All work produced for distribution by the Contractor that includes reference to the Board, Prepaid Program, Savings Program or Florida ABLE must be approved in advance in writing by the Board or the Board’s representative.
      2. Each phase of the services provided by the Contractor will require the approval of the Board or the Board's representative.
      3. The Board reserves the right, in its own best interests, to unilaterally modify, reject, cancel or stop any and all plans, schedules or work in progress.
      4. Notwithstanding "prior approval" requirements which may be reserved to the Board under this Agreement and Part IV, Chapter 1009, Florida Statutes, such requirement does not relieve or mitigate Contractor’s ultimate responsibility for ensuring and guaranteeing the quality and timeliness of work and services to be provided under this Agreement. The Contractor is solely responsible for performing the services specified herein to the satisfaction of the Board.

## Taxes

The Board bears no responsibility for the payment of any federal, state, or local taxes which become payable by the Contractor or its subcontractor as the result of this Agreement.

## Public Access to Records and Confidentiality

* + - 1. Section 1009.981(6), Florida Statutes, provides that all information that identifies the benefactors or qualified beneficiaries of any participation agreement and s. 1009.98(6), Florida Statutes, provides that all information that identifies the purchasers or beneficiaries of any advance payment contract, is not subject to the provisions of s. 119.07(1), Florida Statutes, the Public Records Law. All other documents, papers, letters, or other materials relating to this Contract that are made or received by the Trustee in conjunction with the Contract, and which are required by law to be maintained, will be available for public access and for audit purposes for a period of three (3) years after the expiration of the Contract. Said records will also be maintained per Chapter 119 and other applicable Florida Statutes. The provisions of this Paragraph shall survive the termination of this Agreement.
      2. The Contractor agrees not to use or disclose any information concerning a recipient of services under this Contract for any purpose not in conformity with state and federal law or regulations except upon written consent of the recipient, or his responsible parent or guardian when authorized by law, if applicable.
      3. If the Contractor has access to confidential information in order to fulfill Contractor’s obligations under this Contract, Contractor agrees to abide by all applicable Board Information Technology Security procedures and policies. Contractor (including its employees, sub-contractors, agents, or any other individuals to whom Contractor exposes confidential information obtained under this Contract), shall not store, or allow to be stored, any confidential information on any portable storage media (e.g., laptops, thumb drives, hard drives, etc.) or peripheral device with the capacity to hold information. Failure to strictly comply with this provision shall constitute a breach of contract.
      4. The Contractor shall notify the Board in writing of any disclosure of unsecured confidential information of Board by Contractor, its employees, agents or representatives which is not in compliance with the terms of the Contract (of which it becomes aware). The Contractor also shall report to Board any Security Incidents of which it becomes aware, including those incidents reported to Contractor by its sub-contractors or agents. For purposes of this Contract, “Security Incident” means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of Board information in Contractor’s possession or electronic interference with Board operations; however, random attempts at access shall not be considered a security incident. The Contractor shall make a report to the Agency not more than seven (7) business days after Contractor learns of such use or disclosure. The Contractor’s report shall identify, to the extent known: (i) the nature of the unauthorized use or disclosure, (ii) the confidential information used or disclosed, (iii) who made the unauthorized use or received the unauthorized disclosure, (iv) what the Contractor has done or shall do to mitigate any deleterious effect of the unauthorized use or disclosure, and (v) what corrective action the Contractor has taken or shall take to prevent future similar unauthorized use or disclosure.

## Waiver

Failure of either party to this Agreement to object to or to take affirmative action with respect to any conduct of the other which is in violation of the terms of this Agreement will not be construed as a waiver of the violation or breach, or of any future violation or breach.

## General Conditions

* + - 1. The Board may cancel this Agreement if the Contractor refuses to allow public access to any documents, papers, letters, or other materials subject to the provisions of Chapter 119, Florida Statute, and made or received by the Contractor in conjunction with the Agreement.
      2. The Board will operate the Florida Prepaid College Plan in compliance with the requirements of s. 529 of the Internal Revenue Code and the federal securities laws.
      3. Notwithstanding "prior approval" requirements which may be reserved to the Board under this Agreement and Part IV, Chapter 1009, Florida Statutes, such requirement does not relieve or mitigate Contractor’s ultimate responsibility for ensuring and guaranteeing the quality and timeliness of work and services to be provided under this Agreement. The Contractor is solely responsible for performing the services specified herein to the satisfaction of the Board.
      4. The Board reserves the right, in its own best interests, to unilaterally modify, reject, cancel or stop any and all plans, schedules or work in progress.
      5. The Contractor shall not initiate any communication with any member of the Board, on any matter related to this Contract or related to the duties of the Board under Part IV, Chapter 1009, Florida Statutes, or any successor statute, or which in any way relate to the Contractor’s activities. Except at publicly noticed meetings of the Board or any of its committees, all communication by the Contractor directed to the Board, or any member of the Board, shall only be sent to the Executive Director of the Board who will forward same to the Board or to the appropriate member. If the Contractor receives any communication from any member of the Board, the Contractor shall notify the Executive Director of the Board immediately, and shall take no further action on any matter related to this Contract or any other matter related to the duties of the Board under Part IV, Chapter 1009, Florida Statutes, or any successor statute, until advised by the Executive Director.
      6. Throughout the term of the Agreement, the Contractor shall comply with all applicable federal, state and local laws, regulations, rules or ordinances, as amended from time to time, including, but not limited to, s. 529 of the Internal Revenue Code, any federal regulations relating to qualified state tuition programs, applicable Florida laws, including without limitation Part IV, Chapter 1009, Florida Statutes, all administrative rules adopted by the Board, and the securities laws of the United States and the State of Florida. If during the course of the Agreement these laws, regulations, rules or ordinances are amended, the Contractor shall revise its services as necessary to preserve such compliance at no additional cost to the Board.
      7. The Board reserves the right to inspect the Contractor’s facilities at any time with prior notice.
      8. All references in the Contract to ss. 1009.97, 1009.971, 1009.972, 1009.98, or 1009.983, Florida Statutes, includes all successor statutes thereto.

## Audit of Control Procedures

The Board shall have the right to audit or inspect the Contractor’s, and any subcontractors', procedures and financial and accounting records, including, but not limited to, records, reports, and documents and such other supporting evidence necessary to verify compliance with the terms of this Agreement, using Board employees, its designees or other state agencies as provided by law. The Contractor shall include a provision substantially similar to the preceding sentence in all agreements between the Contractor and its subcontractors that are related to or for the provision of goods or services under this Agreement. If the Board exercises its right to audit, the Contractor and its subcontractors shall provide the Board or its auditors, adequate and appropriate work space as well as access to photocopy machines and the right to interview current employees and contact information for former employees. The provisions of this Paragraph shall survive the termination of this Agreement.

## Invoices

Any invoices submitted by the Contractor seeking payment for services rendered under the terms of this Contract will be submitted to the Board in sufficient detail to ensure proper pre-audit and post-audit thereof.

## Intent

The parties agree that time is of the essence in undertaking the provisions of this Agreement and mutually express their good faith in the execution of its terms.

## Interpretation, Venue and Dispute Resolution

* + - 1. The validity, interpretation and performance of this Agreement shall be controlled by and construed under the laws of the State of Florida. This Agreement shall be subject to the rules of the Florida Prepaid College Board.
      2. The sole and exclusive manner of resolution of all claims, disputes or controversies related to or arising under or from this Agreement shall be pursuant to Rules 19B-14.001, 19B-14.002, 19B-14.003, Florida Administrative Code, as amended from time to time.
      3. Any and all litigation arising under this Agreement shall be instituted in accordance with subparagraph (b) in Leon County, Florida. All appeals shall be to the First District Court of Appeals of the State of Florida.
      4. Any dispute concerning performance of the Contract shall be decided by the Board's designated contract manager, who shall reduce the decision to writing and serve a copy on the Contractor. The decision shall be final and conclusive unless within twenty one (21) days from the date of receipt, the Contractor files with the Board a petition for administrative hearing. The Board’s decision on the petition shall be final, subject to the Contractor’s right to review pursuant to Chapter 120 of the Florida Statutes. Exhaustion of administrative remedies is an absolute condition precedent to the Contractor's ability to pursue any other form of dispute resolution; provided, however, that the parties may employ the alternative dispute resolution procedures outlined in Chapter 120.
      5. The provisions of this Paragraph shall survive the termination of this Agreement.

## Insolvency of the Contractor

* + - 1. In the event the Contractor files for protection or reorganization or a petition for involuntary bankruptcy is filed against the Contractor, under the United States Bankruptcy Code, the Board may determine that it will require certain periodic financial reports and certain operational reports from the Contractor. The Contractor shall supply said reports as requested by the Board.
      2. Notwithstanding Paragraph 6.A., if the Contractor files for protection or reorganization or a petition for involuntary bankruptcy is filed against the Contractor, under the United States Bankruptcy Code, during the term of the contract, the term of this Agreement shall automatically convert to a single one-year contract terminating on the next June 30, after the bankruptcy petition is filed. In such event, the Board shall have the option to renew the Agreement or any portion of this Agreement in accordance with this Agreement or such conditions as may be negotiated between the parties for a number of one-year Agreement extensions which shall be equal to the number five minus the number of years remaining under the term of the Agreement pursuant to Paragraph 6.A., prior to the filing of the bankruptcy petition. Each such one-year Agreement renewal shall be contingent upon, among other things, availability of funds, continued need, and satisfactory performance by the Contractor. Such Agreement extensions shall be subject to an annual performance evaluation of the Contractor.

## Termination

* + - 1. The continuation of this Agreement shall be contingent upon the satisfactory performance and evaluation of the Contractor by the Board. The Board may terminate this Agreement or any part of this Agreement, without penalty or cost to the Board, at its convenience and such termination will be effective at such time as is determined by the Board. If both parties agree, this Agreement or any part of this Agreement resulting from the ITN may be terminated on an agreed date prior to the end of this Agreement without penalty to either party. In the event of termination, the Contractor shall provide to the Board all materials produced in connection with this Agreement within 10 days of notice of termination.

## DISPSITION OF FILES ON TERMINATION

Upon termination of this Agreement, the Contractor shall, in accordance with the regulations of the Securities and Exchange Commission, retain all reports, files and other tangible materials held by the Contractor that contain data or other information relating to the Board. If the Board should so request, the Contractor shall provide the Board with copies of any or all such materials retained by the Contractor. The Contractor covenants and agrees that the Contractor shall not disclose any such information related to the Board or provide copies of such materials related to the Board to any third party except as such disclosure or provision may be required by the regulations promulgated by the Securities and Exchange Commission or upon the specific direction and request of the Board. The provision of this paragraph shall survive the termination of this Agreement.

## Board Authority

This Agreement and all payments provided herein are subject to the provisions of Part IV, Chapter 1009, Florida Statutes, or any successor statute, and the rules of the Board. All references in this Agreement to Part IV, Chapter 1009, Florida Statutes, include all successor statutes.

## Annual Appropriations

Performance by the Board under this Agreement will be subject to and contingent upon the availability of monies lawfully appropriated to the Board and applicable for the purposes of this Agreement.

## Servability

If any provisions of this Agreement are held invalid or unenforceable, such invalidity or unenforceability will not affect any other provisions, and this Agreement will be construed and enforced as if such provisions had not been included.

## Titles

All titles, headings or captions respecting the sections or paragraphs of this Agreement are for convenience of reference only, and will not be construed as a part or limitation of those provisions to which they refer.

## FORM ADV

The Board acknowledges receipt of the Contractor’s disclosure statement Form ADV, Part II, more than 48 hours prior to the date of the execution of this Agreement.

## Contractor’s Investment Manager Client Listing Disclosure

The Board acknowledges receipt of the Contractor’s disclosure list of investment manager clients no later than the date of receipt of the execution of this Agreement.

## Notices

All notices, requests, instructions, other advice, or documents required hereunder will be in writing and delivered personally or mailed by first class mail, postage prepaid, as follows:

If to the Board: Kevin Thompson, Executive Director   
 1801 Hermitage Blvd., Suite 210, Tallahassee, Florida 32308   
 Telephone: (850) 488-8514   
 Facsimile: (850) 488-3555

With a copy to: GrayRobinson, P.A.   
 Attention: Jason Unger, Esquire   
 301 Bronough Street, Suite 600, Tallahassee, Florida 32301   
 Telephone: (850) 577-9090   
 Facsimile: (850) 222-3494

If to the Contractor: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_   
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With a copy to: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_   
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**IN WITNESS THEREOF**, the parties have caused this Agreement to be executed and attested by their respective officers thereunto duly authorized on the day and year first above written.

**FLORIDA PREPAID COLLEGE BOARD**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
Attested to by Its: Executive Director

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_   
Witness

**IN WITNESS THEREOF**, the parties have caused this Agreement to be executed and attested by their respective officers thereunto duly authorized on the day and year first above written.

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Attested to by Its: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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Witness