Investment Management Agreement

This Investment Management Agreement (the “Agreement”), is entered into this \_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 2019, by and between the FLORIDA PREPAID COLLEGE BOARD (“Board”), an agency of the State of Florida, and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (the “Manager”), a corporation operating under the laws of the State of \_\_\_\_\_\_\_\_\_ and doing business in the State of Florida to provide certain investment management services to the Board’s Prepaid Program, Savings Program, the Florida ABLE Program and the Florida Prepaid College Foundation (the “Programs”).

Background

An Invitation to Negotiate, Commingled Investment product Services for the Stanley G. Tate Florida Prepaid College Program, Florida 529 Savings Plan, the Florida ABLE Program and the Florida Prepaid College Foundation, ITN 19-03, (the “ITN”) was issued by the Florida Prepaid College Board on or about May 1, 2019. The Florida Prepaid College Board determined that the Manager has the expertise, organizational capacity, financial resources, and ability to perform services for the Programs as required pursuant to this Agreement.

**THEREFORE,** 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:

I. Services

A. Representations and Warranties

The Manager represents and warrants that:

1. It is a duly registered investment adviser under the Investment Advisers Act of 1940, as amended (the “Investment Advisers Act”), and further represents, warrants, and agrees that it will continue at all times during the term of this Agreement to be an investment adviser and manager, as well as a fiduciary as described in paragraph 2 of this Section and that it will comply with all federal and state security laws, rules and regulations applicable to the Manager, as well as all other state and local laws referenced by this Agreement and all rules adopted hereafter ; and
2. It is an "investment manager" as such term is defined in the Employees Retirement Income Security Act ("ERISA"), 29 U.S.C. § 1002(38), with respect to the assets designated by the Board as subject to this Agreement (the “Account”) and, by reason thereof, a fiduciary as such term is defined in ERISA., with respect to the Account. Nothing in this paragraph incorporates any other term or provision of ERISA and the terms and provisions of ERISA are not applicable to this Agreement; and
3. It is a corporation duly organized, validly existing, and in good standing under the laws of the United States and the State of Delaware 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
4. It is duly qualified and in good standing in such other states of the United States as well as in foreign countries or political subdivisions thereof, as is necessary to perform this Agreement; and
5. 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 Manager 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
6. 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
7. To the best of the Manager's knowledge, neither the execution, delivery, nor performance of this Agreement by the Manager will violate any law, statute, order, rule, regulation, judgment, order or decree by or of any federal, state, local, or foreign court or governmental authority, domestic or foreign, to which the Manager 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.
8. It is possessed in the legal authority and capacity to enter into and perform this Agreement.
9. 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 Agreement; 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.
10. It has no present interest nor will acquire any interest which would conflict in any manner with the Manager's duties and obligations under this Agreement.

**B. Description of Services**

1. The Board hereby appoints the Manager as an investment manager with the power to invest and manage the Account as set forth below.
2. The Manager is hereby directed to invest and reinvest the Account solely in each of the family of funds as the Board and the Manager may agree (the “Fund”). The Manager shall not have any discretion to invest the Account in any investment other than the Fund. It shall be solely the responsibility of the Board to determine when to liquidate all or a portion of the Account’s investment in the Fund, and the Manager shall not liquidate any portion of the Account’s investment in the Fund unless and until it receives written direction from the Board.
3. The Manager will provide access as may be requested by the Board to data and reporting of gross and/or net of fee investment performance; this may include monthly, quarterly and/or annual statements.
4. For the duration of the time that the Manager provides services under this Agreement, the Board shall have the right to use, and the Manager grants to the Board a royalty-free, non-exclusive and non-transferable license, in the United States, its territories and possessions, to use the registered mark “\_\_\_\_\_\_\_\_” and all related logos for use in marketing materials created by the Board relating to the Account’s investment in the Fund.
5. The Manager will provide disclosure materials concerning the Fund as may be requested by the Board for inclusion in any disclosure booklet for the Programs.
6. Upon request, and for a negotiated fee, the Manager will make presentations to the Board, or as otherwise reasonably requested by the Board on investment topics including but not limited to investment strategy, mechanics, environment, performance and projections.
7. All services provided under this Agreement with respect to the Account shall be provided in accordance with the ITN. All provisions of the ITN, the Questions and Answers regarding the ITN, and the Manager’s Proposal submitted in response to the ITN are incorporated by reference and attached to this Agreement as Composite Exhibit “A.”
8. The Manager agrees to discharge its duties, as investment manager and fiduciary, with respect to the Account solely in the interest of the Board and the beneficiaries thereunder and (a) with the care, skill, prudence, and diligence that a prudent man acting in the like capacity and familiar with such matters, under the then present circumstances, would use in the conduct of an enterprise of a like character and with like aims, and (b) in accordance with the investment instructions as the Board may furnish to the Manager in writing from time to time and with this Agreement.

**C. Duration and Consideration**

1. The duration of this Agreement shall be for seven (7) years beginning \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 2019, and continuing through \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 2026. The Board reserves the right, in its discretion, to renew this Agreement for seven (7) additional years under the terms and conditions set forth herein or under such terms and conditions as the parties may mutually agree upon. The renewal may be divided into increments or may be for a complete term. Any renewal or extension will be in writing and executed by both parties to this Agreement.
2. The continuation of this Agreement shall be contingent upon the satisfactory performance and evaluation of the Manager by the Board. The Board may terminate this Agreement or any part of this Agreement, without penalty or cost, at its convenience at any time and for any reason. Such termination will be effective at such time as is determined by the Board.
3. In the event the Manager files for protection or reorganization or a petition for involuntary bankruptcy is filed against the Manager, under the United States Bankruptcy Code, during the term of the Agreement, 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, prior to the filing of the bankruptcy petition. Each such one-year Agreement renewal shall be contingent upon continued need and satisfactory performance by the Manager.
4. The Manager will not be paid an investment management fee with respect to the services performed under this Agreement. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, will be compensated pursuant to the Statutory Prospectus for the Fund. The Board shall pay the fees associated with holding Class \_\_\_ shares of the Fund.
5. The Manager shall be compensated for services set forth in Section B.6 in such manner as will be agreed upon, from time to time, by the Manager and the Board.
6. All out-of-pocket expenses of the Manager, including without limitation, mailing and telephone expenses, travel expenses, salaries, and overhead costs, are to be paid for by the Manager, unless previously approved by the Board.
7. Any invoices submitted by the Manager seeking payment for services rendered under the terms of this Agreement shall be submitted to the Board in sufficient detail to ensure proper pre-audit and post-audit thereof.

**D. Nonexclusive Rights**

By this Agreement, the Board does not intend to grant any firm the exclusive rights to provide all materials or services required by the Board during the period covered by the Agreement.

**E. Severability**

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.

**F. No Assignments**

No assignment, as that term is defined in the Investment Advisers Act, nor any other form of assignment, transfer, or conveyance of this Agreement will be made by the Manager without the prior written consent of the Board.

II. Special Terms

A. Ownership of Materials

The Board owns all materials developed and produced for the Board under this Agreement, unless otherwise agreed to in writing by the Board. The provisions of this Paragraph shall survive the termination of this Agreement.

**B. Public Records**

Section 1009.987(2), Florida Statutes, provides that the personal financial and health information of a consumer held by the Board or the Programs, or an agent or service provider thereof, relating to an Board account or a participation agreement or any information that would identify a consumer is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I 35 of the State Constitution. All other documents, papers, letters or other materials relating to this Agreement that are made or received by the Manager in conjunction with this Agreement, and which are required by law to be maintained, must be available for public inspection and for audit purposes for a period of three (3) years after the expiration of this Agreement. Said records shall be maintained pursuant to Chapter 119, Florida Statutes, and other applicable Florida statutes. The Board may cancel this Agreement if the Manager refuses to allow public access to any documents, papers, letters, or other materials subject to the provisions of Chapter 119, Florida Statutes (and not subject to the general exemptions set forth therein), and made or received by the Manager in conjunction with this Agreement. The provisions of this Paragraph shall survive the termination of this Agreement.

**C. Interpretation and Dispute Resolution**

1. In the event of any conflict, in the opinion of the Board, between any provision of this Agreement and the ITN, the Questions and Answers regarding the ITN or the Response, this Agreement shall govern the conduct of the Board and the Manager. In the event of any conflict, in the opinion of the Board, between the ITN and the Response, the ITN shall govern the conduct of the Board and the Manager. 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 Manager. In the event of any conflict, in the opinion of the Board, between the Questions and Answers regarding the ITN and the Response, the Questions and Answers regarding the ITN shall govern the conduct of the Board and the Manager.
2. The validity, interpretation and performance of this Agreement shall be controlled by and construed under the laws of the State of Florida.
3. 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.
4. Any and all litigation arising under this Agreement shall be brought in accordance with subparagraph 3 in a court of competent jurisdiction in Leon County, Florida. All appeals shall be to the First District Court of Appeals of the State of Florida.
5. The provisions of this Paragraph shall survive the termination of this Agreement.

**D. Indemnification**

1. The Manager shall 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 Agreement.
2. The Manager shall be liable, and agrees to be liable for, and shall indemnify, defend and hold the Board harmless from:
   1. All claims, suits, judgments, or damages (including litigation costs and reasonable attorney’s fees) arising directly from fraud, gross negligence or willful misconduct in the Manager’s performance or any affiliate of Manager performance, of the services which are the subject of this Agreement. “Misconduct” means violation of applicable Florida law, or Board rules or directives, The Program’s Comprehensive Investment Plan, applicable state or federal securities laws and rules or regulations implementing such laws.
   2. All claims, suits, judgments, or damages (including litigation costs and reasonable attorney’s fees) relating to bodily injury, death of any person or damage to any real or tangible personal property arising from the Manager’s performance, or any affiliate of Manager’s performance, of the tasks and duties which are the subject of this Agreement.
   3. All third-party claims, suits, judgments, or damages (including litigation costs reasonable attorney’s fees) arising from the Manager’s performance or any affiliate of Manager’s performance of the services which are the subject of this Agreement.
3. The Manager shall notify the Board in writing immediately of any such claim or suit. The Manager 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 Manager arising from or related to the Manager’s tasks and duties which are subject of this Agreement without the prior written authorization of the Board. Nothing in this Agreement authorizes the Manager to waive the Board’s immunity from suit under the Eleventh Amendment to the United States Constitution or any application of sovereign immunity recognized by federal or state courts.
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.
5. The provisions of this Paragraph shall survive the termination of this Agreement.

**E. Prohibition of communication**

The Manager shall not initiate any communication with any member of the Board, on any matter related to this Agreement or related to the duties of the Board under Chapter 1009, Florida Statutes, or which in any way relate to the Manager’s activities. Except at publicly noticed meetings of the aforementioned boards or any of their committees, all communication by the Manager directed to the Board, shall only be sent to the Board’s Executive Director who will forward same to the appropriate party. If the Manager receives any communication from any member of the Board, the Manager shall notify the Board’s Executive Director immediately, and shall take no further action on any matter related to this Agreement or any other matter related to the duties of the Board under Chapter 1009, Florida Statutes, until advised by the Executive Director.

**F. Notices**

Where notice is to be sent, it shall be addressed to:

**FLORIDA PREPAID COLLEGE BOARD \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_   
Executive Director \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_   
1801 Hermitage Boulevard, Suite 210 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_   
Tallahassee, FL 32308 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_   
Telephone: (850) 488 - 8514   
Facsimile: (850) 488 - 3555

With copy to:

GrayRobinson, P.A.   
Attention: Attorney for Florida Prepaid   
301 S. Bronough Street, Suite 600   
Tallahassee, FL 32301   
Telephone: (850) 577 - 9090   
Facsimile: (850) 222 - 3494

**G. Titles**

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

**H. Binding Effect**

This Agreement shall be binding upon the parties, their related or resulting organizations, successors or transferees, administrative staff, agents, and attorneys.

1. **Waiver**

Failure of either party to this Agreement to object to or to take affirmative action with respect to any conduct of the other that 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.

1. **Invoices**

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

1. **Custody**

The Manager will not serve as custodian for the Account. The Account shall be held by a custodian duly appointed by the Board. The Manager is authorized to give instructions to the custodian with respect to all investment decisions regarding the Account. The Board agrees to notify the Manager as soon as practicable in advance of any change of its custodian. Nothing contained herein shall be deemed to authorize the Manager to take or receive physical possession of any assets of the Account, it being intended that the sole responsibility for safekeeping thereof and the consummation of all purchases, sales, deliveries and investments made pursuant to this Agreement shall rest upon the custodian.

1. **Directions to \_\_\_\_\_\_\_\_\_\_\_\_\_\_**

All directions by or on behalf of the Board to \_\_\_\_\_\_\_\_ shall be in writing signed by one or more persons authorized in writing by the Board.

1. **Manager Disclosure**

The Board acknowledges that it has received the Manager’s Form ADV Part 2 prior to entering into this Agreement.

1. **Entire Agreement; Amendments; Counterparts**

This Agreement constitutes the entire agreement between the parties and supersedes any prior written or oral agreements between them. No modification or waiver of this agreement is valid unless written and properly executed by both parties. This Agreement may be executed in counterparts, each of which shall be an original but all of which together shall constitute one agreement.

[**O. Authorizations**

This Agreement shall also serve as standing authorization for the Manager to accept investment direction from the Board’s account representatives at Northern Trust Company (“Representatives”). Such directions as the Manager may receive from the Representatives may include purchase and redemption orders, wire instructions, and such other instructions as may be necessary or appropriate to manage the Assets covered by this Agreement. This authorization shall continue until revoked in writing by the Board or the Manager.

*The remainder of this page was intentionally left blank*

**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:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Kevin Thompson

Executive Director

Attested to by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Witness\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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

STATE OF FLORIDA

COUNTY OF \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Before me, the undersigned authority, personally came and appeared KEVIN THOMPSON, EXECUTIVE DIRECTOR OF THE FLORIDA PRPAID COLLEGE BOARD, who is personally known to me or who has produced \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ as identification.

In witness whereof, I have placed my hand and seal in the county and state last aforesaid, this \_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_\_.

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

Notary Public, State of Florida at Large

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

My Commission Expires: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**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.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

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

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

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

Attested to by: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Witness \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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

STATE OF FLORIDA

COUNTY OF \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Before me, the undersigned authority, personally came and appeared \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, who is personally known to me or who has produced \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ as identification.

In witness whereof, I have placed my hand and seal in the county and state last aforesaid, this \_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_\_.

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

Notary Public, State of Florida at Large

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

My Commission Expires: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_