

NEBRASKA STATE TREASURER  
AND THE NEBRASKA INVESTMENT COUNCIL

**REQUEST FOR PROPOSALS**



Nebraska Educational Savings Trust  
529 Program Manager Services

July 8, 2019

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**ATTACHMENT A – PROGRAM MANAGEMENT AGREEMENT**

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**NEBRASKA STATE TREASURER AND THE NEBRASKA INVESTMENT COUNCIL**  
**Request for Proposals**

**I. INTRODUCTION**

A. Purpose

The Nebraska State Treasurer (the “Treasurer”) and the Nebraska Investment Council (the “Council” and, together with the Treasurer, the “Issuer”) issue this request for proposals (“RFP”) from qualified financial services companies (“Providers”) who wish to serve as the program manager of all four college savings plans within the Nebraska Educational Savings Trust (“NEST”). The four plans are:

- the Nebraska Educational Savings Trust Direct College Savings Plan (the “NEST Direct Plan”);
- the Nebraska Educational Savings Trust Advisor College Savings Plan (the “NEST Advisor Plan”);
- the State Farm 529 Savings Plan (the “State Farm Plan”); and
- the TD Ameritrade 529 College Savings Plan (the “TDA Plan”) (each, a “Plan” and collectively, the “Plans”).

The Plans are qualified tuition programs established and maintained pursuant to Internal Revenue Code (“Code”) Section 529 and Chapter 85 of the Nebraska Revised Statutes.

The Plans are currently subject to a program management agreement that will expire December 17, 2020. The Issuer intends to engage a program manager from among the responding Providers that demonstrates the greatest ability to provide the services set forth in Section IV and will agree to the terms set forth in the Program Management Agreement (Attachment A) (the “Program Manager”). The Issuer proposes the Program Management Agreement have an initial seven-year term (through December 16, 2027) that it may elect to extend for up to three additional one-year terms; however, the Issuer will consider other terms.

Complete Provider proposals are due **Monday, August 19, 2019**.

*Neither the issuance of the RFP nor the receipt of any proposals submitted pursuant hereto creates an obligation, express or implied, on the Issuer or the State of Nebraska (the “State”) to do business with or enter into a contract with any Provider or subcontractor.*

B. Minimum Qualifications

Each Provider must clearly state and demonstrate within the Executive Summary of its proposal that it satisfies all of the following requirements:

1. A minimum of five years in business and five years' experience with Code Section 529 plans.
2. Maintain or manage at least \$5 billion in assets.
3. Rated by two or more nationally recognized rating services within the three highest rating categories for financial condition and operational performance. If the Provider is privately held and has not been rated by a nationally recognized rating service, the Provider must describe the circumstances under which such ratings have not been conducted. The Provider shall also describe any alternative financial condition and operational performance measures that it believes will be helpful in considering the minimum qualifications of the Provider.
4. Maintain all applicable federal licenses and registrations necessary to conduct a financial services business.
5. Have sufficient capital to assume program manager responsibilities.
6. Maintain liability insurance, errors and omissions insurance, and cyber-liability insurance or comparable coverage that is acceptable to the Issuer.
7. Compliance with College Savings Plans Network ("CSPN") disclosure principles during the term of the Program Management Agreement.
8. Robust procedures and capabilities to ensure the preservation and protection of NEST and account owner data.

## **II. BACKGROUND INFORMATION**

### **A. Current Program Management Agreement**

Since 2010, First National Bank of Omaha has served as the Plans' program manager. The program manager provides administrative, marketing, customer service, investment management and other services to the Plans. The current program management agreement will expire December 17, 2020.

### **B. Current Recordkeeping Agreement**

First National Bank of Omaha subcontracts with Ascensus College Savings Recordkeeping Services, LLC to provide certain custody, accounting, administrative, tax information return preparation, transfer agency, recordkeeping and transaction processing services to the Plans. The current recordkeeping agreement will expire December 17, 2020.

C. Current Agreement with State Farm

Since August 2018, First National Bank of Omaha has provided all program management services to the State Farm Plan, pursuant to the current program management agreement.

D. Current Distribution Agreement with TD Ameritrade

Since 2010, the TDA Plan has been subject to a distribution agreement whereby First National Bank of Omaha subcontracted some of its marketing duties for the TDA Plan to TD Ameritrade. The distribution agreement will expire December 17, 2019; however, the parties to the agreement are currently negotiating an extension. The new distribution agreement is anticipated to have an initial term of five years and be automatically extended for one-year terms thereafter, unless any party provides notice at least 180 days prior to the scheduled expiration date.

E. The Treasurer

1. John Murante has served as Nebraska State Treasurer since January 2019. Before becoming Treasurer, he represented Nebraska's 49<sup>th</sup> Legislative District in the Nebraska Unicameral.
2. Rachel Biar, Assistant State Treasurer, has over 14 years of experience managing Nebraska's college savings plans. She currently serves on the College Savings Plans Network's Executive Board. She is Co-Chair of the Member Relations Committee and a member of the Legal and State Affairs Committee. Ms. Biar is also an active member of the College Savings Foundation.
3. The Treasurer's Office is comprised of five divisions: Treasury Management; NEST College Savings Program; ABLE Program; Nebraska Child Support Payment Center; and Unclaimed Property.

F. The Nebraska Investment Council

1. The Council is an independent state agency consisting of an eight-member governing board and a nine-member investment team.
  - a. Members of the governing board are:
    - (i) Gail Werner-Robertson, Chairwoman
    - (ii) John Conley, CFA
    - (iii) Richard DeFusco, Ph.D., CFA
    - (iv) John Dinkel
    - (v) Keith Olson, CFA
    - (vi) Cecelia Carter (ex officio)
    - (vii) Randy Gerke (ex officio)
    - (viii) John Murante (ex officio)

- b. Members of the investment team are:
  - (i) Michael Walden-Newman
  - (ii) Kathy Dawes
  - (iii) Jeremiah Garber, CFA
  - (iv) Jennifer Hatfield
  - (v) Joseph Jurich
  - (vi) Chris Sanders
  - (vii) Joyce Schlautman
  - (viii) Joe Spitznagel
  - (ix) JoLynn Winkler, CFA
- 2. The Council manages \$27 billion across 32 investment programs, including NEST. For all these entities, the Council's responsibilities are primarily asset management.
- 3. The Council retains authority with respect to all investment options offered by the Plans.
- 4. It is the goal of the Issuer that the investment strategy and structure of the Plans:
  - a. maximize the return and minimize the risk of loss to each account owner, beneficiary, and contributor;
  - b. ensure availability of funds to meet the higher education needs of beneficiaries, regardless of their age;
  - c. offer account owners ample choice of investment options and fund selections; and
  - d. minimize the overall fees charged to the Plans and account owners.

G. The Plans

- 1. The Plans are available on a nationwide basis. It is the Treasurer's goal to offer Plans that are widely regarded as among the best in the country. To this end, the Plans must maximize benefits to account owners through best-in-class investments at minimal cost to account owners. The total expense ratio for the Plans should reflect those goals.
- 2. The Plans must operate without any cash outlay from the Issuer, the Plans themselves (except for the use of an administration fee), or the State.
- 3. The Plans do not have minimum contribution requirements or minimum amounts that must be maintained in Plan accounts. The maximum contribution limit is \$400,000 for the same beneficiary across all NEST accounts.
- 4. The NEST Direct Plan offers 24 investment options, of which three are age-based, six are static, and 15 are individual. The NEST Advisor Plan

offers 28 investment options, of which three are age-based, six are static, and 19 are individual. The State Farm Plan offers eight investment options, of which one is age-based and seven are static. The TDA Plan offers 25 investment options, of which three are age-based, five are static and 17 are individual. The Issuer intends to continue to structure the Plans as an open-architecture platform. To that end, Providers are encouraged to present streamlined, simplified investment options as part of any proposal. However, the Issuer is willing to entertain alternative structures and encourages each Provider to present its best recommended lineup of investment options.

5. The Plans do not charge an enrollment fee. The NEST Direct Plan, NEST Advisor Plan and TDA Plan do not charge an annual account fee. The State Farm Plan charges a \$25 annual account fee, but waives the fee for any account that exceeds \$20,000 on the last day of the period that the fee is assessed. However, the Issuer is willing to entertain alternative structures and encourages each Provider to present its best proposal.
6. Nebraska law does not currently allow the use of NEST contributions to pay for K-12 tuition. Thus, withdrawals from the Plans to pay for a beneficiary's K-12 tuition are considered non-qualified under Nebraska law.
7. The following are the total number of funded accounts and assets in each Plan for annual periods since December 31, 2013 and for the period ending March 31, 2019:

Date	# of NEST Accounts	Total Assets				Average Account Balance
		NEST Direct	NEST Advisor	State Farm Plan	TDA Plan	
3/31/2019	269,465	\$2,142,254,203	\$1,149,071,596	\$565,468,300	\$1,343,540,871	\$19,697
12/31/2018	267,018	\$1,980,846,687	\$1,063,272,652	\$507,825,254	\$1,213,851,758	\$18,255
12/13/2017	256,116	\$2,055,533,613	\$1,103,631,662	\$518,315,606	\$1,177,382,478	\$19,303
12/31/2016	249,069	\$1,817,221,946	\$969,196,078	\$452,097,113	\$957,836,667	\$17,108
12/31/2015	246,387	\$1,702,010,933	\$900,782,013	\$414,292,004	\$832,622,651	\$15,824
12/31/2014	228,121	\$1,688,719,040	\$894,486,645	\$393,311,381	\$782,025,977	\$16,667
12/31/2013	214,023	\$1,570,016,466	\$821,855,912	\$346,325,858	\$673,986,187	\$16,099

H. New Programs

Legislative Bill 610 (2019) created the following programs as enhancements to NEST:

1. Meadowlark Program. The purpose of the program is to provide qualifying individuals (children born on or after January 1, 2020 who are residents of Nebraska at the time of birth) with funding to help pay for qualified higher education expenses at eligible educational institutions in Nebraska. Funding will be held in the Meadowlark Endowment Fund, which will consist of

private contributions and an equivalent amount transferred by the State Treasurer, and will be invested by the Council.

Each year, the Treasurer will notify the parents or legal guardians of qualifying individuals of the program and provide them with the opportunity to opt-out. Any qualifying individuals who do not opt-out will have a NEST account opened on their behalf. The Treasurer will determine the amount of investment income generated by the Meadowlark Endowment Fund during the prior calendar year and evenly distribute the income to the accounts opened in the prior year. NEST will own all the accounts opened under the program.

2. Employer Matching Contribution Incentive Program. The purpose of the program is to encourage employers to make matching contributions to NEST accounts by providing them with up to \$250,000 annually in incentive payments. Incentive payments will be held in the College Savings Incentive Cash Fund, which will consist of contributions from any private individual or private entity, and will be invested by the Council; the fund will not be part of NEST. The program will take effect January 1, 2022.

Employers will be eligible to receive an incentive payment through the program by submitting an application to the Treasurer each year that details the number of employees for whom matching contributions were made in the prior year and the amount of such contributions. Approved employers are eligible to receive an incentive payment equal to 25% of the total matching contributions made during the prior year, up to \$2,000 per contributing employee.

3. College Savings Plan Low-Income Matching Scholarship Program. The purpose of the program is to provide up to \$250,000 annually in matching scholarships to NEST account owners to help pay for qualified higher education expenses at eligible educational institutions in Nebraska. Funding will be held in the College Savings Incentive Cash Fund, which will consist of contributions from any private individual or private entity, and will be invested by the Council; the fund will not be part of NEST. The program will take effect January 1, 2022.

Individuals will be eligible for the program if the NEST account beneficiary is a Nebraska resident and part of a family whose household income for the most recent tax year is no more than 250% of the federal poverty level. Individuals may apply to participate in the program by submitting an application to the Treasurer each year. Approved individuals will be eligible to receive a matching scholarship equal to 100% of the participant's contribution (if the beneficiary is part of a family whose household income is more than 200% of the federal poverty level) or 200% of the participant's contribution (if the beneficiary is part of a family whose household income



is no more than 200% of the federal poverty level). All matching scholarships will be capped at \$1,000 per approved applicant per year.

### III. ANNOUNCEMENTS

#### A. Response Submission

Providers who are interested in responding to this RFP shall submit a complete proposal via e-mail to [rachel.biar@nebraska.gov](mailto:rachel.biar@nebraska.gov) no later than 3:00 p.m. CDT on **Monday, August 19, 2019**.

In addition, each Provider should submit 6 printed copies of its proposal to:

Nebraska State Treasurer  
Attention: Rachel Biar, Assistant Treasurer  
Room 2005, State Capitol Building  
P.O. Box 94788  
Lincoln, NE 68509-4788

Hard copies of each proposal must be received no later than **Wednesday, August 21, 2019**. Proposals received in whole or in part after these dates will not be accepted.

Responses should be presented in accordance with the requirements of Section V.

#### B. Clarification of Information

It is the Provider's responsibility to seek clarification of the information contained in the RFP. Inquiries should include a specific reference to the question in the RFP for which clarification is sought. Questions for clarification must be submitted in writing no later than 3:00 p.m. CST on **Wednesday, July 24, 2019** to:

Rachel Biar, Assistant State Treasurer  
Nebraska State Treasurer's Office  
P.O. Box 94788  
Lincoln, NE 68509  
[rachel.biar@nebraska.gov](mailto:rachel.biar@nebraska.gov)

#### C. Interviews

Following the receipt and evaluation of proposals, the Issuer intends to conduct interviews of finalists in Nebraska in October 2019. Providers are not guaranteed an interview. More information will be provided to finalists regarding the interview format at a later date.

#### D. Designated Contact

Rachel Biar is the designated and sole point of contact for the RFP. Any contact concerning this RFP should be directed to Ms. Biar in writing. No other contact concerning this RFP

shall be made with the Issuer or its employees or delegates during the selection process. Failure to honor this request may result in disqualification of the Provider.

#### IV. SCOPE OF SERVICES

The Provider is expected to provide all administrative, recordkeeping, compliance, customer service, marketing, distribution, trust custody, transition, and implementation services (“Services”) for the Plans, as further discussed below.<sup>1</sup> The Provider is expected to execute Services in accordance with the performance standards set forth in Section IV.E.IV.E, as well as all applicable federal and state law, administrative rules, regulations, and CSPN disclosure principles.

A proposal that takes exception to any portion of the Scope of Services may be rejected.

##### A. General Requirements

1. Mandatory Contractual Terms. By submitting a proposal, a Provider is deemed to have accepted the terms of this RFP. **Any exceptions to the Program Management Agreement (Attachment A) must be clearly identified in the proposal’s Executive Summary**; a Provider is otherwise deemed to have accepted the terms of the Program Management Agreement.
2. Compensation and Payment. The Provider will be compensated for Services solely through fees collected from Plan account owners, consistent with the Provider’s pricing schedule (Attachment B). The Provider must pay all of its direct and indirect expenses in connection with the Plans (including the Provider’s annual marketing commitment, the preparation and distribution of program disclosure materials, and investment fees). Any 12b-1 fee, revenue-sharing payment, sub-transfer agent or related fee paid in connection with a Plan’s investment in any mutual fund shall be an asset of NEST.
3. Audits. The Provider will supply to the Issuer all accountings, reports and information as may be required by either party, Code Section 529, federal or state securities laws, the Municipal Securities Rulemaking Board (“MSRB”), or State statutes. Nebraska law requires an annual audit by either the Auditor of Public Accounts or an independent, licensed accounting firm designated by the Treasurer. Any Provider must submit to these audit requirements at **no cost** to the State, the Issuer, NEST, or the Plans.

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<sup>1</sup> As the marketing and distribution of the TDA Plan is currently under negotiation (see Section II.D), the Provider may not be asked to provide certain marketing and distribution services to the TDA Plan.

4. Separate Accounts. Each Plan account must be maintained as a separate account, identifying each account owner by an arbitrary identifier rather than by Social Security number.
5. Commissions. The Provider must provide a means to make commission and other sales-related payments to third-party financial intermediaries (e.g., NEST Advisor Plan advisors) in an efficient manner.

B. Financial Services

The Provider must possess the requisite knowledge and demonstrate previous experience in providing investment management services, including the ability to consistently deliver investment returns that meet or exceed their respective indexes in three- to five-year time periods. The Provider must:

1. Develop and recommend, for Council approval, investment portfolios, underlying funds and fee structures that appeal to a wide range of investors with various risk tolerance levels and contribution amounts. Any differences in investment options between the Plans should be clearly set forth in the proposal.
  - a. Any fee structure must allow the average account owner to easily understand how fees will be charged, when, and in what amount.
  - b. The Provider must propose the specific investments that would comprise each of the proposed investment portfolios. The Provider must also propose other investment portfolios along with the specific investments and an explanation of the consumer benefits of the additional portfolios. The Provider may design distinct investment options for each of the Plans.
  - c. Proposed investment menus should have a suitable option to serve as a default investment.
  - d. Investments must have a clear investment strategy that includes a reasonable set of assumptions about expected risks and returns.
  - e. Investments must have sufficient track records by which investment merit may be analyzed prior to inclusion in the Plans. The Provider must strive to provide underlying investment options that have a Morningstar 4-5 star or Gold or Silver rating, or similar.
  - f. The Provider must utilize institutional share class, when available and appropriate.

- g. The Provider must recommend, if applicable, best-of-breed asset allocation strategy by investment sector for each age- and/or target-based portfolio.
  - h. Any investments that would comprise an investment portfolio must meet the requirements of the Council's Statement of Investment Philosophy (which can be accessed at [https://nic.nebraska.gov/sites/nic.nebraska.gov/files/doc/Governance%20Policies%20IPS%203-14-19\\_2.pdf](https://nic.nebraska.gov/sites/nic.nebraska.gov/files/doc/Governance%20Policies%20IPS%203-14-19_2.pdf)). The Council has final authority with regard to the investment options offered under the Plans and the asset allocation within each investment option.
2. On at least a quarterly basis, and more frequently as necessary, monitor the performance of each investment portfolio and underlying funds and make recommendations to the Council and its financial advisor.
  3. On at least a quarterly basis, and more frequently as necessary, monitor qualitative aspects of the underlying funds and provide timely communications to the Council and its financial advisor of significant changes in the investment climate, market conditions or investment philosophies that could affect Plan investments.
  4. If applicable, provide appropriate and suitable investments for the transfer of investments in the current Plans.
  5. Update at least daily on the Plans' websites performance information with regard to each investment option. The Provider must also comply with any performance related criteria recommended by the Issuer.
  6. Provide an annual year-end performance review and outlook for the upcoming year.
  7. Provide an annual fee analysis designed to ensure that Plan fees are at their lowest asset class and identify appropriate alternative underlying investments that may offer similar performance at a lower cost.
  8. Provide annual investment manager due diligence, focusing on the management of each Plans' funds, as well as general corporate diligence (e.g., financial statements, material changes in ownership).
  9. Provide an annual review of the Plans' investment structure and age-based glide-path investments.
  10. Review the Council's Statement of Investment Philosophy at least annually.

C. Account Administration and Compliance

The Provider must possess the requisite knowledge and demonstrated experience in effectively administering investment accounts. At a minimum, it must:

1. Manage the Plans in compliance with:
  - a. All applicable federal, state and local laws, administrative rules, regulations and guidance, including but not limited to MSRB rules and standards, Securities Exchange Commission rules and regulations, and Financial Industry Regulatory Authority (“FINRA”) rules; and
  - b. Guidelines established by the Issuer.
2. Monitor federal and state laws and regulations that may affect the Plans, advise the Treasurer and/or the Council of these changes, and work with the applicable parties to implement any changes.
3. Draft, prepare and distribute all Plan documents, subject to the Treasurer’s approval, including but not limited to program disclosure statements, participation agreements, and amendments or supplements thereto, as well as account owner and/or beneficiary communications, Plan enrollment materials, and sweepstakes rules. All Plan documents must be in compliance with all federal and state regulations and CSPN disclosure principles, as currently written. All such materials must be available online and in print and submitted to the MSRB or other regulatory entities in a timely manner, as required by law or as requested by the Treasurer.
4. Comply with applicable MSRB Rules.
5. Provide custody and accounting services necessary to support NEST.
6. Submit a plan for the establishment and maintenance of accounts.
7. Submit a plan for all aspects of customer service to existing and prospective account owners.
8. Submit a plan for how Plan money may be rolled into a Code Section 529A account that may or may not be established and maintained by the Treasurer.
9. Provide Plan enrollment online and through a central mailing location that can receive express deliveries by normal U.S. postal services.
10. Process all contributions and withdrawals, maintain all records and comply with all applicable tax and securities laws, CSPN guidelines, and any performance criteria established by the Treasurer. Such responsibilities include aggregation of accounts for federal tax purposes, annually paying

for and conducting Plan audits, and providing reporting information as requested by the Treasurer for the preparation of the annual report contained in Nebraska Revised Statutes Section 85-1811.

D. Marketing and Distribution

The Provider must possess the requisite knowledge and demonstrated experience in marketing investment products (preferably qualified tuition programs) to motivate and assist families in investing for future college expenses. Marketing efforts include advertising (television, radio and print), marketing materials (enrollment kits and brochures), a toll-free number and website, and face-to-face marketing (group presentations, event marketing and education).

The Treasurer expects the Provider to spend a minimum of \$750,000 each year for marketing services. (Note that the Treasurer does **not** consider any costs associated with the preparation, printing or distribution of program disclosure statements to be “marketing services.”) The Provider should expect that the Treasurer will have limited available funds to contribute to the marketing of the Plans.

The Treasurer will have final approval of all marketing and public relations decisions, including how funding is allocated among various marketing efforts.

The Provider is expected to:

1. Describe its proposed distribution plan, including the use of wholesalers and independent broker/dealers within Nebraska, the Midwest and remaining U.S. regions.
2. Work with the Treasurer or his authorized representative on all aspects of marketing and public relations campaigns.
  - a. Develop all Plan promotional materials, subject to the Treasurer’s approval, and ensure such materials comply with all applicable laws and guidelines.
  - b. Maintain promotional materials on applicable Plan websites.
  - c. Diligently abide by the timelines set forth in the Program Management Agreement regarding the approval of all marketing materials and Plan documents (e.g., sweepstakes rules, program disclosure statements).
3. Conduct marketing in state and out of state year-round.
  - a. Develop and execute a multi-year marketing plan. Submit the proposed plan to the Treasurer on an annual basis for editing and approval.

- b. Budget and expend sufficient funds each year to fund approved marketing efforts.
  - c. Develop a marketing campaign directed at Nebraska's low- to middle-income families and other demographics that do not typically contribute (or make large contributions) to a qualified tuition program.
  - d. Provide no fewer than four full-time dedicated professionals to conduct approved educational and outreach efforts and otherwise expand marketing efforts. At least two such individuals should be dedicated to in-state marketing efforts and at least two such individuals should be dedicated to out-of-state (wholesale) marketing efforts. Proposals should very much reflect a "boots on the ground" approach, with the expectation that the Program Manager-provided professionals annually attend and staff promotional events.
  - e. Separately identify proposed annual marketing spending on in-state and out-of-state efforts for the Treasurer's feedback and approval.
4. Fund any trademark and copyright searches associated with the Plans' marketing efforts. (Note that NEST will own any trademarks and copyrights regardless of how such searches are funded.)
5. Employ data analytics and benchmarks to assess the effectiveness of the Plans' marketing and outreach efforts and report such findings to the Treasurer on an annual basis, in advance of the presentation of the upcoming year's marketing plan.
6. Collaborate with the Treasurer to launch and expand the new three new programs established by Legislative Bill 610 (2019) (see Section II.H).
7. Ensure that the Plans' websites will, at all times, be the sole source of detailed information available via the Internet regarding the Plans. Any inquiries made on the Provider's website about the Plans must be linked directly to the applicable Plan's website.
8. Include prominently in NEST Advisor Plan disclosure materials the availability of the NEST Direct Plan, the State Farm Plan and the TDA Plan as alternative college savings investment options. NEST Direct Plan and TDA Plan disclosure materials will also include references to the availability of the NEST Advisor Plan and the State Farm Plan through financial intermediaries and other professionals.
9. Demonstrate a willingness to work with the Issuer to launch and serve as program manager to a new qualified tuition program within NEST should

the Treasurer eventually decide to offer a new plan or plans. The Treasurer expects a showing of innovative ways the Provider would market and distribute any new plan(s), create new accounts, increase contributions, and otherwise set the new plan(s) apart from other qualified tuition programs.

10. Provide innovative ways to increase participation and contributions to NEST through technology and partnerships.
11. Conduct annual public opinion surveys, in a format and content approved by the Treasurer, to gauge the effectiveness of marketing efforts.

E. Customer Service

The Provider must possess the requisite knowledge and demonstrated experience in providing customer service for qualified tuition programs or similar products in a manner that substantially meets the performance guidelines specified in this Section. This includes, but is not limited to:

**Call Center**

1. Interacting with prospective participants via inbound telephone calls and online inquiries and answering any questions they may have about the Plans, and by taking their names and addresses to send them additional information.
2. Maintaining a comprehensive call center located in the United States, from 8:00 a.m. to 8:00 p.m. CST, Monday through Friday, except U.S. bank holidays. Customer service representatives must be trained by the Program Manager using materials approved in advance by the Treasurer. An automated voice response unit and Internet servicing access must be available at all other times. The call center must be staffed with a sufficient number of customer service representatives who are licensed or registered in accordance with applicable law.
3. Interacting with account owners and advisors over the phone and via e-mail to service their accounts.
4. Maintaining a database of inbound callers seeking enrollment materials, including information such as:
  - a. Caller's name, address and telephone number;
  - b. County of residence (Nebraska callers only);
  - c. Number of children and ages; and
  - d. How the caller heard about the Plan(s).
5. Providing the Treasurer with a monthly report monitoring daily call volumes, call durations, times of calls, hold time, and abandoned calls.



6. Updating or changing prerecorded messages, question-and-answer scripts, and training scripts as needed throughout the year using scripts approved by the Treasurer.
7. Providing a means for all participants to express concerns, comments or complaints regarding the Plans and creating and maintaining a website and toll-free voice response unit for customer service inquiries, account balance information, enrollment, and withdrawal and marketing requests.
8. Providing a means for participants to contribute to their Plan accounts through the workplace.
9. Maintaining the confidentiality of all account owner and beneficiary information.
10. Providing best-in-class website capability, including online enrollment, account maintenance and withdrawals.

### **Customer Service**

1. Serving as the first and main point of contact and managing all incoming and outgoing correspondence for the Plans.
2. Establishing and maintaining accounts, collecting contributions, processing withdrawals, and providing accurate, easy-to-understand information (including quarterly and annual account statements) to account owners.
3. Maintaining robust quality control procedures to minimize error rates.
4. Evaluating customer satisfaction through focus groups, surveys and customer feedback and providing findings to the Treasurer on a regular basis.
5. Having the ability to receive mail each day the U.S. Postal Service is open for business through a physical address and a post office box whose location is acceptable to the Treasurer.

### **Service Level Requirements**

1. Telephone Inquiries
  - a. Abandonment Rate – less than 2%
  - b. Percent of Calls Answered within 30 seconds – 90%
2. Correspondence:

- a. Financial Correspondence Timeliness – 99% of financially related correspondences are sent within two business days of receipt
  - b. Non-Financial Correspondence Timeliness – 99% of non-financial correspondences are sent within seven business days of receipt
3. Check & Money Processing:
- a. Accuracy of Posting Payment – 99% of checks, wire transfers, payroll deductions and Electronic Funds Transfers received are accurately posted to a matching account with the correct amount and with the day of receipt’s trade date
  - b. Posting Timeliness – 99% of checks, wire transfers, payroll deductions and Electronic Funds Transfers are posted to the account owner’s account by the day after receipt
4. Statements, Confirmations & Reporting
- a. Timeliness of Monthly, Quarterly and Year-End Account Owner Statements – 99% are mailed within seven business days of approval
  - b. Timeliness of Daily Confirmations – 99% of daily confirmations are mailed within five business days
  - c. Accuracy of Confirmations, Statements and Tax Reports – 99% of confirmations, statements and tax reports are accurate
  - d. Timeliness of Tax Reporting – 99% of federal tax reports are mailed on the agreed-to date

F. Reports

The Provider will generate reports to evaluate the effectiveness of all aspects of the Services. Such reports will be produced individually or combined and will be provided to the Treasurer and/or the Council, as applicable. Reports will include, at a minimum:

1. Quarterly Reports
- a. Market performance overview
  - b. Review of short- and long-term performance on a Plan basis, as well as a qualitative review
  - c. Asset changes based on market movement versus cash flows
  - d. Portfolio performance
  - e. Returns versus benchmarks
  - f. Fees
  - g. Contribution volumes by portfolio
  - h. Average account balance
  - i. Average contribution amount
  - j. Total contributions
    - (i) For the quarter
    - (ii) Year-to-date

- k. Distribution of beneficiaries by age
- l. Total Distributions for the quarter
- m. Number of accounts
- n. Amount of distribution
- o. Nebraska account owner information
  - (i) Number of Nebraska owned accounts, broken down by Portfolio
  - (ii) Number of Nebraska owned accounts, broken down by county and Nebraska participation rate and provided in a graphic format (i.e., a map of Nebraska)
  - (iii) Market value of Nebraska owned accounts
  - (iv) Number and dollar amount of distributions from Nebraska owned accounts
- p. Call center performance statistics
  - (i) Average second delay
  - (ii) Number of calls
  - (iii) Abandon Rate
- q. Performance data for all Portfolios as compared to independent benchmarks
  - (i) Quarterly, YTD, one-year, three-year, and five-year numbers for the Portfolios, as applicable
  - (ii) Data in IV.F.1.q(i) for each underlying mutual fund
  - (iii) Current asset allocation percentages of portfolios
- r. Plan data
  - (i) Total number of accounts
  - (ii) Total market value
  - (iii) Total dollars paid out
  - (iv) Total number of beneficiaries with withdrawals
- s. Account demographics
  - (i) Average account owner age
  - (ii) Average beneficiary age
  - (iii) Account owner relationship to beneficiary
  - (iv) Residence of account owners by State

## 2. Monthly Reports

- a. Financial reports
- b. Plan market value
- c. Total number of account owners and beneficiaries
- d. Number of new accounts
- e. Number of closed accounts
- f. Total contributions for the month
- g. Total distributions for the month
- h. Call center performance statistics

3. Annual Reports

- a. Annual tax information for Nebraska state income tax purposes
- b. Calendar year contributions by account owner name and arbitrary identifier
- c. Rollovers to another state's qualified plan and/or Achieving a Better Life Experience ("ABLE") plan reported by account owner name and arbitrary identifier
- d. Other information as requested by the Treasurer for state income tax reporting purposes
- e. In addition, the Provider must provide the Treasurer with annual report data no later than October 15 each year

The Provider will provide such other information as the Treasurer may request to monitor and control the Program Management Agreement. The Provider must attend all regularly scheduled Council meetings to review the investment management services to be provided under the Program Management Agreement.

G. Government Affairs

The Provider should be able to assist the Treasurer with government affairs efforts within the State in an effort to improve the Plans. This may include drafting proposed legislation, suggesting amendments to the State's college savings or income tax deduction statutes, testifying before the State Legislature or a committee on behalf of NEST, or proposing design changes that will make the Plans more useful or efficient for account owners, beneficiaries and contributors.

H. Transition & Implementation

If the Issuer awards a contract under this solicitation to a Provider other than the Plans' current program manager, the Provider must provide transition-related services and include in its proposal:

1. A detailed timeline for conversion of Plan assets;
2. A detailed communication plan to ensure account owners are fully informed of the transition and understand the transition timeline;
3. A description of how Plan assets will be accounted for prior to and after conversion;
4. A statement that it will agree to the existing relationships and business terms with State Farm and TD Ameritrade;
5. The resources it will contribute to the transition process; and

6. Whether Plan assets will be continuously invested during the transition period.

I. Privacy & Information Security

The Provider must implement and comply with a written information security program.

1. The Provider must no less often than annually conduct a thorough risk assessment that includes:
  - a. Identification of reasonably foreseeable internal and external threats;
  - b. Assessments of the likelihood and potential damage of identified threats; and
  - c. Assessments of the sufficiency of policies, procedures, customer information systems, and other arrangements in place to control risks.
2. The written information security program must require the Provider to implement technical, administrative, and physical safeguards that are reasonably designed to safeguard customer information in light of the Provider's own size and complexity, the nature of the Plans, and the sensitivity of the customer information that the Provider will obtain in connection with the Plans, and the risks identified in the risk assessment.
3. The Provider must select and supervise third-party service providers that use appropriate safeguards to protect the confidentiality, integrity, and availability of customer information, must require those safeguards by contract, and must regularly audit or monitor service providers for compliance with those steps.
4. The Provider must develop and implement a risk-based response program to handle data breaches, including appropriate customer and regulatory notifications.
5. The Provider must designate one or more employees to coordinate its written information security program.
6. The Provider must sufficiently train its staff with respect to the written information security program and any known risks or vulnerabilities.
7. The Provider must regularly test the written information security program's key controls, systems, and procedures, and must adjust the program to reflect the results of ongoing risk assessments.

8. The Provider must obtain board-level approval of its written information security program, or equivalent approval within its organizational structure.

## V. SUBMISSION REQUIREMENTS

### A. Proposal Format

All pages of each proposal must be consecutively numbered from beginning to end and should follow the same format as this RFP. The proposal must contain a table of contents and a declaration of confidential sections, if any. All proposals must be typewritten on 8.5" x 11" paper (though larger paper is permissible for tables, spreadsheets, etc.).

A transmittal letter must accompany the proposal. The transmittal letter should be brief and signed by an individual who is authorized to commit the Provider to the services and requirements stated in this RFP. All Providers must acknowledge, in their transmittal letters, receipt of this RFP and any addenda to this RFP. The outside envelope should be sealed and clearly marked: "Response to Request for Proposals for the NEST Plans." This should also be used as the same subject line when proposals are submitted via e-mail.

### B. Confidentiality

The Issuer does not intend to disclose the contents of proposals to other Providers during the RFP process. The RFP process is in effect until the Issuer selects a new Program Manager pursuant to this RFP and all parties have signed the Program Management Agreement. However, materials contained in proposals are subject to Nebraska public records statutes and may be viewed and/or copied by any member of the public, including news agencies and competitors. Providers claiming a statutory exception to said statutes should specify which statutory exception applies to its proposal or portions thereof.

### C. Proposal Contents

The proposal must include an executive summary. The executive summary should clearly demonstrate that the Provider has an understanding of the objectives and goals of the Issuer set forth in this RFP and an understanding of the Scope of Services. The summary must clearly state and demonstrate the minimum qualifications as listed in Section I.B of this RFP. It should also contain a brief synopsis of the contents of the entire proposal as well as an analysis of the effort and resources that will be needed to realize the objectives of this RFP. The executive summary will also identify any exceptions the Provider has taken to the Program Management Agreement. **A proposal that takes exception to the requirements of this RFP may be rejected.**

#### 1. **General Information**

- a. State name, address, telephone number, facsimile number, and website address of the Provider.

- b. Provide names, addresses, telephone numbers, facsimile numbers and e-mail addresses of the individuals who will coordinate all activities related to the Services. Provide background and experience information on each individual.
- c. Provide a brief history of the Provider, including ownership and current management and any significant changes in the foregoing (i) during the last five years and (ii) expected or pending.
- d. Furnish a copy of the Provider's annual report and audited financial statements for fiscal years 2017 and 2018.
- e. Provide the most recent ratings reports on the Provider from available agencies (e.g., A.M. Best, Moody's, Standard & Poor's). Indicate the date the Provider was last reviewed by each rating service. State the current rating and identify and explain any and all ratings changes during the last five years.
- f. List qualified tuition programs for which you provide (either currently or within the last three years) investment and administrative services. Include the following information:
  - (i) Length of time of your involvement;
  - (ii) Types of services you offer;
  - (iii) Aggregate annual cash flow;
  - (iv) Total assets of each plan;
  - (v) Plan assets held by your company;
  - (vi) Actual annual rates of return by investment option credited under each plan during the past three years; and
  - (vii) Total number of accounts and participants.

## **2. Plan of Service**

This section will provide a detailed discussion of the Provider's service capabilities demonstrating the Provider's ability to meet the requirements outlined in Section IV. This section will fully explain how the proposed Services will satisfy each requirement listed in this RFP (Section IV - Scope of Services). It should indicate all significant capabilities or issues that will be examined to fulfill the Scope of Services. Providers other than the current program manager must include a transition plan to ensure continuity of Services when the current program management agreement terminates. This demonstration should be presented in the same numbered order in which the requirements appear in Section IV.H.

The Provider will propose a staffing plan to provide the Services required by this RFP in accordance with all required quality standards and will include résumés for those with principal responsibilities for managing the Provider's responsibilities

under the Program Management Agreement, as well as for those with principal responsibilities for each functional area.

Each Provider should identify any subcontractors intended to be used in the performance of the Program Management Agreement and the role each proposed subcontractor will perform in providing the Services. If the Provider will use no subcontractors, so state.

In addition to addressing the requirements described in Section IV, Providers must submit the following as part of their plan of Service:

- a. **Financial Services.** Each proposal should:
  - (i) Describe the specific investments that would comprise each of the investment options in each Plan. The Provider may also propose other investment options along with the specific investments and an explanation of the consumer benefits of the additional options.
  - (ii) Describe the Provider's due diligence process regarding selection and monitoring of the proposed investment vehicle(s). Give examples of reasons for removal of investment vehicles. Provide an example of and rationale for a recent change in an investment vehicle as a result of the due diligence process.
  - (iii) Describe the Provider's internal and outside mutual fund offerings, including the amount of revenue sharing with each mutual fund.
  - (iv) Describe the Provider's internal investment management capabilities and breadth of mutual fund offerings.
  - (v) If non-proprietary mutual funds are proposed for inclusion in the investment options, describe the limitations, if any, on (a) the number of outside mutual funds that may be utilized or (b) the dollar amounts that can be allocated to outside mutual funds.
  - (vi) Describe any limitations on the use of non-proprietary mutual funds and any additional fees that may be assessed in connection with the use of such non-proprietary mutual funds.
  - (vii) Describe whether the Provider and/or its employees, and/or any affiliated or related entity, will be paid fees or commissions (including those from revenue-sharing and



commission recapture services to the Plans) from sources other than the Plans.

- (viii) Describe how investment management fees may be used to reduce or offset other service fees.

**b. Account Administration and Compliance**

Each proposal should provide descriptions of:

- (i) The proposed system, the number of accounts currently administered on this system, the approximate dollar value of such accounts, and the frequency and volume of individual transactions that are processed on a daily and weekly basis.
- (ii) The reliability and integrity history, other market experience and uses of the proposed system.
- (iii) Plans and procedures for accepting and processing new enrollments, maintaining individual accounts, including making changes to accounts, posting contributions (including payroll and Electronic Funds Transfer transactions), and ensuring that the current accumulated contributions and net asset value for each account owner and beneficiary are available on a daily basis.
- (iv) Online access capabilities to the account administration system, including online enrollment, account maintenance and withdrawals.
- (v) If applicable, the Provider's ability to coordinate all facets of account administration for the Plans. Issues such as maximum contributions, distributions, rollovers (including rollovers to ABLE plans) and aggregation of accounts for federal tax law reporting purposes should be addressed.
- (vi) The Provider's account administration experience with respect to qualified tuition programs.
- (vii) Procedures for generating account statements and reports, including information regarding format, frequency, transmittal methods, customization, joint account statement options, etc. and any available sample reports.
- (viii) A disaster recovery plan describing in detail how Services will be resumed within 24 hours of a disaster.

- (ix) The Provider's policies, procedures, data encryption, and technical measures to prevent unauthorized access or alteration, fraud, theft, misuse, or physical damage to hardware, software, communications networks and data.

c. **Marketing and Distribution**

- (i) The Provider must present marketing strategies to be utilized for Nebraska families, as well as marketing strategies to attract account owners outside of Nebraska.
- (ii) The Provider will describe its marketing and distribution plans for NEST's white label plans (the State Farm Plan and the TDA Plan).
- (iii) The Provider will outline existing relationships that it has with companies or firms that provide consulting or other marketing services that are expected to contribute in any way to the marketing of the Plans.
- (iv) The Provider will provide samples of marketing and disclosure information that it currently uses.
- (v) The Provider will describe its plans for promoting the Plans and increasing contributions to the Plans through the use of qualified tuition program gift cards. It will also describe any existing relationships it has with companies or other qualified tuition programs that offer such gift cards.
- (vi) The Provider will detail how it intends to collaborate with the Treasurer to launch, solicit funding for and grow the new three new programs established by Legislative Bill 610 (2019) (see Section II.H).
- (vii) The Provider will describe its willingness to work with the Issuer should the Treasurer decide to offer another qualified tuition program within NEST in the future. The Provider should also describe in broad strokes how it may intend to market and distribute a new NEST plan.
- (viii) The Provider will outline the steps it will take to separate the marketing message of the Plans and any other qualified tuition program it administers when marketing in Nebraska and the surrounding region to ensure that the Plans will be the only qualified tuition programs in the Provider's marketing strategies in the State.

- (ix) The Provider will outline any arrangements with other qualified tuition programs with regard to marketing an advisor-sold plan within Nebraska and how the NEST Advisor Plan will be given priority and promoted within Nebraska. The Provider will also outline how the NEST Advisor Plan will be promoted outside of Nebraska, especially in states where the Provider already markets an advisor-sold plan.
- (x) The Provider will outline the steps it will take to separate the marketing message of the Plans from other Provider-administered qualified tuition programs outside of Nebraska.
- (xi) The Provider must describe any agreements it or any of its affiliates has with other states regarding the marketing of qualified tuition programs around the country and the marketing of other qualified tuition programs in any such plan's home state.
- (xii) The Provider should describe plans for marketing opportunities outside of Nebraska.
- (xiii) The Provider will describe its ability to develop and maintain the Plans' websites and describe its maintenance and intended references to the Plans on the Provider's website.
- (xiv) The Provider will provide plans to market the Plans specifically to State employees and top employers in the State.
- (xv) Describe any products that the Provider currently offers to Nebraska residents that compete or potentially could compete with the Plans. Indicate whether the Provider would agree to contract with the Treasurer to refrain from directly or indirectly offering any competing product for so long as the Provider is providing Services to the Plans. If the Provider would not agree to contract to refrain from offering any competing product, explain how the Provider's offering of one or more competing products can be done consistently with an obligation to aggressively and effectively market and administer the Plans.

**d. Customer Service**

- (i) The Provider will describe its strategies for transmitting and sharing databases of callers to and with the Plans, as well as ensuring the confidentiality of the databases.
- (ii) The Provider will include a discussion of the steps that will be taken to ensure that the Plans' databases are not combined with other databases maintained by the Provider.
- (iii) The Provider will provide the Treasurer with contingency plans or emergency plans for days and/or times when the call volume may exceed the successful Provider's ability to handle the calls quickly and expeditiously. The Provider will also provide the Treasurer with any contingency plans for handling telephone calls from hearing-impaired and non-English-speaking callers.
- (iv) The Provider will outline the ability of its customer service representatives to transfer callers among the Plans, as applicable.
- (v) The Provider will outline procedures for responding to verbal, written, and online inquiries or complaints about the Plans.
- (vi) The Provider will outline procedures for the production and distribution of quarterly statements to account owners, as well as the Provider's ability to accommodate additional or more detailed reports if required by the Issuer.
- (vii) The Provider will include service levels achieved for qualified tuition programs currently under management and similar programs. Describe how the Provider intends to meet the service level requirements contained in Section IV.E. Provide anticipated service levels for each measure listed and describe the Provider's resources available for the Plans.

**e. Government Affairs**

Describe the Provider's government relations resources and capabilities, as well as the Provider's proposed efforts on behalf of NEST during the term of the Program Management Agreement. The Program Manager should hire a government affairs specialist familiar with NEST, subject to the Treasurer's approval.

**f. Transition and Implementation**

Describe the Provider's proposed transition plan as outlined in Section IV.H. If you are proposing any changes to a Plan's underlying investments, please include your mapping strategy.

**3. Experience and Capabilities**

**a. Provider's Minimum Qualifications**

In compliance with the minimum qualifications set forth in Section I.B, the Provider must:

- (i) Describe the firm, including who holds controlling interest in the firm. Provide a percentage breakdown of any party having a legal or beneficial interest of greater than 5%. If the firm is employee-owned/controlled, indicate what percentage of the ownership interest is employee-owned.
- (ii) Discuss organizational structure, including size and location(s).
- (iii) Discuss whether the Provider or its parent or affiliate is a registered broker/dealer. If the Provider trades in securities with a parent or affiliate, describe any process designed to avoid conflict of interest. Describe if these systems negatively affect the Provider's ability to perform its duties and, if so, what measures have been utilized to lessen this impact.
- (iv) Provide a statement of its firm's invested assets under management for the past five years. Indicate if mergers or acquisitions influenced any growth in that time.

**b. Capabilities**

The Provider must discuss in detail the following:

- (i) The Provider must be a financial services firm experienced in all facets of investment management services.
- (ii) The Provider must provide a senior level manager who will be responsible for the relationship between the Provider and the Issuer. The principal day-to-day contact must be identified.
- (iii) The Provider must list its project management team and describe both how the team will interact with the Issuer and

staff and how the team will accomplish the requirements of this RFP. Also provide summary résumés for all essential personnel who may provide these Services. Their résumés should include past experience servicing similar types of programs and any familiarity with agencies, authorities, and instrumentalities of the State.

- (iv) Discuss whether the Provider is registered (or is exempt from such registration) under the Investment Advisors Act of 1940 and/or registered or licensed by the U.S. Securities and Exchange Commission (“SEC”), any self-regulatory organization (as such term is defined in § 3(a)(26) of the Securities Exchange Act of 1934, as amended); any regulatory agency of any state; or any U.S. government department or agency.
- (v) State whether the Provider is a licensed member of the Securities Investor Protection Corporation (“SIPC”). If so, state the amount of SIPC protection the Provider provides.
- (vi) Describe how the Provider proposes to properly evaluate the project management team on a continual basis to ensure that quality standards are met. The Provider will provide the Treasurer with periodic analysis of the results of program performance.
- (vii) Provide an overview of experience rendering services to other qualified tuition programs, or in offering services similar to those included in Section IV of this RFP. Specifically explain the Provider’s experience with white label plans. This description must include a summary of the services offered, whether the services are currently being provided or whether the relationship with the qualified tuition program has terminated, the number of years the Provider has provided these services, the number of clients, the size of the programs served, and geographic locations the Provider currently serves.
- (viii) Provide three references that will be applicable to the specific Services requested in this RFP. The Issuer will have the right to contact any reference as part of the evaluation and selection process. If a proposal uses a subcontractor(s), provide three references per subcontractor. If the Provider (or a subcontractor) provides this service or a similar service to another qualified tuition program or a state or municipal government, the Provider must identify all such entities as a reference.

Each client reference is to include the following information:

- (1) Name of client organization and the name, title, and telephone number of the point of contact for the client organization;
- (2) Value and type of contract(s) supporting the client organization, the date the work was performed or the duration of contract(s) supporting the client organization, and the service location; and
- (3) If the Provider is no longer serving this client, an explanation of why the Provider is no longer providing the services.

#### 4. **Legal Actions Summary**

The Provider(s) must include the following:

- a. A statement as to whether there are any outstanding legal actions against the Provider and a brief description of any such action.
- b. A brief description of any settled or closed legal actions against the Provider over the past five years.
- c. A brief description of any pending or prior litigation against the Provider and its officers, directors, principals or key personnel related to participation in company-, employer- or government-sponsored investment plans over the past three years.
- d. A statement as to whether or not the Provider has filed (or has filed against it) any bankruptcy or insolvency proceeding and, if so, provide details.
- e. A brief description of any extraordinary investigation, examination, complaint, disciplinary action or other proceeding relating to or affecting the Provider or any of its employees, agents, etc. that has occurred within the last 10 years and was commenced by any of the following: the SEC; any self-regulatory organization (as such term is defined in § 3(a)(26) of the Securities Exchange Act of 1934, as amended); any attorney general or any regulatory agency of any state of the United States; any U.S. government department or agency; or any governmental agency regulating securities of any country in which the Provider is doing business.

**5. Indemnity Insurance**

Describe the level of workers' compensation insurance, directors' and officers' liability insurance, fiduciary professional liability insurance, public liability insurance and fidelity bonds or similar coverage maintained by the Provider and any agents and/or subcontractors proposed to provide any of the Services described in this RFP. All such insurance should be provided by insurer(s) rated A-, class X or better by A.M. Best & Company, or otherwise approved in writing by the Treasurer. If the Provider is a joint venture, partnership or consortium, each party must meet these criteria.

**6. Financial Capabilities and Statements**

Providers must demonstrate financial stability. Proposals must include:

- a. Evidence that the Provider has adequate financial capacity to provide the Services.
- b. Copies of the last two year-end audited (preferred) financial statements or best available equivalent report.
- c. An analysis of those financial statements/reports.

**7. Subcontractors**

If any significant portion of the work listed above is not expected to be performed by the Provider, the Provider must list any subcontractors that are proposed to provide the required products and Services. Providers must identify subcontractors and the role these subcontractors will have in the performance of the contract.

**8. Financials**

The proposal must contain all cost information in the format specified in Attachment B.

All Attachment B information must be signed in ink as follows:

- a. As an individual: sign with full name and address.
- b. As a partnership: partners will sign with full names and business address.
- c. As a corporation: an authorized officer of the corporation will sign with full name and title and will include the name and address of the corporation.



9. **Privacy & Information Security**

The proposal must either include documentation of the Provider's written information security program or summarize that program in sufficient detail to demonstrate the Provider's compliance with Section IV.I above.

**VI. SELECTION PROCESS AND CRITERIA**

A. Award of Contract

The Issuer reserves the right to reject any and all responses to this RFP. The Issuer may choose to appoint an advisory committee to compile a list of finalists and either seek additional information from these Providers to clarify best and final offers and/or permit an oral presentation to the Treasurer and/or the Council. The Issuer will determine which proposal offers the best means of servicing the interests of the Plans and the State.

The Issuer reserves the right to add additional Providers at any time, particularly in the area of marketing and education.

B. Evaluation Criteria

Responses will be evaluated based on the following criteria, which is presented in no particular order:

1. Competitiveness of investment performance and product features;
2. Financial stability and strength of Provider;
3. Customer service and recordkeeping;
4. Costs charged to any account or any other entity;
5. Nebraska resident and non-resident accessibility;
6. Marketing commitment to broaden customer base;
7. Administrative capacity and strategy;
8. Transition and implementation;
9. Any other quality or characteristic deemed in the best interests of the State or the Issuer; and
10. Goal measurement and monitoring criteria.

# **ATTACHMENT A – PROGRAM MANAGEMENT AGREEMENT**

**NEST 529 COLLEGE SAVINGS PLANS  
PROGRAM MANAGEMENT AGREEMENT**

This Program Management Agreement (the “Agreement”) is entered into by and among the Nebraska State Treasurer (the “Treasurer”), as trustee for the Nebraska Educational Savings Plan Trust (the “Trust”), the State Investment Officer on behalf of the Nebraska Investment Council (the “Council”) and \_\_\_\_\_, a \_\_\_\_\_ with its principal place of business in \_\_\_\_\_, \_\_\_\_\_ (the “Contractor”). The Agreement is effective \_\_\_\_\_, 2019 (“Effective Date”).

**RECITALS**

WHEREAS, the State of Nebraska (the “State”) enacted Neb. Rev. Stat. Sections 85-1801 et seq., as amended from time to time (the “Act”), which provides for the establishment of the Trust as a means of meeting beneficiaries’ qualified higher education expenses pursuant to Section 529 of the United States Internal Revenue Code of 1986, as amended (the “Code”);

WHEREAS, the Trust consists of assets invested in four Code Section 529 qualified tuition programs sponsored by the Treasurer;

WHEREAS, the four qualified tuition programs are the Nebraska Educational Savings Trust Direct College Savings Plan, the Nebraska Educational Savings Trust Advisor College Savings Plan, the State Farm 529 Savings Plan, and the TD Ameritrade 529 College Savings Plan (each, a “Plan” and, collectively, the “Plans”);

WHEREAS, Neb. Rev. Stat. Section 85-1804 provides the Treasurer with responsibility for the administration, operation and maintenance of the Trust and the Plans;

WHEREAS, Neb. Rev. Stat. Section 85-1804(9) authorizes the Treasurer to engage personnel for the purpose of rendering professional, managerial and technical assistance and advice regarding the administration and operation of the Trust and the Plans;

WHEREAS, Neb. Rev. Stat. Section 85-1804 provides that the State Investment Officer shall have the fiduciary responsibility to make all decisions regarding the investment of the Trust’s assets, pursuant to directions, guidelines and policies established by the Council;

WHEREAS, Neb. Rev. Stat. Section 85-1804 authorizes the Council to select and enter into agreements with entities to provide investment advice and management of the assets in the Trust, and the State Investment Officer is authorized by the Council to contract with such entities;

WHEREAS, the Treasurer and the Council have issued a request for proposals for 529 program manager services and have evaluated the proposals from several institutions; and

WHEREAS, the Treasurer and the Council have selected the Contractor to serve as the program manager for the Plans, in accordance with the Agreement.

NOW, THEREFORE, in consideration of the foregoing and of the mutual promises set forth herein, and intending to be legally bound hereby, the Treasurer, the Council and the Contractor hereby agree as follows:

## 1. DEFINITIONS

- a. Definitions. The following terms used in the Agreement will have the respective meanings set forth below:
  - i. “Account” shall mean a separate account established as part of a Plan and maintained in accordance with Code Section 529, the Act, and the Agreement.
  - ii. “Account Owner” shall mean an organization described in Code Section 501(c)(3) that is exempt from federal income taxation pursuant to Code Section 501(a), an individual, a firm, a corporation, a state or local government organization, or a legal representative of any of the foregoing who has entered into a Participation Agreement.
  - iii. “Administrative Fee” shall mean the portion of the Management Fee that is paid to or on behalf of the Treasurer in connection with the Treasurer’s expenses to operate the Trust.
  - iv. “Administrative Fund” shall mean the administrative fund established by the Statute.
  - v. “Allocation Guidelines” shall mean the guidelines for allocation of the assets in each of the Investment Options of the respective Plans as recommended by the Contractor and approved in writing by the Council in accordance with the Agreement and as set forth in the Council’s Statement of Investment Philosophy.
  - vi. “Applicable Law” shall mean all applicable laws, judgments, decrees, injunctions, writs and orders of any court, tribunal, arbitrator or Governmental Authority and rules, regulations, orders, licenses and permits of any Governmental Authority.
  - vii. “Beneficiary” shall have the meaning as set forth in the Statute on the Effective Date.
  - viii. “Business Day” shall mean a day on which the New York Stock Exchange is open for trading.
  - ix. “Contingency Program” shall mean the Contingency and Disaster Recovery Program described in Section 10.d.

- x. “Contractor” shall mean the party identified on page one of the Agreement, and includes subcontractors performing Services.
- xi. “Contractor Intellectual Property” means any and all intellectual property rights owned by the Contractor or licensed to the Contractor by a third party and used by the Plans and the Program Disclosure Statement that consist of, but are not limited to, any patents or published patent applications, registered copyrights, trademarks, or other proprietary information.
- xii. “Final Termination Date” shall mean the date on which the Contractor no longer holds any assets under the Agreement and the Contractor no longer provides Services with respect to any Accounts.
- xiii. “FINRA” shall mean the Financial Industry Regulatory Authority, Inc.
- xiv. “Governmental Authority” shall mean any federal, state, local, municipal or other governmental department, commission, district, bureau, agency, regulatory body, court, tribunal or other instrumentality (or any officer or representative thereof) of competent jurisdiction.
- xv. “Initial Disaster Period” shall mean the 30 calendar days immediately following the declaration of a disaster under the Contingency Program.
- xvi. “Initial Term” shall mean the period from the Program Start Date to [11:59 p.m. CST on December 16, 2027].
- xvii. “Investment Options” shall mean the investment options listed on Schedule B hereto and made available to Account Owners investing in the Trust.
- xviii. “IRS” shall mean the United States Internal Revenue Service.
- xix. “Losses” shall mean all losses, costs, claims, causes of action, liabilities, penalties, damages and expenses (including, without limitation, reasonable attorneys’ fees and disbursements), excluding consequential, punitive and special damages.
- xx. “Management Fee” shall mean the fee payable to the Contractor for the Services, as set forth herein.
- xxi. “Material Adverse Effect” shall mean a material adverse effect on (A) the business, operations or financial condition of the Contractor, the Treasurer, the Council or the Plans, (B) the ability of any party to the Agreement to perform its material obligations under the Agreement, or (C) the validity or enforceability of a material provision of the Agreement or the material rights or remedies of any party to the Agreement.

- xxii. “Media Materials” shall mean the Program Logo, any slogan developed specifically for the Plans, any trade names, trademarks or service marks created specifically for the Plans, any copyrighted materials relating solely or primarily to the Plans, including materials contained in the Program Disclosure Statement that are related specifically to the State, the Treasurer, the Council, or the Plans, website content related specifically to the Plans and marketing, advertising and public relations materials that are specific to the Plans.
- xxiii. “MSRB” shall mean the Municipal Securities Rulemaking Board.
- xxiv. “Non-Qualified Withdrawal” shall mean a withdrawal from an Account other than (i) a Qualified Withdrawal, (ii) a withdrawal by reason of the death or disability of a Beneficiary or (iii) a withdrawal made in connection with the receipt by the Beneficiary of a scholarship.
- xxv. “Participation Agreement” shall mean the agreement to be entered into by the Trust and an Account Owner with respect to an Account in a form mutually agreed upon by the Contractor and the Treasurer, as amended from time to time with the approval of the Treasurer.
- xxvi. “Person” shall mean any individual, corporation, partnership, joint venture, limited liability company, joint stock company or other similar organization, trust or any other entity, an unincorporated organization, a government or any agency or political subdivision thereof, a court, or any other legal entity whether acting in an individual, fiduciary or other capacity.
- xxvii. “Plan List” shall mean lists, compilations and summaries of Account Owners, Beneficiaries, Account contributors and/or Persons requesting information or making inquiries as to the Trust, a Plan or the Plans.
- xxviii. “Program Disclosure Statement” shall mean the document(s) describing each Plan prepared for distribution to persons in connection with their opening of Accounts and entering into Participation Agreements and to Account Owners and others having an interest in the respective Plan.
- xxix. “Program Fiscal Year” shall mean the 12-month period ending each December 31.
- xxx. “Program Logo” shall mean the logo designed and developed specifically for the Plan.
- xxxi. “Program Materials” shall mean all records, books, correspondence, papers and files relating solely or primarily to the Plans, whether or not in the

possession of the Treasurer or the Council, including, without limitation, all lists, compilations and summaries of Account Owners, Beneficiaries or prospective Account Owners who contact the Contractor for the purpose of expressing an interest in the Plans.

- xxxii. “Program Records” shall mean, collectively, the Program Materials, the Media Materials, and the Allocation Guidelines.
- xxxiii. “Program Start Date” shall mean 12:00 a.m. CST on December 17, 2020.
- xxxiv. “Qualified Higher Education Expenses” shall have the meaning set forth in Code Section 529(e)(3).
- xxxv. “Qualified Tuition Program” shall have the meaning set forth in Code Section 529(b)(1).
- xxxvi. “Qualified Withdrawal” shall mean a withdrawal from an Account to pay the Qualified Higher Education Expenses of the Beneficiary of the Account.
- xxxvii. “RFP” shall mean the Treasurer’s and the Council’s request for proposals for 529 program manager services dated July 8, 2019.
- xxxviii. “SEC” shall mean the U.S. Securities and Exchange Commission.
- xxxix. “Service Levels” shall mean the service level requirements set forth in the RFP.
- xl. “Services” shall mean the program management, marketing, administrative, investment management and other services to be provided in connection with Plans by the Contractor, which are referenced in Section 2.a.
- xli. “Third Party Intellectual Property” means any and all intellectual property rights owned by any subcontractor of the Contractor and used in the Plans that consist of, but are not limited to, any patents or published patent applications, registered copyrights, trademarks, or other proprietary information.
- xl.ii. “Transition Period” shall mean the period of time between the Effective Date and the Program Start Date.
- xl.iii. “Transition Plan” shall mean the implementation plan designed to ensure the orderly transfer to the Contractor of the program management of the Plans.
- xl.iiii. “Trust Intellectual Property” means any and all intellectual property rights owned by the Trust or licensed to the Trust by third parties other than the

Contractor and its Subcontractors and used in the Plans that consist of, but are not limited to, any patents or published patent applications, registered copyrights, trademarks, or other proprietary information.

xlv. “Unit Value” shall mean price per unit of each Investment Option. The Unit Value per unit of each Investment Option is calculated when regular trading closes on the New York Stock Exchange on each Business Day. The Unit Value per unit is calculated by dividing the total value of the Investment Option’s net assets by the total number of outstanding units in the Investment Option. The value of the Investment Option’s net assets is based upon the holdings in each underlying investment and the net asset value thereof.

b. Rules of Construction. For all purposes of the Agreement, except as otherwise expressly provided or unless the context otherwise requires:

i. Singular words will connote the plural as well as the singular, and vice versa (except as indicated), as may be appropriate. Masculine words such as “he,” “his,” and “him” will connote the feminine as well as the masculine, and vice versa, as may be appropriate.

ii. Unless otherwise indicated, references within the Agreement to articles, sections, paragraphs or clauses are references to articles, sections, paragraphs or clauses in or to the Agreement.

iii. The words “herein,” “hereof” and “hereunder” and other words of similar import refer to the Agreement as a whole and not to any particular article, section, paragraph or clause.

iv. References to any Person will include such Person and its successors and permitted assigns.

v. The Agreement’s recitals and any exhibits, schedules or ancillary documents attached hereto from time to time are incorporated into and made a part of the Agreement.

c. Order of Construction. The Agreement shall consist of the following documents in the order listed, which are hereby incorporated by reference and made an integral part of the Agreement:

i. the Agreement;

ii. the Contractor’s proposal; and

iii. the RFP.



Ambiguities in the interpretation of this document shall be resolved by reference to the documents listed in this order.

## 2. CONTRACTOR AS PROGRAM MANAGER

- a. Engagement by the Treasurer and the Council. The Contractor shall provide program management services to the Plans as described in the RFP and the Contractor's proposal in accordance with the terms and conditions of the Agreement ("Services"). The Contractor warrants that during the Transition Period, the Initial Term, and any Renewal Term, it will not withhold Services for any reason, including but not limited to a dispute between the parties arising under the Agreement.
- b. Standard of Care; Fiduciary Status. The Contractor acknowledges that it has fiduciary duties to the Treasurer, the Council, the Plans, the Trust, Account Owners and Beneficiaries, and it agrees to discharge its duties with respect to the Plans and the Trust solely in the interest of the State, Account Owners and the Beneficiaries of the respective Plans.

The Contractor will perform the Services and discharge its responsibilities, duties and obligations under the Agreement with the same degree of care and skill under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims.

The Treasurer is under no obligation to monitor the actions of the Contractor to insure that its actions conform to these requirements.

- c. Term. At the option of the Treasurer and the Council, the Agreement may be extended for up to [three additional one-year terms (each such one-year term, a "Renewal Term")] at the end of the Initial Term, provided the Treasurer and the Council notify the Contractor in writing of their intention to extend at least 180 days prior to the scheduled expiration date. Any Renewal Term will become effective only upon a written amendment to the Agreement executed by the Treasurer and the State Investment Officer on behalf of the Council.
- d. Contractor's Representative and Team. The Contractor shall designate a representative and a team which shall serve as the contact for the Treasurer and the Council regarding performance of Services, subject to the Treasurer's approval. During the Initial Term and any Renewal Term, the Contractor shall promptly notify the Treasurer and the Council in writing of any proposed change to its approved representative or team. The Treasurer and the Council reserve the right, in their sole discretion, to require the substitution of the Contractor's representative or any member of the Contractor's approved team by written notice to the Contractor.

The Contractor's representative and team shall meet with the Treasurer or his staff by conference call at least every two weeks. The Contractor's representative and a member of the designated team with responsibility for investment management Services shall attend quarterly Council meetings, and other such meetings as may be requested by the Treasurer or the Council.

- e. Subcontracting of Services. The Contractor shall have the right to subcontract: (i) services relating to marketing, information and distribution of the Plans; (ii) transfer agency services required of the Contractor; and (iii) custody, fund accounting and certain administrative services required of the Contractor. However, the Contractor may not subcontract any portion of the Services without obtaining the prior written approval of the Treasurer and the State Investment Officer on behalf of the Council, nor may the Contractor assign the Agreement or any of its rights or obligations hereunder without the prior written approval of the Treasurer and the Council.

Any such subcontract or assignment shall be subject to review by the Treasurer and the Council and to any terms and conditions that the Treasurer and the Council deem necessary to protect the interests of the State, Account Owners and Beneficiaries. Any subcontract shall be non-assignable without the prior written approval of the Treasurer and the State Investment Officer on behalf of the Council.

The Contractor warrants that all subcontractors and assignees engaged in providing Services shall be qualified to perform the Services, and shall be properly licensed and otherwise authorized to do so under Applicable Law. Upon the termination of the Agreement for any reason, all subcontractor agreements or assignments related to the performance of Services shall also terminate.

The Contractor shall be liable and responsible for the actions of any subcontractor as if the Contractor had performed those duties itself.

The Treasurer, the Council and their designees shall have direct access to and communication with any subcontractor performing Services under the Agreement, with or without the involvement of the Contractor.

- f. Employees of Contractor. The Contractor shall utilize its personnel to perform the Services required under the Agreement, and such personnel shall at all times remain employees or consultants of the Contractor, subject solely to the Contractor's direction and control, and are not employees of the State. The Contractor shall alone retain full liability to its employees and consultants in all respects, including for their welfare, salaries, fringe benefits, legally required employer contributions and tax obligations. The Contractor and its agents and employees shall not accrue leave, retirement, insurance, bonding, use of State vehicles, or any other benefits afforded to State employees as a result of the Agreement.

The Contractor warrants that all employees engaged in providing the Services shall be qualified to perform the Services, and shall be properly licensed and otherwise authorized to do so under all Applicable Law.

- g. Corrective Action & Error Analysis. Upon the earlier of the Contractor's discovery of or the Contractor's receipt of notice from the Treasurer or the Council of the Contractor's (or any subcontractor's) failure to provide any of the Services in accordance with the Service Levels, the Contractor shall within a reasonable period of time (but no later than five Business Days) after such discovery or notice: (i) correct the failure without charging additional fees; or (ii) if the failure is not capable of being corrected within the aforementioned time frame, provide the Treasurer and the Council, if applicable, with a written report detailing the cause of and procedure for correcting the failure as promptly as possible. The report shall also include reasonable assurances that: (i) applicable corrective steps reasonably calculated to be a permanent fix have been taken; (ii) the Contractor has implemented a short-term workaround and it will use its best efforts to implement a permanent correction as soon as possible; and (iii) the failure will not recur.

### **3. CONDITIONS PRECEDENT TO THE EFFECTIVE DATE OR PROGRAM START DATE**

- a. Conditions to the Effective Date. Before the Effective Date, each of the following conditions must be satisfied or waived in writing by the Treasurer and the Council:
  - i. *The Treasurer*. Each of the Treasurer's representations in the Agreement shall be true and correct in all material respects on and as of the Effective Date.
  - ii. *The Council*. Each of the Council's representations in the Agreement shall be true and correct in all material respects on and as of the Effective Date.
  - iii. *The Contractor*. Each of the Contractor's representations in the Agreement shall be true and correct in all material respects on and as of the Effective Date.
- b. Conditions to the Program Start Date. Before the Program Start Date, each of the following conditions must be satisfied or waived in writing by the Treasurer and the Council:
  - i. *The Treasurer*. Each of the Treasurer's representations in the Agreement shall be true and correct in all material respects on and as of the Program Start Date.
  - ii. *The Council*. Each of the Council's representations in the Agreement shall be true and correct in all material respects on and as of the Program Start Date.

- iii. *The Contractor.* Each of the Contractor's representations in the Agreement shall be true and correct in all material respects on and as of the Program Start Date.
- c. Certificate of the Contractor. The Contractor shall deliver to the Treasurer a signed certificate, dated the Program Start Date, to the effect that all portions of the Program Disclosure Statements, the Plans' websites, and any other Program Materials describing the Contractor, the Contractor's (and any subcontractor's) duties with respect to the Plans and the investment aspects of the Plans (including the Investment Options and risks associated with each) are complete and accurate and do not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in light of the circumstances, not misleading. Nothing in this Section shall require the Contractor to make any representations as to the portions of the Program Disclosure Statements describing the duties and responsibilities of the Treasurer or the Council.
- d. Legal Opinions.
  - i. *Tax Opinion.* The Contractor shall have obtained, at its sole expense, an opinion for the benefit of the Treasurer and the Council, in a form and substance reasonably acceptable to the Treasurer and the Contractor, from counsel to the Contractor, that the Plans and the conversion of the Plans and transfer of Plan assets to the Contractor satisfy the qualification requirements of Code Section 529.
  - ii. *Opinion of Contractor's Counsel.* An opinion of counsel shall have been provided to the Contractor (with copies to the Treasurer and the Council), addressing the matters to which the Contractor has delivered its representations, warranties and covenants as set forth in Section 7 (other than with respect to those matters addressed by paragraph 3.d.i).
- e. Insurance Coverage. The Contractor shall have provided proof of insurance coverage of the types and at the levels set forth in Section 7.o.
- f. Participation Agreement and Program Disclosure Statement.
  - i. *Completion.* The Participation Agreement and the Program Disclosure Statement will be in form and substance acceptable to the Treasurer.
  - ii. *Certificate of the Contractor.* The Contractor will have delivered to the Treasurer a certificate, dated on the Program Start Date, executed on behalf of the Contractor, to the effect that all portions of the Program Disclosure Statement are complete and accurate in all material respects and completely and accurately describe the Trust, the Plans, and the Investment Options and do not contain any untrue statement of material fact or omit to state a

material fact necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading.

- g. Administrative Systems. Prior to the Program Start Date, the Contractor shall have demonstrated to the satisfaction of the Treasurer its ability to accept applications for Participation Agreements, to receive contributions and to establish and maintain accounts.
- h. Subcontracts. Prior to the Program Start Date, any subcontracts shall have been approved in accordance with Section 2.e and executed by the Contractor and subcontractor.
- i. Conversion Agreement. If applicable, prior to the Program Start Date, the Treasurer, the Council, the Contractor and First National Bank of Omaha (“FNBO”) shall have entered in a conversion agreement for the transfer of Trust Assets and Program Records held by FNBO to the Contractor.

#### **4. INVESTMENT OF TRUST ASSETS**

- a. Trust Management. The Contractor shall manage the Trust in accordance with the Act and the Agreement. The Contractor shall segregate Trust assets in a custodian bank in a separate custody account for each Plan. The custody accounts shall be maintained for the sole purpose of investing Trust assets and shall not be combined with the assets of the Contractor or any other Person.
- b. The Investment Options. Account contributions will be allocated by the Contractor to each Investment Option in accordance with the Investment Option elections of Account Owners and any applicable Allocation Guidelines set forth in Section 5.b.
- c. Investment of Trust Assets. Trust assets will be invested and administered by the Contractor as set forth in the Program Disclosure Statement. To the extent Trust assets are invested in investments of the Contractor, such assets will be invested as set forth in the Contractor’s registration statements for such investments. The Contractor shall provide notification to the Treasurer and the Council upon obtaining knowledge of any information regarding negligent conduct, misconduct, unusual performance, mismanagement, change in management, or any alleged violation of laws, rules or regulations involving any underlying fund or Trust asset that could have a material adverse effect upon the performance or value of any underlying investment or Trust asset.
- d. Crediting of Contributions. Plan contributions received in good order before the close of trading on the New York Stock Exchange (usually 4:00 p.m., Eastern Time) on any Business Day shall be credited to the Account to which the contribution is made on the same day. Contributions received in good order at or after the close of trading on the New York Stock Exchange or on a day other than a Business Day shall be credited on the next Business Day. Contributions shall be

credited that same day to the applicable Investment Option at the Unit Value per share calculated for that day for such Investment Option. A contribution shall be credited to an Account (i) once the documentation with respect to the Account is properly completed and such contribution is in good order and (ii) at a share price equal to the Unit Value per share next calculated for the applicable Investment Option after the contribution is credited. Any Person other than an Account Owner who contributes to an Account shall forfeit any rights to the contribution.

- e. Distributions. The Contractor shall process requests by Account Owners for distributions from the Accounts in compliance with: (i) Code Section 529; (ii) regulations thereunder; (iii) applicable Private Letter Rulings; (iv) other applicable IRS guidance; and (v) the applicable Program Disclosure Statement. The Unit Value per share for an Investment Option applicable to a distribution shall be the Unit Value per share next calculated for such Investment Option once such distribution request is received in good order (the same day if a distribution request is received in good order before the close of trading on the New York Stock Exchange (usually 4:00 p.m., Eastern Time) on any Business Day, or the next Business Day if a distribution request is received in good order at or after the close of trading on the New York Stock Exchange or on a day other than a Business Day).

## **5. INVESTMENT GUIDELINES**

- a. Program Investment Objective. In accordance with the Code and the regulations thereunder, the Contractor shall recommend to the Council mutual funds and other investments for the Plans consistent with the Council's investment objectives for the Plans. The Contractor shall adhere to all policies, procedures, and criteria as set forth in the Agreement or otherwise adopted by the Council or the Treasurer. The Treasurer and the Council acknowledge that the Contractor does not guarantee performance of the Investment Options or any return of amounts contributed by Account Owners or any income or earnings thereon and that the investment of contributions made by Account Owners is subject to market risks and may lose value.
- b. Allocation Guidelines. The Contractor shall invest Trust assets allocated to an Investment Option (including new contributions allocated to each Investment Option and the net earnings of each Investment Option) in accordance with the Allocation Guidelines. The Contractor shall make recommendations regarding the Allocation Guidelines consistent with its fiduciary duties, the objectives of the Trust, the Plans and the Investment Options as set forth in the Council's Statement of Investment Philosophy. On or before May 1 of each calendar year during the Initial Term and any Renewal Term, the Contractor shall submit to the Council for its consideration the Contractor's recommended Allocation Guidelines for each Investment Option for the following calendar year. On or before July 30 of each such calendar year, the Council shall either (i) notify the Contractor that the Council approves the Contractor's recommended Allocation Guidelines, as they may have been revised after consultation with the Council, or (ii) deliver to the Contractor

revised Allocation Guidelines that the Council deems appropriate in its sole discretion. In the event of any change to the Allocation Guidelines by the Council, the Contractor shall have a commercially reasonable period of time (not to exceed 30 calendar days) to implement any such changes.

- c. Mid-Year Changes to Allocation Guidelines. Notwithstanding anything to the contrary set forth above, the Council, upon written notice to the Contractor, may change the Allocation Guidelines at any time with 30 days' notice for application during the remaining portion of such calendar year.
- d. Investment Policies and Performance Benchmarks. The investment objective, policies and allocation for each of the Investment Options shall be as set forth in Schedule B, as amended from time to time. The Council reserves the right to adopt additional investment policies applicable to the Plans at any time upon advance written notice. In the event that such investment policies are adopted, they shall become part of the Agreement.
- e. Proxy Voting. The Council retains the right to vote all proxies of the investments underlying the Investment Options.
- f. Substitution, Removal or Addition of Investment Options. The Contractor may recommend to the Council the substitution, removal or addition of Investment Options to the respective Plans. The Council can choose to accept, reject or modify such recommendations in its sole discretion. The Council may, upon 30 days' written notice to the Contractor, direct the substitution, removal or addition of Investment Options to the respective Plans. The parties acknowledge and agree that the Contractor shall complete such substitution, removal or addition as soon as possible but in no event later than 60 days after receipt of such written notice.

If the Contractor recommends the addition of a mutual fund as an Investment Option and the mutual fund charges a redemption fee, the Contractor shall inform the Treasurer and the Council that the recommended mutual fund charges a redemption fee and provide the Treasurer and the Council with a written summary of the material terms of the fee.

- g. Expense Ratios and Other Fees. The expense ratios and other fees and expenses, except the Management Fee, associated with the Investment Options shall be set forth in Schedule B (collectively, the "Portfolio Expenses"). Prior to any increase to the Portfolio Expenses due to an increase in the expense ratios or other fees and expenses of the Investment Options or as a result of changes in the Allocation Guidelines or the substitution, removal or addition of Investment Options to the Plans, the Contractor shall seek the prior written consent of the Council, which the Council may grant or deny in its sole discretion. If the Council denies any request of the Contractor related to an increase in the Portfolio Expenses, the Contractor may, nonetheless, implement such increase in Portfolio Expenses; provided, however, that before the increase in Portfolio Expenses becomes effective, the

Contractor shall provide written notice of its intent to implement the increase in Portfolio Expenses and the Council shall have the opportunity to direct the Contractor to (i) substitute the affected Investment Options with other Investment Options, (ii) remove the affected Investment Options, and/or (iii) modify the Asset Allocation Guidelines.

## 6. FEES AND CHARGES

- a. Contractor Expenses. The Contractor shall bear all of its own direct and indirect costs and expenses associated with the Agreement, the Trust, the Plans, the Investment Options, and the Services and other obligations and responsibilities under the Agreement. This includes, but is not limited to, the marketing expenditure commitment, preparation and distribution of Program Disclosure Statements, preparation and distribution of enrollment materials, maintaining the Plans' websites, and transactional and other fees or expenses of the Investment Options. None of such costs or expenses shall be paid from or reimbursed out of the Trust or by the State.
- b. Management Fee. The Contractor will be entitled to the Management Fee as set forth in Schedule A, subject to adjustments as provided in Section 6.f, which shall be the Contractor's sole compensation for performing the Services hereunder, except as otherwise provided herein. The investment management fee for each Investment Option is charged separately and is disclosed in the prospectus for each Investment Option and is in addition to the Management Fee payable directly to the Contractor. The Management Fee will accrue and be calculated by the Contractor daily and will be payable to the Contractor monthly. Any 12b-1 fee, revenue sharing payment, sub-transfer agent, or related fees paid in connection with a Plan's investment in any mutual fund shall be an asset of the Plan, and the Contractor shall not be entitled to retain any such fees.
- c. Investment Management Fee. The investment management fee for each Investment Option is charged separately and is disclosed in the prospectus for each Investment Option and is in addition to the Management Fee payable directly to the Contractor.
- d. Payment of the Management Fee; Audit by the Treasurer or the Council. Commencing on the 15th day of each month after the Program Start Date, the Contractor will deliver to the Treasurer and the Council a summary report of its calculation of the Management Fee for the preceding month, in a format and by a means, electronically or otherwise, to be agreed upon by the Treasurer and the Council. Such report will set forth, at a minimum, the net assets of each Plan invested in each Investment Option for each day of the preceding month. If, within seven days following receipt of such calculation, the Treasurer or the Council does not advise the Contractor that it objects to such calculation, the Contractor will withdraw the calculated Management Fee from the Trust. If the Treasurer or the Council advises the Contractor that it objects to such calculation, the Treasurer, the Council and the Contractor will, in good faith, attempt to resolve such objection as



soon as reasonably practicable. The Contractor may withdraw the Management Fee immediately following resolution of such dispute.

The calculation and collection of the Management Fee will remain subject to post-audit adjustment as provided in Section 9.e, and neither the Treasurer's nor the Council's failure to advise the Contractor with respect to any monthly calculation, nor any transfer by the Contractor in payment of a prior amount calculated and submitted but not objected to by the Treasurer or the Council, will preclude subsequent adjustment of the Management Fee or the repayment by the Contractor of any overage.

Once the Contractor ceases performing Services under the Agreement, the Contractor will no longer be entitled to withdraw a Management Fee from the Trust.

- e. Administrative Fee. Concurrent with the payment of the Management Fee to the Contractor, the Contractor shall pay the Administrative Fee to the Treasurer.
- f. Adjustments to the Management Fee. The Management Fee may be adjusted only upon mutual written agreement of the parties and only: (i) in connection with a mutually agreed upon change to a Plan or Plans; (ii) if a Plan or Plans are modified or restructured in response to a change in Applicable Law and such change materially impacts the duties of the Contractor hereunder; or (iii) with a mutually agreed upon modification to the Services or administrative systems at the request of the Treasurer or the Council.
- g. Comparable Qualified Tuition Programs. The Contractor represents that the Management Fee is the lowest offered by the Contractor to any state with a comparable Qualified Tuition Program. In the event the Contractor reduces or agrees to a program management fee, including after taking into account any account fees and other non-asset based fees, which is less than the Management Fee for any state with a comparable Qualified Tuition Program, it shall offer the same fee schedule to the Trust, and the Plans shall automatically receive the benefit of any such more favorable terms as of the date such lower program management fee is provided to such state.
- h. Service-Based and Other Fees. The Contractor shall charge Account Holders the transaction fees for the transactions as set forth in Schedule A (the "Service Fees"). The Contractor may not change Service Fees without the prior approval of the Treasurer and the Council.

## 7. REPRESENTATIONS AND WARRANTIES OF THE CONTRACTOR

The Contractor hereby represents, warrants and covenants to the Treasurer and the Council as follows:

- a. Organization of the Contractor. The Contractor is duly organized, validly existing and in good standing under the laws of the state in which it is organized. The Contractor is also duly qualified and in good standing under the laws of the State and each jurisdiction where its ownership or lease of property or the conduct of its business otherwise requires such qualification. It is in compliance with all governmental approvals, consents, licenses, permits, certificates, franchises and requirements of law that are necessary to conduct its business and to enter into and perform its obligations under the Agreement and other Trust and Plan documents. The Contractor has the full corporate power and authority to execute and deliver the Agreement and to perform its obligations hereunder.
- b. Authority. The execution and delivery by the Contractor of the Agreement, and the performance by the Contractor of its obligations hereunder, have been duly and validly authorized. The Agreement has been duly and validly executed and delivered by the Contractor and constitutes the legal, valid and binding obligation of the Contractor enforceable against the Contractor in accordance with its terms.
- c. No Conflicts. The execution and delivery by the Contractor of the Agreement and the performance by the Contractor of its duties and obligations hereunder do not: (i) conflict with or result in a breach of any of the terms, conditions or provisions of its articles of incorporation or by-laws; (ii) conflict with or result in a violation or breach of any term or provision of any law, rule, regulation, judgment, decree, order or injunction applicable to it or any of its assets or properties; or (iii) conflict with or result in a violation or breach of, or constitute (with or without notice or lapse of time or both) a default under, any material agreement to which it is a party, or any material obligation or responsibility which it has to any third party.
- d. Governmental Approvals and Filings. As of the Effective Date, no consent, approval or action of, or filing with or notice to, any governmental or regulatory authority is required on the part of the Contractor in connection with the execution, delivery and performance of the Agreement or the consummation of the transactions contemplated hereby. No consent or approval of any other Person, including the holders of any indebtedness or obligations of the Contractor, is required on the part of the Contractor in connection with its execution, delivery and performance of the Agreement or the performance of its obligations hereunder.
- e. State Securities and Blue Sky Law Clearance. Subject to (i) verification of the availability of an applicable exemption from securities registration requirements under the securities laws of the State and (ii) the making of necessary notice filings (which filings the Contractor will make prior to the Program Start Date), Accounts may be promoted and offered to and opened by, and contributions thereto may be

made by, prospective or actual Account Owners eligible to open an Account pursuant to the Code in each state of the United States. The Contractor will be solely responsible for identifying all required consents, approvals, notifications and other filings to this end under applicable state securities or blue sky laws and for the qualification of the Accounts under the securities laws of the State and of each state of the United States, if required. The Treasurer will cooperate with the Contractor, as may be necessary, in the Contractor's preparation and submission of all such consents, approvals, notifications and other filings.

- f. Mutual Fund Registration. Each mutual fund included in the Investment Options is registered as an investment company under the Investment Company Act of 1940, as amended.
- g. Licenses and Approvals. The Contractor shall obtain, at its expense, all licenses, permits, insurance, and governmental approvals, if any, necessary to the performance of its obligations under the Agreement.
- h. Registration. The Contractor is registered or exempt from registration under the Investment Advisors Act of 1940, as amended, and is registered or licensed by the SEC, any self-regulatory organization (as such term is defined in Section 3(a)(26) of the Securities Exchange Act of 1934, as amended), any regulatory agency of any state of the United States, or any U.S. government department or agency, as applicable.
- i. 1940 Act. If the Trust or Plans shall be required to register as an investment company under the Investment Company Act of 1940, as amended, then the Contractor will cooperate with the Treasurer in effecting such registration in a timely manner.
- j. Compliance With Laws. The offer and sale of interests in the Trust and performance of the Services shall be performed in compliance with all requirements of the SEC, FINRA, the MSRB and any other state or federal authority to the extent such requirements may be or become applicable to the Contractor or any of its subcontractors.
- k. No Litigation. There is no action, suit, investigation or proceeding pending or, to the best knowledge of the Contractor, threatened against the Contractor before any court, arbitrator or administrative or governmental body that might: (i) result in a Material Adverse Effect on the operations of the Contractor; (ii) materially and adversely affect the ability of the Contractor to perform the Services hereunder; or (iii) materially adversely affect the reputation and public perception of the Contractor's relationship with the Trust or a Plan. There is no material action, suit, investigation, claim or proceeding pending, or, to the best knowledge of the Contractor, threatened against the Contractor or its parent involving allegations of fraud, misrepresentation, willful misconduct, breach of fiduciary duty, violation of any federal or state securities law or regulation, or violation of any federal or state

law or regulation enacted for the protection of banks, thrift institutions, insurance companies, or other financial institutions. As of the date hereof, the Contractor has not settled any action, suit, investigation or claim for any of the foregoing that might: (i) result in a Material Adverse Effect on the operations of the Contractor; (ii) materially and adversely affect the ability of the Contractor to perform the Services hereunder; or (iii) materially adversely affect the reputation and public perception of the Contractor's relationship with the Plans.

- l. Covenant To Notify. The Contractor will use its best efforts to notify the Treasurer and the Council in writing as soon as practicable, but in any event within 15 Business Days, of:
  - i. the earlier of the receipt by or actual knowledge of any subpoena, summons, complaint, order instituting proceedings, notice of investigation, indictment or criminal information, involving as a party any Governmental Authority with jurisdiction with respect to the enforcement of federal or state securities laws, with respect to any alleged violation by the Contractor, its affiliates or any subcontractor of any securities law requirement applicable to the Services or the administration of any Investment Option in which Trust assets are invested; or
  - ii. the entry by the Contractor, its affiliate or any subcontractor into a settlement agreement in any proceeding described in paragraph 7.l.i, or the issuance by any Governmental Authority of any consent order, cease and desist order or similar order applicable to the Contractor, its affiliate or any subcontractor with respect to any alleged violation by any such Person of any securities law requirement described in paragraph 7.l.i.
- m. Pay-for-Play. The Contractor has not and will not pay any placement agent fees, finder's fee, cash solicitation fee, or fee for consulting, lobbying or obtaining business from the Treasurer or the Council directly or indirectly related to the Contractor's Services or the Agreement.
- n. Program Disclosure Statement. The Program Disclosure Statement will at no time contain untrue statements of material fact, or omit material facts necessary to be stated in order for the Program Disclosure Statement not to be misleading in light of the circumstances.
- o. Insurance Coverage. The Contractor shall, during the Initial Term and any Renewal Term, maintain insurance of the types and at the levels set forth below:
  - i. *Errors and Omissions Insurance*. With respect to the investment management Services provided by the Contractor, investment advisors' errors and omissions insurance coverage, provided by an insurance carrier with an AM Best's rating of A- or better (unless otherwise approved by the Treasurer and the Council), shall be maintained by the Contractor in the

amount of no less than \$35,000,000 with a deductible of no more than \$5,000,000 per occurrence. The Contractor agrees to maintain errors and omissions insurance coverage for at least five years beyond the Final Termination Date.

- ii. *Cyber Liability Insurance.* The Contractor shall maintain cyber liability insurance with respect to the Services in the amount of \$5,000,000 per occurrence and \$10,000,000 aggregate to protect any and all Program Records or Confidential Information received by the Contractor pursuant to the Agreement, including any such Program Records or Confidential Information that resides on the devices owned by the Contractor employees or agents.
- iii. *General Liability Insurance.* The Contractor agrees to maintain (and cause any subcontractor performing Services to maintain) general liability insurance coverage in the amount of \$10,000,000 with a policy that contains, or is endorsed to contain, the following provisions:
  - 1. The State, the Treasurer, the Council and their officers, officials, employees, agents and volunteers are to be covered as additional insureds.
  - 2. For any claims related to the Services, the insurance coverage shall be primary insurance as it respects the Treasurer and the Council. Any insurance or self-insurance maintained by the Treasurer or the Council or its officers, officials, employees, agents or volunteers shall be in excess of the Contractor's insurance and shall not contribute with it.
- iv. *Policy Cancellation.* Each insurance policy required by this Section 7.0 shall be endorsed to state that coverage shall not be canceled by the insurer except after 30 calendar days' notice of cancellation of such policy to the Contractor or applicable subcontractor. The Contractor agrees to give immediate written notice to the Treasurer upon the receipt of such a cancellation notice from the insurer. A cancellation of an insurance policy required hereunder without replacement by a policy that meets this Section's requirements before the effective date of the cancellation shall entitle the Treasurer to declare the Contractor in material breach of the Agreement.
- p. Continuing Representations, Warranties and Covenants. Each of the representations, warranties and covenants made by the Contractor in this Section is true and correct as of the Effective Date and through the final day of the Initial Term and any Renewal Term, except to the extent a particular representation or warranty provides that it is made as of a specified date. Upon any material change in any of the representations, warranties or covenants made by the Contractor in

this Section, the Contractor shall immediately notify the Treasurer and the Council in writing of such change.

## **8. REPRESENTATIONS AND WARRANTIES OF THE TREASURER AND THE COUNCIL**

The Treasurer and the Council hereby represent, warrant and covenant to the Contractor as follows:

- a. Authority. The execution and delivery of the Agreement by the Treasurer and the Council, and the performance by the Treasurer and the Council of its obligations hereunder, have been duly and validly authorized under Applicable Law. The Treasurer and the Council have the legal right, power and authority to execute and deliver the Agreement, and the Treasurer and the Council have the legal right, power and authority to perform their obligations hereunder. The Agreement has been duly and validly executed and delivered by the Treasurer and the Council and constitutes the legal, valid and binding obligation of the Treasurer and the Council, enforceable in accordance with its terms.
- b. No Conflicts. The execution and delivery of the Agreement by the Treasurer and the Council, the performance by the Treasurer and the Council of their obligations hereunder and the consummation of the transactions contemplated hereby do not: (i) conflict with or result in a violation of any term or provision of any law, rule, regulation, judgment, decree or injunction applicable to the Treasurer, the Council or the Trust; or (ii) conflict with or result in a violation or breach of, or constitute (with or without notice or lapse of time or both) a default under, any agreement or other instrument to which the Treasurer, the Council or the Trust is a party, or any material obligation of the Treasurer, the Council or the Trust to a third party.
- c. Governmental Approvals and Filings. No additional consents, approvals or actions of, or filing with or notice to, any agency or instrumentality of the State is required in connection with the execution and delivery of the Agreement by the Treasurer or the Council, and the performance of the Agreement by the Treasurer and the Council or the consummation by the Treasurer and the Council of the transactions contemplated hereby, except such consents and approvals that will have been obtained upon execution and delivery of the Agreement.

Except as provided in Section 3, no consent, approval or further action by a Governmental Authority is required to cause proceeds from the contributions by Account Owners to be invested in the Investment Options.

- d. Qualified Tuition Program. The Treasurer and the Council intend that the Plans be operated and administered as a Qualified Tuition Program. To the best knowledge of the Treasurer and the Council, they have not taken any action to cause the Plans to cease to qualify as a Qualified Tuition Program.

## 9. REPORTING AND COMPLIANCE

- a. Reports and Financial Statements. The Contractor will prepare and deliver to the Council, the Council's designated investment adviser and custodian, and the Treasurer: (i) within 10 Business Days immediately following the end of each calendar quarter, reports on the performance of each of the Investment Options and the Administrative Fund, in a form mutually satisfactory to the Treasurer and the Council; and (ii) within 30 calendar days immediately following the end of each Program Fiscal Year, an annual statement of assets and liabilities and changes in net assets in a form mutually satisfactory to the Treasurer, the Council, and the Council's designated investment adviser and custodian, each such report to be prepared in accordance with generally accepted accounting principles applied on a consistent basis as of and for the periods involved.
- b. Account Statements. The Contractor will prepare and send to each Account Owner, within 20 calendar days immediately following the end of the period to which they pertain, calendar quarter and calendar year statements identifying: (i) the contributions made to each selected Investment Option in the relevant Account during the preceding period; (ii) the total contributions made to each selected Investment Option in such Account through the end of such period; (iii) the rate of return for the Investment Options in the relevant Account for such period; (iv) the total value of such Account(s) at the end of such period; (v) distributions made from each selected Investment Option in such Account during such period; and (vi) such other information that the Treasurer or the Council reasonably requests to have reported to the Account Owner. Account statements will be accompanied by an insert reflecting the benchmark performance for the Investment Options.
- c. Compliance Requirements. The Contractor shall:
  - i. Keep the Plans in compliance with Applicable Laws, the requirements of the Code and the regulations and rules of the Plans promulgated thereunder and any amendments thereto, provided such amendments do not impair a material term of the Agreement, and to manage the Plans to qualify as Qualified Tuition Programs;
  - ii. Keep adequate records of each Account, keep each Account separate from each other Account and provide the Treasurer with the information necessary to prepare the Account information and statements required by the Statute;
  - iii. Compile information for statements required to be prepared under the Code and provide such compilations to the Treasurer; and
  - iv. Provide the Treasurer with copies of all regulatory filings and reports made by the Contractor in connection with the Plans until the Final Termination Date.

- d. Tax Reports. The Contractor shall:
  - i. If there is any distribution from an Account to any individual or for the benefit of any individual during a calendar year, report such distribution to the IRS and either the Account Owner, the Beneficiary or the distributee to the extent required by federal law or regulation; and
  - ii. Prepare and file statements and information relating to Accounts to the extent required by federal and State law.
- e. Audits. The Contractor shall prepare or cause to be prepared, at its expense, annual financial statements in accordance with generally accepted accounting principles for each of the Plans within 75 days following the end of each Program Fiscal Year. Upon request, the Contractor shall provide such books, records, documents and accounting procedures and practices within its custody and control as are reasonably relevant to the performance of the Services for examination by the Treasurer and its outside auditors for a period of up to six years from the Final Termination Date. Such audit shall meet the requirements of the Act, as reasonably determined by the Treasurer. Each party shall reasonably cooperate with the other party and its representatives in connection with such audits and such audits shall be conducted at reasonable times and in a manner that will not unreasonably interfere or delay work. The Contractor will, in good faith, with the assistance of the Treasurer and the Council, attempt to resolve any State audit exceptions caused by the Contractor as soon as reasonably practicable. The Contractor shall agree that it will be held liable for any State audit exceptions to the extent caused by the Contractor and shall return to the State all payments made under the Agreement for which such exception has been taken or which has been disallowed because of such exception.
- f. Preparation and Distribution of Program Disclosure Statements. The Contractor shall prepare Program Disclosure Statements for each Plan in accordance with College Savings Plan Network (“CSPN”) disclosure principles as set forth in the current Disclosure Principles Statement. The Contractor shall update, whether by supplement or republication, and distribute Program Disclosure Statements on an annual basis, or more frequently as recommended by the CSPN disclosure principles or as requested by the Treasurer. Subject to the Treasurer’s approval and only when there are no substantial changes to a Plan, the Contractor may republish Program Disclosure Statements every other year and supplement Program Disclosure Statements in years in which it does not republish.

## **10. OWNERSHIP AND CUSTODY OF PROGRAM RECORDS**

- a. Program Records. The Treasurer shall own and have all right, title and interest in and to, and beneficial ownership of, the Program Records, regardless of authorship and whether or not they are in the possession of the Treasurer; provided, however,



that nothing in this Section shall affect the Contractor's or its subcontractors' ability to create, maintain and preserve Program Records, subject to Section 5.b, in the customary course of its operation in accordance with the Agreement or as required under Applicable Law or affect the Contractor's ownership of the Contractor Intellectual Property or its subcontractors' ownership of Third Party Intellectual Property. The Contractor acknowledges and agrees that all Program Records created by it or any of its subcontractors shall be considered "works made for hire" and the Treasurer shall own and have all right, title and interest in and to, and beneficial ownership of, the same (except to the extent that any Program Records qualify as trade secrets under Applicable Law, where in such event all worldwide right, title and interest in and to such Program Records shall be assigned to Treasurer in the following sentence and Contractor shall treat and protect such Program Records as trade secrets as provided in Section 11 of the Agreement as provided under Applicable Law). To the extent any Program Records do not qualify as "works made for hire" under applicable copyright laws, the Contractor hereby assigns, conveys and transfers to the Treasurer all worldwide right, title and interest in and to such Program Records. The Contractor agrees to execute and provide to the Treasurer, and cause its subcontractors to execute and provide to the Treasurer, such further assignments and other documents as may be reasonably required to vest the Treasurer with all worldwide, right, title and interest in and to such Program Records free and clear of all liens, claims and encumbrances.

- b. Access to Program Records. Program Records shall be readily accessible to the Treasurer, at the Contractor's expense, in a commercially reasonable manner during the Initial Term and any Renewal Term and for seven years from the Final Termination Date; provided, however, that the Treasurer, the Council and/or their designees shall have all access necessary to comply with Applicable Law. Upon request, copies shall be furnished to the Treasurer and the Council at no cost. The Contractor shall maintain and archive the Program Records in compliance with applicable MSRB, FINRA and SEC rules and regulations after the Final Termination Date. The Contractor shall provide the Treasurer and/or the Treasurer's representative with full access and login credentials to any requested Contractor or subcontractor website or database in order to view Account information, Account activity or otherwise resolve complaints or inquiries. In performing the Services, and in the event of any action, suit, investigation or similar proceeding involving the Contractor that is brought in connection with the Plans, the Contractor and its subcontractors will have full access to the relevant Program Records and, to the fullest extent permitted by law, the Treasurer will cooperate fully, and will cause its officers and employees to cooperate fully, with the Contractor in connection with any such action, suit, investigation or similar proceeding.
- c. Program Information Technology. The Contractor Intellectual Property shall remain the property of the Contractor; the Third Party Intellectual Property shall remain the property of the applicable subcontractor; and the Trust Intellectual Property shall remain the property of the Trust. In addition, the Contractor, its

subcontractors, and third-party licensors providing software or other technology to the Contractor or its subcontractor for development, modification or operation of the Plans shall own and continue to own, during and after the Agreement, all right, title and interest in and exclusive beneficial ownership of all software and source code (including superseded versions), system design materials, system testing materials, system technical support materials, system training materials, and other components of such information technology relating to the development, modification or operation of the Plans, whether created before or during the term of the Agreement as their respective interests may be. Notwithstanding anything in the Agreement to the contrary, the Plans, the Treasurer and the Council shall not be restricted in any manner in connection with the continuation of the Plans after the term of the Agreement in using the same or substantially the same structure of the Plans as have been in effect prior to termination or expiration of the Agreement.

- d. Contingency and Disaster Recovery Program. The Contractor at all times must have a Contingency Program to ensure that Plan operations will continue in the event of a variety of possible business disruptions due to natural disasters, technical disasters, and internal and external malicious activity (including cyberattacks that affect systems or business networks). The Contingency Program must identify all resources that require backup and the priority of such backup, and it must at a minimum address or provide for:
  - i. Personnel responsibilities in the event of business disruption;
  - ii. Backup recovery facilities that, at a minimum, provide for adequate hardware/software compatibility between the backup facility and the operations facility, and adequate workspace and equipment to conduct ongoing business;
  - iii. Backup strategies for data files and system files, including the frequency of backup and the storage of backup media;
  - iv. Environmentally controlled and secure off-site storage (A) located an adequate distance from the operations facility to avoid both facilities being impaired by the same event, and (B) which will contain at a minimum storage of procedures and user manuals, backup operating instructions, reference and data files, system documentation and software files, and operational files;
  - v. Access to multiple communication modes as needed to continue full operations;
  - vi. A quarterly test of the backup facility's ability to assume full operations;

- vii. Review of the Contingency Program at least annually and in connection with any significant changes to the Contractor's business operations and environment; and
- viii. The contingency and disaster recovery services set forth in [relevant section of the Contractor's RFP proposal].

At the Treasurer's discretion, the Treasurer or the Treasurer's designees may observe any or all backup and recovery tests. All requirements of the Agreement, including, without limitation, those relating to confidentiality and compliance with Applicable Law, shall apply to the Contractor disaster recovery site. Except as set forth below in this Section, for a period not to exceed the Initial Disaster Period, the Contractor shall be excused from complying with the Service Levels that, as a result of the disaster, cannot be met through the exercise of best efforts; provided, however, that, (i) during the Initial Disaster Period the Contractor shall use its best efforts to comply with the Service Levels, and ensure that any disaster recovery services provider complies with the Service Levels with respect to the affected Services; (ii) in no case shall the Contractor be excused from complying with the Service Levels that are not materially affected by the disaster; (iii) in no case shall the Contractor be excused from complying with the Service Levels with respect to Services that continue to be provided by the Contractor in the same manner notwithstanding the disaster; and (iv) in no case shall the Contractor be excused from complying with the Service Levels that can otherwise be met through the exercise of best efforts.

## **11. CONFIDENTIALITY AND PUBLIC RECORDS**

- a. Confidential Information. The Contractor, the Treasurer and the Council agree to maintain the confidentiality of all personal and financial information concerning Account Owners and Beneficiaries (except for disclosures required by Applicable Law or otherwise required under the Agreement, disclosures to Account Owners of such information relating to them or their Accounts, disclosures required by Section 9.d, disclosures of information regarding Qualified Withdrawals to institutions of higher education, and disclosures required by SEC Regulation S-P and the privacy policies adopted by the Contractor in compliance with Applicable Law) unless written authorization to disclose such information has been given by the appropriate party. To the extent permitted by Applicable Law, the Contractor, the Treasurer and the Council agree to maintain the confidentiality of all technical, financial, business and other information of the Contractor, its subcontractors and their affiliates, including Contractor Intellectual Property and Third Party Intellectual Property. The personal, technical, financial, business and other information referred to above is "Confidential Information." The Contractor will use Confidential Information solely for the purpose of performing the Services in accordance with the Agreement. The Contractor will hold all Confidential Information in strict confidence indefinitely (even beyond the Final Termination Date) until returned to the other party or its designated representatives or destroyed

pursuant to a party's record retention policy in accordance with Applicable Law, and will not disclose such information without prior written authorization from the Treasurer and the Council. The Treasurer and the Council will hold all Confidential Information in strict confidence indefinitely (even beyond the Final Termination Date) until returned to the other party or its designated representatives, destroyed pursuant to a party's record retention policy in accordance with Applicable Law, or as otherwise disclosed pursuant to Section 11.d. The Contractor will defend, indemnify and hold the Treasurer, the Council, the Trust and the Plans harmless against and from all Losses arising out of the wrongful use or disclosure of such information by the Contractor, a subcontractor, or their respective current or former officers, employees, agents and representatives.

This Section will not restrict any disclosure required to be made by Applicable Law, except that no such disclosure will be made sooner (unless otherwise compelled) than five Business Days immediately following the other party's receipt of written notice of such requirement, and such notice will include a copy of any Applicable Law. In the event either party is ordered to disclose Confidential Information, such party will afford to the other party a reasonable opportunity to participate and object, at the other party's expense, to any such disclosure.

- b. Use by Employees and Agents. The requirement of confidentiality also applies to the subcontractors and delegates of any party and employees, attorneys and other professional advisers and agents of the parties and such subcontractors and delegates. Each party will use its best efforts to ensure that such persons adhere to the confidentiality requirements set forth herein. Use and disclosure of proprietary and Confidential Information by employees, agents, attorneys and other professional advisers to the extent necessary to carry out the terms and purposes of the Agreement is permitted.
- c. Plan Lists. The Contractor agrees it shall not, and shall cause its affiliates, subcontractors and delegates not to, sell, provide or otherwise disclose information from any Plan List to any third party unless otherwise directed to by the Treasurer or required by Applicable Law.
- d. Public Records. Pursuant to State public records statutes (Neb. Rev. Stat. Sections 84-712 through 84-712.09), information or documents received by the Treasurer or the Council from the Contractor may be open to public inspection and copying unless exempt from disclosure. The parties agree that the Confidential Information of the Contractor, its subcontractors or their affiliates may include information or documents that contain "trade secrets," as such term is defined by the Nebraska Trade Secrets Act, Neb. Rev. Stat. Section 84-502(4), or other proprietary or commercial information which if released would give advantage to business competitors and serve no public purpose, within the meaning of Neb. Rev. Stat. Section 84-712.05(3). The Contractor will identify any such information and documents as "Confidential."

If any Person (including any governmental employee who is not an employee of the State) should request access to or be granted access to any such information or documents marked as “Confidential,” the Treasurer and the Council shall notify the Contractor in writing of any such request and shall furnish a copy of all written materials pertaining to such request (including the request itself), prior to the request’s approval if so granted, so that the Contractor, its subcontractors and their affiliates and any other affected parties may work with the Treasurer and/or the Council, as appropriate, to properly protect such Confidential Information at law or in equity and, if deemed necessary or appropriate, pursue any remedies available to them under Applicable Law.

## 12. COMMUNICATIONS AND MARKETING

- a. Communications. The Program Logo, will be displayed, on: (i) each application to open an Account and each Participation Agreement; (ii) the Program Disclosure Statements and any disclosure supplemental thereto; (iii) each Program Account statement; (iv) each pamphlet and other materials advertising the Plans; (v) each advertising of the Plans in print and electronic media; and (vi) other Plan documents, including other Plan forms and letterhead. The Program Logo shall at all times be represented with equal or greater prominence than the Contractor brand name and logo. All communications shall be made in accordance with all Applicable Laws, including the Statute and the rules and regulations, as may be in effect from time to time of the MSRB and FINRA. Any marketing, promotional, sweepstakes or other written materials prepared by the Contractor must be submitted in advance to the Treasurer for approval prior to use. The Contractor shall provide the Treasurer with at least 10 business days to review all such materials. The parties agree that this requirement is a material term of the Agreement.
- b. The Contractor and Affiliate Marketing and Advertising. The Contractor shall not, without the advance written consent of the Treasurer, make any mailings or contact with any Account Owners or Beneficiaries unrelated to the Plans, unless such contact or communication is initiated or facilitated with no information obtained in relation to the Plans. The Contractor will not, and will cause its affiliates not to: (i) sell any list established in administering the Plan of Account Owners or Beneficiaries or any name thereon to any third party; (ii) use any list of Account Owners or any name therein for any solicitation unrelated to the Plans; or (iii) solicit any Beneficiaries. The Plans’ Internet websites are the property of the Trust.
- c. Marketing Expenditures and Promotional Activities. The marketing and promotional activities performed by the Contractor for the Plans shall include, but not be limited to, the Services set forth in the RFP and the Contractor’s RFP proposal. Within 30 days of the execution of the Agreement and by no later than September 15 of each year thereafter, the Contractor will submit a proposed marketing plan specifically designed for the immediately following calendar year.

Prior to implementation, each marketing plan must be reviewed and approved by the Treasurer. The Contractor will implement the marketing plan after incorporating any changes requested by the Treasurer. The Treasurer will notify the Contractor in advance of all of the Treasurer's Plan marketing and promotional activities and shall obtain the Contractor's permission, which shall not be unreasonably withheld, prior to using the Contractor's name or the Contractor's brand name and logo on any Plan communication.

- i. *Professional Staff.* The Contractor shall provide no fewer than four full-time professional community outreach personnel to be engaged by the Treasurer to market the Plans. These professionals shall be dedicated to conducting approved educational and outreach efforts, expanding marketing efforts, annually attending and staffing Plan promotional events, including The Nebraska State Fair, and performing such other activities as determined by the Treasurer. At least two such professionals will be dedicated to marketing efforts in the State and at least two will be dedicated to marketing efforts outside the State.
  - ii. *Marketing Reports.* The Contractor shall compile, prepare and provide to the Treasurer, within 15 Business Days immediately following the end of each calendar quarter, a report containing a list of the Contractor's ongoing marketing efforts and completed marketing activities during the preceding quarter. Reports shall be in form and substance as approved by the Treasurer.
- d. Publicity. The Treasurer, the Council and the Contractor shall provide each other with prior notice and a draft of any press release or public announcement regarding the Plans, the Agreement, and/or the Services performed hereunder.

### **13. LIABILITY AND INDEMNIFICATION**

- a. The Contractor.
  - i. *Liability of the Contractor.* The Contractor, to the fullest extent permitted under Applicable Law, will be liable to the Treasurer, the Council and the Trust for any and all Losses suffered, incurred or sustained by the Treasurer, the Council, an Account Owner, a Beneficiary, the Trust or their respective employees, agents, representatives, affiliates, delegates or subcontractors, or to which the Treasurer or the Trust or their respective employees, agents, representatives, affiliates, delegates or subcontractors become subject, to the extent resulting from, arising out of or relating to any negligent act or omission, willful misconduct, material breach of the Agreement or fraud by the Contractor or its officers, employees, agents, representatives, delegates or subcontractors.

- ii. *Indemnification by the Contractor.* Subject to the provisions of the Agreement, the Contractor will, to the full extent permitted under Applicable Law, indemnify, defend and hold harmless the Plans, the Treasurer, the Council, Account Owners, Beneficiaries, the Trust and the members, officers, employees and agents of any of them having responsibilities in connection with the Plans and any successors of any of them (collectively, the “Plan Indemnitees”), from and against any and all Losses suffered, incurred or sustained by the Plan Indemnitees or to which any of them becomes subject, to the extent resulting from, arising out of or relating to a breach by the Contractor of the Agreement and constituting a negligent act or omission, willful misconduct, a material breach of the Agreement, fraud, or willful violation of law by the Contractor or its officers, employees, agents, representatives, affiliates, delegates or subcontractors with respect to, related to or concerning the Agreement. Notwithstanding the foregoing, a Plan Indemnitee will not be entitled to indemnification hereunder if it has been adjudicated that such Losses: (A) arose from a material violation of the Agreement by, or the negligent act or omission, willful misconduct, fraud, or willful violation of law by, any Plan Indemnitee (including any Plan Indemnitee not seeking indemnification); or (B) arose out of the acts or omissions of the prior program manager or other present service providers.
- b. Liability of the Treasurer and the Council. The liability of the Treasurer and the Council under the Agreement is limited to the extent contemplated and provided by the State Tort Claims Act (Neb. Rev. Stat. Sections 81-8,209 through 81-8,235) and the State Contract Claims Act (Neb. Rev. Stat. Sections 81-8,302 through 81-8,306).
- c. Indemnification Procedures. If there is asserted any claim, liability or obligation that may give rise to any Losses to a party for which indemnification may be available under the Agreement (the “Indemnified Party”), or if such Indemnified Party determines the existence of the foregoing whether or not the same shall have been asserted, such Indemnified Party shall promptly give notice in writing to the other party (the “Indemnifying Party”) (including reasonable detail of the facts giving rise to same) upon receipt of notice of the assertion of any claim, liability or obligation, or receipt of notice of the filing of any lawsuit based upon such assertion, or, with respect to a claim not yet asserted against the Indemnified Party, promptly upon the determination by the Indemnified Party of the existence of the same. The Indemnifying Party, within 30 days, or such shorter period as is required to avoid any prejudice in the claim, after the notice, may elect to defend, compromise or settle the third-party claim at its expense. No Indemnified Party shall compromise or settle any claim or dispute to which this Section applies without the prior written consent of the Indemnifying Party. Such written consent will not be unreasonably withheld. The Indemnified Party shall provide to the Indemnifying Party all information, assistance and authority reasonably required in

order to evaluate any third-party claim, and affect any defense, compromise or settlement.

- d. No Personal Liability. In no event shall any official, officer, employee or agent of the State, the Treasurer, the Council or the Trust be personally liable or responsible for any representation, statement, covenant, or obligation contained in, or made in conjunction with, the Agreement, whether express or implied.

#### **14. TERMINATION OF AGREEMENT**

- a. Termination. The Agreement will terminate prior to the expiration of the Initial Term or Renewal Term, if any, upon the occurrence of any of the following (each an “Early Termination Event”), subject to the provisions of subsection c:
  - i. at the Treasurer’s or the Council’s election, if the Contractor breaches any provision of the Agreement (with respect to representations, covenants or otherwise) and such breach remains uncured for more than 30 days after the Treasurer or the Council have given written notice thereof to the Contractor; provided, however, that, if the nature of the breach is such that, if the Treasurer and the Contractor mutually agree, the same cannot reasonably be cured within the applicable cure period, the Contractor shall not be deemed to be in breach if the Contractor shall within such period commence cure and thereafter diligently seeks to prosecute the same to completion;
  - ii. at the Treasurer’s or the Council’s election, if the Contractor commences a voluntary case or other proceeding seeking rehabilitation, liquidation, reorganization or other relief with respect to itself or its debts under any rehabilitation, bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, rehabilitator, receiver, liquidator, custodian or other similar official of it or substantially all of its property, or will consent to any such relief or to the appointment of or taking possession by any such official in an involuntary case or other proceeding commenced against it, or will make a general assignment for the benefit of creditors, or file an answer admitting the material allegations of a petition filed against it in any such proceeding or fail generally to pay its debts as they become due, or will take any corporate action to authorize any of the foregoing;
  - iii. at the Treasurer’s or the Council’s election, if an involuntary case or other proceeding will be commenced against the Contractor seeking rehabilitation, liquidation, reorganization or other relief with respect to it or its debts under any rehabilitation, bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its property, and such involuntary case or other proceeding will remain undismissed and unstayed for a period of 60 days;



- iv. at the Treasurer's or the Council's election in the event of a change in law which has a Material Adverse Effect on the ability of the State to operate the Trust or the Plans; or
  - v. at the Contractor's election if the Treasurer or the Council breaches any provision of the Agreement (with respect to the representations, covenants or otherwise) and such breach remains uncured for more than 30 days after the Contractor has given written notice thereof to the Treasurer and the Council; provided, however, that, if the nature of the breach is such that, if the Treasurer and the Contractor mutually agree, the same cannot reasonably be cured within the applicable cure period, the Treasurer or the Council shall not be deemed to be in breach if the Treasurer or the Council shall within such period commence cure and thereafter diligently seeks to prosecute the same to completion.
- b. Existing Accounts. In the event the Agreement is not renewed at the expiration of the Initial Term or any Renewal Term, the Contractor shall continue to provide all Services after the date of expiration of the Initial Term or any Renewal Term through the actual termination of the Agreement in accordance with the terms of the Agreement, unless otherwise notified by the Treasurer. Notwithstanding the foregoing, the Treasurer may elect to have the Contractor continue to provide the Services beyond an Early Termination Event through the end of the Initial Term or Renewal Term, as applicable, if the Council provides notice of its right to terminate the Agreement. Such election by the Treasurer shall in no way impact the Council's decision to terminate all investment management services by the Contractor. In addition, the Council may elect to have the Contractor continue to provide investment management services beyond an Early Termination Date through the end of the initial Term or current Renewal Term, as applicable, if the Treasurer provides notice of its right to terminate the Agreement. Such election by the Council shall in no way impact the Treasurer's decision to terminate all program management services by the Contractor. The Contractor shall not solicit or accept new Accounts after the expiration of the Initial Term or Renewal Term.
- c. Transition Accounts.
- i. In the event the Agreement is terminated by an Early Termination Event or is not renewed at the expiration of the Initial Term or Renewal Term, the Treasurer may require and the Contractor shall continue to provide, if required, those Services that the Treasurer determines are necessary and appropriate to enable the transition of the Plans from program management by the Contractor to the Treasurer, its designated representatives or a new program manager (the "Transition"). In no event shall the Contractor continue to provide Services under the Agreement for a period to exceed one year following the date of the Early Termination Event or expiration of the Initial Term or Renewal Term. The Contractor and the Treasurer must

mutually agree upon any longer transition period. The Contractor shall be entitled to all fees and expenses which are due and owing to the Contractor under the terms of the Agreement for Services provided by the Contractor during the Transition through the Final Termination Date as its sole compensation for providing such services. In no event shall the Contractor be entitled to any other fees or compensation in connection with the Transition. The parties shall mutually and in good faith agree upon a Transition plan for the orderly transfer of Accounts and Services prior to the Final Termination Date from the Contractor to any workforce, agency, contractor, or other entity designated by the Treasurer that provides for reasonable consideration for the best interests of the Account Owners, is protective of the Treasurer's fiduciary obligations, and avoids the likelihood of an increase in economic loss, or the likelihood of resulting liability to Account Owners, Beneficiaries or the Treasurer. Such Transition plan shall provide for complete, prompt, and reasonable access to all records, data, files and information pertinent to performing the work the Contractor will be ceasing to perform, but excluding the Contractor Intellectual Property and the Third Party Intellectual Property.

- ii. The Contractor shall take all steps necessary to ensure that all system materials, including documentation, are current and adequate to facilitate the orderly transfer of all files, data, information and assets of or relating to the Plans in a reasonable and storable electronic form within a medium mutually agreed upon by the Contractor and the Treasurer.
- iii. During the Transition, the parties shall take all steps necessary to ensure that their respective employees, agents and subcontractors do not impede or delay the orderly transfer of work. In the event of a Transition, if there is any delay in the transfer that is the direct or indirect result of actions of the Contractor or its employees, agents or subcontractors that impedes the Transition, the Treasurer may, at his discretion, require the Contractor to pay to escrow fees otherwise allowable under the terms of the Agreement until such time as the transition is complete.
- iv. The Contractor and its subcontractors shall each bear all of their own expenses in connection with the assumption of program management responsibilities as well as any Transition.

## **15. NOTICES**

Any notice given in connection with the Agreement shall be given in writing and shall be delivered: (i) by hand to the other party; (ii) by courier to the other party; (iii) by certified mail, postage prepaid, return receipt requested, to the other party at the other party's address provided below; or (iv) by facsimile transmission or e-mail transmission to the other party as noted below. Notice shall be deemed delivered immediately upon personal service and upon confirmation of transmission if sent by facsimile transmission. Notice

provided in the United States mail shall be deemed delivered the third Business Day after the document has been deposited in the United States mail. Notice by e-mail transmission shall be deemed delivered on the date the recipient provides written acknowledgement (via e-mail or other method) of receipt of the same. Any party may change its physical address, facsimile number or e-mail address by giving written notice of the change to the other parties.

*If to the Treasurer to:*

Nebraska State Treasurer State Capitol Building P.O. Box 94788 Lincoln, NE 68509	Telephone: (402) 471-2455 Facsimile: (402) 471-4390 Email: john.murante@nebraska.gov
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*With a copy to (which shall not constitute notice):*

Rachel Biar, Assistant Treasurer State Capitol Building P.O. Box 94788 Lincoln, NE 68509	Telephone: (402) 471-2455 Facsimile: (402) 471-4390 Email: rachel.biar@nebraska.gov
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*With a copy to (which shall not constitute notice):*

John E. Schembari Kutak Rock LLP 1650 Farnam Street Omaha, NE 68102	Telephone: (402) 346-6000 Facsimile: (402) 346-1148 Email: john.schembari@kutakrock.com
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*If to the Council to:*

Nebraska Investment Council Attn: State Investment Officer 941 O Street, Suite 500 Lincoln, NE 68508	Telephone: (402) 471-2043 Facsimile: (402) 471-2498 Email: nic.sio@nebraska.gov
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*With a copy to (which shall not constitute notice):*

Christopher Heinrich O'Neill Heinrich Damkroger 121 South 13th Street Lincoln, NE 68501	Telephone: (402) 434-3000 Facsimile: (402) 434-3030 Email: cheinrich@ohdbslaw.com
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*If to the Contractor to:*

	Telephone: Facsimile: Email:
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## 16. MISCELLANEOUS

- a. Amendment. The Agreement, including the Schedules hereto, may be amended only if such amendment is in writing and agreed to by the Treasurer, the Council and the Contractor.
- b. Cooperation. The parties will cooperate with each other in a commercially reasonable manner in order that the conditions to the obligations of the Treasurer, the Council and the Contractor contained in Section 3 are satisfied and the duties and obligations of the parties hereunder may be effectively, efficiently and promptly discharged.
- c. Compliance With Civil Rights Laws and Equal Opportunity Employment. The Contractor shall comply with the Nebraska Fair Employment Practice Act and Title VI of the Civil Rights Act of 1964, as amended, so that no person shall, on the grounds of age, creed, sex, physical handicap, race, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under the Agreement or under any project, program, or activity supported by the Agreement. The Contractor shall also comply with: the Federal Rehabilitation Act of 1973, as amended; the Americans with Disabilities Act of 1990, as amended; Section 5043 of the Rehabilitation Act of 1973, as amended; the Age Discrimination Act of 1975, as amended; and the Nebraska Fair Employment Act, as amended. The Contractor further agrees to include similar provisions in all subcontracts for services allowed in connection with the Agreement.
- d. Personnel Recruitment Prohibition. The Contractor shall not knowingly recruit any State professional or technical personnel who have worked on the Plans or who have had any influence on decisions affecting the Plans for one year following the completion of services provided pursuant to the Agreement. This prohibition does not affect the right of the Contractor's organization to recruit employees for projects unrelated to the Plans, provided such recruitment does not create a conflict of interest.
- e. State Property. The Contractor shall be responsible for the proper care and custody of any state-owned personal property (such as vehicles or computers) furnished for the Contractor's use during the performance of the Agreement. The Contractor shall reimburse the State for any damage of such property as a result of the Contractor's use, normal wear and tear excepted.
- f. Drug-Free Workplace. The Contractor shall maintain a drug-free workplace policy.
- g. Waiver. The terms and conditions hereof may be waived only by a written instrument signed by the party waiving compliance. The failure of the Treasurer, the Council or the Contractor to insist on strict compliance with the Agreement, or to exercise any right or remedy under the Agreement, will not constitute a waiver of any rights provided under the Agreement, estop either party from thereafter

demanding full and complete compliance, or prevent either party from exercising such a right or remedy in the future. Any waiver by either party of any right under the Agreement will not constitute a waiver with respect to any separate or subsequent right or matter under the Agreement.

- h. Force Majeure. Neither the Treasurer, the Council nor the Contractor (or the Contractor's affiliates, subcontractors or delegates) shall be liable for or deemed to be in default for any delay or failure to perform under the Agreement if such delay or failure to perform results from an act of God, civil or military authority, act of war, terrorism, riot, insurrection or other occurrence beyond that party's control. In such case, the intervening cause must not be caused by the party asserting it and the excused party is obligated to promptly perform in accordance with the terms of the Agreement after the intervening cause ceases.
- i. Advance Payment. No compensation or payments of any kinds will be made in advance of services actually performed and/or goods furnished except such payments as expressly permitted by the Agreement.
- j. Taxes. The State is not required to pay taxes of any kind and assumes no liability for taxes as a result of the Agreement. Any property tax payable on the Contractor's equipment which may be installed in a State-owned facility is the responsibility of the Contractor. The State shall not pay taxes based on the Contractor's income or property taxes for software.
- k. Inspection and Approval. Final inspection and approval of all work required by the Agreement shall be performed by the designated State officials. The State shall have the right to enter any premises where the duties of the Contractor or any subcontractor under the Agreement are being performed and to inspect, monitor, or otherwise evaluate the work being performed. All inspections and evaluations shall be at reasonable times and in a manner that will not unreasonably delay work.
- l. No Third-Party Beneficiaries. Except as otherwise specifically provided for herein, nothing in the Agreement is intended or will be construed to give any Person, other than the parties hereto and their successors and permitted assigns, any legal or equitable right, remedy or claim under or in respect to the Agreement or any provision contained herein.
- m. Independent Contractor. Nothing contained in the Agreement will be deemed or construed to create the relationship of a joint venture or partnership between the Treasurer, the Council or the Contractor. The Contractor will have no authority to bind the Treasurer or the Council without the written consent of the Treasurer and/or the Council, as appropriate. The Contractor is an independent contractor and will be free, subject to the terms and conditions of the Agreement, to exercise judgment and discretion with regard to the conduct of its business.

- n. Headings. Headings and subheadings of provisions of the Agreement are solely for the convenience of reference and are not a part of the Agreement and will not affect the meaning, construction, operation or effect hereof.
- o. Entire Agreement. The Agreement, including the RFP and all Schedules attached hereto (as amended from time to time), sets forth the entire understanding of the parties hereto with respect to the subject matter hereof and incorporates, merges and supersedes any and all prior understandings and communications, whether written or oral, with respect to such subject matter.
- p. Governing Law. The Agreement shall be construed in accordance with and governed by the laws of the State of Nebraska. The venue of any action to enforce the provisions of the Agreement shall be Lancaster County, Nebraska. In the event any term of the Agreement is held to be invalid or unenforceable by a court, the remaining terms of the Agreement will remain in force.
- q. Survival. Notwithstanding the termination or expiration of the Agreement, provisions regarding confidentiality, indemnification, records, right to audit and independent audit, intellectual property rights, post-termination duties and responsibilities, and any other provisions which by their nature should survive shall survive the Final Termination Date.
- r. Attorneys' Fees. If any party brings any action or proceedings to enforce, protect or establish any right or remedy under the terms and conditions of the Agreement, the prevailing party shall, to the extent permitted by law, be entitled to recover reasonable attorneys' fees, as determined by a court of competent jurisdiction, in addition to any other relief awarded.
- s. Selling Agent Agreements. The Treasurer or the Council may, at any time in their sole discretion, as Trust fiduciaries, direct the Contractor and any subcontractor to terminate a selling agent agreement for the Plans upon 10 days' notice.
- t. Time of Essence. Time is expressly declared to be of the essence with respect to the Agreement.
- u. Counterparts. The Agreement may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered will be an original, but all of which taken together will constitute one and the same instrument.

**IN WITNESS WHEREOF**, the parties hereto have caused the Agreement to be executed by their duly authorized representatives on the Effective Date.

**NEBRASKA STATE TREASURER, AS  
TRUSTEE FOR THE NEBRASKA  
EDUCATIONAL SAVINGS PLAN TRUST**

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John Murante, Nebraska State Treasurer

**NEBRASKA INVESTMENT COUNCIL**

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Michael Walden-Newman, State Investment  
Officer

**[CONTRACTOR]**

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**[Name, Title]**

**SCHEDULE A  
MANAGEMENT FEE**



**SCHEDULE B**  
**INVESTMENT OPTIONS**

## ATTACHMENT B – PRICING SCHEDULE

Complete this pricing schedule and include all fees the Provider proposes to charge to manage the Plans in this Attachment. Failure to complete this Attachment may result in disqualification of the Provider.

### 1. NEST DIRECT PLAN

#### a. Proposed Fee Structure

- i. The weighted average operating expense ratios for all portfolios in the Plan will not exceed \_\_\_\_\_%.
- ii. Complete the following table (or a table of comparable format) by inserting your proposed **age-based investment options** in the far left column and assuming a State administration fee of 0.02%. Add more rows to the table as necessary.

Age-Based Investment Option	Weighted Average Operating Expense Ratio	Program Management Fee	State Administration Fee	Total Annual Asset-Based Fees
			0.02%	
			0.02%	
			0.02%	

- iii. Complete the following table (or a table of comparable format) by inserting your proposed **static investment options** in the far left column and assuming a State administration fee of 0.02%. Add more rows to the table as necessary.

Static Investment Option	Weighted Average Operating Expense Ratio	Program Management Fee	State Administration Fee	Total Annual Asset-Based Fees
			0.02%	
			0.02%	
			0.02%	

- iv. Complete the following table (or a table of comparable format) by inserting your proposed **individual mutual funds or other investments not**

**captured above** in the far left column and assuming a State administration fee of 0.02%. Add more rows to the table as necessary.

Mutual Fund, Etc.	Weighted Average Operating Expense Ratio	Program Management Fee	State Administration Fee	Total Annual Asset-Based Fees
			0.02%	
			0.02%	
			0.02%	

- v. Indicate whether any of the program management fees listed above will be reduced as the asset base increases, and provide the exact break points for such reductions and in what amounts.
- vi. Identify any other proposed program management fees not captured above and how the Provider intends to charge such fees.

**2. NEST ADVISOR PLAN**

a. Proposed Fee Structure

- i. Complete the following table (or a table of comparable format) by inserting your proposed **share class structure** in the far left column and the fees associated with each, assuming a State administration fee of 0.02%. Add more rows to the table as necessary.

Share Class	Up-Front Sales Load	Distribution and Marketing Fee	CDSC	Trail	Program Management Fee	State Administration Fee	Total Fees
						0.02%	
						0.02%	
						0.02%	

- ii. Describe all relevant aspects of each share class, including the point at which a share class converts to A shares. (Currently the NEST Advisor Plan converts Class C units to Class A units five years after purchase. Upon

conversion, units do not pay a Class A up-front sales load and the distribution and marketing fee falls to 0.25%.)

- iii. Identify any circumstances in which the up-front sales loads will be reduced or waived.
- iv. Identify any exceptions to the distribution and marketing fee.
- v. Identify any exceptions to the contingent deferred sales charge (“CDSC”)
- vi. Identify any fee sharing or other arrangements with distributors, investment managers, subcontractors or other service providers.

### 3. STATE FARM PLAN

#### a. Proposed Fee Structure

- i. Assuming the structure of and underlying investments in the State Farm Plan remain the same, complete the table.

Class A	Weighted Average Operating Expense Ratio	Distribution and Marketing Fee	Program Management Fee	State Administration Fee	Total Annual Asset-Based Fees	Max Up-Front Sales Load
<b>Age-Based Investment Option</b>						
Age 0-2	0.05%			0.02%		
Age 3-5	0.05%			0.02%		
Age 6-8	0.05%			0.02%		
Age 9-10	0.05%			0.02%		
Age 11-12	0.06%			0.02%		
Age 13-14	0.07%			0.02%		
Age 15-16	0.07%			0.02%		
Age 17-18	0.08%			0.02%		
Age 19+	0.09%			0.02%		
<b>Static Investment Options</b>						
All Equity	0.05%			0.02%		
Growth	0.05%			0.02%		
Moderate Growth	0.06%			0.02%		
Balanced	0.07%			0.02%		
Conservative	0.09%			0.02%		
Money Market	0.18%			0.02%		
Bank Savings	0.00%			0.02%		

- ii. Currently, the State Farm Plan charges a \$25 annual account fee but waives the fee for any account that exceeds \$20,000 on the last day of the period that the fee is assessed. Indicate whether this fee would remain the same. If you propose changing the fee, provide details of those changes.

#### **4. TDA PLAN**

- a. Current Fee Structure

- i. The structure of and underlying investments in the TDA Plan are as follows:

	Weighted Average Operating Expense Ratio	TD Ameritrade Sub-Admin. Fee	Program Management Fee	State Administration Fee	Total Annual Asset-Based Fees
<b>Age-Based Investment Option</b>					
Aggressive					
Age 0-2	0.16%	0.19%	0.25%	0.02%	0.62%
Age 3-5	0.15%	0.19%	0.25%	0.02%	0.61%
Age 6-8	0.16%	0.19%	0.25%	0.02%	0.62%
Age 9-10	0.16%	0.19%	0.25%	0.02%	0.62%
Age 11-12	0.16%	0.19%	0.25%	0.02%	0.62%
Age 13-14	0.16%	0.19%	0.25%	0.02%	0.62%
Age 15-16	0.15%	0.19%	0.25%	0.02%	0.61%
Age 17-18	0.14%	0.19%	0.25%	0.02%	0.60%
Age 19+	0.12%	0.19%	0.25%	0.02%	0.58%
Growth					
Age 0-2	0.16%	0.19%	0.25%	0.02%	0.62%
Age 3-5	0.16%	0.19%	0.25%	0.02%	0.62%
Age 6-8	0.16%	0.19%	0.25%	0.02%	0.62%
Age 9-10	0.16%	0.19%	0.25%	0.02%	0.62%
Age 11-12	0.15%	0.19%	0.25%	0.02%	0.61%
Age 13-14	0.14%	0.19%	0.25%	0.02%	0.60%
Age 15-16	0.12%	0.19%	0.25%	0.02%	0.58%
Age 17-18	0.08%	0.19%	0.25%	0.02%	0.54%
Age 19+	0.10%	0.19%	0.25%	0.02%	0.56%
Index					
Age 0-2	0.05%	0.19%	0.25%	0.02%	0.51%
Age 3-5	0.05%	0.19%	0.25%	0.02%	0.51%
Age 6-8	0.06%	0.19%	0.25%	0.02%	0.52%
Age 9-10	0.06%	0.19%	0.25%	0.02%	0.52%
Age 11-12	0.07%	0.19%	0.25%	0.02%	0.53%
Age 13-14	0.08%	0.19%	0.25%	0.02%	0.54%
Age 15-16	0.10%	0.19%	0.25%	0.02%	0.56%
Age 17-18	0.18%	0.19%	0.25%	0.02%	0.64%
Age 19+	0.18%	0.19%	0.25%	0.02%	0.64%
<b>Static Investment Options</b>					
All equity	0.16%	0.19%	0.25%	0.02%	0.62%
Growth	0.16%	0.19%	0.25%	0.02%	0.62%
Moderate Growth	0.16%	0.19%	0.25%	0.02%	0.62%
Balanced	0.16%	0.19%	0.25%	0.02%	0.62%

<b>Conservative</b>	0.12%	0.19%	0.25%	0.02%	0.58%
<b>Individual Investment Options</b>					
<b>State Street S&amp;P 500 Index</b>	0.0175%	0.19%	0.25%	0.02%	0.48%
<b>Vanguard Total Stock Market Index</b>	0.02%	0.19%	0.25%	0.02%	0.48%
<b>Vanguard Russel 1000 Value Index</b>	0.08%	0.19%	0.25%	0.02%	0.54%
<b>T. Rowe Price Large Cap Growth</b>	0.56%	0.19%	0.25%	0.02%	1.02%
<b>Vanguard Equity Income</b>	0.17%	0.19%	0.25%	0.02%	0.63%
<b>Vanguard Extended Market Index</b>	0.05%	0.19%	0.25%	0.02%	0.51%
<b>Tributary Small Company</b>	0.99%	0.19%	0.25%	0.02%	1.45%
<b>iShares Russell 2000 Growth ETF</b>	0.24%	0.19%	0.25%	0.02%	0.70%
<b>Vanguard REIT Index</b>	0.10%	0.19%	0.25%	0.02%	0.56%
<b>State Street MSCI ACWI Ex USA Index</b>	0.09%	0.19%	0.25%	0.02%	0.55%
<b>Vanguard FTSE Emerging Markets ETF</b>	0.14%	0.19%	0.25%	0.02%	0.60%
<b>DFA World ex-US Government Fixed Income</b>	0.20%	0.19%	0.25%	0.02%	0.66%
<b>MetWest Total Return Bond</b>	0.38%	0.19%	0.25%	0.02%	0.84%
<b>Vanguard Total Bond Market Index</b>	0.03%	0.19%	0.25%	0.02%	0.49%
<b>Vanguard Short-Term Bond Index</b>	0.04%	0.19%	0.25%	0.02%	0.50%
<b>Vanguard Short-Term Inflation-Prot. Index</b>	0.04%	0.19%	0.25%	0.02%	0.50%

<b>Goldman Sachs Financial Square Gov. Money Market</b>	0.18%	0.19%	0.25%	0.02%	0.64%
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b. Future TDA Plan Design

- i. Beginning in November 2019, the TDA Plan will undergo a number of changes to its investment options and fees. These changes can be viewed on the Council’s website and are summarized here:

<https://nic.nebraska.gov/sites/nic.nebraska.gov/files/doc/7.b.%20%20%20%20TD%20Ameritrade%20529%20College%20Savings%20Plan%20-%20Investment%20Changes.pdf>

<https://nic.nebraska.gov/sites/nic.nebraska.gov/files/doc/7.a.%20%20%20%20TD%20Ameritrade%20529%20College%20Savings%20Plan%20-%20Staff%20Memo.pdf>

The Provider should take these changes into account when developing a proposed fee structure.

**5. OTHER PROPOSED COSTS**

If the Provider proposes any other charges, they must be clearly described here. Any charge not addressed in the pricing schedule in your proposal will not be allowed or paid pursuant to the terms of the Program Management Agreement.