



## SCHOLARSHARE INVESTMENT BOARD

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Julio Martinez

### ScholarShare Investment Board

### Request for Proposals No. SIB 05-21 (RFP) Program Management Services for the ScholarShare 529 College Savings Plan

### Notice to Prospective Bidders

**June 17, 2021**

You are invited to review and respond to this Request for Proposals No. SIB 05-21 (RFP) for program management services for California's direct-sold qualified tuition program, the ScholarShare 529 College Savings Plan.

Proposals for these services must comply with the instructions included in this RFP. The RFP includes the Sample Standard Agreement the selected firm will be expected to execute. The agreement that will be entered into with the State of California ("State") will include by reference the General Terms and Conditions (GTC 04/2017) and Contractor Certification Clauses (CCC 04/17) which may be viewed and downloaded online at <https://www.dgs.ca.gov/OLS/Resources/Page-Content/Office-of-Legal-Services-Resources-List-Folder/Standard-Contract-Language>.

The General Terms and Conditions and all Exhibits that are a part of the Sample Standard Agreement in Part II of the RFP are considered non-negotiable. By submitting a proposal, your firm agrees to the terms and conditions stated in this RFP. The contract will be for a five (5) year term with an option to extend the contract for five one-year additional terms.

The Bidders must comply with all instructions in the RFP, including using the response format outlined in Section 4.

All responses to this RFP must be submitted in hard copy and as described in Section 3 of the RFP no later than **4:00 p.m. Pacific Time (PT) on July 15, 2021**. All proposals must be delivered to:

ScholarShare Investment Board  
915 Capitol Mall, Room 590  
Sacramento, California 95814  
Attention: Stanley Zeto

In the opinion of the ScholarShare Investment Board, this RFP is complete and without need of explanation. However, if you have questions, or should you need any clarifying information, contact Stanley Zeto by email at [scholarshare@treasurer.ca.gov](mailto:scholarshare@treasurer.ca.gov).

Please note that no *verbal* information given will be binding upon the State unless such information is issued in writing as an official addendum.

The State of California will not contract or otherwise do business with publicly-held U.S. expatriate corporations without a compelling public interest. This policy is designed to ensure that companies with which the State of California does business meet threshold standards of corporate accountability.

On behalf of the ScholarShare Investment Board, thank you for your interest.

Julio Martinez  
Executive Director

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STANDARD AGREEMENT (STD. 213)

EXHIBIT A – SCOPE OF WORK

EXHIBIT B – BUDGET DETAIL AND PAYMENT PROVISIONS

EXHIBIT C – GENERAL TERMS AND CONDITIONS

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- Appendix 1 - The Act
- Appendix 2 - ScholarShare Statement of Investment Policy
- Appendix 3 - ScholarShare Monitoring Procedures and Criteria

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Certain schedules are to be provided by the Bidder as specified in the RFP and Sample Agreement, if applicable.

- Schedule 3.2 - Subcontractors
- Schedule 3.5 - Contractor's Key Personnel
- Schedule 6.2 - Investment Performance Criteria (Schedule V of Appendix 3 to the Sample Agreement) / Investment Objectives for Investment Options
- Schedule 8.2 – ScholarShare Administrative Performance Criteria
- Schedule 8.4 - Administrative and Other Reports

## **PART I – REQUEST FOR PROPOSALS**

### **1. PURPOSE AND DESCRIPTION OF SERVICES**

#### **1.1 Scope Overview**

The ScholarShare Investment Board (SIB or Board) is soliciting proposals from qualified firms, organizations, and/or a consortium of allied financial services companies to provide program management services for California's qualified tuition program, the ScholarShare 529 College Savings Plan (Plan). The Plan is described in Section 1.3, Background. SIB also administers the California Kids Investment and Development Savings Program (CalKIDS) and California Memorial Scholarship Program (CMS). While this Request for Proposals No. SIB 05-21 (RFP) does not seek program management services for CalKIDS or for CMS, it does include certain support services for these programs.

The Board specifically seeks proposals from firms interested in serving as Plan Manager for the Plan. SIB seeks a Plan Manager who will design, implement and manage a 529 plan to appeal across and be sold directly to California's diverse population. The Plan Manager must offer a wide range of investment options with competitive investment performance, state-of-the-art enrollment technology, a strategic and robust marketing and workplace plan, seamless administration and recordkeeping, and responsive customer service, all at the lowest possible cost to investors. Plan investors will not be subject to annual account maintenance fees.

#### **1.2 Sample Standard Agreement**

Part II of this RFP includes a Sample Standard Agreement (Sample Agreement) for each Bidder's review. The winning Bidder will be expected to execute the Sample Agreement. All terms and conditions noted in the Sample Agreement are considered non-negotiable. Proposals that do not accept all items included in the Sample Agreement may be deemed non-responsive and excluded from evaluation.

The agreement entered into pursuant to this RFP (Agreement), if any, will be subject to the approval of SIB and the Department of General Services (DGS). The term of the Agreement entered into pursuant to this RFP (Agreement), if any, will be five (5) years from the launch date of the new Plan (see Section 3.1 of Part I for the Schedule (Key Action Dates)) with an option at SIB's sole discretion to extend for up to five additional one-year terms. Assuming compliance with performance criteria, SIB may, but is not obligated to, extend the Agreement at the end of the initial term for up to five one-year terms. Services shall not be performed prior to the approval of the Agreement, by the DGS Office of Legal Services.

#### **1.3 Background**

The California Legislature authorized creation of the Trust in 1997 (Education Code Sections 69980-69994 (the Act), see Appendix 1 to the Sample Agreement, attached), intending it to be a "qualified tuition program" as defined in Section 529 (Section 529 of the Internal Revenue Code of 1986, as amended (Code)). The Act authorizes Trust investments for a specific beneficiary's advance savings for qualified higher education expenses in an eligible educational institution. SIB is the State entity responsible for establishing and maintaining the Plan, including its effective and efficient administration. The seven-member Board meets four to five times annually, with additional meetings if deemed necessary. Meetings are generally held in Sacramento at the State Treasurer's Office, 915 Capitol Mall, but may be held at other locations.

Section 69992 of the Education Code requires SIB to aggressively market the Plan to California citizens. Plan information is designed to educate citizens about the benefits of saving for higher education, and to help them decide the level of participation and combination of savings strategies that

may be appropriate for them. SIB is required to develop a mechanism to keep Plan participants motivated about their current and future academic endeavors.

TIAA-CREF Tuition Financing, Inc. (TFI) currently provides program management services for the Plan. TFI was selected in June 2011 to replace Fidelity Brokerage Service, LLC (Fidelity) pursuant to a competitive request for proposals process. Currently, TFI manages all investment, marketing and administrative aspects of the Plan pursuant to a program management agreement expiring in November 2021. Recent Annual Reports and other relevant financial information on the Plan, as well as an overview of CalKIDS and the CMS program, can be found on the SIB website at [www.treasurer.ca.gov/scholarshare](http://www.treasurer.ca.gov/scholarshare).

Account and asset data for the Plan for the past several years is provided in the table below.

Year	Number of Open Accounts at Year End	Plan Assets (in billions)
2016	282,562	\$7.03
2017	299,900	\$8.29
2018	317,761	\$8.25
2019	332,423	\$9.88
2020	352,398	\$11.36

Data as of December 31, 2020.

The Plan currently offers 19 Investment Options, including: (i) a passively-managed enrollment year option (comprised of 10 portfolios), (ii) an actively-managed enrollment year option (comprised of 10 portfolios), (iii) six passively-managed multi-fund static options, (iv) six actively-managed multi-fund static options, (v) four individual mutual fund options (including one Social Choice Portfolio), and (vi) one (1) Guaranteed Portfolio Option. Each of these Options and the fees associated with them is described in detail in the ScholarShare 529 “Plan Description,” which can be downloaded from [www.scholarshare529.com](http://www.scholarshare529.com). Existing Plan participants do not pay any annual account maintenance fees.

#### 1.4 Program Conversion

In the event of a program conversion, the applicable new Plan Manager shall work cooperatively with TFI during a transition period. Following the conversion, the Plan assets invested in the two funding agreements with TIAA-CREF Life Insurance Company (TCLIC) allocated in the Guaranteed Investment Option and other Plan portfolios, as noted below, will be withdrawn and transferred incrementally to the new Plan Manager over a specified period of time ranging from two to five years depending on the funding agreement.

##### ➤ Funding Agreement A

Portfolios	Total Assets*	Withdrawal Period
Active Enrollment Year Portfolio (2024-2025) Active Enrollment Year Portfolio (2022-2023) Active Enrollment Year Portfolio (2020-2021) Active Enrollment Year Portfolio (Enrollment) Active Conservative Portfolio Passive Enrollment Year Portfolio (2024-2025) Passive Enrollment Year Portfolio (2022-2023) Passive Enrollment Year Portfolio (2020-2021) Passive Enrollment Year Portfolio (Enrollment) Passive Conservative Portfolio	\$1.58 billion	Two years

\*As of December 31, 2020

➤ **Funding Agreement B**

Portfolios	Total Assets*	Withdrawal Period
Principal Plus Interest Portfolio	\$639.0 million	Five years

\*As of December 31, 2020

All other assets will be transferred to similar investment option(s) in the Plan, as applicable, and the new Plan Manager will be responsible for the costs of system conversion, including the migration of investments to appropriate investment options. A new Plan Manager also will be responsible for aggregation of all Trust accounts.

### 1.5 Scope of Work

The following scope of work details SIB's expectations for the Plan Manager (Contractor). The Contractor will provide all program management services for the compliance, investment, education, administration, banking (including transaction processing), recordkeeping and customer service functions in compliance with all RFP requirements and the resulting contract.

#### a) General

- (i) The Contractor will provide overall management services for the investment, marketing, distribution, recordkeeping, cash management, custody administration and customer service functions of the Plan.
- (ii) The Contractor will manage the Plan in compliance with Section 529 of the Code, and all other applicable federal and State statutes, rules and regulations. The Contractor will monitor for changes in the legal and regulatory environment that may materially affect the Plan, and it will make recommendations for amendments or supplements to the Plan offering materials.
- (iii) Services shall be performed at the offices of the Contractor, appropriate affiliates, subsidiaries and subcontractors. The Contractor, affiliates, subsidiaries and subcontractors must provide services in compliance with all federal and State regulatory bodies.
- (iv) The Contractor will designate a dedicated key personnel team to serve SIB and it will notify SIB of any changes to the management or composition of that team as they occur. Such changes include re-assignments, resignations, terminations, additions or other changes to the employment status or composition of the professionals assigned to the team. Additionally, the Contractor shall notify the SIB if the team takes on additional responsibilities (either internal or external clients).
- (v) All work to be performed by the Contractor will be reviewed by SIB or its designee. Such review will not relieve the Contractor of any liability in connection with such work.

#### b) Marketing and Distribution

- (i) The Contractor must aggressively and exclusively market and promote the Plan throughout California.
- (ii) The Contractor will present an annual marketing plan to SIB for review and approval. The annual marketing plan will be based upon the Contractor's annual marketing commitment, which will be used for all marketing and promotional expenditures, excluding any overhead charges. Allocation of the annual marketing commitment will be subject to SIB's approval.

- (iii) The Contractor shall keep SIB informed during development and refinement of all marketing campaigns and related materials. No marketing activity shall commence without SIB approval. The Contractor will provide monthly reports on marketing expenditures.
- (iv) The Contractor must satisfy marketing performance criteria, which may include asset (net new contributions) and account growth standards for the Plan in comparison to the national industry. The performance criteria will be agreed upon by SIB and the Contractor and will be incorporated in the Agreement, along with appropriate remedies for failing to achieve the performance criteria. The Contractor will also provide SIB satisfaction performance criteria, which will measure the percentage of accounts closed due to transfers to qualified tuition programs offered by entities other than California.
- (v) The Contractor must provide investor education and outreach to the diverse California population, including enrollment materials in Spanish and other languages deemed appropriate by SIB. The Contractor must offer opportunities or support SIB's efforts to reach all possible investors through grassroots marketing and targeted direct market campaigns, including initiatives directed specifically toward lower and middle-income California residents.

c) Investment Services

- (i) The Contractor must develop and recommend fee-competitive investment options that appeal to a wide range of investors with various risk tolerances and contribution levels. Any investment options must be consistent with SIB's investment objectives as outlined in the ScholarShare Statement of Investment Policy (Investment Policy), which is included as Appendix 2 to the Sample Agreement in Part II of this RFP. The Board must approve any and all recommended investment options.
- (ii) The Contractor is responsible for the development and recommendation for Board approval an asset allocation for the age-based or enrollment year and static allocation portfolios.
- (iii) While open architecture is strongly preferred, the Contractor may recommend a proprietary line-up of underlying investments, investments from a single mutual fund company, or investments from multiple investment managers. In doing so, the Contractor must support its recommendations to SIB, demonstrating the superiority of the recommendation over other possible investment line-ups. The Contractor must be willing to include non-proprietary fund managers in the event of performance shortfalls in the future or if SIB determines that an open architecture structure would meaningfully increase participation in the Plan.
- (iv) The Contractor's performance will be measured by the ScholarShare Monitoring Procedures and Criteria (Procedures), which is included as Appendix 3 to the Sample Agreement in Part II of this RFP. The Contractor must also demonstrate that it (and any investment management subcontractor) has rigorous internal monitoring procedures in place for the funds and investment vehicles proposed as Underlying Investments.
- (v) On at least a quarterly basis, and more frequently as necessary, the Contractor must inform SIB about significant changes in the investment climate, market conditions or investment philosophies that could affect Plan investments.
- (vi) The Contractor shall prepare an annual review of the Investment Portfolios and the Underlying Investments. The review should include, but not be limited to, an asset allocation review as well as proposed changes to benchmarks and Underlying Investments.
- (vii) If applicable, the Contractor must provide a clear and appropriate conversion plan showing the mapping of current account investments from the existing Plan to the new Plan.



d) Recordkeeping, Administration and Customer Service

- (i) The Contractor must allow accounts to be opened by eligible individuals, corporations, trusts, custodians, Uniform Gift to Minors Act (UGMA), Uniform Transfer to Minors Act (UTMA), not-for-profit entities, and other public entities.
- (ii) The Contractor must provide enrollment online and through a central mailing location that can receive express deliveries and deliveries by normal U.S. postal services.
- (iii) The Contractor will archive and store all Plan records in compliance with all federal and State securities regulations on applicable law.
- (iv) The Contractor will process all transactions, including but not limited to, contributions and withdrawals, exchanges, transfers, maintain all records, and comply with all tax and securities laws as required under Section 529 of the Code, the California Franchise Tax Board (FTB), federal and State securities regulations, and ScholarShare Administrative Performance Criteria (see (xiv below)). This includes the annual report and audit of the Plan as required in Section 69990 of the Act, and as applicable, aggregation for federal tax law purposes.
- (v) At a minimum, live customer service for the Plan will be required from 8:00 a.m. to 7:00 p.m. Pacific Time (PT), Monday through Friday, except holidays, and customers must have voice response unit (VRU) and Internet servicing access in all other hours. All inbound and outbound phone calls shall be recorded and retrievable.
- (vi) The Contractor shall provide monthly reports to the SIB Executive Director indicating the number of new accounts and assets generated for that month and currently in existence, relevant account activity, including but not limited to, the number of rollovers, all relevant investment performance results, and other program administration and marketing information prescribed by the SIB Executive Director or SIB. The Contractor also will provide a quarterly report outlining customer service inquiries and results, the number and types of complaints and the manner in which they were resolved, the quarterly performance of all investments, and such other information as SIB requests, including prior year comparisons on requested information.
- (vii) The Contractor must attend all formal SIB meetings (four to five times annually) unless otherwise notified by the SIB Chair or his or her designee, and provide program-related reports as requested by SIB or its staff. The Contractor must also respond to the need for telephone consultation within a 24-hour period and be available at minimum to SIB and the staff between the hours of 8:00 a.m. – 5:00 p.m. PT.
- (viii) The Contractor shall have a robust plan for implementing and tracking workplace enrollments and it shall provide a means for participants to contribute to their accounts through payroll deduction. Contractor also shall maintain a robust gifting platform with the goal of growing California accounts.
- (ix) Upon request, the Contractor shall provide the SIB staff access to all files, records, documents and data pertaining to the Plan that are in its possession and control, regardless of how that information is stored (Plan Records). The Plan Records for the Plan shall be provided in a reasonable time and in a form acceptable to the SIB Executive Director and SIB. At its expense, the Contractor also shall provide SIB all Plan Records for the Plan in a sortable electronic form via a mutually agreeable medium after notice from SIB that the Agreement will terminate. In addition, the Contractor will allow SIB staff access on-site to its facilities. The SIB staff will provide reasonable notice prior and on-site access will be conducted during normal business hours.

- (x) The Contractor and its approved subcontractors will be required to provide annual SOC1 and SOC2 Type 2 reports to SIB. In the event the SOC1 or SOC2 Type 2 reports have reported discrepancies, the Contractor will provide a full description of such discrepancies, management response and resolution for each occurrence.
- (xi) The Contractor shall maintain a cybersecurity plan to keep and protect the confidentiality of participant personal information, including, but not limited to, identification numbers or codes and account codes and account access numbers or codes in accordance with all applicable federal and State laws, and secure an appropriate insurance policy to protect against losses resulting from security breaches.
- (xii) The Contractor also shall maintain a disaster recovery plan to ensure business continuity. The disaster recovery plan shall be tested twice per year with results provided to SIB.
- (xiii) The Contractor shall provide for the integration of Outcome Tracker, the online recordkeeping platform offered by VistaShare, to support CalKIDS, as well as other local children savings account (CSA) programs utilizing ScholarShare 529 as its savings vehicle. The Contractor shall also provide for a system to support a matching grant program with specific eligibility requirements.
- (xiv) The Contractor's performance will be measured by administrative performance criteria. The current ScholarShare Administrative Performance Criteria for the Existing Plan (Administrative Benchmarks) is included in Schedule 8.2 to the Sample Agreement in Part II of this RFP. Administrative performance criteria will be determined once a Bidder is chosen and will be included in the Agreement, but in no event will the criteria be less stringent than the Administrative Benchmarks. SIB and/or the Contractor may review and recommend modifications to the administrative performance criteria on an annual basis based on industry norms and national trends. Any modifications to the administrative performance criteria would require approval by the Board.

e) Program Conversion (as applicable)

If SIB awards the Agreement under this RFP to a Bidder other than the existing Plan Manager, the new Plan Manager will begin providing services in advance of the Plan re-launch. In the event of a conversion, the new Plan Manager will provide the following conversion-related services:

- (i) The Contractor shall develop a detailed timeline for conversion of assets with an expected Plan re-launch in November 2021.
- (ii) The Contractor shall provide a detailed communication plan to ensure timely communications to existing Plan account owners during the conversion period.
- (iii) The Contractor shall provide a seamless transition of Plan records, assets, and processes for Plan account owners.
- (iv) The Contractor shall reconcile cash and net asset values (NAVs) to ensure all Plan assets are accounted for prior to and after conversion.
- (v) The Contractor shall provide a plan to handle assets invested in two TCLIC funding agreements allocated in the Guaranteed Investment Portfolio and other Plan portfolios to address a multi-year withdrawal schedule.
- (vi) The Contractor shall provide resources, as necessary, to ensure that current Plan assets are continuously invested throughout the conversion and implementation process.

- (vii) At the SIB's direction, the Contractor shall engage a conversion manager at its expense.
- (viii) The Contractor shall take all steps necessary to achieve a conversion date that is agreed upon by the SIB and the new Plan Manager.
- (ix) The Contractor shall assume the costs of the system conversion and the transfer of investments to the applicable new investment option(s).

## 2. **MINIMUM QUALIFICATIONS**

**Bidder must complete Attachment 4 of the RFP certifying that the Bidder meets the following minimum qualifications.** Bidders must establish each of the following minimum qualifications. Failure to meet these minimum qualifications will cause your proposal to be considered non-responsive and the proposal will be rejected. If the Bidder is a consortium or includes subcontractors, all partners/subcontractors must also establish compliance with each of the following minimum qualifications:

- a) Bidder may not currently or during the term of the Agreement(s) executed pursuant to this RFP, have a contractual or other business relationship with SIB's investment consultant, currently Meketa Investment Group, Inc. (Meketa), or its 529 industry consultant, currently AKF Consulting Group (AKF) (jointly, the Consultants).
- b) At all times, Bidder must hold and maintain all licenses and registrations required by applicable federal and state laws for businesses offering securities, investment and municipal advisory services. All licenses and registrations must be current and in good standing.
- c) Bidder must agree in writing to serve as fiduciary with respect to its work.
- d) Bidder must be qualified to do business in the State of California. Bidder must also be able to provide evidence of qualification (e.g. registration with the California Secretary of State) to do business in the State of California, including qualification of any subcontractors, upon proposal submission for this RFP.
- e) Bidder has responded to each Question listed in Section 4 of this RFP, as applicable, and has provided the applicable Attachments outlined in Section 7.
- f) Bidder must affirm its ability and willingness to provide all required Services as specified in Section 1.5 Scope of Work.

### 3. **PROPOSAL REQUIREMENTS**

#### 3.1 **Schedule (Key Action Dates)**

All Bidders are hereby advised of the following schedule and will be expected to adhere to the required dates and times (all times listed are in Pacific Time (PT)).

<b>Date</b>	<b>Action</b>
<b>June 17, 2021</b>	RFP Available to Prospective Bidders
<b>June 23, 2021, 12:00 p.m.</b>	Written Question Submittal Deadline
<b>June 30, 2021</b>	Answers to Written Questions (see Section 3.2) Distributed
<b>July 15, 2021, 4:00 p.m.</b>	<b>Deadline for Proposal Submission</b>
<b>July 16 – July 28, 2021</b>	Evaluation of Proposals
<b>July 29 – July 30, 2021</b>	Oral Interviews
<b>August 2, 2021</b>	Notice of Intent to Award
<b>August 9, 2021</b>	Award of Contract
<b>August 17, 2021</b>	Board Approval to Enter Into Agreement(s)
<b>August 17 – November 6, 2021</b>	Program Conversion Planning, if applicable
<b>November 7, 2021</b>	Commencement of Contract (pending DGS approval)

SIB reserves the right to change the above dates and times, and, if so, SIB may modify this RFP prior to the date fixed for submission of proposals by the issuance of an addendum. SIB will also provide post updates online at <http://treasurer.ca.gov/scholarshare/> and <https://caleprocure.ca.gov/>. SIB also reserves the right not to award an agreement at all.

#### 3.2 **Questions and Answers**

In the opinion of SIB, this RFP is complete and needs no further explanation. However, if you have questions, or should you need any clarifying information, contact Stanley Zeto by email at [scholarshare@treasurer.ca.gov](mailto:scholarshare@treasurer.ca.gov). Bidders may submit written questions, if any, no later than 12:00 p.m. PT on June 23, 2021 by email to [scholarshare@treasurer.ca.gov](mailto:scholarshare@treasurer.ca.gov).

A copy of the responses to all written questions received by 12:00 p.m. PT on June 23, 2021 will be posted online at [www.treasurer.ca.gov/scholarshare](http://www.treasurer.ca.gov/scholarshare) and <https://caleprocure.ca.gov/> by close of business on June 30, 2021.

#### 3.3 **Proposal Format**

a) In preparing proposals, Bidders should:

- (i) Use standard 8 ½" x 11" white paper with a minimum font type size of 11 points. Consecutively number all pages in the Bidder's response (including attachments and/or appendices).
- (ii) Include a cover letter stating:
  - The name, address, email address, phone and fax numbers of the principal contact responsible for the oversight of the engagement. Indicate the availability of this person for meetings with SIB, the Executive Director, and SIB staff.

- The name, address, email address, phone and fax numbers of the project representative who will be available to SIB and its staff on a day-to-day basis during the term of the Agreement.
  - The name, address, email address, phone and fax number of a key contact at each partner, if a consortium, and subcontractor, and what the person would be responsible for under the Agreement.
  - That the Bidder accepts the terms of the Agreement included as Part II of this RFP. **Please note that all terms and conditions noted in the Agreement are considered non-negotiable.**
- (iii) List responses to each Question in Section 4 (as applicable) in the same order as listed in this RFP.

### **3.4 Submission of Proposals**

- a) Proposals should provide straightforward and concise descriptions of the Bidder's ability to satisfy the requirements of this RFP. The proposal must be complete and accurate. Omissions, inaccuracies or misstatements may be cause for rejection of a proposal.
- b) All proposals must be submitted in hard copy under **sealed** cover and received by SIB by 4:00 p.m. PT on July 15, 2021 unless SIB provides notice that the date has been changed. **Proposals received after this date and time will not be considered.** Proposals received by fax or email will be rejected.
- c) A minimum of one (1) unbound original and three (3) copies of the proposal, in addition to electronic copies of the proposal on one (1) USB flash drive, must be submitted.
- d) The original proposal must be marked "**ORIGINAL COPY**". All documents contained in the original proposal package must have **original signatures** and must be signed by a person who is authorized to bind the proposing firm. All additional proposal sets may contain photocopies of the original package.
- e) The proposal envelopes must be plainly marked with the RFP number and title, your firm name and address, and must be marked with "**DO NOT OPEN**", as shown in the following example:

**Request for Proposals No. SIB 05-21**  
**Program Management Services for**  
**California's ScholarShare 529 College Savings Plan**  
**Firm Name**  
**Firm Address**  
**Contact Person and Phone Number**  
**"DO NOT OPEN"**

If the proposal is made under a fictitious name or business title, the actual legal name of Bidder must be provided.

Proposals not submitted under sealed cover and marked as indicated may be rejected.

- f) **Proposals that omit the Minimum Qualifications Certification included in Attachment 4, respectively, of Section 7 will not be considered.** Proposals shall include each of the required attachments on the Required Attachment Check List in Section 7. Proposals that do not comply with the requirements of the RFP shall be deemed non-responsive. A non-responsive proposal is one that does not meet the basic proposal requirements and will be rejected.

- g) One (1) unbound original and three (3) copies of the proposal, and electronic copies of the proposal on one (1) USB flash drive, shall be mailed or delivered to the following address:

**ScholarShare Investment Board  
915 Capitol Mall, Room 590  
Sacramento, California 95814  
Attention: Stanley Zeto  
Phone: (916) 651-6380**

- h) Proposals must be submitted for the performance of all the services described herein. Any deviation from the work specifications will not be considered and will cause a proposal to be rejected.
- i) A proposal may be rejected if it is conditional or incomplete, or if it contains any alterations of form or other irregularities of any kind. SIB may reject any or all proposals and may waive any immaterial deviation in a proposal. SIB's waiver of immaterial defects shall in no way modify the RFP document or excuse the Bidder from full compliance with all requirements if awarded the Agreement.
- j) The Bidder is entirely responsible for the costs of developing proposals and costs incurred in anticipation of award of the Agreement. Such costs shall not be charged to SIB.
- k) An individual who is authorized to bind the proposing firm contractually shall sign Required Attachment 2 in Section 7, the Proposal/Proposer Certification Sheet. The signature must indicate the title or position that the individual holds in the firm. An unsigned proposal may be rejected.
- l) A Bidder may modify a proposal after its submission by withdrawing its original proposal and resubmitting a new proposal prior to the proposal submission deadline as set forth in the Schedule (Key Action Dates) in Section 3.1 of this RFP. The submission of a new proposal must comply with the requirements in this section. Proposal modifications offered in any other manner, oral or written, will not be considered.
- m) A Bidder may withdraw its proposal by submitting a written withdrawal request to SIB, signed by the Bidder or an agent authorized in accordance with subsection (l) in this Section 3.4 above. A Bidder may thereafter submit a new proposal prior to the proposal submission deadline. Proposals may not be withdrawn without cause subsequent to the proposal submission deadline.
- n) SIB may modify this RFP prior to the date fixed for submission of proposals by the issuance of an addendum. Any addendums to this RFP will be posted on the online at <http://treasurer.ca.gov/scholarshare/> and <https://caleprocure.ca.gov/>.
- o) Upon announcement and release of this RFP and until selection of the winning Bidder (and notice of intent to award the Agreement), Bidders (or potential Bidders) are not permitted to communicate with SIB staff or its consultants with respect to the RFP except in connection with process and procedures related to the RFP. Any communication must be directed to Stanley Zeto at [scholarshare@treasurer.ca.gov](mailto:scholarshare@treasurer.ca.gov).
- p) SIB reserves the right to reject all proposals. SIB is not required to award an agreement.
- q) Bidders are cautioned to not rely on SIB to discover and report to the Bidder any defects and errors in the submitted documents to the Bidder. Before submitting a response to this RFP, Bidders should carefully review the response, correct all errors, and confirm compliance with the RFP requirements.

- r) Where applicable, Bidder should carefully examine work sites and specifications. No additions or increases to the agreement amount will be made due to a lack of careful examination of work sites and specifications.
- s) More than one proposal from any firm, organization, partnership, corporation or association under the same or different names, will not be considered. Reasonable grounds for believing that any Bidder has submitted more than one proposal for the work contemplated herein will cause the rejection of all proposals submitted by that Bidder. If there is reason for believing that collusion exists among the Bidders, none of the participants in such collusion will be considered in this or future procurements.
- t) No oral understanding or agreement shall be binding on either party.

**3.5 Evaluation Process**

- a) All proposals will be reviewed by an evaluation committee. The initial review of the proposals will confirm that all information has been submitted in conformity with the requirements of this RFP. The absence of required information will cause a proposal to be deemed non-responsive and may result in the proposal's disqualification. Responsive proposals will then be scored according to criteria herein. Points will be awarded for each scored category and not for each question unless otherwise noted. The scored categories and the corresponding weighting of each scored category is as follows:

SCORED CATEGORY	WEIGHTING
Firm Background and Organization	100 points
Investment Services	250 points
Recordkeeping, Administration and Customer Service	200 points
Marketing and Distribution	200 points
Plan Fees (Scoring is described in Section 4.5)	250 points
<b>Possible Points Upon Initial Evaluation</b>	<b>1,000 points</b>
Interview (Top Two Bidders Only)	200 points
<b>Total Possible Points</b>	<b>1,200 points</b>

The Evaluation Committee will allot points for each component of the RFP, up to 1,200 points.

The scoring will be done in two phases:

- First Phase - The first phase will be worth 1,000 points, with all items being scored with the exception of the Interview portion. Following the initial phase of the evaluation process, the Evaluation Committee will invite the two Bidders that receive the highest scores based on the point system above for interviews.
- Second Phase - All interviews will be conducted pursuant to the specifications below:
  - Interviews will be set for one hour
  - There will be a maximum of five (5) presenters for each Bidder interviewed
  - Interviews will be scored based on the Bidders' responses to a set of specific questions according to the point scale outlined in Section 3.5(b). All Bidders will be asked the same set of questions. Generally, Bidders will be asked about the following areas:
    - Firm Background and Organization
    - Investment Services
    - Recordkeeping, Administration and Customer Service

- Marketing and Distribution
- Plan Fees
- No unsolicited information, material, or presentation may be provided at the interview. Bidders are limited in their responses to only information provided in their written proposal and may not introduce new services, products, or other information.

The Bidder's second phase score will be added to the Bidder's first phase score, and the highest scoring Bidder will be determined.

- b) The following point scale will be used to score the responses to the questions presented under each of the scored category unless otherwise specified. Points earned for each scored category that result in a non-whole number will be rounded to the next whole number. For example, 75% of 250 points is 187.5 points, which would be rounded up to 188 points.

Points Awarded	Interpretation	General Basis for Point Assignment
100%	Excellent	Response fully meets the Board's needs, requirements or expectations with a high degree of confidence in the Bidder's response. Bidder offers one or more enhancing feature, method, or approach exceeding basic expectations.
75%	Good	Response fully addresses category being scored. Good degree of confidence in the Bidder's response. Minimal weaknesses are acceptable.
50%	Adequate	Response (i.e. content and/or explanation offered) is adequate to meet the Board's needs, requirements or expectations. Any omission(s), flaw(s), or defect(s), are inconsequential and acceptable.
0%	Inadequate	Response fails to address any portion of the category being scored. The omission(s), flaw(s), or defect(s) are significant and unacceptable.

- c) Proposals that contain false or misleading statements, or provide references that do not support an attribute or condition claimed by the Bidder, may be rejected. If, in the opinion of SIB, such information was intended to mislead SIB in its evaluation of the proposal, and the attribute, condition, or capability is a requirement of this RFP, it will be the basis for rejection of the proposal.
- d) The contract will be awarded to the responsible and responsive Bidder with the highest total score.
- e) The Evaluation Committee will review all proposals for the quality of the written proposal and the oral interview, including clarity and thoroughness of the responses. Upon completion of reference checks, the Evaluation Committee will submit to the Board the Bidder earning the highest score for each Plan at such time, the Board will vote to approve the Committee's recommendation. If interviews are not conducted, the final recommendation will be based upon the quality of the written proposal only.
- f) SIB is not required to award an Agreement.

### 3.6 **Award and Protest**

- a) Notice of the proposed award shall be posted in a public place at the State Treasurer's Office, 915 Capitol Mall, Sacramento, CA 95814, for five (5) working days prior to awarding the agreement. The notice will be posted at the entrance to Room 590 and online at [www.treasurer.ca.gov/scholarshare](http://www.treasurer.ca.gov/scholarshare).



- b) If any Bidder, prior to the award of agreement, files a protest with SIB and the DGS Office of Legal Services, 707 Third Street, 7<sup>th</sup> Floor, Suite 7-330, West Sacramento, CA 95605, on the grounds that the (protesting) Bidder would have been awarded the contract had the agency correctly applied the evaluation standard in the RFP, or if the agency followed the evaluation and scoring methods in the RFP, the agreement shall not be awarded until either the protest has been withdrawn or DGS has decided the matter. It is suggested that you submit any protest by certified or registered mail.
- c) Within five (5) days after filing the initial protest, the protesting Bidder shall file with SIB and the DGS Office of Legal Services a detailed written statement specifying the grounds for the protest. It is suggested that this detailed written statement be submitted by certified or registered mail.

### **3.7 Disposition of Proposals**

- a) Upon proposal opening, all documents submitted in response to this RFP will become the property of SIB and the State, and will be regarded as public records under the California Public Records Act (Government Code section 6250 et seq.) and subject to review by the public following the contract award *regardless of any attempts to classify information in the proposals as "confidential."* SIB cannot prevent the disclosure of public documents.
- b) Proposal packages may be returned only at the Bidder's expense, unless such expense is waived by SIB

### **3.8 Agreement Execution and Performance**

- a) It is expected that service shall be available no later than 120 days, or on the express date set by SIB and the successful Bidder, after all approvals have been obtained and the Agreement is fully executed. Should the Contractor fail to commence work at the agreed upon time, the awarding agency, upon five (5) days written notice to the Contractor, reserves the right to terminate the Agreement.
- b) All performance under the Agreement shall be completed on or before the termination date of the Agreement.

## **4. PROPOSAL CONTENT – QUALIFICATIONS AND EXPERIENCE**

Questions in this Section 4 are intended to demonstrate the Bidder's qualifications. Points will be awarded for the Bidder's response(s) to each question. The allocation of points is defined in Section 3.5 of this RFP entitled "Evaluation Process." In preparing proposals, the Bidder must list each question and then provide the Bidder's response to that question in the same order listed in this RFP.

For purposes of the following Questions, and for this RFP generally, the term "related entity" means any partnership, joint venture, sub-contractual relationship, and all other direct or indirect affiliations of the Bidder, entities that own the Bidder, and subsidiaries of the Bidder that could, in any reasonable capacity, effect the Plan or impact the Plan investment portfolio. Questions should be answered for each relevant partner or subcontractor to the extent applicable if a Bidder is a consortium or is using subcontractors.

### **4.1 Required Information (this section is not scored)**

- a) Provide an overview of your firm including organizational and capital structure. Explicitly identify the entity that will serve as the Agreement party, as well as all affiliates, subsidiaries, subcontractors and other entities that will provide services to meet the requirements of this engagement. If the Agreement party is not a parent entity, indicate your willingness to provide a parent guarantee or propose a suitable alternative to ensure performance of the services to be provided pursuant to the Agreement.

- b) List any 529 program management engagements or applicable subcontractor services to 529 plans (not including investment services) terminated since January 1, 2018 and note the reason the account was terminated.
- c) Has your firm or any subcontractor or any related entity of either ever been, is aware of, or has reason to believe it is or will be the subject of an enforcement action or an audit or inquiry by the Internal Revenue Service (IRS), the Securities and Exchange Commission (SEC), the Financial Industry Regulatory Authority (FINRA), the Municipal Securities Rulemaking Board (MSRB), a California regulatory or investigative agency or any other federal or state regulatory or investigative agency in connection with a qualified tuition program with which it is associated or for which it provides services as a subcontractor? If yes, explain in detail.
- d) List any other recent or pending issues that may impact your firm's ability to deliver the required Services. Include any ownership or organizational changes and substantive issues raised by independent auditors in recent financial statements.

#### **4.2 Firm Background and Organization**

- a) Complete Attachment 18 identifying all key personnel who will be responsible for performing services pursuant to this RFP. This should include: the executive with overall responsibility for the firm's engagement to SIB, the day-to-day manager, the investment professional responsible for the overall investment structure, the senior-most marketing professional, and the senior-most professional(s) responsible for operations, recordkeeping and customer service (hereafter referred to as Key Personnel). Provide professional resumes for each of these individuals in Attachment 18.
- b) Does your firm currently manage or otherwise provide services to a 529 plan? If so, list in a table the details of your current engagements, including type of 529 program (prepaid versus savings, direct-sold versus advisor-sold), number of accounts and assets (including totals for all 529 engagements, as of December 31, 2020), Morningstar Plan ratings, nature of your engagement and the start and expiration dates of your current contract. Please also include experience, if any, with CSA and matching grant programs.
- c) Describe all existing 529 relationships or pending proposals that would have a material impact on your firm or entity's ability to serve as the Plan Manager. In addition, specifically address whether any other 529 relationships would prohibit: (1) marketing the Plan nationally; (2) SIB's control over its pricing structure; (3) assurance that SIB's fees will always match the most attractively-priced 529 plan managed by your firm; and (4) how your firm would aggressively market the Plan through workplace efforts.
- d) Has your firm or any subcontractor or any related entity, or any owner, officer, director, principal, management level employee, or Key Personnel of your firm ever been involved in an enforcement action by or had an audit or inquiry from the SEC or any other governmental (local, state, or federal) regulatory agency, or been named a defendant in litigation where there was an allegation of violation of fiduciary responsibility? If yes, explain in detail.
- e) Has your firm, any related entity, a parent company, an affiliate, subsidiary, or any affiliated mutual or commingled fund been subject to any enforcement action or investigation by, or entered into settlements or is party to litigation with, or been subject to any audits or regulatory or investigative inquiries by, the IRS, the SEC, FINRA or a state regulatory or investigative agency in connection with mutual fund, investment management or college savings businesses (including market timing, late trading, collusion with third parties, preferential fund family treatment, directed brokerage payments or other sales practices, or a failure to supervise sales professionals) at any time? If yes, explain in detail.

**4.3 Investment Services**

- a) Identify the investment options you propose to offer in the Plan, as applicable. The options you propose at a minimum should include the following:
- i. Age-based or enrollment year options
  - ii. Static asset allocation options
  - iii. Individual asset classes or individual mutual funds
  - iv. Cash Solution (such as Stable Value products, Money Market Funds, FDIC, etc.)
  - v. ESG options
  - vi. Any others you recommend

Your response should distinguish between options with different management styles (i.e., active, passive, etc.). Given the diverse range of participant risk tolerances and investment preferences why do you believe the proposed lineup best meets these varied investment objectives? In the case of age-based or enrollment year and static asset allocation options, provide the percentages allocated by asset class and the benchmark against which performance of the investment option will be measured.

- b) Complete the following table for each underlying investment that you propose to include in the investment options which you have identified in your response to 4.3(a) above. If the underlying investment is not a registered mutual fund, then write "N/A" on the categories that do not apply. Attach additional sheets if necessary.

	Fund Name	Fund Name	Fund Name
<b>Ticker</b>			
<b>Asset Class</b>			
<b>Benchmark</b>			
<b>Investment Option Fund Will Be In</b>			
<b>Share Class of the Fund to be used (also specify if retail or institutional)</b>			
<b>Total Annual Share Class Fees</b>			
<b>Lipper Ranking as of 12/31/2020</b>			
<b>Morningstar Rating as of 12/31/2020</b>			
<b>Portfolio Manager(s)</b>			

- c) Indicate any underlying funds or other investment vehicles, included in your response to 4.2(b), that have experienced net cash outflows of 20% or more in the three-year period from January 1, 2018 through December 31, 2020. Provide a detailed explanation.
- d) Describe the internal procedures your firm uses to monitor the performance of its funds and its fund managers.
- e) In the context of asset allocation, discuss how the investment options proposed and the underlying investments identified in your responses to 4.3(a) and 4.3(b) are consistent with your understanding

of the investment objectives of the overall Plan. Keep in mind that SIB seeks the broadest possible array of investment options and it must approve all investment options. Include in your response how you designed the glide path and asset allocation for the age-based or enrollment year investment options you have proposed. Include how and when you will rebalance assets in the age-based or enrollment year portfolios. Also indicate if and how your approach to asset allocation has changed in response to market performance since 2018.

- f) SIB is interested in providing open architecture, including a diversified group of investment managers. Would you agree to multiple, non-proprietary investment managers and, if so, is there a maximum number or percentage of unaffiliated investment managers you would accept? If you do not agree with a multi-manager platform, explain how you would otherwise enhance the Plan's marketability through investment options.
- g) If the underlying investments proposed are from non-affiliated investment managers, explain the choices you have made and why. If applicable, describe any revenue sharing or other financial arrangements currently in place or that you intend to establish with non-affiliated investment managers.
- h) Describe how your investment approach and proposed lineup would position the Plan for a top Morningstar Plan rating.
- i) Do you propose using separately managed accounts and/or ETFs? Describe your views concerning the advantages or disadvantages of using either or both as underlying investments.
- j) If you have proposed a guaranteed (whether through federal insurance or otherwise) or cash investment option(s), describe the structure of the offering and, to the extent applicable, its yield as of January 1, 2021.
- k) Indicate your willingness to work with California-based financial or other institutions to offer federally guaranteed investment options.
- l) List all new institutional accounts (including 529 plans) acquired by your firm or by the investment managers included in your proposal since January 1, 2018. As of January 1, 2021, specify the assets under management, the investment funds used, and the term of the engagement. For 529 mandates, distinguish between direct-sold and advisor-sold mandates.
- m) List any institutional accounts (including 529 plans) terminated or closed since January 1, 2018, the amount, and note the reason(s) the account was lost.
- n) Describe in detail the data, information, and advice you will provide SIB on a monthly or quarterly basis to analyze and interpret the investment results of the Plan. Provide at least one recent client report, similar to what you would provide to SIB.
- o) List all changes since January 1, 2018 in personnel who directly participated in investment-related decision making processes. For each individual listed, provide title, primary role, product involvement, date and reasons for the change. Include changes in personnel at affiliated firms that may provide investment management services in your engagement.
- p) What proxy rights will SIB have with respect to the underlying investments? Describe when and how SIB will be notified about proxies.

- q) Provide an asset projection for 1-, 5-, 10-, and 18-years for a single investment in the most aggressive age-based or enrollment year investment option offered. Assume the investment is made at the beneficiary's birth on January 1, 2021, a 5% annual return, that fees and charges remain the same throughout the investment period, and that no withdrawals are made from the account.
- r) In the event of an SIB Plan manager conversion, describe the procedures your firm would follow, and the prerequisites to ensure that current Plan assets are continuously invested throughout a conversion to ensure a smooth, timely and efficient transfer of assets that does not result in losses to the Plan or its account owners. List any investment-related issues in particular that could delay an orderly conversion to your firm.
- s) Please complete the Excel Spreadsheet included in Attachment 6 to show the mapping of current Portfolios to new Portfolios in the Plan and the investment expenses for each proposed Portfolio.

#### **4.4 Recordkeeping, Administration and Customer Service**

- a) Describe any 529 or other relevant experience (including the experience of your proposed subcontractor) providing recordkeeping, transfer agent, technology systems, administration and customer service for individual participants. For any experience, include the number and dollar value of accounts for which your firm is currently or was responsible for, and the volume of individual transactions processed on an annual basis.
- b) Describe your recordkeeping system and its capabilities for 529 plans. How long have you used the current system? Are you contemplating installation of a new system in the next five years? If yes, describe.
- c) Describe your accounting and reconciliation process and procedures that ensure processed transactions are balanced with corresponding banking activity. Also, include your procedures for identifying exceptions and final resolution.
- d) Describe your firm's procedures to ensure compliance with the requirements of Section 529 of the Code and other applicable laws, including (but not limited to) the MSRB, the SEC, and California laws and regulations. Do you have a procedures manual in place for 529 programs?
- e) Identify the independent accounting firm that provides audit and other attestation services to your firm, as well as your affiliates, including funds sponsored by your firm, if applicable. In addition, provide copies of the most recent SOC1 and SOC2, Type 2 reports covering the activities of your organization that will provide the applicable services to the Plan under your proposal (Attachment 20). If your proposal includes subcontractors, provide these SOC1 and SOC2 Type 2 reports and indicate if the SOC1 report is performed under SSAE16 or SSAE18. If SSAE 16, describe your oversight and risk management procedures to ensure the operating effectiveness of your subcontractors. To the extent your firm does not have either of the SOC1 or SOC2 reports, describe your plans and timing to provide such reports in the future.
- f) Describe your technical environment, including hardware, application and database software. Include the security features of your operating systems, including daily back-up procedures, disaster recovery plans, and business continuity plans. Indicate when a disaster recovery test was last performed.
- g) Describe your process and system for maintaining cybersecurity and confidentiality of sensitive participant information as well as procedures in place to prevent and to respond to data breaches.

- h) Describe your online account services, including your firm's use of electronic signatures for account openings, withdrawals and other account transactions. Also, indicate other interactive tools that will be available to prospective investors and account owners, such as mobile applications or mobile optimized websites to support the growing use of mobile devices, payroll deduction administration or gifting functionality.
- i) Describe your processes for distributing funds from participant accounts, including the ability to do so online if this is not already addressed in your response to 4.4(h) above, as well as distributing funds electronically directly to third parties. You also should include any relevant information you will provide or require regarding rollovers to and from other 529 and ABLE programs.
- j) Describe the workplace plans your firm currently offers or would create for SIB, including how you will process contributions (e.g., clearinghouse funds or payroll deduction). If possible, include the number of firms using 529 workplace enrollment, the total number of participants, and the total number of accounts that you have managed. Specify whether there are any size thresholds for payroll deduction.
- k) Describe the location and number of dedicated customer service staff assigned to the Plan. Affirm compliance with the Customer Service Standards included in ScholarShare Administrative Performance Criteria (Schedule 8.2 to the Sample Agreement).
- l) Outline the monthly and quarterly reports as described in Section 1.5 Scope of Work and the Sample Agreement that you will provide to SIB. Indicate what information will be available online to SIB on a daily and weekly basis.
- m) Currently, the Plan offers a minimum initial investment of one dollar. What do you propose as the minimum initial investment and the minimum subsequent investment in the Plan? Specify whether different minimum initial and subsequent investments apply to accounts with automatic or recurring contributions, including workplace accounts.
- n) Describe your experience with 529 plan manager conversions.
- o) In the event of an SIB Plan conversion in connection with the award under this RFP, provide a detailed plan and timeline to describe the conversion of all administrative services that will occur during the conversion period, affirming that your firm can meet SIB's proposed conversion date. List any administrative-related issues in particular that could delay an orderly conversion to your firm.

#### **4.5 Marketing and Distribution**

- a) Describe in detail your California marketing strategies for the Plan, including specifically any plans you have for language and cultural differences across the regions of the State. Describe any additional value-added services you will propose to generate interest and accelerate new account enrollments in the Plan.
- b) What initiatives would your firm implement or otherwise support to reach low- and moderate-income California residents? Describe your firm's experience with programs or initiatives such as matching grant and CSA programs, as well as your willingness to provide marketing support for these types of programs. Provide specific details about these programs and initiatives, including but not limited to, key requirements, results and technological or operational platforms utilized.
- c) What workplace initiatives or programs would your firm implement to ensure that employers throughout California can offer college savings benefits to their employees, including opportunities for education and engagement, as well as flexibility in ways to make contributions?

- d) If you already offer or market other 529 programs, will you agree not to market these 529 plans in California once you are the Plan Manager? Will you also agree to encourage future contributions to those plans to be directed toward ScholarShare 529 accounts instead? If not, why?
- e) SIB intends to measure the Plan Manager’s marketing performance against an agreed-upon growth rate standard for ScholarShare 529 accounts, contributions, and assets over the term of the contract. In the table below, provide projections for each of the next five years as it relates to the number of new accounts opened, and new contributions collected during each calendar year, and total Plan assets under management (AUMs) at year end. Actual figures as of December 31, 2020 are provided below.

Projection	2020	2022	2023	2024	2025	2026
<b>New Accounts</b>	34,300					
<b>New Contributions</b>	\$980.7 million					
<b>Total Plan AUMs</b>	\$11.36 billion					

The contract with the current Plan Manager includes remedies for underperformance. Would your firm agree to include remedies for underperformance? If so, please describe.

- f) Complete the following table showing your annual marketing commitment specifically for the Plan in California. SIB expects the entire marketing commitment to be spent in each year for actual marketing and advertising expenses, but not general overhead. If marketing dollars remain unspent at the end of any year, the moneys will roll forward to the following year. The annual marketing commitment shall not include dollars considered to be “added value.”

Contract Year	Annual Marketing Commitment
1	
2	
3	
4	
5	
<b>Total</b>	

- g) Describe the non-financial resources your firm will provide for in-state marketing. Be specific in terms of field representatives that will be dedicated to marketing the Plan to community groups, financial professionals and employers throughout the entire state.
- h) Describe your firm’s presence in California, including the number of offices and employees available to provide information to the general investing public. Also include the number of California-based accounts and the associated assets you already manage in non-529 investments. How will you leverage this customer base for the benefit of the Plan?
- i) Describe what your firm or entity does on an ongoing basis to market your organization and any research demonstrating name brand recognition of your firm. With this in mind, how do you envision the interplay between your firm’s brand and the ScholarShare 529 brand for Plan marketing materials?

- j) In the event of a SIB Plan conversion, describe how your firm would communicate conversion news with existing Plan account owners. What is the appropriate timetable for communications with existing Plan account owners?

**4.6 Plan Fees**

Plan Fees will be scored based upon the table below. An annual account maintenance fee is currently not charged to Plan participants and will not be accepted. Note that any fees not included in your proposal **will not** be accepted. The Board assumes a SIB Administrative Fee of five (5) basis points for all investment options.

The proposal(s) with lowest average Total Investment Option Fees, based on the responses provided in questions (a) and (b) of this section, shall be awarded the maximum points as follows:

Question	Proposal	Maximum Points
(a)	Asset-Weighted Average Investment Option Fee	200
(b) – (d)	Responses to Questions	50

The following formula shall be used for the award of points in Question (a) of this Plan Fees section. The proposal(s) without the lowest Asset-Weighted Average Investment Option Fee, based on the responses provided in Question (a) of this section, shall be awarded points based on the following calculation:

- $(\text{Lowest Bidder's Asset-Weighted Average Total Investment Option Fee}) / (\text{Other Bidder's Asset-Weighted Average Total Investment Option Fee}) = (\text{Factor})$
- $(\text{Points awarded to Other Bidder}) = (\text{Factor}) \times (\text{Maximum Points})$

**EXAMPLE:**

- A maximum of 200 points is available for Question (a). The Bidder with the lowest Asset-Weighted Average Total Investment Option Fee receives the maximum 200 points.
- Lowest Bidder's Asset-Weighted Average Total Investment Option Fee  
= 25 basis points
- Other Bidder's Asset-Weighted Average Total Investment Option Fee  
= 50 basis points
- $(\text{Lowest Fees proposal} / \text{Other Fees proposal}) = 25 \text{ bps} / 50 \text{ bps} = \frac{1}{2}$
- Points awarded to Other Bidder =  $\frac{1}{2} \times 200$  maximum points = 100 points

- a) Provide the following asset-based fee information for the proposed investment options:
- i. Using the Excel Spreadsheet included in Attachment 6, please provide the requested investment option mapping and fee information to determine the Asset-Weighted Average Investment Option Fee for the overall Plan. The Asset-Weighted Average Investment Option Fee will be used to determine the points allocated for this Question (a).



- ii. Based on the information provided in Attachment 6, complete the following table (stated in basis points) showing the proposed asset-based fee structure for each **investment option**. Provide fees for each Age Band or Enrollment Year portfolio included in the Age-Based or Enrollment Year Option(s). Investment Expenses should reflect the weighted expenses for each portfolio within Age-Based or Enrollment Year and Static Asset Allocation Investment Options. Add additional rows as applicable.

Investment Portfolio (Bidder to specify)	Investment Expense	Program Management Fee	SIB Administration Fee	Total Fee
			5	
			5	
			5	

- b) Indicate whether any of the fees or costs included in your response to question 4.5(a) will decrease in the future as the asset base increases or upon some other factors. If yes, complete the following table as applicable:

Assets Under Management	Fee to be Reduced (e.g., Program Management Fee)	Adjusted Fee (basis points or dollars, as applicable)
Provide AUM range		
Provide AUM range		
Provide AUM range		

- c) Specify any additional fees or expenses that would apply to administration of accounts in the Plan. Unless fees or expenses are included in this response, they will not be accepted.
- d) Indicate your willingness to commit to SIB that the fees associated with the Plan will be reduced in the future to terms that are at least as favorable as any other qualified tuition plan managed by your firm.

**5. CALIFORNIA DISABLED VETERAN BUSINESS ENTERPRISE**

**5.1 Disabled Veteran Business Enterprise (DVBE) Participation (OPTIONAL) –**  
<https://www.dgs.ca.gov/PD/Services/Page-Content/Procurement-Division-Services-List-Folder/Certify-or-Re-apply-as-Small-Business-Disabled-Veteran-Business-Enterprise>

This solicitation provides an incentive for DVBE participation. Attachment 7 outlines the DVBE Incentive Program. Bidders seeking the DVBE incentive must submit a completed Bidder Declaration (GSPD-05-105) that demonstrates DVBE participation and qualification for a DVBE incentive, with bid submittal. Bidders who have been certified by California as a DVBE must also complete and submit the DVBE Declarations, STD. 843. All disabled veteran owners and disabled veteran managers of the DVBE(s) must sign the form(s). The DVBE Incentive participation is optional and at the discretion of the proposing firm.

## **6. PREFERENCE PROGRAMS**

### **6.1 Small Business or Microbusiness Preference -**

<https://www.dgs.ca.gov/PD/Services/Page-Content/Procurement-Division-Services-List-Folder/Certify-or-Re-apply-as-Small-Business-Disabled-Veteran-Business-Enterprise>

A five percent (5%) preference will be applied to certified small business firms submitting proposals. To obtain the preference, firms must either be certified as a small business at the time the bid is submitted. The firm MUST include an updated copy of their Small Business Certificate to obtain the preference. The 5% preference is issued only for computation purposes to arrive at the successful firm(s), and does not alter the amount of the actual bids. Once each bid has been scored, if the highest responsible firm is not a certified small business or microbusiness, 5% of the highest scoring bid is added to the total "earned" points for each bid submitted by a certified small business. These final numbers, with the 5% included, are then used to determine the highest scoring bid. Questions regarding the small business certification or preference approval should be directed to the Office of Small Business & DVBE Services (OSDS) at (916) 375-4940 or can be found at the website listed above.

### **6.2 Non-Small Business Preference -**

<https://www.dgs.ca.gov/PD/Services/Page-Content/Procurement-Division-Services-List-Folder/Certify-or-Re-apply-as-Small-Business-Disabled-Veteran-Business-Enterprise>

A five percent (5%) preference is available to a non-small business claiming twenty-five percent (25%) California certified small business subcontractor participation. If claiming the non-small business subcontractor preference, the bid response must include a list of the small business(es) with which the firm commits to subcontract in an amount of at least 25% of the net bid price with one or more California certified small businesses. Each listed certified small business must perform a "commercially useful function" in the performance of the contract as defined in Government Code Section 14837(d)(4). The required list of California small business subcontractors must be attached to the bid response and must include the following: 1) subcontractor name, 2) address, 3) phone number, 4) a description of the work to be performed and/or products supplied; and 5) the dollar amount or percentage of the net bid price (as specified in the solicitation) per subcontractor.

Firms claiming the 5% preference must commit to subcontract for at least 25% of the net bid price with one or more California certified small businesses. Completed certification application required support documents must be submitted to the OSDS no later than 5:00 p.m. PT on the bid due date, and the OSDS must be able to approve the application as submitted. Questions regarding certification should be directed to the OSDS at (916) 375- 4940. The preference to a non-small business firm that commits to small business or microbusiness subcontractor participation of 25% of its net bid price shall be 5% of either the lowest, responsive, responsible firm's price or the highest response, responsible firm's total score. A non-small business, which qualifies for this preference, may not take an award away from a certified small business.

**6.3 Target Area Contract Preference Act (TACPA) -**

<https://www.dgs.ca.gov/PD/Services/Page-Content/Procurement-Division-Services-List-Folder/Request-a-Target-Area-Contract-Preference>

The TACPA preference will be granted for this procurement. Proposers wishing to take advantage of the TACPA preference will need to review the following website and submit the appropriate response with the proposal:

Proposers wishing to take advantage of the TACPA preference are required to submit the following applications/forms:

- TACPA Preference Request (Std. 830)
- Bidder's Summary of Contract Activities and Labor Hours (DGS/PD 525)
- Manufacturer's Summary of Contract Activities and Labor Hours (DGS/PD 526).

**7. REQUIRED ATTACHMENTS**

Refer to the following pages for additional Required Attachments.

Responsive proposals shall include the completed required attachments listed on Attachment 1. One (1) copy of all Required Attachments (with original signatures) must be compiled and submitted in a binder that is separate from the Bidder's response to the RFP. The Required Attachments shall also be included on the one (1) USB flash drive submitted with the Bidder's response to the RFP.

**ATTACHMENT 1**

**REQUIRED ATTACHMENT CHECK LIST**

Complete this checklist to confirm the inclusion of attachments listed below. Place a check mark or "X" next to each item that you are submitting to SIB. **For your proposal to be responsive, each of the following required attachments must be submitted with your proposal package.**

**This checklist should be returned with your proposal package.**

<b><u>ATTACHMENT</u></b>	<b><u>ATTACHMENT NAME / DESCRIPTION</u></b>
____ Attachment 1	Required Attachment Check List
____ Attachment 2	Proposal/Proposer Certification Sheet
____ Attachment 3	Bidder References
____ Attachment 4	Minimum Qualifications Certification
____ Attachment 5	Securities and Exchange Commission Form ADV (Part 1 and Part 2) or Proof of Exemption from Registration
____ Attachment 6	Investment Mapping
____ Attachment 7	California Disabled Veteran Business Enterprise (DVBE) Participation Program Instructions (if applicable)*
____ Attachment 8	Payee Data Record (STD. 204)
____ Attachment 9	Bidder Declaration Form (GSPD-05-105)
____ Attachment 10	Contractor Certification Clauses (CCC 04/2017)
____ Attachment 11	Darfur Contracting Act Certification Form
____ Attachment 12	Iran Contracting Act Certification Form
____ Attachment 13	California Civil Rights Law Certification
____ Attachment 14	Evidence of Qualification to do Business in the State of California
____ Attachment 15	Small Business or Microbusiness Preference (if applicable)
____ Attachment 16	Non-Small Business Preference (if applicable)
____ Attachment 17	Target Area Contract Preference Act (TACPA) Program (if applicable)
____ Attachment 18	Resumes of Key Personnel
____ Attachment 19	Audited Financials and SEC Filings for Bidder (3 years) and Subcontractor(s) (1 year)
____ Attachment 20	Service Organization Controls Reports

**\*DVBE Participation is not required for this solicitation; however, a DVBE incentive will be applied as provided in Attachment 7.**

**ATTACHMENT 2**

**PROPOSAL/PROPOSER CERTIFICATION SHEET**

This Proposal/Proposer Certification Sheet must be signed and returned along with all the "required attachments" as an entire package in duplicate with original signatures. The proposal must be transmitted in a sealed envelope in accordance with RFP instructions.

- A. Place all required attachments behind this certification sheet.
- B. The signature affixed hereon and dated certifies compliance with all the requirements of this proposal document. The signature below authorizes the verification of this certification.
- C. The signature below certifies to the best of your knowledge that the information provided on this document is true and complete.

**An Unsigned Proposal/Proposer Certification Sheet May Be Cause For Rejection**

1. Company Name	2. Telephone Number ( )	2a. Fax Number ( )
3. Address		
Indicate your organization type:		
4. <input type="checkbox"/> Sole Proprietorship	5. <input type="checkbox"/> Partnership	6. <input type="checkbox"/> Corporation
Indicate the applicable employee and/or corporation number:		
7. Federal Employee ID No. (FEIN)	8. California Corporation No.	
9. Indicate applicable license and/or certification information:		
10. Proposer's Name (Print)	11. Title	
12. <b>Signature</b>	13. Date	
14. Are you certified with the Department of General Services, Office of Small Business Certification and Resources (OSBCR) as:		
a. California Small Business Yes <input type="checkbox"/> No <input type="checkbox"/> If yes, enter certification number: _____	b. Disabled Veteran Business Enterprise Yes <input type="checkbox"/> No <input type="checkbox"/> If yes, enter your service code below: _____	
<b>NOTE:</b> A copy of your Certification is required to be included if item "a" is checked " <b>Yes</b> ".		
Date application was submitted to OSBCR, if an application is pending:		

**Completion Instructions for Proposal/Proposer Certification Sheet**

Complete the numbered items on the Proposal/Proposer Certification Sheet by following the instructions below.

<b>Item Numbers</b>	<b>Instructions</b>
1, 2, 2a, 3	Must be completed. These items are self-explanatory.
4	Check if your firm is a sole proprietorship. A sole proprietorship is a form of business in which one person owns all the assets of the business in contrast to a partnership and corporation. The sole proprietor is solely liable for all the debts of the business.
5	Check if your firm is a partnership. A partnership is a voluntary agreement between two or more competent persons to place their money, effects, labor, and skill, or some or all of them in lawful commerce or business, with the understanding that there shall be a proportional sharing of the profits and losses between them. An association of two or more persons to carry on, as co-owners, a business for profit.
6	Check if your firm is a corporation. A corporation is an artificial person or legal entity created by or under the authority of the laws of a state or nation, composed, in some rare instances, of a single person and his successors, being the incumbents of a particular office, but ordinarily consisting of an association of numerous individuals.
7	Enter your federal employee tax identification number.
8	Enter your corporation number assigned by the California Secretary of State's Office. This information is used for checking if a corporation is in good standing and qualified to conduct business in California.
9	Complete, if applicable, by indicating the type of license and/or certification that your firm possesses and that is required for the type of services being procured.
10, 11, 12, 13	Must be completed. These items are self-explanatory.
14	If certified as a California Small Business, place a check in the "yes" box, and enter your certification number on the line. If you are not certified to one or both, place a check in the "No" box. If your certification is pending, enter the date your application was submitted to OSBCR.

**ATTACHMENT 3**

**BIDDER REFERENCES**

Submission of this attachment is mandatory. Failure to complete and return this attachment with your proposal will cause your proposal to be rejected and deemed nonresponsive.

List below five references for services performed within the last five (5) years, which are similar to the scope of work to be performed in the Agreement. If five references cannot be provided, provide an explanation on an attached sheet of paper.

<b>REFERENCE 1</b>			
Name of Firm			
Street Address	City	State	Zip Code
Contact Person		Telephone Number	
Dates of Service		Value or Cost of Service*	
Brief Description of Service Provided			

<b>REFERENCE 2</b>			
Name of Firm			
Street Address	City	State	Zip Code
Contact Person		Telephone Number	
Dates of Service		Value or Cost of Service*	
Brief Description of Service Provided			

<b>REFERENCE 3</b>			
Name of Firm			
Street Address	City	State	Zip Code
Contact Person		Telephone Number	
Dates of Service		Value or Cost of Service*	
Brief Description of Service Provided			

<b>REFERENCE 4</b>			
Name of Firm			
Street Address	City	State	Zip Code
Contact Person		Telephone Number	
Dates of Service		Value or Cost of Service*	
Brief Description of Service Provided			

\*Optional

**REFERENCE 5**

Name of Firm			
Street Address	City	State	Zip Code
Contact Person		Telephone Number	
Dates of Service		Value or Cost of Service*	
Brief Description of Service Provided			

SUBCONTRACTOR REFERENCES (if applicable)

List below three references for services performed by your subcontractor(s) within the last five (5) years, which are similar to the scope of work to be performed in the Agreement. If three references cannot be provided, provide an explanation on an attached sheet of paper.

**REFERENCE 1**

Name of Firm			
Street Address	City	State	Zip Code
Contact Person		Telephone Number	
Dates of Service		Value or Cost of Service*	
Brief Description of Service Provided			

**REFERENCE 2**

Name of Firm			
Street Address	City	State	Zip Code
Contact Person		Telephone Number	
Dates of Service		Value or Cost of Service*	
Brief Description of Service Provided			

**REFERENCE 3**

Name of Firm			
Street Address	City	State	Zip Code
Contact Person		Telephone Number	
Dates of Service		Value or Cost of Service*	
Brief Description of Service Provided			

\*Optional



**ATTACHMENT 4**

**MINIMUM QUALIFICATIONS CERTIFICATION**

The Bidder certifies that it fulfills all of the minimum qualifications outlined in Section 2 of this Request for Proposals No. SIB 05-21 (RFP). By signing this attachment, the Bidder also agrees that if selected as the Plan Manager for California's ScholarShare 529 College Savings Plan, it will notify the ScholarShare Investment Board immediately upon its failure to continue to meet the minimum qualifications.

On behalf of \_\_\_\_\_, I certify that said firm  
(Bidder Name)  
complies with the Minimum Qualifications set forth in Section 2 of the RFP.

\_\_\_\_\_  
(Authorized Signature of Firm) (Firm Name)

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

\_\_\_\_\_  
(Title)

**ATTACHMENT 5**

SECURITIES AND EXCHANGE COMMISSION FORM ADV OR PROOF OF EXEMPTION

Attach the Securities and Exchange Commission Form ADV or Proof of Exemption from Registration.

**ATTACHMENT 6**

**INVESTMENT MAPPING**

Bidders can download the attached Excel Spreadsheet in electronic format by visiting ScholarShare Investment Board RFP webpage at <https://www.treasurer.ca.gov/scholarshare/rfp/index.asp>. Please complete the spreadsheet to show the following:

- Investment mapping of current Portfolios to new Portfolios
- Asset-Weighted Average Investment Option Fee

The Bidder's response to investment mapping will be considered in scoring for Investment Services, Section 4.3(s). The Bidder's calculated Asset-Weighted Average Investment Option Fee will be used to score Plan Fees, Section 4.5(a).

If the Bidder proposes that current Portfolio assets be mapped to multiple new Portfolios, Bidders shall specify the expected amount of current Portfolio assets that would be mapped to each new Portfolio. Investment Options that are a blend of multiple underlying funds (e.g., age-based, enrollment-based and static asset allocation portfolios) should include a weighted-average investment expense. Add as many rows as necessary.

**ATTACHMENT 7**

**CALIFORNIA DISABLED VETERAN BUSINESS ENTERPRISE (DVBE)  
PARTICIPATION GOAL PROGRAM INSTRUCTIONS**

**DVBE PARTICIPATION REQUIREMENT.** The Disabled Veteran Business Enterprise (DVBE) Participation Goal Program for State contracts is established in Public Contract Code (PCC) section 10115 et seq., Military and Veterans Code (MVC) section 999 et seq., and California Code of Regulations (CCR), title 2, section 1896.60 et seq. **This solicitation DOES NOT include a minimum DVBE participation requirement. DVBE participation is NOT required in the bid or proposal. However, a DVBE incentive will be applied as provided below.**

**DVBE INCENTIVE.** The State will apply a DVBE incentive for responsive bids or proposals (herein “bid” or “bids”) from responsible bidders that propose DVBE participation. The DVBE incentive will vary in relation to the percentage of confirmed DVBE participation. The following percentages shall apply.

<b>Confirmed DVBE Participation of</b>	<b>DVBE Incentive</b>
5% and above	5%
4% to 4.99% inclusive	4%
3% to 3.99% inclusive	3%
2% to 2.99% inclusive	2%
1% to 1.99% inclusive	1%

As applicable:

(1) Awards based on low price – The DVBE incentive is applied by reducing the bid price by the amount of DVBE incentive as computed from the lowest responsive bid price submitted by a responsible bidder. The DVBE incentive is for evaluation purposes only. Application of the DVBE incentive shall not displace an award to a small business with a non-small business.

(2) Awards based on high score – The DVBE incentive is a percentage of the total possible available points, not including points for socioeconomic incentives or preferences. The DVBE incentive points are included in the sum of non-cost points. The DVBE incentive points cannot be used to achieve any applicable minimum point requirements.

Bidders who have been certified by California as a DVBE (or who are bidding rental equipment and have obtained the participation of subcontractors certified by California as a DVBE) must also submit a completed form **STD. 843 (Disabled Veteran Business Enterprise Declaration)**. All disabled veteran owners and disabled veteran managers of the DVBE(s) must sign the form(s). Should the form not be included with the solicitation, contact the State contracting official or obtain a copy at the following website: [https://www.documents.dgs.ca.gov/dgs/fmc/gs/pd/pd\\_843.pdf](https://www.documents.dgs.ca.gov/dgs/fmc/gs/pd/pd_843.pdf). The completed form should be included with the bid response.

At the State’s option prior to award, bidders may be required to submit additional written clarifying information. Failure to submit the requested written information as specified may be grounds for bid rejection.

RESOURCES AND INFORMATION\*

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**U.S. Small Business Administration:**

Central Contractor Registration on-line database  
<https://uscontractorregistration.com/>

**FOR:**

Service-Disabled Veteran-Owned  
Businesses in California

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**Local Organizations:**

DVBE local contacts  
<https://www.dgs.ca.gov/PD/Services/Page-Content/Procurement-Division-Services-List-Folder/Certify-or-Re-apply-as-Small-Business-Disabled-Veteran-Business-Enterprise>

**FOR:**

List of Potential DVBE Subcontractors

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**Department of General Services, Procurement Division (DGS-PD) eProcurement:**

Website: <https://caleprocure.ca.gov/>  
Phone: (916) 375-2000  
Email: [eprocure@dgs.ca.gov](mailto:eprocure@dgs.ca.gov)

**FOR:**

- SB/DVBE Search
- CSCR Advertisements
- Training Modules

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**DGS-PD Office of Small Business and DVBE Services (OSDS):**

707 Third Street, Room 1-400, West Sacramento, CA 95605  
Website: <https://www.dgs.ca.gov/PD/Services/Page-Content/Procurement-Division-Services-List-Folder/Certify-or-Re-apply-as-Small-Business-Disabled-Veteran-Business-Enterprise>  
OSDS Receptionist: (916) 375-4940  
PD Receptionist: (800) 559-5529  
Fax: (916) 375-4950  
Email: [osdchelp@dgs.ca.gov](mailto:osdchelp@dgs.ca.gov)

**FOR:**

- Directory of OSDS Certified DVBEs
- Certification Applications
- Certification Information
- Certification Status, Concerns
- General DVBE Program Information
- DVBE Business Utilization Plan
- SB/DVBE Advocates
- Lists of Trade and Focus Publications

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**Commercially Useful Function Definition**

Military and Veterans Code section 999(b)  
California Code of Regulations, title 2, section 1896.62(l)

**ATTACHMENT 8**

PAYEE DATA RECORD (STD. 204)

All bidders must complete the Payee Data Record (STD. 204) and include it with the bid response. The Payee Data Record form can be accessed from the following link:

<https://www.documents.dgs.ca.gov/dgs/FMC/PDF/Std204.pdf>

**ATTACHMENT 9**

**BIDDER DECLARATION (GSPD-05-105)**

All bidders must complete the **Bidder Declaration (GSPD-05-105)** and include it with the bid response. When completing the declaration, bidders must identify all subcontractors proposed for participation in the contract. Bidders awarded a contract are contractually obligated to use the subcontractors for the corresponding work identified unless the State agrees to a substitution and it is incorporated by amendment to the contract. The Bidder Declaration (GSPD-05-105) can be accessed from the following link:

<https://www.documents.dgs.ca.gov/dgs/fmc/gsp/pd/gspd05-105.pdf>

CCC 04/2017

**ATTACHMENT 10**

**CERTIFICATION**

I, the official named below, CERTIFY UNDER PENALTY OF PERJURY that I am duly authorized to legally bind the prospective Contractor to the clause(s) listed below. This certification is made under the laws of the State of California.

<i>Contractor/Bidder Firm Name (Printed)</i>		<i>Federal ID Number</i>
<i>By (Authorized Signature)</i>		
<i>Printed Name and Title of Person Signing</i>		
<i>Date Executed</i>	<i>Executed in the County of</i>	

**CONTRACTOR CERTIFICATION CLAUSES**

1. **STATEMENT OF COMPLIANCE:** Contractor has, unless exempted, complied with the nondiscrimination program requirements. (Gov. Code §12990 (a-f) and CCR, Title 2, Section 11102) (Not applicable to public entities.)

2. **DRUG-FREE WORKPLACE REQUIREMENTS:** Contractor will comply with the requirements of the Drug-Free Workplace Act of 1990 and will provide a drug-free workplace by taking the following actions:

a. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations.

b. Establish a Drug-Free Awareness Program to inform employees about:

- 1) the dangers of drug abuse in the workplace;
- 2) the person's or organization's policy of maintaining a drug-free workplace;
- 3) any available counseling, rehabilitation and employee assistance programs; and,
- 4) penalties that may be imposed upon employees for drug abuse violations.

c. Every employee who works on the proposed Agreement will:

- 1) receive a copy of the company's drug-free workplace policy statement; and,
- 2) agree to abide by the terms of the company's statement as a condition of employment on the Agreement.

Failure to comply with these requirements may result in suspension of payments under the Agreement or termination of the Agreement or both and Contractor may be ineligible for award of any future State agreements if the department determines that any of the following has occurred: the Contractor has made false certification, or violated the certification by failing to carry out the requirements as noted above. (Gov. Code §8350 et seq.)

3. **NATIONAL LABOR RELATIONS BOARD CERTIFICATION:** Contractor certifies that no more than one (1) final unappealable finding of contempt of court by a Federal court has been issued against Contractor within the immediately preceding two-year period because of Contractor's failure to comply with an order of a Federal court, which orders Contractor to comply with an order of the National Labor Relations Board. (Pub. Contract Code §10296) (Not applicable to public entities.)



4. CONTRACTS FOR LEGAL SERVICES \$50,000 OR MORE- PRO BONO REQUIREMENT: Contractor hereby certifies that Contractor will comply with the requirements of Section 6072 of the Business and Professions Code, effective January 1, 2003.

Contractor agrees to make a good faith effort to provide a minimum number of hours of pro bono legal services during each year of the contract equal to the lessor of 30 multiplied by the number of full time attorneys in the firm's offices in the State, with the number of hours prorated on an actual day basis for any contract period of less than a full year or 10% of its contract with the State.

Failure to make a good faith effort may be cause for non-renewal of a state contract for legal services, and may be taken into account when determining the award of future contracts with the State for legal services.

5. EXPATRIATE CORPORATIONS: Contractor hereby declares that it is not an expatriate corporation or subsidiary of an expatriate corporation within the meaning of Public Contract Code Section 10286 and 10286.1, and is eligible to contract with the State of California.

6. SWEATFREE CODE OF CONDUCT:

a. All Contractors contracting for the procurement or laundering of apparel, garments or corresponding accessories, or the procurement of equipment, materials, or supplies, other than procurement related to a public works contract, declare under penalty of perjury that no apparel, garments or corresponding accessories, equipment, materials, or supplies furnished to the state pursuant to the contract have been laundered or produced in whole or in part by sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor, or with the benefit of sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor. The contractor further declares under penalty of perjury that they adhere to the Sweatfree Code of Conduct as set forth on the California Department of Industrial Relations website located at [www.dir.ca.gov](http://www.dir.ca.gov), and Public Contract Code Section 6108.

b. The contractor agrees to cooperate fully in providing reasonable access to the contractor's records, documents, agents or employees, or premises if reasonably required by authorized officials of the contracting agency, the Department of Industrial Relations, or the Department of Justice to determine the contractor's compliance with the requirements under paragraph (a).

7. DOMESTIC PARTNERS: For contracts of \$100,000 or more, Contractor certifies that Contractor is in compliance with Public Contract Code section 10295.3.

8. GENDER IDENTITY: For contracts of \$100,000 or more, Contractor certifies that Contractor is in compliance with Public Contract Code section 10295.35.

### **DOING BUSINESS WITH THE STATE OF CALIFORNIA**

The following laws apply to persons or entities doing business with the State of California.

1. CONFLICT OF INTEREST: Contractor needs to be aware of the following provisions regarding current or former state employees. If Contractor has any questions on the status of any person rendering services or involved with the Agreement, the awarding agency must be contacted immediately for clarification.

Current State Employees (Pub. Contract Code §10410):

1). No officer or employee shall engage in any employment, activity or enterprise from which the officer or employee receives compensation or has a financial interest and which is sponsored or funded by any state agency, unless the employment, activity or enterprise is required as a condition of regular state employment.

2). No officer or employee shall contract on his or her own behalf as an independent contractor with any state agency to provide goods or services.

Former State Employees (Pub. Contract Code §10411):

- 1). For the two-year period from the date he or she left state employment, no former state officer or employee may enter into a contract in which he or she engaged in any of the negotiations, transactions, planning, arrangements or any part of the decision-making process relevant to the contract while employed in any capacity by any state agency.
- 2). For the twelve-month period from the date he or she left state employment, no former state officer or employee may enter into a contract with any state agency if he or she was employed by that state agency in a policy-making position in the same general subject area as the proposed contract within the 12-month period prior to his or her leaving state service.

If Contractor violates any provisions of above paragraphs, such action by Contractor shall render this Agreement void. (Pub. Contract Code §10420)

Members of boards and commissions are exempt from this section if they do not receive payment other than payment of each meeting of the board or commission, payment for preparatory time and payment for per diem. (Pub. Contract Code §10430 (e))

2. LABOR CODE/WORKERS' COMPENSATION: Contractor needs to be aware of the provisions which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions, and Contractor affirms to comply with such provisions before commencing the performance of the work of this Agreement. (Labor Code Section 3700)
3. AMERICANS WITH DISABILITIES ACT: Contractor assures the State that it complies with the Americans with Disabilities Act (ADA) of 1990, which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA. (42 U.S.C. 12101 et seq.)
4. CONTRACTOR NAME CHANGE: An amendment is required to change the Contractor's name as listed on this Agreement. Upon receipt of legal documentation of the name change the State will process the amendment. Payment of invoices presented with a new name cannot be paid prior to approval of said amendment.
5. CORPORATE QUALIFICATIONS TO DO BUSINESS IN CALIFORNIA:
  - a. When agreements are to be performed in the state by corporations, the contracting agencies will be verifying that the contractor is currently qualified to do business in California in order to ensure that all obligations due to the state are fulfilled.
  - b. "Doing business" is defined in R&TC Section 23101 as actively engaging in any transaction for the purpose of financial or pecuniary gain or profit. Although there are some statutory exceptions to taxation, rarely will a corporate contractor performing within the state not be subject to the franchise tax.
  - c. Both domestic and foreign corporations (those incorporated outside of California) must be in good standing in order to be qualified to do business in California. Agencies will determine whether a corporation is in good standing by calling the Office of the Secretary of State.
6. RESOLUTION: A county, city, district, or other local public body must provide the State with a copy of a resolution, order, motion, or ordinance of the local governing body which by law has authority to enter into an agreement, authorizing execution of the agreement.
7. AIR OR WATER POLLUTION VIOLATION: Under the State laws, the Contractor shall not be: (1) in violation of any order or resolution not subject to review promulgated by the State Air Resources Board or an air pollution control district; (2) subject to cease and desist order not subject to review issued pursuant to Section 13301 of the Water Code for violation of waste discharge requirements or discharge prohibitions; or (3) finally determined to be in violation of provisions of federal law relating to air or water pollution.
8. PAYEE DATA RECORD FORM STD. 204: This form must be completed by all contractors that are not another state agency or other governmental entity.

**ATTACHMENT 11**

**DARFUR CONTRACTING ACT CERTIFICATION**

Pursuant to Public Contract Code section 10478, if a bidder or proposer currently or within the previous three years has had business activities or other operations outside of the United States, it must certify that it is not a “scrutinized” company as defined in Public Contract Code section 10476.

**Therefore, to be eligible to submit a bid or proposal, please insert your company name and Federal ID Number and complete only one of the following three paragraphs (via initials for Paragraph # 1 or Paragraph # 2, or via initials and certification for Paragraph # 3):**

<i>Company/Vendor Name (Printed)</i>	<i>Federal ID Number</i>
<i>Printed Name and Title of Person Initialing (for Options 1 or 2)</i>	

1. \_\_\_\_\_ We do not currently have, and have not had within the previous  
Initials three years, business activities or other operations outside of the  
United States.

**OR**

2. \_\_\_\_\_ We are a scrutinized company as defined in Public Contract Code  
Initials section 10476, but we have received written permission from the  
Department of General Services (DGS) to submit a bid or proposal  
pursuant to Public Contract Code section 10477(b). A copy of the written  
permission from DGS is included with our bid or proposal.

**OR**

3. \_\_\_\_\_ We currently have, or we have had within the previous three years,  
initials business activities or other operations outside of the United States,  
+ certification but we certify below that we are not a scrutinized company  
below as defined in Public Contract Code section 10476.

**CERTIFICATION For # 3.**

I, the official named below, CERTIFY UNDER PENALTY OF PERJURY that I am duly authorized to legally bind the prospective proposer/bidder to the clause listed above in # 3. This certification is made under the laws of the State of California.

<i>By (Authorized Signature)</i>	
<i>Printed Name and Title of Person Signing</i>	
<i>Date Executed</i>	<i>Executed in the County and State of</i>

**ATTACHMENT 12**

**IRAN CONTRACTING ACT CERTIFICATION**  
(Public Contract Code sections 2202-2008)

Prior to bidding on, submitting a proposal or executing a contract or renewal for a State of California contract for goods or services of \$1,000,000 or more, a vendor must either: a) certify it is **not** on the current list of persons engaged in investment activities in Iran created by the California Department of General Services ("DGS") pursuant to Public Contract Code section 2203(b) and is not a financial institution extending twenty million dollars (\$20,000,000) or more in credit to another person, for 45 days or more, if that other person will use the credit to provide goods or services in the energy sector in Iran and is identified on the current list of persons engaged in investment activities in Iran created by DGS; or b) demonstrate it has been exempted from the certification requirement for that solicitation or contract pursuant to Public Contract Code section 2203(c) or (d).

To comply with this requirement, please insert your vendor or financial institution name and Federal ID Number (if available) and complete **one** of the options below. Please note: California law establishes penalties for providing false certifications, including civil penalties equal to the greater of \$250,000 or twice the amount of the contract for which the false certification was made; contract termination; and three-year ineligibility to bid on contracts. (Public Contract Code section 2205.)

**OPTION #1 - CERTIFICATION**

I, the official named below, certify I am duly authorized to execute this certification on behalf of the vendor/financial institution identified below, and the vendor/financial institution identified below is **not** on the current list of persons engaged in investment activities in Iran created by DGS and is not a financial institution extending twenty million dollars (\$20,000,000) or more in credit to another person/vendor, for 45 days or more, if that other person/vendor will use the credit to provide goods or services in the energy sector in Iran and is identified on the current list of persons engaged in investment activities in Iran created by DGS.

<i>Vendor Name/Financial Institution (Printed)</i>		<i>Federal ID Number (or n/a)</i>
<i>By (Authorized Signature)</i>		
<i>Printed Name and Title of Person Signing</i>		
<i>Date Executed</i>	<i>Executed in</i>	

**OPTION #2 – EXEMPTION**

Pursuant to Public Contract Code sections 2203(c) and (d), a public entity may permit a vendor/financial institution engaged in investment activities in Iran, on a case-by-case basis, to be eligible for, or to bid on, submit a proposal for, or enters into or renews, a contract for goods and services.

If you have obtained an exemption from the certification requirement under the Iran Contracting Act, please fill out the information below, and attach documentation demonstrating the exemption approval.

<i>Vendor Name/Financial Institution (Printed)</i>		<i>Federal ID Number (or n/a)</i>
<i>By (Authorized Signature)</i>		
<i>Printed Name and Title of Person Signing</i>		<i>Date Executed</i>

**ATTACHMENT 13**

**CALIFORNIA CIVIL RIGHTS LAWS CERTIFICATION**

Pursuant to Public Contract Code section 2010, if a bidder or proposer executes or renews a contract over \$100,000 on or after January 1, 2017, the bidder or proposer hereby certifies compliance with the following:

1. **CALIFORNIA CIVIL RIGHTS LAWS:** For contracts over \$100,000 executed or renewed after January 1, 2017, the contractor certifies compliance with the Unruh Civil Rights Act (Section 51 of the Civil Code) and the Fair Employment and Housing Act (Section 12960 of the Government Code); and

2. **EMPLOYER DISCRIMINATORY POLICIES:** For contracts over \$100,000 executed or renewed after January 1, 2017, if a Contractor has an internal policy against a sovereign nation or peoples recognized by the United States government, the Contractor certifies that such policies are not used in violation of the Unruh Civil Rights Act (Section 51 of the Civil Code) or the Fair Employment and Housing Act (Section 12960 of the Government Code).

**CERTIFICATION**

I, the official named below, certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.		<i>Federal ID Number</i>
<i>Proposer/Bidder Firm Name (Printed)</i>		
<i>By (Authorized Signature)</i>		
<i>Printed Name and Title of Person Signing</i>		
<i>Date Executed</i>	<i>Executed in the County and State of</i>	

**ATTACHMENT 14**

**EVIDENCE OF QUALIFICATION TO DO BUSINESS IN THE STATE OF CALIFORNIA**

Bidder and any subcontractor identified in the proposal must be qualified to do business in the State of California. Bidder must submit evidence demonstrating compliance with this requirement with its proposal.

Include a copy of the proposer's evidence of qualification as Attachment 14. This evidence may include current documentation from the California Secretary of State.

**ATTACHMENTS 15, 16 & 17**

**PREFERENCE PROGRAMS (IF APPLICABLE)**

Attach proof in claiming Small Business or Microbusiness Preference, Non-Small Business Preference, or Target Area Contract Preference Act Program, if applicable.

**Small Business or Microbusiness Preference**

[https://www.dgs.ca.gov/PD/Resources/Page-Content/Procurement-Division-Resources-List-Folder/Small Business and Disabled Veteran Business Enterprise Best Practices](https://www.dgs.ca.gov/PD/Resources/Page-Content/Procurement-Division-Resources-List-Folder/Small_Business_and_Disabled_Veteran_Business_Enterprise_Best_Practices)

**Non-Small Business Preference**

[https://www.dgs.ca.gov/PD/Resources/Page-Content/Procurement-Division-Resources-List-Folder/Small Business and Disabled Veteran Business Enterprise Best Practices](https://www.dgs.ca.gov/PD/Resources/Page-Content/Procurement-Division-Resources-List-Folder/Small_Business_and_Disabled_Veteran_Business_Enterprise_Best_Practices)

**Target Area Contract Preference Act (TACPA) Program**

<https://www.dgs.ca.gov/PD/Services/Page-Content/Procurement-Division-Resources-List-Folder/Request-a-Target-Area-Contract-Preference>

**ATTACHMENT 18**

**RESUMES OF KEY PERSONNEL**

Name of Firm:
Please attach resumes for each identified key personnel who will be directly involved in providing these services.

Name:	Percent of Effort %
Title:	Office Location:
Phone Number:	Email:
Role:	
How Long in Current Position?	How Long Employed in Current Firm?
Experience:	

Name:	Percent of Effort %
Title:	Office Location:
Phone Number:	Email:
Role:	
How Long in Current Position?	How Long Employed in Current Firm?
Experience:	



**ATTACHMENT 19**

**AUDITED FINANCIALS AND SEC FILINGS**

Attach the audited financials and SEC filings for the Bidder (3 years) and Subcontractor(s) (1 year).

**ATTACHMENT 20**

**SERVICE ORGANIZATION CONTROLS REPORTS**

Attach copies of the most recent SOC1 and SOC2, Type 2 reports covering the activities of your organization that will provide the applicable services to the Program under your proposal.

**STANDARD AGREEMENT**

AGREEMENT NUMBER

PURCHASING AUTHORITY NUMBER  
(If Applicable)

STD 213 (Rev. 03/2019)

SAMPLE

1. This Agreement is entered into between the Contracting Agency and the Contractor named below:

CONTRACTING AGENCY NAME

ScholarShare Investment Board

CONTRACTOR NAME

TBD

2. The term of this Agreement is:

START DATE

November 7, 2021 (or upon approval by the Department of General Services, whichever is later)

THROUGH END DATE

November 6, 2026 (plus five optional one-year extensions)

3. The maximum amount of this Agreement is:

Zero-dollar contract

4. The parties agree to comply with the terms and conditions of the following exhibits, which are by this reference made a part of the Agreement.

EXHIBITS	TITLE	PAGES
Exhibit A	Scope of Work	5
Exhibit B	Budget Detail and Payment Provisions	1
Exhibit C*	General Terms and Conditions - GTC 04/2017	1
Exhibit D	Special Terms and Conditions	1
Exhibit E	Additional Provisions	35
	Appendix 1 – The Act	1
	Appendix 2 – ScholarShare Statement of Investment Policy	1
	Appendix 3 – ScholarShare Monitoring Procedures and Criteria	19
	Schedule 3.2 – Subcontractors	1
	Schedule 3.5 – Contractor’s Key Personnel	1
	Schedule 6.2 – Investment Performance Criteria / Investment Objectives for Investment Options	1
	Schedule 8.2 – ScholarShare Administrative Performance Criteria	4
	Schedule 8.4 – Administrative and Other Reports	1
	RFP and Contractor's response thereto are incorporated by reference and made a part of this agreement	

*Items shown with an asterisk (\*), are hereby incorporated by reference and made part of this agreement as if attached hereto.*

*These documents can be viewed at <https://www.dgs.ca.gov/OLS/Resources>*

**IN WITNESS WHEREOF, THIS AGREEMENT HAS BEEN EXECUTED BY THE PARTIES HERETO.**

**CONTRACTOR**

CONTRACTOR NAME (if other than an individual, state whether a corporation, partnership, etc.)

TBD

CITY

STATE

ZIP

PRINTED NAME OF PERSON SIGNING

TITLE

CONTRACTOR AUTHORIZED SIGNATURE

DATE SIGNED

**STANDARD AGREEMENT**

STD 213 (Rev. 03/2019)

AGREEMENT NUMBER  SAMPLE	PURCHASING AUTHORITY NUMBER (If Applicable)
--------------------------------	--

**STATE OF CALIFORNIA**

CONTRACTING AGENCY NAME ScholarShare Investment Board			
CONTRACTING AGENCY ADDRESS 915 Capitol Mall, Room 590	CITY Sacramento	STATE CA	ZIP 95814
PRINTED NAME OF PERSON SIGNING Julio Martinez	TITLE Executive Director		
CONTRACTING AGENCY AUTHORIZED SIGNATURE	DATE SIGNED		
CALIFORNIA DEPARTMENT OF GENERAL SERVICES APPROVAL	EXEMPTION (If Applicable)		

**EXHIBIT A**  
**(Standard Agreement)**

**SCOPE OF WORK**

1. Contractor agrees to provide to the ScholarShare Investment Board (SIB) program management services as described herein:

The Contractor will provide all program management services for the compliance, investment, education, administration, banking (including transaction processing), recordkeeping and customer service functions.

a) General

- (i) Contractor will provide overall management services for the investment, marketing, distribution, recordkeeping, cash management, custody administration and customer service functions of the Plan.
- (ii) Contractor will manage the Plan in compliance with Section 529 of the Code, and all other applicable federal and State statutes, rules and regulations. The Contractor will monitor for changes in the legal and regulatory environment that may materially affect the Plan, and it will make recommendations for amendments or supplements to the Plan offering materials.
- (iii) Services shall be performed at the offices of the Contractor, appropriate affiliates, subsidiaries and subcontractors. The Contractor, affiliates, subsidiaries and subcontractors must provide services in compliance with all federal and State regulatory bodies.
- (iv) Contractor will designate a dedicated key personnel team to serve SIB and it will notify SIB of any changes to the management or composition of that team as they occur. Such changes include re-assignments, resignations, terminations, additions or other changes to the employment status or composition of the professionals assigned to the team. Additionally, the Contractor shall notify the SIB if the team takes on additional responsibilities (either internal or external clients).
- (v) All work to be performed by the Contractor will be reviewed by SIB or its designee. Such review will not relieve the Contractor of any liability in connection with such work.

b) Marketing and Distribution

- (i) Contractor must aggressively and exclusively market and promote the Plan throughout California.
- (ii) Contractor will present an annual marketing plan to SIB for review and approval. The annual marketing plan will be based upon the Contractor's annual marketing commitment, which will be used for all marketing and promotional expenditures, excluding any overhead charges. Allocation of the annual marketing commitment will be subject to SIB's approval.
- (iii) Contractor shall keep SIB informed during development and refinement of all marketing campaigns and related materials. No marketing activity shall commence without SIB approval. Contractor will provide monthly reports on marketing expenditures.
- (iv) Contractor must satisfy marketing performance criteria, which may include asset (net new contributions) and account growth standards for the Plan in comparison to the national industry. The performance criteria will be agreed upon by SIB and the Contractor and will be incorporated in the Agreement, along with appropriate remedies for failing to achieve the performance criteria. The Contractor will also provide SIB satisfaction performance criteria, which will measure the percentage of accounts closed due to transfers to qualified tuition programs offered by entities other than California.

**EXHIBIT A**  
**(Standard Agreement)**

- (v) Contractor must provide investor education and outreach to the diverse California population, including enrollment materials in Spanish and other languages deemed appropriate by SIB. Contractor must offer opportunities or support SIB's efforts to reach all possible investors through grassroots marketing and targeted direct market campaigns, including initiatives directed specifically toward lower and middle-income California residents.

c) Investment Services

- (i) Contractor must develop and recommend fee-competitive investment options that appeal to a wide range of investors with various risk tolerances and contribution levels. Any investment options must be consistent with SIB's investment objectives as outlined in the ScholarShare Statement of Investment Policy (Investment Policy), which is included as Appendix 2 in this Agreement. The Board must approve any and all recommended investment options.
- (ii) Contractor is responsible for the development and recommendation for Board approval an asset allocation for the age-based or enrollment year and static allocation portfolios.
- (iii) While open architecture is strongly preferred, Contractor may recommend a proprietary line-up of underlying investments, investments from a single mutual fund company, or investments from multiple investment managers. In doing so, the Contractor must support its recommendations to SIB, demonstrating the superiority of the recommendation over other possible investment line-ups. Contractor must be willing to include non-proprietary fund managers in the event of performance shortfalls in the future or if SIB determines that an open architecture structure would meaningfully increase participation in the Plan.
- (iv) Contractor's performance will be measured by the ScholarShare Monitoring Procedures and Criteria (Procedures), which is included as Appendix 3 in this Agreement. Contractor must also demonstrate that it (and any investment management subcontractor) has rigorous internal monitoring procedures in place for the funds and investment vehicles proposed as Underlying Investments.
- (v) On at least a quarterly basis, and more frequently as necessary, Contractor must inform SIB about significant changes in the investment climate, market conditions or investment philosophies that could affect Plan investments.
- (vi) Contractor shall prepare an annual review of the Investment Portfolios and the Underlying Investments. The review should include, but not be limited to, an asset allocation review as well as proposed changes to benchmarks and Underlying Investments.
- (vii) If applicable, Contractor must provide a clear and appropriate conversion plan showing the mapping of current account investments from the existing Plan to the new Plan.

d) Recordkeeping, Administration and Customer Service

- (i) Contractor must allow accounts to be opened by eligible individuals, corporations, trusts, custodians, Uniform Gift to Minors Act (UGMA), Uniform Transfer to Minors Act (UTMA), not-for-profit entities, and other public entities.
- (ii) Contractor must provide enrollment online and through a central mailing location that can receive express deliveries and deliveries by normal U.S. postal services.
- (iii) Contractor will archive and store all Plan records in compliance with all federal and State securities regulations on applicable law.
- (iv) Contractor will process all transactions, including but not limited to, contributions and withdrawals, exchanges, transfers, maintain all records, and comply with all tax and securities laws as required under Section 529 of the Code, the California Franchise Tax Board (FTB), federal and State securities regulations, and ScholarShare Administrative Performance Criteria (see (xiv below)). This includes the annual report and audit of the

**EXHIBIT A**  
**(Standard Agreement)**

Plan as required in Section 69990 of the Act, and as applicable, aggregation for federal tax law purposes.

- (v) At a minimum, live customer service for the Plan will be required from 8:00 a.m. to 7:00 p.m. Pacific Time (PT), Monday through Friday, except holidays, and customers must have voice response unit (VRU) and Internet servicing access in all other hours. All inbound and outbound phone calls shall be recorded and retrievable.
- (vi) Contractor shall provide monthly reports to the SIB Executive Director indicating the number of new accounts and assets generated for that month and currently in existence, relevant account activity, including but not limited to, the number of rollovers, all relevant investment performance results, and other program administration and marketing information prescribed by the SIB Executive Director or SIB. Contractor also will provide a quarterly report outlining customer service inquiries and results, the number and types of complaints and the manner in which they were resolved, the quarterly performance of all investments, and such other information as SIB requests, including prior year comparisons on requested information.
- (vii) Contractor must attend all formal SIB meetings (four to five times annually) unless otherwise notified by the SIB Chair or his or her designee, and provide program-related reports as requested by SIB or its staff. The Contractor must also respond to the need for telephone consultation within a 24-hour period and be available at minimum to SIB and the staff between the hours of 8:00 a.m. – 5:00 p.m. PT.
- (viii) Contractor shall have a robust plan for implementing and tracking workplace enrollments and it shall provide a means for participants to contribute to their accounts through payroll deduction. Contractor also shall maintain a robust gifting platform with the goal of growing California accounts.
- (ix) Upon request, Contractor shall provide the SIB staff access to all files, records, documents and data pertaining to the Plan that are in its possession and control, regardless of how that information is stored (Plan Records). The Plan Records for the Plan shall be provided in a reasonable time and in a form acceptable to the SIB Executive Director and SIB. At its expense, the Contractor also shall provide SIB all Plan Records for the Plan in a sortable electronic form via a mutually agreeable medium after notice from SIB that the Agreement will terminate. In addition, Contractor will allow SIB staff access on-site to its facilities. The SIB staff will provide reasonable notice prior and on-site access will be conducted during normal business hours.
- (x) Contractor and its approved subcontractors will be required to provide annual SOC1 and SOC2 Type 2 reports to SIB. In the event the SOC1 or SOC2 Type 2 reports have reported discrepancies, Contractor will provide a full description of such discrepancies, management response and resolution for each occurrence.
- (xi) Contractor shall maintain a cybersecurity plan to keep and protect the confidentiality of participant personal information, including, but not limited to, identification numbers or codes and account codes and account access numbers or codes in accordance with all applicable federal and State laws, and secure an appropriate insurance policy to protect against losses resulting from security breaches.
- (xii) Contractor also shall maintain a disaster recovery plan to ensure business continuity. The disaster recovery plan shall be tested twice per year with results provided to SIB.
- (xiii) Contractor shall provide for the integration of Outcome Tracker, the online recordkeeping platform offered by VistaShare, to support CalKIDS, as well as other local children savings account (CSA) programs utilizing ScholarShare 529 as its savings vehicle. Contractor shall also provide for a system to support a matching grant program with specific eligibility requirements.
- (xiv) Contractor's performance will be measured by administrative performance criteria. The current ScholarShare Administrative Performance Criteria for the Existing Plan (Administrative Benchmarks) is included in Schedule 8.2 of this Agreement.

**EXHIBIT A  
(Standard Agreement)**

Administrative performance criteria will be determined and included in the Agreement, but in no event will the criteria be less stringent than the Administrative Benchmarks. SIB and/or the Contractor may review and recommend modifications to the administrative performance criteria on an annual basis based on industry norms and national trends. Any modifications to the administrative performance criteria would require approval by the Board.

e) Program Conversion (as applicable)

If applicable, the Plan Manager will provide the following conversion-related services:

- (i) Contractor shall develop a detailed timeline for conversion of assets with an expected Plan re-launch in November 2021.
- (ii) Contractor shall provide a detailed communication plan to ensure timely communications to existing Plan account owners during the conversion period.
- (iii) Contractor shall provide a seamless transition of Plan records, assets, and processes for Plan account owners.
- (iv) Contractor shall reconcile cash and net asset values (NAVs) to ensure all Plan assets are accounted for prior to and after conversion.
- (v) Contractor shall provide a plan to handle assets invested in two TCLIC funding agreements allocated in the Guaranteed Investment Portfolio and other Plan portfolios to address a multi-year withdrawal schedule.
- (vi) Contractor shall provide resources, as necessary, to ensure that current Plan assets are continuously invested throughout the conversion and implementation process.
- (vii) At the SIB's direction, Contractor shall engage a conversion manager at its expense.
- (viii) Contractor shall take all steps necessary to achieve a conversion date that is agreed upon by the SIB and the new Plan Manager.
- (ix) Contractor shall assume the costs of the system conversion and the transfer of investments to the applicable new investment option(s).

- 2. The services shall be performed at the offices of the Contractor and at the offices of appropriate affiliates, related entities, subsidiaries and subcontractors.
- 3. Customer services for the ScholarShare 529 College Savings Plan (Direct Plan) will be provided at a minimum from 8:00 a.m. to 7:00 p.m. Pacific Time (PT), Monday through Friday, except for holidays.
- 4. The project representatives during the term of this agreement will be:

State Agency: ScholarShare Investment Board	Contractor: TBD
Name: Julio Martinez	Name:
Phone: 916-651-6380	Phone:
Fax: 916-589-2835	Fax:



**EXHIBIT A**  
**(Standard Agreement)**

Direct all inquiries to:

State Agency: ScholarShare Investment Board	Contractor: TBD
Attention: Stanley Zeto	Attention:
Address: 915 Capitol Mall, Room 590 Sacramento, CA 95814	Address:
Phone: 916-651-6381	Phone:
Fax: 916-589-2835	Fax:

**EXHIBIT B  
(Standard Agreement)**

**BUDGET DETAIL AND PAYMENT PROVISIONS**

**1. Invoicing and Payment**

Contractor shall not invoice the State for any fees or expenses since such amounts will be deducted from contributions to or otherwise charged against assets in the ScholarShare Trust. Contractor shall only be entitled to such amounts as disclosed to participants and as set forth in Section 9 of Exhibit E to this Agreement.

In the event that a material default or breach occurs pursuant to the terms of this Agreement, the SIB may require that certain fees and expenses be placed in escrow for the benefit of the Plan until such default or breach is cured.

**2. Budget Contingency Clause**

As set forth in Section 9.3 of Exhibit E to this Agreement, the Services provided pursuant to this Agreement are not contingent upon the Budget Act of the current year and/or any subsequent years. At no time will moneys be appropriated under the Budget Act for payments to the Contractor under the Program.

**3. Prompt Payment Clause**

The payment provisions contained in Government Code Chapter 4.5 do not apply to this Agreement as allowable fees and expenses will be deducted from contributions to or charged against assets in the ScholarShare Trust. Allowable fees and expenses are only those set forth in the Section 9 of Exhibit E to this Agreement, as approved by SIB and as are subject to future alteration based on industry norms and national trends.

**4. Fees to Contractor**

Contractor shall be entitled to receive a monthly program management fee for the Plan as set forth in Section 9.2 of Exhibit E to this Agreement.

**5. Fees to SIB**

SIB shall be entitled to receive a monthly administrative fee from the Trust as set forth in Section 9.4 of Exhibit E to this Agreement.

**EXHIBIT C**  
**(Standard Agreement)**

**GENERAL TERMS AND CONDITIONS**

General Terms and Conditions (GTC 04/2017) is hereby incorporated by reference and made part of this agreement as if attached hereto. The General Terms and Conditions can be viewed at <https://www.dgs.ca.gov/OLS/Resources/Page-Content/Office-of-Legal-Services-Resources-List-Folder/Standard-Contract-Language>.

**EXHIBIT D**  
**(Standard Agreement)**

**SPECIAL TERMS AND CONDITIONS**

Special Terms and Conditions are included in Exhibit E, Additional Provisions.

**EXHIBIT E**  
**(Standard Agreement)**

**ADDITIONAL PROVISIONS**

**1. DEFINITIONS.**

"*Account*" shall mean an individual savings account established as part of the Program and maintained pursuant to a Participation Agreement in accordance with the Act and this Agreement.

"*Account Balance*" shall mean, with respect to an Account, the total cash contribution plus net earnings less (a) net losses attributable to such Account, (b) any Withdrawals directed by the Account Owner, and (c) any fees withdrawn from such Account in accordance with this Agreement.

"*Account Owner*" shall mean any Person who is a participant as defined in the Act and who enters into a Participation Agreement with respect to an Account.

"*Act*" shall mean the California Education Code, Section 69980 et. seq., as amended from time to time, and attached as Appendix 1 to this Agreement.

"*Administrative Performance Criteria*" shall mean the performance standards applicable to the Administrative Services described in Section 8.2 of this Exhibit E.

"*Administrative Services*" shall mean the customer service, records administration and other general administrative services to be performed by the Contractor in connection with the Direct Plan as provided in Section 8 of this Exhibit E.

"*Agreement*" shall mean the Standard Agreement entered into between SIB and the Contractor.

"*Applicable Law*" shall mean (i) all requirements of the Act, of the Code, of any federal or state securities law, of any tax code of any state, or of any other federal or state law applicable to the Program or the Contractor; (ii) any rule or regulation of a Governmental Authority (or, unless waived with the written consent of SIB and the Contractor, any proposed rule or regulation, notice of proposed rulemaking or other administrative action, guideline or requirement promulgated by any Governmental Authority that is applicable to the Program or the Contractor, if either (a) such Governmental Authority states it will deem such proposal to be effective or available for reliance, prior to final adoption, or (b) such proposal is generally being followed in accordance with applicable practice among qualified tuition programs); and (iii) any judicial judgment, decree, injunction, writ, order or administrative ruling, order or determination by any Governmental Authority that is applicable to the Program or the Contractor.

"*Beneficiary*" shall have the same meaning as the "designated beneficiary" provided in Section 529 (e) (1) as it is amended from time to time, and is intended to mean the individual whose Qualified Higher Education Expenses as defined by Section 529 are expected to be paid from an Account.

"*Board*" or "*SIB*" shall mean the ScholarShare Investment Board, an agency of the State, established pursuant to Section 69984 (a) (2) (B) of the Act and consisting of the State Treasurer, the Director of Finance, the Executive Director of the State Board of Education, a member of the Student Aid Commission, a member of the public, a representative from a California public institution of higher education, and a representative from a California independent college or university.

"*Business Day*" shall mean a day on which the New York Stock Exchange is open for trading.

"*Code*" shall mean the Internal Revenue Code of 1986, as amended from time to time.

**EXHIBIT E**  
**(Standard Agreement)**

"*Contractor's Proposal*" shall mean the Contractor's response to the RFP.

"*Direct Plan*" shall mean the college savings plan established as part of the Program in which accounts may be established directly with SIB as facilitated by the Contractor rather than through a financial professional the Contractor rather than through a financial professional such as an independent financial consultant, a broker-dealer, or a bank.

"*Disclosure Principles*" shall mean the College Savings Plans Network (CSPN) Disclosure Principles, Statement No. 4, as may be amended by CSPN from time to time.

"*Executive Director*" shall mean the member of SIB staff responsible for administration of the Trust and overall management of the Program.

"*FINRA*" shall mean the Financial Industry Regulatory Authority.

"*Giftor*" shall mean any Person other than an Account Owner who contributes an amount to an Account which has been previously established by an Account Owner for a Beneficiary.

"*Governance Principles*" shall mean the Guidance for Governance and Maintenance of Section 529 Plans, adopted by CSPN on May 18, 2010, and as may be amended by CSPN from time to time.

"*Governmental Authority*" shall mean any federal, state, local, municipal or other governmental department, commission, district, board, bureau, agency, regulatory body, court, tribunal or other instrumentality (or any officer or representative thereof) of competent jurisdiction.

"*Investment Options*" shall mean the options for investment made available under the Direct Plan to Account Owners in accordance with the Contractor's Proposal and this Agreement. Each Investment Option shall be a segregated investment portfolio of the Trust.

"*Investment Performance Criteria*" shall mean the performance standards set forth in Section V of the Monitoring Procedures attached as Appendix 3 to this Agreement.

"*Investment Policy Statement*" shall mean the Statement of Investment Policy established for the Program by SIB, as such Policy Statement may be revised by SIB from time to time, and included as Appendix 2 to this Agreement.

"*Investment Services*" shall mean the investment advisory services to be provided by the Contractor in connection with the Direct Plan as provided in Section 6 of this Exhibit E.

"*IRS*" shall mean the Internal Revenue Service.

"*Key Investment Professional*" shall mean the decision maker who is responsible for action or advice and the decision-making process related to Investment Services.

"*Marketing Performance Criteria*" shall mean the annual account, contribution, and asset growth rate standards for the Direct Plan as provided by the Contractor, as may be accepted, rejected or modified by SIB in future years, and the percentage of Accounts closed annually due to rollovers to other qualified tuition programs, all as set forth in Section 7 of this Exhibit E.

"*Marketing Plan*" shall mean the annual plan for marketing and promotion of the Direct Plan approved by SIB.

**EXHIBIT E**  
**(Standard Agreement)**

"*Marketing Services*" shall mean the marketing services to be provided by the Contractor in connection with the Direct Plan as provided in Section 7 of this Exhibit E.

"*Monitoring Procedures*" shall mean Monitoring Procedures and Criteria adopted by the ScholarShare Investment Board and dated March 19, 2020, included as Appendix 3 to this Agreement, as may be modified from time to time.

"*MSRB*" shall mean the Municipal Securities Rulemaking Board.

"*Net Asset Value*" or "*NAV*" shall mean the value of each unit of each Investment Option at the close of trading on every Business Day.

"*Other SIB Programs*" shall mean the California Kids Investment and Development Savings Program, Matching Grant Program, and any other college savings plan established by SIB as part of the Program under Section 529.

"*Participation Agreement*" shall mean the agreement to be entered into by SIB and a prospective Account Owner with respect to an Account, as amended from time to time.

"*Person*" shall mean a participant or potential participant as defined in the Act to include an individual, trust, estate, partnership, association, company or corporation, a custodian under the California Uniform Transfers to Minors Act, a custodian under the California Uniform Gifts to Minors Act, a state or local government agency, or a legal representative of a participant who has entered into a participation agreement pursuant to the Act.

"*Program*" shall mean the California college savings program authorized by the Act to be developed and implemented by SIB as a Qualified Tuition Program under Section 529 and under which SIB has established the Direct Plan.

"*Program Disclosure Booklet*" shall mean the offering document (or documents), including all exhibits, attachments or supplements, distributed in hard copy or electronic form, prepared in compliance with the Disclosure Principles, which describes the Direct Plan and the Trust, and is distributed to Prospects and Account Owners in connection with opening an Account and entering into a Participation Agreement.

"*Program Lists*" shall mean all records, books, correspondence, papers and files relating solely to the Program, including, without limitation, completed applications and all information collected by the Program from or concerning Account Owners, Designated Beneficiaries, Giftors, and/or Prospects

"*Program Management Fee*" shall mean the monthly management fee payable to the Contractor for all Services under this Agreement as set forth in Section 9.1 of this Exhibit E.

"*Program Materials*" shall mean all promotional materials (including press releases), media materials and other documents and materials in hard copy or electronic form used in connection with management or administration of the Direct Plan, including the Marketing Plan, the Program Disclosure Booklet, the Participation Agreement, the Direct Plan websites maintained by the Contractor, and the application used to establish an Account.

"*Program Records*" shall mean the Program Lists and Program Materials as well as any logo that has been designed and developed specifically for the Program; any slogan developed specifically for the Program; any trade names, trademarks or service marks created specifically for the Program; any copyrighted materials relating solely or primarily to the Program, any website content related specifically to

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the Program; the URL for the Program website; the Program's toll-free number; and advertising, marketing, and public relations materials that are specific to the Program, all as set forth in Section 16.1 of this Exhibit E.

"*Program Start Date*" shall mean the date that the Program commences as determined by the Board.

"*Program Year of SIB*" shall mean the twelve (12) month period commencing each January 1 and ending each December 31.

"*Prospects*" shall mean Persons requesting information or making inquiries as to the Trust or the Program.

"*Qualified Higher Education Expense*" shall have the meaning set forth in Section 529.

"*Qualified Tuition Program*" shall have the meaning set forth in Section 529.

"*Reasonable Access*" shall mean access to inspect or audit books and records pursuant to this Agreement during normal business hours and in such a manner and at such a location so as to not unreasonably interfere with or disrupt normal business operations, after providing reasonable advance notice.

"*Regulatory Body*" shall mean the MSRB, FINRA and any other State or federal board or association that regulates the activities of the Contractor.

"*Request for Proposals*" or "*RFP*" shall mean Request for Proposals No. SIB 05-21, for Program Management Services for the ScholarShare 529 College Savings Plan, released by SIB on June 17, 2021.

"*SEC*" shall mean the United States Securities and Exchange Commission.

"*Section 529*" shall mean Section 529 of the Code, as amended from time to time, and the regulations issued pursuant thereto.

"*Securities Law Requirements*" shall mean at the time of determination, with respect to the Services or the administration of any underlying investment: (i) all requirements of any federal or state securities law; and (ii) any judicial judgment, decree, injunction, writ, settlement, order or administrative ruling, order or determination by any Governmental Authority enforcing or interpreting any federal or state securities law. "*Services*" shall mean, collectively, the Investment Services, the Marketing Services and the Administrative Services, in each case provided with respect to the Direct Plan.

"*SIB Administrative Fee*" shall mean the monthly administrative fee payable to SIB from the Trust, included in Section 9.4 of this Exhibit E.

"*State*" shall mean the State of California and, in certain instances, SIB acting on behalf of the State.

"*Subcontractor*" shall mean the subcontractor to whom the Contractor has assigned its rights and obligations to perform Services as approved by SIB in accordance with the provisions of Section 3.2 of this Exhibit E.



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"Term" shall mean the Initial Term together with any Extension Term or Terms as applicable in accordance with Section 14.1 of this Exhibit E.

"Trust" shall mean the Golden State ScholarShare College Savings Trust established by the Act in connection with the Program for funds contributed to the Accounts established by Account Owners for which SIB shall act as trustee.

"Underlying Investments" shall mean those funds or other investment vehicles in which the assets of the Investment Options are invested.

"Withdrawal" shall mean a distribution from an Account requested by an Account Owner without regard to how the proceeds of such distribution will be used.

**2. INCORPORATION OF ADDITIONAL DOCUMENTS; RULES OF CONSTRUCTION.**

(a) The RFP, the Contractor's Proposal, and the terms of the Award are hereby incorporated by reference into and made a part of this Agreement

(b) This Agreement, including documents that have been incorporated herein by reference, contains all representations and the entire understanding between the parties hereto with respect to the subject matter hereof. Any prior correspondence, memoranda or agreements are replaced in total by this Agreement.

(c) In the event there are any inconsistencies or ambiguities among the terms of this Agreement and incorporated documents, the following order of precedence shall be used: (i) Applicable Laws; (ii) the terms and conditions of Exhibits A through E of this Agreement, including attachments and schedules; (iii) the RFP; (iv) Contractor's Proposal; and (v) any other provisions, terms, or materials incorporated herein.

(d) For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires:

- (i) Singular words shall connote the plural as well as the singular, and vice versa (except as indicated), as may be appropriate.
- (ii) References within this Agreement to articles, sections, paragraphs or clauses are references to articles, sections, paragraphs or clauses in or to this Agreement.
- (iii) The words "herein," "hereof" and "hereunder" and other words of similar import used in this Agreement refer to this Agreement as a whole and not to any particular article, section, paragraph or clause.
- (iv) References to any Person shall include such Person, the Person's successors and permitted assigns.

**3. APPOINTMENT OF CONTRACTOR TO PROVIDE SERVICES.**

3.1 Appointment and Acceptance. SIB hereby appoints the Contractor to provide the Administrative, Marketing and Investment Services, all as described herein. The Contractor accepts this appointment and agrees to perform the Services in accordance with this Agreement. The Contractor agrees that it shall cooperate with SIB and any consultants, advisors, auditors or legal counsel hired by SIB to review, evaluate or otherwise advise regarding the Trust or the Program.

3.2 Delegation and Assignment of Responsibilities. [IF APPLICABLE TO CONTRACTOR'S PROPOSAL]

(a) SIB approves the delegation and assignment by subcontract to the specific entities of the particular Services under this Agreement by the Contractor as set forth on Schedule 3.2 to this Agreement to be provided by the Contractor, subject to the terms of a written subcontract approved in writing by SIB.

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The Contractor may propose additional subcontractors to perform certain Services at any time, subject to the written approval of such additional subcontractors and of the applicable subcontract by SIB, which consent shall not be unreasonably withheld or delayed. The Contractor shall not delegate or subcontract the performance of Services for which it is responsible to any affiliate or third party except in accordance with this Section 3.2.

(b) No delegation or subcontract by the Contractor pursuant to this Section 3.2 shall relieve it of its responsibilities hereunder, and the Contractor shall be responsible for the performance of Services by its respective delegates and subcontractors and shall remain obligated hereunder as if no delegation or assignment by subcontract had been made.

(c) Each subcontract shall be a written agreement providing, in form satisfactory to SIB, unless waived in whole or in part by SIB, that:

- (i) the subcontractor agrees to discharge the Services to which such subcontract applies in accordance with the provisions of this Agreement that set forth such Services;
- (ii) SIB is a third party beneficiary of such subcontract with the right to enforce such subcontract directly against the subcontractor;
- (iii) the subcontractor shall in no event have (A) any right to payment from or to impose a lien on the Trust or (B) any right to payment from any other asset of SIB;
- (iv) that the subcontract is non-assignable without the consent of SIB; and
- (v) such other requirements as SIB may reasonably request and that are mutually agreed upon by the parties.

(d) The Contractor warrants that all delegates and subcontractors engaged in performing the Services shall be properly licensed and otherwise authorized to do so under Applicable Law, and the Contractor agrees that it shall enforce the Service performance obligations of each respective subcontractor or, at the option of SIB, shall assist SIB in enforcing such obligations and provisions.

**3.3 Standard of Care.**

(a) The Contractor acknowledges that it has fiduciary duties to SIB, the Program, the Trust, the Account Owners and the Beneficiaries through Applicable Law and the Services it provides pursuant to this Agreement.

(b) The Contractor acknowledges that it or a subcontractor shall hold and manage the Accounts and amounts deposited therein in trust for the Account Owners and Beneficiaries thereof and that it is subject to the requirement to use prudence and care in its respective dealings with the Trust and the Underlying Investments and the Accounts therein relating to the Direct Plan.

(c) The Contractor specifically agrees that in performing its duties under the Agreement it will act not in regard to speculation, but with the care, skill, prudence and diligence under the circumstances then prevailing, specifically including, but not by way of limitation, the general economic conditions, the anticipated needs of the Trust and the Underlying Investments and the Accounts therein relating to the Program, and the Account Owners and Beneficiaries, that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of like character and with like aims to seek to attain the goals of the Program as determined from the Act and the Investment Policy Statement.

(d) The Contractor agrees to discharge its duties with respect to the Direct Plan and the Trust solely in the interest of SIB, the Account Owners and the Beneficiaries of the Direct Plan.

**3.4 Employees of Contractor.** The Contractor shall utilize its personnel to perform Services pursuant to this Agreement, and such personnel shall at all times remain employees or consultants of the Contractor, subject solely to the Contractor's direction and control. 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. No facility of the Contractor used in performing Services shall be deemed to be transferred, assigned, conveyed or leased to SIB or the Program by such performance or use pursuant to this Agreement. The Contractor warrants that all employees engaged in

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the Services shall be qualified to perform the Services, shall be properly licensed and otherwise authorized to do so under all Applicable Law.

3.5 Contractor's Key Personnel. The key members of the Contractor's staff will be identified in Schedule 3.5 to this Agreement to be provided by the Contractor and, at least at the Program Start Date, will include those staff members identified in Attachment 17 of the Contractor's Proposal according to the key role each staff member will provide. "Key Personnel" individually and collectively must include the overall business head responsible for the Contractor's engagement with SIB, the day-to-day manager, the Key Investment Professional responsible for the overall investment structure, the senior-most marketing professional, and the senior-most professional(s) responsible for operations, record keeping and customer service.

3.6 Changes in Control, Organization or Key Personnel.

(a) The Contractor shall promptly, and in any case within five (5) calendar days, notify SIB in writing: (i) of any change in the majority ownership, control, or business structure of the Contractor; (ii) of any other material change in the Contractor's business, partnership or corporate organization; or (iii) of any changes to Key Personnel. All written notices from the Contractor under this provision shall contain sufficient information to permit SIB to evaluate the changes within Contractor's organization under the same criteria as was used by SIB in its award of this Agreement to Contractor. The Contractor agrees to provide SIB with such additional information as requested by SIB.

(b) During the Term of this Agreement, the Contractor shall notify SIB of any proposed changes to the Key Personnel due to reassignments, resignations, terminations, or changes to the employment status of any Key Personnel prior to implementing such changes, or, if it is not feasible for Contractor to give prior notice of such event to SIB, then promptly after such a change.

(c) In the event of any changes to Key Personnel, the Contractor immediately will designate interim Key Personnel and, within six (6) months, permanent Key Personnel in conjunction with the notice provided pursuant to Section 3.6(a).

(d) SIB shall have the right to request removal of any Key Personnel that it deems to be providing unsatisfactory or inadequate work. The Contractor shall comply with such a request in a timely manner and shall provide notice of interim or permanent Key Personnel pursuant to Section 3.6(a).

(e) The Agreement may be terminated immediately, in the sole discretion of the Board and upon written notice from the Board to the Contractor, due to any change in or departure of any Key Personnel, which shall be considered a material breach by the Contractor and constitute cause of termination pursuant to Section 7 of Exhibit C, if Contractor is in the Board's sole judgment unable to provide equal, or substantially comparable, permanent substitute personnel in experience, education, and other qualifications.

**4. PROGRAM START DATE.** The Contractor and SIB shall take all action necessary for the Program Start Date.

**5. CONDITIONS TO THE PROGRAM START DATE.** At or before the Program Start Date, each of the following conditions shall be met (all or any of which conditions to the Program Start Date may be waived in whole or in part by the written agreement of SIB and the Contractor):

(a) Representations and Warranties. Each of the representations and warranties made by SIB and the Contractor, respectively, in this Agreement shall be true and correct in all material respects on and as of the Program Start Date as though such representation or warranty was made on and as of the Program Start Date.

(b) Program Disclosure Booklet.

(i) Completion. The Program Disclosure Booklet shall have been prepared in such form and substance as shall be mutually acceptable to SIB and the Contractor.

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- (ii) Certificate of SIB. SIB shall have delivered to the Contractor a Certificate, dated the Program Start Date, to the effect that all portions of the Program Disclosure Booklet describing SIB and SIB's duties and responsibilities with respect to the Direct Plan are complete and accurate and do not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading. Nothing in this Section 5(b) shall require SIB to make any representations as to the portions of the Program Disclosure Booklet describing the Contractor, and the investment risks associated with the Direct Plan or the Contractor's or any other Persons' duties and responsibilities with respect to the Program.
- (iii) Certificate of the Contractor. The Contractor shall have delivered to SIB a Certificate, dated the Program Start Date, to the effect that all portions of the Program Disclosure Booklet describing the Contractor's duties and responsibilities with respect to the Direct Plan (including such duties and responsibilities which have been delegated or subcontracted pursuant to Section 3.2 of this Exhibit E) are complete and accurate and do not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading. Nothing in this Section 5(b) shall require the Contractor to make any representations as to the portions of the Program Disclosure Booklet describing the duties and responsibilities with respect to the Direct Plan of SIB or any other Persons (other than any Person to whom duties are delegated or subcontracted by the Contractor in accordance with Section 3.2 of this Exhibit E).
- (c) Structuring of the Direct Plan. SIB and the Contractor shall have developed and agreed to the terms of the Direct Plan with the intent that the Direct Plan constitutes a Qualified Tuition Program.
- (d) Insurance Coverage. The Contractor shall have provided proof of insurance coverage of the types and at the levels as set forth in Section 12.10 of this Exhibit E.
- (e) Initial Marketing Plan. The Executive Director of SIB shall have reviewed and approved the initial Marketing Plan required to commence the marketing and selling of the Participation Agreements.
- (f) Program Materials. All Program Materials necessary to offer and implement participation in the Program shall have been prepared by the Contractor and approved in form and substance by SIB and shall be finalized by the Contractor and available for such use.
- (g) Administrative Systems. The Contractor shall have demonstrated to the satisfaction of SIB its ability to accept applications for Participation Agreements, to receive contributions and to establish and maintain Accounts.
- (h) Performance Guarantee. The Contractor shall have delivered a performance guarantee, an irrevocable letter of credit or a contract bond, as described in Section 12.11 of this Exhibit E.

## **6. INVESTMENT SERVICES.**

### **6.1 The Trust.**

(a) The Contractor shall manage the Direct Plan in accordance with the Code, the Act, other Applicable Laws, this Agreement, the RFP, and the Contractor's Proposal. The assets of the Trust's Investment Options shall be maintained in accounts registered in the name of the Trust (the "Trust Accounts"). The Trust shall consist of a program fund and an administrative fund. All assets will be deposited in the program fund until such time as the Contractor transfers funds to the administrative fund in accordance with Section 9.5 herein.

(b) The Contractor shall provide Investment Services as set forth in this Agreement. All monies received as contributions to the Accounts shall be deposited by the Contractor into the program fund of the Trust and invested in the Investment Option or Options designated by the Account Owner. The assets of the Trust shall be preserved, invested and expended by the Contractor solely pursuant to and for the

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purposes of the Program and shall not be loaned or otherwise transferred or used by the Contractor for any other purposes. Unless the prior written approval of SIB is received, the Contractor shall not withdraw or permit to be withdrawn any assets from the Trust except (i) to process a Withdrawal at the direction of the Account Owner; or (ii) to pay the fees chargeable against the assets of the Trust provided in and in accordance with the provisions of Section 9 of this Exhibit E.

**6.2 Investment Services.**

(a) The Contractor shall provide Investment Services as set forth in this Agreement. SIB acknowledges that it has provided the Contractor with investment policies or objectives for the Program, including the Investment Policy Statement, the Monitoring Procedures, and the Investment Performance Criteria, with which the Contractor is to base its recommendations for Investment Options, Underlying Investments, and allocations. At no time shall the investment policies require the Contractor to recommend a particular type of investment vehicle be used as an Underlying Investment. The Contractor does not guarantee that the investment objective or performance of any particular Investment Option, Underlying Investment, or allocation will be achieved.

(b) It is acknowledged and understood by SIB and the Contractor that SIB has the responsibility to monitor the performance of the Underlying Investments. It is further acknowledged and understood by SIB and the Contractor that any decision to eliminate, replace, or change an Investment Option, Underlying Investment, or allocation is the ultimate responsibility of SIB.

(c) During the fourth quarter of each calendar year during the Term, the Contractor shall submit to SIB for its consideration, Investment Options, Underlying Investments, and allocations proposed for implementation during the following calendar year. It is acknowledged and understood by SIB and the Contractor that for each calendar year, SIB will either approve and provide written confirmation of its approval of the Investment Options, Underlying Investments, and allocations for implementation during the following calendar year or will deliver in writing to the Contractor revised Investment Options, Underlying Investments, and allocations that SIB deems appropriate in the discharge of SIB's obligations. The Contractor shall implement the Investment Options, Underlying Investments, and allocations as approved or provided by SIB on a date to be mutually agreed upon by SIB and the Contractor.

(d) The Contractor shall invest and manage the assets of the Trust, and make recommendations regarding the investment and administration of the assets of the Trust, in a manner to ensure that the Investment Options and the Underlying Investments shall be in compliance with Sections 6.2 and 6.3 of this Exhibit E and the Investment Policy Statement at all times. The investment objectives and criteria for each Investment Option shall, except as otherwise hereafter agreed to by SIB and the Contractor, be as set forth in Schedule 6.2 attached hereto, subject to Applicable Law. Each Underlying Investment shall be invested in assets described in the Investment Policy Statement. Within thirty (30) days following the close of each month, the Contractor will provide to SIB a report describing the Contractor's compliance with the Investment Policy Statement, in addition to the information set forth in Section 6.8 of this Exhibit E.

**6.3 Investment Performance and Benchmarks.**

(a) Except as otherwise agreed to by SIB and the Contractor, the Contractor shall at all times adhere to all policies, procedures, and criteria as set forth in the Investment Performance Criteria, Investment Policy Statement and the Monitoring Procedures. The Contractor does not guarantee that investment performance or attainment of any particular investment return will be achieved.

(b) An Underlying Investment shall be placed on watch status if any one of the following events occurs: (i) the Underlying Investment's investment performance does not meet the Investment Performance Criteria or (ii) an issue designated by SIB as a significant concern is brought to the attention of the Contractor. Issues of significant concern include, but are not limited to questionable or problematic investment style (relative to benchmark); fund holdings (types of investments); fund management activities;

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target allocations; qualitative considerations; changes in senior investment personnel; or changes in ownership or control.

(c) SIB must take formal action before an Underlying Investment shall be removed from watch status as described in Section III of Monitoring Procedures. The Contractor shall carefully monitor and report to SIB (i) causes of relative performance, including a detailed attribution analysis, and (ii) requested information about any Underlying Investment that has attained watch status each quarter until such Underlying Investment has been removed from watch status or is replaced. Underlying Investments may be replaced as outlined in Section IV, "Corrective Measures", of the Monitoring Procedures.

(d) The Board may determine that the Contractor is in material breach of this Agreement if a third (1/3) of total Direct Plan assets at quarter-end are invested in multiple Underlying Investments on watch status; provided, however, if Contractor makes a recommendation to replace an Underlying Investment and that recommendation is rejected or changed by SIB, such Underlying Investment shall not be taken into account when determining the foregoing.

(e) SIB shall assess the Contractor's overall performance in providing investment management services with consideration of, but not limited to, the following: level of SIB confidence; material organizational changes pertaining to investment management operations; turnover of Key Investment Personnel; adherence to investment mandates as determined by the SIB; modifications to the Trust's active/passive allocation structure (due to performance related issues); relative performance of Investment Options; and quality and speed of investment reporting functions.

(f) In the course of performing its duties hereunder, the Contractor shall consider whether it is appropriate to recommend a change in any Underlying Investment and SIB may require a change in any Underlying Investment if the new investment satisfies the requirements in the Monitoring Procedures and the Investment Policy Statement. In the event that the Contractor recommends and/or SIB directs that a change in an Underlying Investment is appropriate or required, the Contractor shall be responsible for making a recommendation to SIB as to a suitable alternative investment. Such recommended investments shall be reviewed by SIB and its investment consultant to determine if the investments satisfy the criteria for selection of Underlying Investments set forth in the Monitoring Procedures. Any such recommendation made by the Contractor must be approved by SIB in writing prior to its implementation.

(g) SIB may require the Contractor to replace an existing Underlying Investment managed by it with an alternative Underlying Investment managed by an entity that is not affiliated with the Contractor if (i) all similar alternative funds managed by the Contractor or an affiliate do not satisfy the criteria for selection of Underlying Investments set forth in the Monitoring Procedures, or (ii) SIB reasonably determines that such a change is in the best interests of the Account Owners. If SIB so requires, the Contractor will work with SIB, within the confines of Applicable Law, the Contractor's fiduciary duties, and operational constraints of the Contractor, to attempt to add to the Direct Plan one or more unaffiliated Underlying Investments. SIB acknowledges that before an unaffiliated Underlying Investment can be added to the Direct Plan, the Contractor and the investment adviser or principal underwriter of the unaffiliated Underlying Investment will need to enter into an agreement and that, in some cases, such an agreement may not be possible, which would result in the unaffiliated Underlying Investment not being added to the Direct Plan. Contractor agrees to negotiate in good faith with any investment adviser or principal underwriter of the unaffiliated Underlying Investment.

**6.4 Allocation Guidelines.** The Contractor shall invest the assets in each of the Underlying Investments in accordance with the allocations approved by SIB from time to time (the "Allocation Guidelines"). The initial Allocation Guidelines shall be the allocation guidelines established by the Contractor and approved by SIB as set forth in the Investment Policy Statement. By November 1 of each Program Year during the Term, the Contractor shall submit to SIB, for SIB's consideration, the Contractor's recommended Allocation Guidelines for the following Program Year. The Contractor shall make such recommendations consistent with the objectives of the Trust, the Program and the Investment Options. At the request of SIB, the Contractor shall consult with SIB and may thereafter propose revised Allocation Guidelines for such applicable time period. SIB shall either notify the Contractor that SIB approves the Contractor's

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recommended Allocation Guidelines or shall deliver to the Contractor revised Allocation Guidelines for such period that SIB deems appropriate in the discharge of SIB's statutory obligation. In the event that SIB delivers revised Allocation Guidelines, the Contractor shall have a commercially reasonable period of time to implement any such changes, including without limitation divestitures or acquisitions of the Underlying Investments. The time period for which such revised Allocation Guidelines are applicable shall be in effect until new Allocation Guidelines are recommended and approved by SIB. Notwithstanding anything to the contrary set forth above, SIB may change the Allocation Guidelines at any time for application during the remaining portion of a period in which Allocation Guidelines are in effect. In the event of any such change by SIB, the Contractor shall have thirty (30) calendar days to implement any such changes in Allocation Guidelines, or such longer time as may be agreed to by Contractor and SIB in order to protect Account Owners and Beneficiaries from the potential negative effects of too-rapid sales, including without limitation divestitures or acquisitions of Underlying Investments.

**6.5 Contributions; Withdrawals; Accounts.** The Contractor shall establish for each Account Owner an individual Account in the Direct Plan for the benefit of a Beneficiary with the Investment Option(s) selected by the Account Owner during the enrollment process for the Account, including but not limited to, instructions relating to the selection of Investment Options and the investment of recurring contributions. The Contractor shall receive contributions from Account Owners and Giftors and shall credit each such contribution received in good order to the Account to which such contribution is made, and to the Trust as it relates to the Program, (a) on the Business Day of receipt of the contribution by the Contractor if received before the close of trading on the New York Stock Exchange, or such earlier time as may be reflected in administrative rules agreed to from time to time by the Contractor and SIB, or as otherwise may be required by Applicable Law; or (b) on the next Business Day following receipt of the contribution by the Contractor if received on a day other than a Business Day, or if received after the close of trading on the New York Stock Exchange, or such earlier time as may be reflected in administrative rules agreed to from time to time by the Contractor and SIB, or as otherwise may be required by Applicable Law. For purposes of Withdrawals from an Account, changes in the Beneficiary and for all other Account-related purposes, only the Account Owner may give directions to the Contractor regarding the Account.

**6.6 Minimum Contribution and Maximum Account Balance Limits.**

(a) Contractor shall offer the following minimum initial contribution amounts for Direct Plan participants:

Method of Investment	Minimum Investment Level
Accounts Opened Under Previous Provider	Transfer accounts with any balance
Lump Sum Investments	\$1 initial and subsequent
Automatic Investing (Direct Deposit)	\$1 initial and subsequent
Automatic Investing (Payroll Deduction)	\$1 initial and subsequent

(b) Contractor shall ensure that no contribution shall cause the maximum account balance for a Designated Beneficiary to exceed the amount approved by SIB and as required by the Act.

**6.7 Determination of Net Asset Value.**

(a) The Net Asset Value of each unit of each Investment Option shall be calculated by the Contractor based on, and reflective of, the following:

- (i) the net asset value per share or unit of the Underlying Investments as of the market close on that Business Day;
- (ii) adjustments, if any, to the net asset value per share of any Investment Option made after the market close;

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- (iii) net purchase orders and net redemption orders received by the Contractor each Business Day;
  - (iv) the Contractor's deduction and payment of fees and expenses from the Investment Options in accordance with Section 9 of this Exhibit E; and
  - (v) the Contractor's reinvestment, into any Underlying Investment, of any income, dividends and/or capital gain distributions paid by such Investments.
- (b) The value of any particular Account for each Investment Option in which the Account is invested shall be determined by multiplying the NAV of the unit of the Investment Option by the number of units of the Investment Option held in the particular Account.
- (c) The assets of the Trust and each Investment Option shall be valued as of the close of each Business Day.

**6.8 Reports and Financial Information.**

(a) The Contractor shall keep adequate records of the Account Balance with respect to each Account, and it shall compile, prepare and deliver to SIB and to Account Owners on a timely basis the financial information, reports and statements required of the Contractor under the Act, the Code, other Applicable Laws and by this Agreement. In particular, the Contractor shall prepare and deliver to SIB, within thirty (30) calendar days immediately following the end of each calendar month, reports in a form satisfactory to SIB including: (i) the type of investment, name of the issuer, the dollar amount invested, and, to the extent applicable, the date of maturity and par value of each security, investment and money within the Trust; (ii) to the extent applicable, the weighted average maturity of the investments in the Trust; (iii) any amounts in the Trust that are under the management an investment manager; (iv) the market value as of the date of the report and the source of this valuation for any security within the Trust; (v) a description of the compliance with the Investment Policy Statement, and (vi) any other information mandated by the Act or reasonably requested by SIB.

(b) The Contractor shall provide oral or written progress reports and attend meetings as reasonably requested by the Executive Director to determine if the Contractor is performing to expectations, is on schedule, or present findings, conclusions, and recommendations, or to afford occasions for discussing and resolving problems encountered. At a minimum the Contractor shall provide monthly and quarterly reports that include information on accounts, assets, contributions, investment results, administrative performance and such other matters as may be specified by the Executive Director.

**6.9 Proxy Voting.** Decisions on voting of shares of all Underlying Investments held by the Program will be made by SIB on behalf of all Account Owners and Beneficiaries

**7. MARKETING SERVICES.**

**7.1 Marketing Services.** The Contractor shall provide marketing services to SIB in support of its Marketing Plan for the Direct Plan, in a manner which is commercially reasonable and in compliance with this Agreement and all Applicable Law (the "Marketing Services"). The Contractor must provide investor education for and outreach to the diverse California population, including enrollment materials in English and Spanish and such other languages as directed by SIB.



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**7.2 Annual Marketing Commitment.** The Contractor will dedicate the following amount annually to promote the Direct Plan within California (the “Annual Marketing Commitment”):

Year 1	\$ _____
Year 2	\$ _____
Year 3	\$ _____
Year 4	\$ _____
Year 5	\$ _____

The Annual Marketing Commitment will cover costs directly allocable to the marketing and promotion of the Direct Plan, including all marketing and disclosure materials used in the acquisition of new accounts (but not including disclosure materials used for existing Accounts).

The Contractor will present to SIB an Annual Marketing Plan for the following Program Year no later than October 1 of each current Program Year. The allocation of the Annual Marketing Commitment will be subject to SIB approval, and it will include SIB discretion over the Annual Marketing Commitment to proposed marketing concepts and promotional activities for the Direct Plan.

In the event that the Contractor fails to achieve the Marketing Performance Criteria specified in the Contractor’s Proposal and as may be modified by Section 7.3 of this Exhibit E, the Contractor will provide SIB with a detailed revised Marketing Plan for the then-current year setting forth the initiatives it will undertake to satisfy the current year Marketing Performance Criteria. If the Contractor fails to provide a satisfactory revised Marketing Plan, SIB may require the Annual Marketing Commitment to be increased in the then-current year in order to achieve the Marketing Performance Criteria. The amount of increase shall be determined by SIB in relationship to the percentage of underperformance and such amount shall not be unreasonable.

**7.3 Marketing Performance Criteria.**

(a) Growth rate standards for the Direct Plan (the “Marketing Performance Criteria”) for the initial term of this Agreement will be agreed upon and used to evaluate the Contractor’s marketing performance under the Agreement. The Contractor may propose modifications to the Marketing Performance Criteria, which SIB may accept or reject, or it may request further modifications taking into consideration industry norms and national trends.

(b) The Marketing Performance Criteria will also include a measurement of the percentage of Accounts closed due to rollovers to Qualified Tuition Programs offered by other states. Accounts closed due to rollovers to other programs cannot exceed two percent (2%) annually, unless SIB accepts a modification to this amount.

(c) The Marketing Performance Criteria will be used to evaluate the Contractor’s marketing performance under the Agreement. The Contractor may propose modifications to the Marketing Performance Criteria, which SIB may accept or reject, or it may request further modifications taking into consideration industry norms and national trends.

**7.4 Development and Approval of Program Materials.**

(a) The Contractor shall only use Program Materials in the marketing and offering of the Program.

(b) The Contractor shall submit all Program Materials to SIB for written approval by the Executive Director prior to finalizing such Program Materials. The Executive Director shall promptly review all Program Materials so submitted, and approval of such Program Materials by the Executive Director shall not be unreasonably withheld or delayed to the extent consistent with the purposes of the Program. The Contractor shall not finalize, distribute or otherwise use any Program Materials until such Program Materials

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have been approved in writing by SIB. It is agreed that normal turnaround time for review and approval by SIB of Program Materials submitted by the Contractor to SIB for approval will be five (5) Business Days that the State is opened for business.

7.5 Branding of Program Materials; the Contractor Promotions.

(a) During the Term of this Agreement, the Contractor may be identified as the "Manager" for the Program, and the Contractor's brand name and logo may be displayed, on (i) each application to open an Account and each Participation Agreement; (ii) each Program Disclosure Booklet and any disclosure supplemental thereto; (iii) each Account statement; (iv) each pamphlet, brochure and other materials promoting or advertising the Program or the Trust; (v) each advertising of the Program in newspapers, periodicals and newsletters; and (vi) other Program Materials with the prior written consent of the Executive Director, and such approval will not be unreasonably withheld or delayed to the extent consistent with the purposes of the Program.

(b) All Program Materials shall display the "ScholarShare" brand, and any "Plan brand" which may be developed, in a manner and at a level of prominence acceptable to SIB.

(c) The Contractor may advertise to the general public or any third parties unrelated to the Program or the Trust the Contractor's status with respect to the Program and the Trust, after prior approval of SIB of such advertisements.

(d) The Contractor shall display the "ScholarShare" brand in a manner and at a level of prominence acceptable to SIB in connection with any California-specific promotions using the Contractor's brand.

7.6 Promotional Materials. The Contractor agrees that all Program promotional materials prepared and distributed by the Contractor shall comply with all Applicable Laws regarding disclosures for Qualified Tuition Programs, including generalized disclosure on (a) the investment objectives, risks, charges and expenses associated with the Program, (b) availability of and the need to read carefully the Program Disclosure Booklet, (c) whether Section 529 programs offered by the home state(s) of the Account Owner or Beneficiary offer tax or other benefits not available through the Program, and (d) the provision that neither the principal deposited nor the investment return, if any, of the Program is guaranteed by the State, SIB, the Contractor or any of its affiliates, or the federal government or any agency thereof. All Program Materials also must refer to SIB as the issuer of and sponsor for the securities offered for investment in the Program.

7.7 Non-Program Communications. During the Term and following any termination or expiration of this Agreement, the Contractor shall not direct non-Program communications of any kind to Account Owners, Beneficiaries, Giftors or Prospects unless SIB approves. Notwithstanding the foregoing, the Contractor may direct non-Program communications to any Account Owner, Beneficiary, Giftor or Prospect that either (a) expressly consents to receive solicitations from the Contractor; (b) requests information about or opens non-Program accounts with a Contractor; (c) at any time was or becomes the owner of a product of the Contractor other than pursuant to a Participation Agreement or Account application; or (d) has been contacted based upon information obtained through a source independent of the Program.

7.8 Other Section 529 Programs. The Contractor shall not actively market or solicit the purchase of Investment Options for Section 529 programs, other than the Program, to or by California residents. Notwithstanding the foregoing, nothing in this Agreement shall prevent the Contractor from responding to unsolicited requests from California residents for information concerning Section 529 programs other than the Program.

7.9 Marketing Reports. The Contractor shall compile, prepare and provide to SIB, within twenty (20) Business Days immediately following the end of each calendar month, a report containing a list of the Contractor's completed marketing activities during the preceding month, which report shall be in form and

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substance as approved by SIB. The Contractor also shall provide a written report of ongoing and completed marketing efforts in form and substance as approved by SIB within thirty (30) Business Days of each calendar quarter end.

**8. ADMINISTRATIVE SERVICES.**

8.1 Records Administration and Customer Service. During the Term of the Agreement, the Contractor shall perform all Administrative Services for the Program, including but not limited to the following:

(a) Revise current procedures, as necessary, for all rules and processes established by SIB relating to the Direct Plan operations and provide a copy of any such revised procedures to SIB at the Program Start Date and as such rules and procedures are updated or otherwise modified;

(b) Maintain compliance with Section 529 by imposing appropriate monitoring safeguards on contributions to and withdrawals from Accounts, and on changes to Account Owners and Beneficiaries;

(c) Create and distribute appropriate training materials to agents, customer service representatives, and other interested parties;

(d) Accept Prospect calls and inquiries, and maintain a database of such inquiries if the Prospect provides contact information;

(e) Accept and process Account applications from any Persons eligible to be Account Owners under the Code received in good order online and through a central mailing location that can receive regular and express deliveries by the United States Postal Service (USPS) and private delivery services;

(f) Accept and process initial and subsequent contributions received in good order and ensure that contributions do not cause the account balance to exceed the maximum approved by SIB and as required by the Act;

(g) Create or designate a customer call center to respond to Direct Plan Account Owner inquiries from 8:00 a.m. to 7:00 p.m. Pacific Time (PT), Monday through Friday, except holidays.

(h) Accept and process Withdrawals and rollovers from Accounts;

(i) Establish aggregation procedures for the Program and Other SIB Programs, if any, to satisfy Section 529;

(j) Prepare all State and federal tax reporting documents;

(k) Maintain [www.scholarshare.com](http://www.scholarshare.com) and [www.scholarshare529.com](http://www.scholarshare529.com), which enables prospective and/or existing Account Owners to:

(i) receive information about the Trust and the Direct Plan;

(ii) enroll online;

(iii) download an Application to establish an Account with the Trust;

(iv) access all Account information;

(v) process transactions and account maintenance online; and

(vi) make certain Account changes online

(l) Accept direct deposits from employers (including the State) on behalf of Account Owners by payroll deduction and automatic checking/savings account withdrawals;

(m) Provide quarterly and annual statements to Account Owners including opening and closing asset balances and units held as well as Account activity during the quarter or year as applicable, and such other matters as SIB reasonably requests;

(n) Provide an annual report to Account Owners or Beneficiaries to satisfy the requirements of Section 69990 of the Act, as it may be amended from time to time.

(o) Provide a way for Account Owners to make changes to their Accounts, including but not limited to, address changes, telephone number changes, and change of Beneficiary designation, while still maintaining the confidentiality of information as required by Section 17 of this Exhibit E;

(p) Provide a means for Account Owners or Beneficiaries to view or retrieve Account activity, and to express concerns, comments or complaints on a daily basis through a voice response unit and a secure website;

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(q) Provide timely fulfillment of Program Materials, including promotional materials, and maintain a systematic history of fulfillment activity at the customer service center established by the Contractor for each Prospect and Account Owner;

(r) Maintain a systematic history of Prospect and Account Owner comments, calls, and other communications and inquiries at the customer service center established by the Contractor;

(s) Provide for the integration of Outcome Tracker, online recordkeeping platform offered by VistaShare, to support children savings account (CSA) programs with the Contractor's Account recordkeeping system;

(t) Provide a recordkeeping system accessible online to support a matching grant program within the Direct Plan with specific eligibility requirements.

**8.2 Administrative Performance Criteria.** The Contractor will provide Administrative Services under this Agreement in accordance with Administrative Performance Criteria approved by SIB and attached to this Agreement as Schedule 8.2. Contractor may review and recommend to SIB modifications to such Criteria annually based on industry norms and national trends. Modifications shall be approved by SIB.

**8.3 Withdrawals.** The Contractor shall process requests by Account Owners for Withdrawals from the Accounts in accordance with the written withdrawal procedures which are developed by the Contractor and provided in writing to SIB (the "Withdrawal Procedures"). The Contractor shall transfer all or a portion of the Account Balance pursuant to a withdrawal request in accordance with the Withdrawal Procedures.

**8.4 Administrative and Other Reports.** The Contractor shall compile, prepare and provide to SIB a report or reports of records administration and customer service activities of the Contractor during the preceding period, which reports shall be in form and substance as approved by SIB. The reports of activity shall include, among other things, the items set forth by SIB on Schedule 8.4 to this Agreement attached hereto. The Contractor shall provide such reports in electronic and hard copy form to SIB fifteen (15) Business Days immediately following the end of each calendar month or quarter as applicable, and shall use commercially reasonable efforts to provide such reports within such shorter period following the end of each calendar month or quarter as applicable in the case of the accounting reports as necessary to meet SIB's needs for such reports.

**9. CONTRACTOR'S FEES AND CHARGES; SIB ADMINISTRATIVE FEE.**

**9.1 Contractor's Fees and Charges.**

(a) The Contractor shall bear all of its own respective direct and indirect costs and expenses associated with the provision of Services and its other obligations and responsibilities under this Agreement (including but not limited to, as applicable, the Annual Marketing Commitment, preparation of all offering materials for the Direct Plan, including the Program Disclosure Booklet, other than as acknowledged or set forth in Section 9.1(b), Section 9.2, or Section 9.7 of this Exhibit E). No such costs or expenses shall be paid from or reimbursed out of the Trust or by SIB or the State.

(b) The Contractor shall be entitled to accrue daily and withdraw monthly a Program Management Fee from the Trust as described in Section 9.2 of this Exhibit E (the "Program Management Fee"), which Fee shall be inclusive of the fees and expenses (including transaction costs) for each Underlying Investment as described in the most recent prospectus for each Investment. The Program Management Fee will be calculated daily by multiplying the applicable annual rate by the daily market value of the Direct Plan assets based on a 365/366 calendar year during the applicable period. The Program Management Fee and other fees permitted under Sections 9.6, and 9.7 of this Exhibit E shall be the Contractor's sole compensation for performing all of the Services hereunder.

(c) SIB and the Contractor may review fees annually based on industry norms and national trends. In the event of a change in Applicable Laws during the term of this Agreement, which change materially

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impacts the duties of the Contractor hereunder (as mutually agreed upon by SIB and the Contractor), SIB and the Contractor shall consider a change to the application of the Annual Marketing Commitment detailed in Section 7.2 of this Exhibit E, and then a change to allowable fees.

**9.2 Computation and Withdrawal of the Program Management Fee: Audit by SIB.**

(a) The annual rate of the Program Management Fee will be [TO COME] of the average daily net assets of the Direct Plan. The Program Management Fee shall be computed based on the actual number of days in the calendar year.

(b) The Contractor shall deliver to SIB a report setting forth the procedures it proposes for determining its Program Management Fee and the format for reporting such Program Management Fee in accordance with this Agreement, which procedures and format shall be subject to review and approval by SIB.

(c) On or before the fifteenth (15) day of each month following the Program Start Date, the Contractor shall deliver to SIB, by electronic or other such means requested by SIB, a summary report of its calculation of the Program Management Fee for the preceding month, based on the procedures and in the format approved by SIB as required by Section 9.2(b) of this Exhibit E. Such report shall set forth, at a minimum, the average assets of the Trust invested for each day of the preceding month.

(d) If, within seven (7) calendar days following receipt of the report delivered pursuant to Section 9.2(c), SIB does not advise the Contractor that it objects to or wishes to confirm such report, the Contractor may at that time withdraw the amount of the Program Management Fee from the Trust. If within such seven-day period, SIB advises the Contractor that it objects to or wishes to confirm such calculation, SIB and the Contractor shall, in good faith, attempt to resolve such objection or complete such confirmation as soon as reasonably practicable. If SIB objects to a portion of such calculation, the Contractor may withdraw such portion of the Program Management Fee that is not in dispute. The calculation and collection of the Program Management Fee shall remain subject to post-audit adjustment, and neither SIB'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 SIB, shall prevent SIB from adjusting the Program Management Fee to reflect SIB's identification of improper prior payments during the course of a post-audit, or requiring repayment by the Contractor of any overage to the Trust.

(e) To collect the Program Management Fee to which it is entitled in accordance with the foregoing provisions of this Section 9.2, SIB on behalf of the Trust hereby authorizes the Contractor to deduct, directly from the assets of the Trust and at the time periods as provided in this Section 9.2, the pro rata portion of the Program Management Fee accrued during the previous month as calculated in accordance herewith.

(f) In the event of a material default or breach under the Agreement, SIB may require certain fees and expenses to be placed in escrow, pending cure of the breach or default. At such time as the breach or default is cured, moneys in escrow not otherwise applied for services shall be transferred to the Contractor.

**9.3 No SIB or State Obligation for Fees.**

(a) SIB and the State shall have no liability to the Contractor for fees or compensation for the Services. The only compensation for the Services received by the Contractor shall be the Program Management Fee, which shall be payable only from amounts available in and withdrawn from the Trust, and payments, if any, disclosed to SIB (or its designee) which are received from insurance companies issuing funding agreements to the Trust or third-party mutual funds or their advisers, as described in Section 9.7 of this Exhibit E, unless SIB approves specific account charges as set forth in Section 9.6 of this Exhibit E.

(b) This Agreement is not contingent upon the Budget Act of the current or any future fiscal year. At no time will moneys be appropriated under the Budget Act for payments to the Contractor under the Program.

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9.4 SIB Administrative Fee. The Contractor shall deliver to SIB from Trust assets a monthly administrative fee (the "SIB Administrative Fee") accrued and computed daily against the market value of the net assets of the Direct Plan (based on a calendar year of 365/366 days) during the applicable period. The SIB Administrative Fee shall remain in effect until such time as SIB changes this Fee, which it may do at any time in its sole discretion in order to provide funds for marketing, consumer outreach and/or scholarship programs, or to maintain the competitiveness of the Program. The Contractor will distribute the SIB Administrative Fee to SIB on a monthly basis according to a payment schedule and procedures to be agreed upon by the Contractor and SIB.

9.5 Withdrawal and Payment of SIB Administrative Fee. On or before the fifteenth (15th) Business Day of each month following the Program Start Date, the Contractor shall withdraw from the program fund of the Trust the SIB Administrative Fee accrued in accordance with the provisions of Section 9.4 of this Exhibit E and shall transfer such amount to the administrative fund or as further directed by SIB by the fifteenth (15th) day of such month. To pay the SIB Administrative Fee to SIB as provided herein, SIB on behalf of the Trust hereby authorizes the Contractor to deduct, directly from the assets of the Trust, the SIB Administrative Fee accrued during the previous month as calculated in accordance herewith.

9.6 Penalties or Charges.

(a) Except for the penalties and charges described in (b) below, no fee, charge or penalty shall be imposed in connection with the establishment or maintenance of any Account or transaction within, or withdrawal from, the Direct Plan. Nothing in this Agreement shall prevent the Contractor from charging Account Owners for services not required by this Agreement (e.g., electronic funds wire charges and overnight delivery charges) or an account maintenance fee for non-California residents, provided such amounts are approved in writing in advance by SIB.

(b) To the extent required by Applicable Law or Section 529, or by prior agreement between the State and Contractor, the Contractor may collect federal or State penalties on behalf of the Program.

9.7 Acknowledgment of Payments from Third-Party Funds. SIB acknowledges that: (i) the Contractor may receive fees on assets invested in insurance company funding agreements or third-party mutual funds (i.e., funds advised by a Person unaffiliated with the Contractor receiving the fee) from such funds or the advisers thereof in consideration of performing various services in connection with the Trust's investment in such funds, and (ii) such fees will not be paid or credited to the Trust. The Contractor will disclose the amount of any such fees to SIB at the time it proposes such unaffiliated insurance company funding agreements or third party funds as Underlying Investments.

9.8 Payment of Taxes. SIB is exempt from federal excise taxes and shall not make any payment for any personal property taxes levied on Contractor or any taxes levied on employee wages. SIB will pay any applicable State or local sales or use taxes on the Services rendered pursuant to this Agreement. The State also may pay any applicable sales and use taxes imposed by another state.

**10. REPRESENTATIONS AND WARRANTIES OF THE CONTRACTOR.**

(a) Organization. [Note: This representation will be modified for the Contractor selected pursuant to the RFP.] The Contractor is a [TO COME] company, duly organized, validly existing and in good standing under the laws of the State of [TO COME]. The Contractor is duly qualified and in good standing under the laws of each jurisdiction (including California) where its ownership or lease of property or the conduct of its business requires such qualification. The Contractor has been and is in material compliance with, all governmental approvals, consents, licenses, permits, certificates, franchises and requirements under Applicable Law, that are necessary for such Contractor to conduct its business generally and in the State

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of California and to enter into and perform its obligations under this Agreement and the other documents relating to the Program and the Trust.

The Contractor has full corporate power and authority to execute and deliver this Agreement and to perform its obligations hereunder and to consummate the transactions contemplated hereby. The Contractor or an affiliate is a registered investment adviser under the Investment Advisers Act of 1940, as amended. The Contractor meets and will continue to meet the minimum qualifications of the RFP, and as certified in Contractor's Proposal (Attachment 4 , Minimum Qualifications Certification), throughout the Term of the Agreement.

(b) Enforceability. The execution and delivery by the Contractor of this Agreement, and the performance by the Contractor of its obligations hereunder, have been duly and validly authorized, with no other corporate action on the part of the Contractor or its stockholders being necessary. The Contractor has the full legal right, power and authority to execute and deliver this Agreement and to perform its obligations hereunder. This Agreement has been duly and validly executed and delivered by the Contractor and constitutes a 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 this Agreement, the performance by the Contractor of its duties and obligations hereunder and the consummation of the transactions contemplated hereby do not conflict with or result in a violation, default or breach of: (i) any term or provision of any law, rule, regulation, judgment, decree, order or injunction applicable to the Contractor or any of its assets and properties, (ii) any contractual restriction of any kind binding on or affecting the Contractor or any of its properties; (iii) any of the terms, conditions or provisions of the charter or by-laws of the Contractor; or (iv) any material agreement to which the Contractor is a party, or any material obligation or responsibility which the Contractor has to any third party (with or without notice or lapse of time or both). No contract to which the Contractor is a party requires the Contractor to actively promote interests in a Qualified Tuition Program in California or to California residents or otherwise take action in conflict with the agreements and covenants of the Contractor in this Agreement. Contractor will amend its contracts with other states for which it provides services related to Qualified Tuition Programs, before the Program Start Date, so as to eliminate all provisions that are in conflict with the provisions of this Agreement.

(d) No Relationships. The Contractor shall not have a contractual relationship with any entity engaged by SIB, including its investment consultant and its 529 industry consultant, without SIB's prior written consent.

(e) Approvals and Filings. Except as noted in subparagraph (c), no consent, approval (except for the approval of SIB) 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 this Agreement or the consummation of the transactions contemplated hereby. In addition, all consents or approvals of any other Person, including the holders of any indebtedness or obligations of the Contractor, required in connection with the execution, delivery and performance of this Agreement or the consummation of the transactions contemplated hereby, have been obtained by the Contractor.

(f) 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 which might result in any material, adverse change in the operations of the Contractor or which might materially and adversely affect the ability of the Contractor to perform the respective Services or otherwise comply with its obligations under this Agreement.

(g) Investment Advisers Act. The Contractor is or will engage an affiliate that is a registered investment adviser under the Investment Advisers Act of 1940, as amended, to perform the investment management services called for under this Agreement for Investment Options that hold securities that require registration pursuant to the Securities Act of 1933 and Investment Company Act of 1940. The Contractor's or its affiliate's personnel responsible for managing the assets of the Trust will have the necessary licenses under applicable federal and state securities law and regulatory requirements.

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(h) The Contractor shall promptly, and in any case within five (5) calendar days, notify SIB in writing if any of the Contractor's representations and warranties, as set forth in this Agreement, ceases to be true at any time during the Term of this Agreement.

(i) The Contractor warrants by execution of this Agreement, that no person or selling agency has been employed or retained to solicit or secure this Agreement upon agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, SIB shall, in addition to other remedies provided by law, have the right to annul this Agreement without liability, paying only for the value of the work actually performed, or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee.

**11. REPRESENTATIONS AND WARRANTIES OF SIB.**

(a) State Agency. SIB is an agency of the State of California created to administer the Trust and oversee the Program by (i) appointing the program administrator for the Trust (the "Executive Director of SIB") and the manager of the Program, (ii) adopting regulations for administration of the Program, and (iii) establishing an investment policy for the Trust assets.

(b) Authority; Enforceability. The execution and delivery by SIB of this Agreement and the performance by SIB of its obligations hereunder, have been duly and validly authorized. SIB has the full legal right, power and authority to execute and deliver this Agreement and perform its obligations hereunder. This Agreement has been duly and validly executed and delivered by SIB and constitutes a legal, valid and binding obligation of SIB, enforceable against it in accordance with its terms.

(c) No Conflicts. The execution and delivery by SIB of this Agreement, the performance by SIB of its obligations hereunder, the offer and sale of interests by SIB in the Trust and the consummation of the transactions contemplated hereby do not: (i) conflict with or result in a violation or breach of any term or provision of any law, rule, regulation, judgment, decree, or injunction applicable to SIB or the Trust or the Program 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 SIB, the Trust, or the Program is a party, or any material obligation or responsibility of SIB, the Trust, or the Program to a third party.

(d) Governmental Approvals and Filings. All consents, approvals and actions of, and filing with or notice to, any agency or instrumentality of the State in connection with the execution, delivery and performance of this Agreement by SIB and the consummation of the transactions contemplated hereby by SIB have been obtained.

(e) Section 529 Status; Compliance with Act. The Act establishes and creates the Trust pursuant to which the Program has been created. The Program and the Trust are structured to qualify as a Qualified Tuition Program under the Code. SIB, the Trust, and the Program each is in full compliance with all of the provisions of the Act and all other Applicable Law. SIB shall not knowingly take any action that would jeopardize the compliance of the Program and the Trust with the requirements of the Act or the treatment of the Program and the Trust as a Qualified Tuition Program.

(f) Policies and Procedures. SIB has provided the Contractor with the policies and procedures for and related to the Program.

(g) No Commingling. All Trust assets will be held in the Trust in a separate fund for the exclusive benefit of Account Owners and Beneficiaries. Program assets shall not constitute property of the State of California, will not be commingled with the funds of the State of California, and may only be used as authorized under the Act and Section 529 and any rules and regulations promulgated thereunder. Trust assets are not subject to appropriation by the State of California or any subdivision thereof, nor will Trust assets be subject to the claims of creditors of the State of California.

(h) Program Management Fee. The Program Management Fee is not subject to appropriation by the State of California.

(i) SIB Administrative Fee. SIB is authorized to permit Contractor to deduct, and SIB is authorized



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to receive, an Administrative Fee from the assets of the Trust and the Administrative Fee shall be used solely for the purposes of the Program.

(j) Cooperation. SIB shall cooperate with the Contractor in a commercially reasonable manner in order that the duties and obligations of the parties hereunder may be effectively, efficiently and promptly discharged. SIB shall, at its expense, execute and deliver to the Contractor such further instruments and documents, and shall take such further action, as the Contractor may from time to time reasonably request in order to carry out the intent and purpose of this Agreement. To that end, SIB shall, at all reasonable times during normal business hours and as reasonably necessary, make available for discussion with the Contractor properly authorized personnel.

(k) Continuing Representations and Warranties. The representations and warranties set forth in this Section 11 are true and correct as of the date of this Agreement and will continue to be true and correct throughout the Term of the Agreement unless SIB notifies the Contractor otherwise. SIB shall promptly, and in any case within five (5) calendar days, notify the Contractor in writing if any of SIB's representations and warranties, as set forth in this Agreement, ceases to be true at any time during the Term of this Agreement.

**12. COVENANTS OF THE CONTRACTOR.**

12.1 Compliance with Requirements of Applicable Law. The Contractor and any approved subcontractor(s) shall provide the Services and perform its obligations under this Agreement in compliance with the requirements of all Applicable Law, including but not limited to the following:

(a) The Contractor shall not knowingly take any action that would jeopardize: (i) the compliance of the Trust with the requirements of the Act; (ii) the treatment of the Trust as a Qualified Tuition Program; and (iii) the exemption from registration under and compliance with the federal securities law of the Participation Agreements or the Trust. The Contractor also shall not take any action in connection with federal or State legislative or regulatory proposals which would have a material adverse effect on the Program.

(b) The Contractor's performance of the Services under this Agreement shall be performed in material compliance with all requirements of FINRA, the MSRB and any other Governmental Authority or Regulatory Body to the extent such requirements may be or become applicable to the Contractor.

(c) The Contractor shall promptly provide to SIB copies of all regulatory filings and reports made by the Contractor in connection with the Program during the Term or while it is holding any Trust assets, other than confidential filings or reports that will not become part of the Trust. The Contractor shall make available for review by SIB the results of any periodic examination by any Governmental Authority relating to the Program, except to the extent that such report or reports may not be disclosed under Applicable Law or the rules of such authority.

(d) The Contractor shall use the Program Disclosure Booklet in connection with the offer and sale of interests in the Trust only so long as the Certificate delivered by the Contractor to SIB pursuant to Sections 5(b)(iii) of this Exhibit E remains true and correct at the time of such offer and sale.

(e) SIB may seek such legal advice concerning the status of the Program and the Trust as it deems advisable, including (i) preparing and filing on behalf of the Trust an IRS Letter Ruling request, and (ii) preparing and filing a request for an SEC No-Action Letter. The costs and expenses of SIB in obtaining such advice shall be shared equally between SIB and the Contractor. The Contractor shall render assistance to SIB in the preparation of a request for an IRS Letter Ruling and/or SEC No-Action Letter. At no time during the Term shall the Contractor seek an IRS Ruling, SEC No-Action Letter, or any other interpretation of Applicable Law by any Governmental Authority specifically relating to the Trust or the Program independent of the efforts of SIB to obtain such interpretation and without the express written consent of SIB, which consent shall not be unreasonably withheld to the extent consistent with the Program and the Trust. Nothing in this Section shall be deemed to prohibit the Contractor from seeking an interpretation relating to another state-administered Qualified Tuition Program.

(f) In the event that the Trust or objectives of the Trust are adversely affected due to interpretations of existing federal tax law (including, without limitation, if the IRS Letter Ruling negatively impacts the Trust

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or the IRS refuses to issue the IRS Letter Ruling), State tax law or federal or State securities laws, (i) SIB shall use commercially reasonable efforts to restructure the Trust and the Contractor shall use commercially reasonable efforts to restructure the Services hereunder within the constraints of Applicable Law to address such adverse consequences, and (ii) expenses incurred in connection with such restructuring efforts will be allocated as mutually agreed upon by SIB and the Contractor.

12.2 Further Cooperation. The Contractor shall cooperate with SIB in a commercially reasonable manner in order that the conditions to the Program Start Date contained in Section 5 of this Exhibit E are satisfied and the duties and obligations of the parties hereunder may be effectively, efficiently and promptly discharged. The Contractor shall, at its expense, execute and deliver to SIB such further instruments and documents, and shall take such further action, as SIB may from time to time reasonably request in order to carry out the intent and purpose of this Agreement, including development of procedures for communications regarding the Trust as it relates to the Program. To that end, the Contractor shall, at all reasonable times during normal business hours and as reasonably necessary, make available for discussion with SIB properly authorized personnel.

12.3 Compliance with Applicable Securities Law Requirements. In providing the Services under this Agreement, the Contractor currently complies, and during the Term of this Agreement, the Contractor shall comply, in all material respects with applicable Securities Law Requirements.

12.4 Covenant to Notify. The Contractor will notify SIB as soon as practicable, but in any event within fifteen (15) Business Days, of any of the following involving the Contractor or its affiliates or any Key Personnel:

(a) Receipt or actual knowledge of any subpoena, summons, complaint, order instituting proceedings, notice of investigation, indictment, criminal information or other legal process, involving any Governmental Authority with jurisdiction over federal or state securities laws, with respect to any alleged violation of securities laws applicable to the Investment Services provided by the Contractor, its affiliates, related entities or any subcontractor; or

(b) Entry into a settlement agreement by the Contractor or by any affiliate, related entity or subcontractor in any proceeding described in clause (a), or the issuance by any Governmental Authority of any "consent order", "cease and desist order" or similar order applicable to the Contractor, any affiliate, related entity or subcontractor with respect to any alleged securities law violation(s) described in clause (a); or

(c) Any admission by the Contractor, any affiliate, related entity or subcontractor in any proceeding described in (a) that the Contractor, affiliate, or related entity or subcontractor has violated any applicable securities laws; or

(d) Any administrative determination or entry of judgment in any proceeding described in (a) that the Contractor, affiliate, related entity or subcontractor has violated any applicable securities laws; or

(e) Any of the foregoing as it relates to any Applicable Laws.

12.5 Legal Update. The Contractor shall provide a copy of its Form ADV to SIB quarterly (no later than 30 days after March 31, June 30, September 30, and December 31) and shall deliver any other reports, including any additional deliveries of its Form ADV, to SIB as required by Applicable Law or reasonably requested by SIB. The Contractor shall update SIB quarterly (no later than 30 days after March 31, June 30, September 30, and December 31) regarding any changes to its Licensing, Registration, Disciplinary Action and Litigation disclosure or the Legal Disclosure Certification information. This also includes disclosure of any new actions that have been brought against Contractor subsequent to its initial disclosure at the time of the execution of this Agreement. If no changes or new actions have occurred, the Contractor will state so in its quarterly report to SIB. Required back-up documentation for the quarterly update include copies of the Contractor's most recent 10-K and 10-Q (Legal Proceedings sections only) if such filings are

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required of the firm with the SEC; and an updated copy of the Contractor's Schedule DRP to Form BD of NASD regulatory actions, or the equivalent FINRA form.

12.6 Tax Reports. As required by the Act, the Contractor shall:

(a) Report to the IRS, the California Franchise Tax Board (the "FTB"), an Account Owner, Beneficiary or any other Person to the extent required by Applicable Law, if there are any withdrawals from the Trust by any individual or for the benefit of any individual during a calendar year and generally comply with all tax law reporting as is or may be required under Section 529, by the FTB, or any other federal or State regulations, including aggregation for federal tax law purposes;

(b) Provide an annual listing to the FTB on magnetic tape or in other suitable electronic form, and in a manner agreed upon by the FTB and the Trust, of all Withdrawals, including payment of benefits and refunds, to any individual with respect to an interest in an Account; and

(c) Prepare and file statements and information relating to the Trust and the Accounts to the extent required by federal and State tax law, with written confirmation of such filing provided to SIB.

12.7 Audits.

(a) Financial and Related Audits. At its cost and expense, the Contractor shall provide:

(i) Draft annual audited financial statements for the Direct Plan no later than thirty (30) Business Days prior to SIB's required filing date as specified by Section 69989 of the Act.

(ii) Final annual audited financial statements for the Direct Plan no later than fifteen (15) Business Days prior to SIB's required filing date as specified by Section 69989 of the Act.

Such annual statements shall be audited by a certified public accountant or firm of such accountants duly licensed to practice and practicing as such under the laws of the State, who is independent and not under the control of the Contractor, and who does not have any substantial interest, direct or indirect, in the Contractor. Selection of the certified public accountant or firm of such accountants as well as the scope of the audit will be subject to approval by the Executive Director. Contractor also shall provide SIB with any SOC1 Type 2 and SOC2 Type 2 report received in connection with the Direct Plan.

(b) Performance Audit. SIB or the Executive Director may arrange, or may require the Contractor to provide Reasonable Access for a performance audit of any or all of the services under this Agreement. SIB shall select the auditor for such a performance audit and it shall pay the reasonable expenses of such auditor. The Contractor shall, and shall cause its affiliates, related entities, subsidiaries, and subcontractors to cooperate fully with the designated auditor performing and to provide complete access to all Program records in order to conduct such an audit.

(c) Required Access to Information and Audit. In accordance with Section 4 of Exhibit C, the Contractor agrees that SIB, the Department of General Services, the Bureau of State Audits, or their designated representative shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement. Contractor agrees to maintain such records for possible audit for three (3) years after final payment, unless a longer period of records retention is stipulated or required by Applicable Law. Contractor agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, Contractor agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this Agreement.

(d) Other Audits. SIB shall be entitled to have Reasonable Access to conduct other audits with respect to the Trust from time to time. The Contractor shall, and shall cause its affiliates, related entities, subsidiaries, and subcontractors, as applicable, to cooperate fully and to provide access to all Program records necessary in order to conduct such an audit.

12.8 Continuing Disclosure Undertaking. To the extent applicable in connection with the offering of the Program, SIB shall execute and deliver a continuing disclosure undertaking to make appropriate filings with respect to compliance with Rule 15c2-12 of the Securities and Exchange Act of 1934 ("Rule 15c2-12").

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Throughout the Term of this Agreement, in order to allow SIB to comply with Rule 15c2-12, the Contractor shall deliver to SIB on a timely basis such information concerning the Trust, including but not limited to information concerning investment performance of the Trust and other facts related to the Trust which are in the control of the Contractor and which the SIB deems reasonably necessary for purposes of making appropriate filings under Rule 15c2-12. Further, the Contractor shall certify on a quarterly basis that it is in compliance in all material respects with the terms of this Agreement.

12.9 Amendments to Program Disclosure Booklet. The Contractor shall amend or supplement the Program Disclosure Booklet to take into consideration material developments subsequent to the preparation and delivery of the initial Program Disclosure Booklet. SIB and the Contractor shall cooperate in the determination of whether a particular development warrants an amendment or supplement to the Program Disclosure Booklet. On each date that the Program Disclosure Booklet is amended or supplemented, the Contractor and SIB shall confirm in writing that the representations and statements contained in the certificate delivered pursuant to Sections 5(b)(ii) and 5(b)(iii) of this Exhibit E remain true and correct as of such date.

12.10 Insurance Coverage.

(a) The Contractor shall, during the Term of this Agreement and as applicable, maintain insurance coverage of the types and at the levels as set forth below:

- (i) Errors & Omissions Insurance. With respect to the Investment Services provided by the Contractor hereunder, Investment Advisors' Errors & Omissions insurance coverage, provided by an insurance carrier with an AM Best's rating of A- or better unless otherwise approved by SIB, shall be maintained by the Contractor in the amount of not less than ten million dollars (\$10,000,000.00) with a deductible of not more than \$1 million. The Contractor agrees to maintain Errors & Omissions insurance coverage in accordance with this Section 12.10(a)(i) for at least five years beyond the termination of this Agreement.
- (ii) General Liability Insurance. The Contractor agrees to maintain General Liability insurance coverage in the amount of ten million dollars (\$10,000,000.00), with a policy which contains, or is endorsed to contain, the following provisions:
  - (A) The State, SIB, its officers, officials, employees and volunteers are to be covered as additional insureds.
  - (B) For any claims related to the Services to be performed pursuant to this Agreement, the insurance coverage shall be primary insurance as respects SIB, its officers, officials, employees, agents, and volunteers. Any insurance or self-insurance maintained by SIB, its officers officials, employees, agents or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.
- (iii) Cyber Liability Insurance. The Contractor agrees to maintain cyber liability insurance with liability limits in the amount of ten million dollars (\$10,000,000.00) per occurrence and twenty million dollars (\$20,000,000.00) in the aggregate to protect any and all of SIB's and the Program's Confidential data received by the Contractor related to this Agreement including such data that resides on the devices used by Contractor's personnel. The policy shall include a waiver of subrogation in favor of SIB.

(b) Each insurance policy required by this Section 12.10 shall be endorsed to state that coverage shall not be canceled by the Insurer except after thirty (30) days prior written notice has been given to the Executive Director.

(c) Any deductibles or self-insured retentions must be disclosed to and approved by SIB.

(d) If the General Liability Insurance coverage to be provided under subsection (a)(ii) hereof is written on a Claims Made form, the Contractor agrees that:

- (i) The "Retro Date" must be shown, and must be before the date of the Agreement or the beginning of Agreement Services.

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- (ii) Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the Term of this Agreement. Insurance carrier must have an AM Best's rating of "A-" or better.

12.11. Performance Guarantees. At no cost to SIB, the Contractor will provide an unconditional performance guarantee issued by an entity that evidences sufficient financial strength to ensure performance of the Contractor and all affiliates, related entities, subsidiaries and subcontractors engaged to provide services pursuant to the Agreement. In lieu of a performance guarantee, the Contractor may provide either:

(a) an irrevocable Letter of Credit in an amount sufficient to meet the Contractor's program management obligations (including any dollars committed to marketing) pursuant to the Agreement for a period of one year. Such Letter of Credit shall be issued by a bank doing business in California and insured by the Federal Deposit Insurance Corporation. The Contractor shall further provide for honor of a draft or demand for payment presented with SIB's written statement certifying that there has been loss, damage, or liability resulting from the Contractor's performance or non-performance of duties and obligations under the Agreement, or from the negligence or act of omission by the Contractor or its agents, servants, and employees, and that the amount of the demand or draft is, therefore, now due and payable; or

(b) a Surety Bond payable to SIB in an amount sufficient to meet the Contractor's program management obligations (including any dollars committed to marketing) pursuant to the Agreement for a period of one year. The Surety Bond must be maintained in current status at all times throughout the Term of the Agreement. If the term of the Bond is less than the Term of the Agreement, SIB will require that evidence of renewal be submitted to SIB no less than 60 days prior to the expiration date of the Bond.

(c) other alternative arrangements acceptable to SIB.

12.12 Keeping of Records and Books of Account. The Contractor shall keep accurate books and records connected with the performance of this Agreement. The Contractor shall ensure that books and records of subcontractors, suppliers, and other providers shall also be accurately maintained. Such books and records shall be kept in a secure off-site storage facility, with a copy at a secure back-up recovery facility as described in Section 21 of this Exhibit E, and SIB and its representatives shall have Reasonable Access to inspect and copy such books and records.

12.13 Protection of Trademark. The Contractor shall take all commercially reasonable steps to assist SIB in protecting the name, slogan and logo for, and any other trademarks or service marks associated with, the Program from infringement by third parties.

12.14 Compliance with Disclosure Principles and Governance Principles. The Contractor shall use only offering materials, including the Program Disclosure Booklet, which are in conformity with the Disclosure Principles, except as may be approved in advance or directed by SIB. The Contractor shall take such actions as SIB may deem reasonably necessary to enable SIB to satisfy the intent of the Governance Principles.

**13. RESERVED FOR TRANSITION PROVISIONS, IF APPLICABLE.**

**14. TERM OF AGREEMENT; TERMINATION.**

14.1 Term of Agreement. The Term of this Agreement shall be for a period of five years, beginning on November 7, 2021, unless terminated earlier or extended by amendment (the "Initial Term"). At the pleasure of the Board, this Agreement may be extended for five one-year terms (the "Extension Term" or "Extension Terms"). An Extension Term of this Agreement, and any amendments to this Agreement in connection with such Extension Term, shall be affected through a written instrument executed by the

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Contractor, SIB, and the California Department of General Services, and in accordance with Applicable Law.

**14.2 Termination by SIB for Deficient Performance.**

(a) SIB will continually monitor the performance of work pursuant to this Agreement as described in the Marketing, Administrative and Investment Performance Criteria as set forth herein or as otherwise incorporated by reference. Each portion of the Agreement will be evaluated separately on an annual basis.

- (i) If at any time SIB finds that the Contractor's Marketing Services or Administrative Services are not adequate as determined by comparison to the Marketing and Administrative Performance Criteria as set forth in the Agreement, and if the performance would be curable but it remains uncured for more than sixty (60) days after SIB has given written notice thereof to the Contractor (unless SIB reasonably determines such deficient performance would be curable over a longer period of time), then SIB may treat such deficient performance as a material breach and it may terminate this Agreement.
- (ii) If at any time SIB finds the Contractor in material breach in accordance with Section 6.3(d) herein, then SIB may terminate this Agreement.
- (iii) If at any time SIB finds the Contractor's investment performance is otherwise deemed inadequate as set forth in Section 6.3 herein, and such performance remains uncured for more than a one (1) year period after SIB has given written notice thereof to the Contractor, then SIB may treat such inadequate performance as a material breach and it may terminate this Agreement.

(b) Without waiving any of its rights with respect to a finding of material breach, SIB in its sole discretion may allow the Contractor to continue to perform work under the Agreement, but it may require that up to the full amount of the Program Management Fees or other available fees otherwise due to the Contractor be placed in escrow until all identified deficiencies are cured. During the pending default, SIB may apply the escrowed fees to actual costs incurred as a result of the default. Once the default is cured or the Contractor's performance has improved to SIB's satisfaction, any amounts remaining in the escrow will be transferred to the Contractor.

(c) Deficient performance, including any material breach of this Agreement, shall constitute cause of termination pursuant to Section 7 of Exhibit C.

**14.3 Termination for Insolvency.** The Contractor shall notify SIB immediately in writing in the event that it, any parent, affiliate, related entity, subsidiary or subcontractor files any federal bankruptcy action or state receivership action, any federal bankruptcy or state receivership action is commenced against any of these parties, or any of these parties is adjudged bankrupt, or a receiver is appointed and qualifies. In the event of any of the foregoing events, or if SIB determines, based on reliable information, that there is a substantial probability that the Contractor, parent, affiliate, related entity, subsidiary, or subcontractor will be financially unable to continue performance under this Agreement, SIB may terminate this Agreement and all further rights and obligations immediately by giving five (5) days' notice in writing to the Contractor. Insolvency shall constitute cause for purpose of termination pursuant to Section 7 of Exhibit C.

**14.4 Termination for Expatriation.** The Contractor shall notify SIB immediately in writing in the event that it [or its parent] files any notice with the SEC that Contractor intends to reincorporate offshore. In the event of such notice, SIB may terminate this Agreement and all further rights and obligations immediately by giving five (5) days' written notice to the Contractor. In this instance, SIB may require the Contractor to continue to provide Services under this Agreement until a replacement contractor can assume management of the Direct Plan.

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**14.5 Transition upon Termination.**

(a) When the Contractor ceases to perform any portion or all of the work contemplated in this Agreement, whether such cessation is at the direction of SIB or due to termination of the Agreement, the Contractor shall promptly facilitate the transfer of such work from the Contractor to any workforce, agency, contractor, or other entity designated by SIB. The Contractor, its employees, agents, and subcontractors shall provide SIB, its staff, and whoever SIB selects to perform future work for the Direct Plan, Reasonable Access to all records, data, files, and information pertinent to performing the work which the Contractor will be ceasing to perform. The Contractor shall continue to perform all work under this Agreement during a transition of up to one year as determined by SIB to ensure an orderly transition of services provided pursuant to a new agreement, except that the Contractor and SIB must mutually agree upon any longer transition period.

(b) 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 Direct Plan in a reasonable and sortable electronic form within a medium mutually agreed upon by the Contractor and SIB.

(c) When work is transferred from the Contractor, the Contractor shall take all steps necessary to ensure that its employees, agents, and subcontractors do not impede or delay the orderly transfer of work. In the event of a transfer of work from the Contractor, if there is any delay in the transfer which is the direct or indirect result of actions of the Contractor, its employees, agents, or subcontractors which impedes the transfer of work, SIB may, at its discretion, require the Contractor to pay to escrow fees otherwise allowable under the terms of this Agreement until such time as the transition is complete.

(d) Collection by SIB of the amount authorized in this provision does not limit SIB's ability to collect any other amounts that SIB is authorized to pursue and collect pursuant to other provisions of this Agreement or Applicable Law.

**14.6 Collection of Fees.** In addition to giving written notice of breach to the Contractor under Section 14.2, if such breach is not cured within the applicable time periods set forth in Section 14.2, SIB may order that the portion of the Contractor's Program Management Fee which would otherwise accrue during the period from the date of such notice until such time as SIB has determined that the Contractor has not cured the breach shall be withdrawn by the Contractor as otherwise permitted by Section 9.1(b) and transferred to SIB to be held in escrow during such period and may be used by SIB to pay its expenses in enforcing the terms of this Agreement. In the event that the Contractor shall cure such breach, the escrowed fees (net of any amounts payable to SIB) will be transferred to the Contractor. Nothing in this Section 14.6 or any other provision of this Agreement shall limit SIB's right or ability to pursue any other remedy available to it at law or in equity or both.

**14.7 Additional Termination at SIB's Option.** Unless otherwise specified by the provisions of Section 7 of Exhibit C, this Agreement may not be terminated by SIB without cause during the first five years of its term. Upon completion of the Initial Term, this Agreement may be terminated in whole or in part at any time upon 180 calendar days' written notice by SIB, for any reason. Upon receipt of a termination notice, the Contractor shall promptly discontinue all services affected unless the notice specifies otherwise.

**14.8 Termination upon Expiration of the Initial Term Without Cause.** This Agreement shall be terminated upon expiration of the Initial Term unless at least ninety (90) days prior to the expiration date SIB has provided written notice to the Contractor of extension for an Extension Term pursuant to Section 14.1.

**14.9 Contractor Rights upon Termination.** In the event of termination of this Agreement for any reason set forth in this Section 14, the Contractor will be entitled to withdraw its Program Management Fee in accordance with Section 9 for satisfactory services performed prior to the termination, net of any amounts

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transferred to SIB in accordance with Section 14.6 above. The Contractor shall not be entitled to additional compensation.

14.10 Software and Other Program Records to be Available to Trust. At the termination of this Agreement, the Contractor will cooperate with SIB to effect an efficient transition of Program Records and data to a new contractor, including the granting of nonexclusive, royalty free, nontransferable limited use licenses for all software which permits participants and/or beneficiaries to participate in and interact with the Program. These limited use licenses will be used to effect the transition of data, including testing and reconciliation, and will expire upon successful transition of program records and data to a new contractor. Contractor shall provide, at its expense, Reasonable Access to all Program Records and data to SIB or a successor contractor. Program records and data shall be provided by the Contractor in a reasonable and sortable electronic form within a medium mutually agreed upon by the Contractor and SIB.

14.11 Post-Term Restrictions. Upon termination or expiration of this Agreement, the Contractor agrees that it shall not make any direct solicitation of any Account Owner, Beneficiary, Giftor and/or Prospect except to the extent permitted by and in accordance with Section 7.7 of this Exhibit E. The Contractor further agrees that it shall not use the Program Records after termination or expiration of this Agreement for any purpose other than as may be required in connection with on-going Services to Accounts, if any.

**15. CONTACT PERSONS; MEETINGS.**

15.1 Contact Persons. SIB and the Contractor shall each appoint an individual who shall serve as a contact person for the purpose of carrying out this Agreement and who shall be authorized to act on behalf of his/her respective party as to the matters pertaining to this Agreement. Effective upon execution of this Agreement, the initial contact persons shall be those set forth in Section 4 of Exhibit A to this Agreement. Each party shall notify the other, in writing, as to the name, address and telephone number of any replacement for any such designated contact persons or any additional contact person or replacement thereof.

15.2 Meetings. Appropriate Key Personnel shall attend all formal SIB meetings unless otherwise notified by the SIB Chair, his/her designee or the Executive Director that participation via telephonic connection is acceptable. The Contractor must prepare a report on the Direct Plan's investments and other Direct Plan related updates for the Board's review at these meetings.

**16. OWNERSHIP AND CUSTODY OF PROGRAM RECORDS AND MEDIA MATERIALS; RELATED INFORMATION.**

16.1 Program Records. The following shall constitute the Program Records:

(a) all written and electronic records, books, data, documents, reports, analyses, designs, drawings, correspondence, papers and files for or relating solely or primarily to the Program, including all Program Materials, regardless of by whom created and whether or not in SIB's or the Contractor's possession, and including, without limitation, all Program Lists;

(b) any logo, slogan developed for and any trade names, trademarks and service marks developed in connection with the Program;

(c) any copyrighted materials relating solely or primarily to the Program; and

(d) the website content and marketing, advertising and public relations materials that are specific to the Program.

16.2 Ownership of Program Records; Contractor's Internal Information. SIB shall own, and as such shall have all right, title, interest in and beneficial ownership of, the Program Records. Although the Contractor shall not own the Program Records, the Contractor shall be and remain the sole owner of all of



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its respective internal records, books, documents, files, know-how and other intellectual property developed and utilized by the Contractor to perform the Services under this Agreement (including without limitation investment allocation methodologies and know-how, and any software and analytical tools as are otherwise owned by the Contractor and utilized and developed by or for the management, marketing and administration of the Direct Plan) (the "Contractor Intellectual Property"); provided, however, that SIB shall not be restricted in any manner in connection with the continuation of the Direct Plan after the Term of this Agreement in using the same or substantially the same structure of the Direct Plan or portions thereof (including the investment and allocation guidelines components) as have been in effect prior to termination or expiration of this Agreement, and the Contractor shall be deemed to have granted SIB a non-exclusive, perpetual, royalty-free, non-transferable license to so use the same or substantially the same structure of the Direct Plan or portions thereof (including the investment and allocation guidelines components) as have been in effect prior to termination or expiration of this Agreement (the "Direct Plan Structure").

16.3 Use and Custody of Program Records. SIB shall be deemed to have granted to the Contractor during the Term of this Agreement, and after termination or expiration of this Agreement only to the extent set forth in this Exhibit E, a non-exclusive, royalty-free non-transferable license to use Program Records in connection with its Services under this Agreement. Program Records reflecting aggregate Program and Account data (but excluding Program Lists and transaction and Account Owner specific data) shall be made available to SIB by Reasonable Access, at the Contractor's expense, in a reasonable and sortable electronic form within a medium mutually agreed upon by the Contractor and SIB. Program Records reflecting Program Lists and transaction and Account specific data shall be made available to SIB upon its request, provided that SIB protects and safeguards such information consistent with SIB's privacy policy and the provisions set forth in Section 17. During the Term of this Agreement and so long as the Contractor is providing services to SIB in accordance with this Agreement, the Contractor shall at its sole discretion either transfer ownership to SIB, or obtain adequate license rights for SIB to use in Program Records copyrighted or patented materials that (i) are owned by the Contractor, or by a third party that has granted such Contractor the right to sublicense relevant use rights to SIB, and (ii) were incorporated by the Contractor into any Program Records. The form and substance of any such licenses to use such materials shall be subject to prior approval by SIB. The Contractor shall not use the Program Records during the Term of this Agreement or after termination hereof other than as may be required in connection with the Services and any post-termination transition pursuant to Section 14.5 of this Exhibit E.

16.4 Ownership and Use of Names and Property by Contractor

(a) SIB shall own and have all right, title, interest in and exclusive beneficial ownership of, any logo, any slogan developed for and any trade names, trademarks or service marks in connection with the Program during and after the Term of this Agreement, including ownership of, any website or toll-free phone number used for servicing and promotion of the Program. SIB will be deemed to grant the Contractor a royalty-free and non-transferable (other than to a subcontractor) license to use the name, the logo, any slogans, trademarks, service marks, trade names, the websites and the toll-free numbers throughout the Term of the Agreement.

(b) The Contractor shall not use the names of the Program, the State or SIB, or material relating to the Program in any manner other than in a manner approved prior thereto by the Executive Director; provided, however, the Executive Director shall not withhold approval of such use when the use merely refers to such names in accurate terms (and in type no larger or bolder than in the textual material in the document in which its name appears) and is in connection with a description of the appointment of the Contractor hereunder or is required by the SEC, a state securities commission, or any federal or state bank regulatory authority.

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**17. CONFIDENTIALITY.** The requirements of confidentiality under this Agreement apply to SIB, the Contractor, its employees and agents, and to all affiliates, related parties, subsidiaries, and subcontractors, and to their employees and agents.

(a) All financial, statistical, personnel, technical and other data or information relating to SIB's operation which is considered confidential as defined by law or is designated as confidential by SIB and is made available to the Contractor in order to carry out this Agreement, shall be protected by the Contractor from unauthorized use, disclosure or destruction through the observance of all applicable federal and California State information security and confidentiality laws and procedural requirements.

(b) The Contractor shall implement and maintain a Confidentiality Program and Privacy Policy, to which the Contractor will adhere, which collectively establish policies and procedures designed to prevent the unauthorized disclosure of confidential data, and define what is considered confidential data and what is considered public data. SIB shall respond to questions by the Contractor regarding the classification of data. SIB shall have the opportunity, if desired, to review all related policies and procedures. Confidentiality Program and Privacy Policy policies and procedures must include, but are not limited to:

- (i) Secure systems development practices utilizing industry standards.
- (ii) Software testing program utilizing industry best practices prior to production to ensure system and data integrity.
- (iii) Operating system security patches, upgrades, and anti-virus software.
- (iv) Access controls to SIB data with no generic account access.
- (v) Disaster recovery plan to protect SIB data in the event of data loss or destruction.
- (vi) Standards for the transmission and storage of data. At a minimum, confidential information must be encrypted in transit, and at rest on portable storage devices.
- (vii) Keep and protect the confidentiality of participant personally identifiable information, including, but not limited to, identification numbers or codes and account codes and account access numbers or codes in accordance with all applicable federal and State laws.
- (viii) Secure an appropriate insurance policy to protect against losses resulting from security breaches.

(c) The Confidentiality Program and Privacy Policy shall be implemented and maintained in accordance with all applicable federal, State, and State Treasurer's Office (STO) requirements, including but not limited to:

- (i) Section I of Article I of the State of California Constitution;
- (ii) Information Practices Act of 1977 (Civil Code Sections 1798 – 1798.78);
- (iii) Civil Code Sections 1798.80 – 1798.86;
- (iv) Financial Information Privacy Act (Financial Code Sections 4050 – 4060);
- (v) California Public Records Act (Government Code Sections 6250 – 6268); and
- (vi) Online Privacy Protection Act of 2003 (Business and Professions Code Sections 22575 – 22579).
- (vii) State Administrative Manual Section 5300 Information Security.

(d) The Contractor shall not disclose any information classified as confidential or private without advance authorization from the Executive Director or as required by law.

(e) The Contractor certifies that it understands and is in conformance with all applicable federal and State information security and confidentiality laws and requirements.

(f) The Contractor represents, warrants and covenants that it has implemented and will maintain, as part of its Confidentiality Program and Privacy Policy an information security program reasonably designed to protect confidential data, which program includes administrative, technical and physical safeguards to ensure the security of such confidential data, to protect against anticipated threats or hazards to the security or integrity of such confidential data and to protect against unauthorized access to or use of such confidential data.

(g) The Contractor specifically agrees that it shall not, and shall cause its affiliates, related parties, subsidiaries, or subcontractors not to, sell, provide or otherwise disclose information from, any Program List to any third party unless otherwise directed to or approved by SIB or required by Applicable Law.

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(h) Upon reasonable request, in advance, SIB staff may conduct on-site visits during normal business hours to Contactor facilities to ensure SIB data is protected per the requirements contained in this confidentiality statement.

(i) The Contractor shall notify SIB and the STO Chief Information Security Officer simultaneously (by phone: 916-653-3019; by email: [AISO@treasurer.ca.gov](mailto:AISO@treasurer.ca.gov)) if the Contractor suspects or has confirmed a security incident related to the Program such as breach or loss of data. Notification to the SIB and the STO Chief Information Security Officer must occur no more than four hours after a suspected or confirmed security incident.

**18. LIABILITY AND INDEMNIFICATION.**

18.1 Indemnification by the Contractor. As set forth in Section 5 of Exhibit C, the Contractor agrees to indemnify, defend and save harmless SIB, its officers, agents and employees from any and all claims and losses accruing or resulting to any and all contractors, subcontractors, suppliers, laborers, and any other person, firm or corporation furnishing or supplying work services, materials, or supplies in connection with the performance of this Agreement, and from any and all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged by the Contractor in the performance of this Agreement.

18.2 Payment of Costs. The Contractor shall pay its own costs associated with the defense of actions brought against the Contractor or its employees for actions or inactions which are within the Contractor's scope of responsibility. SIB shall pay its own costs associated with the defense of actions brought against SIB arising out of actions or inactions which are within the scope of its responsibility.

18.3 LIMITATION ON LIABILITY. IN NO EVENT WILL THE CONTRACTOR (ITS DIRECT OR INDIRECT SUBSIDIARIES, CONTROLLED AFFILIATES) BE LIABLE HEREUNDER TO THE INDEMNIFIED PARTIES FOR SPECIAL, INDIRECT, PUNITIVE, EXEMPLARY, OR CONSEQUENTIAL DAMAGES IN CONNECTION WITH OR ARISING OUT OF THIS AGREEMENT UNLESS THE CONTRACTOR'S ACTS OR OMISSIONS CONSTITUTE BAD FAITH, WILLFUL MISFEASANCE, GROSS NEGLIGENCE, OR RECKLESS DISREGARD OF DUTIES UNDER THIS AGREEMENT

**19. DOCUMENT REVIEW.** In accordance with the terms of Section 4 of Exhibit C and as provided under Section 12.7 of this Exhibit E, upon request of SIB, the Contractor shall make all of its audit, accounting or other work papers, notes or other documentation received or prepared by it in connection with the services provided under this Agreement available for review by SIB or its representatives. Any such review by SIB shall be performed during normal working hours and otherwise in a manner so as to not unreasonably interfere with or disrupt the Contractor's normal business operations in any material respect. All materials available for review by SIB under this Section 19 shall be subject to the provisions of Section 17 of this Exhibit E.

**20. NOTICES.** All notices required or permitted to be given under this Agreement shall be in writing and shall be deemed duly given upon delivery if personally delivered, upon confirmation of transmission if sent by facsimile transmission, upon the third Business Day that the State is opened for business after mailing if sent by registered or certified mail, postage prepaid, and upon receipt if sent by reputable courier, as follows, or to such other address or Persons any party may hereafter designate by notice to the other parties hereunder:

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If to SIB: Julio Martinez, Executive Director  
ScholarShare Investment Board  
915 Capitol Mall, Room 590  
Sacramento, CA 95814  
Phone: (916) 651-6380  
Fax: (916) 589-2835

If to the Contractor: [TO COME]

Either party may, from time to time by notice in writing served upon the other, designate a different mailing address or a different or additional person to which all such notices or demands thereafter are to be addressed.

**21. CONTINGENCY PROGRAM.** The Contractor at all times must have a Contingency Program to ensure that Direct 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 cyber-attacks that affect systems and / or business networks). The Contingency Program must identify all resources that require backup and the priority of such backup, and it must address or provide for:

- (a) Personnel responsibilities in the event of business disruption;
- (b) Back-up 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 on-going business;
- (c) Back-up strategies for data files and system files, including the frequency of back-up and the storage of back-up media;
- (d) Environmentally controlled and secure off-site storage (i) located an adequate distance from the operations facility to avoid both facilities being impaired by the same event and (ii) 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;
- (e) Access to multiple communication modes as needed to continue full operations;
- (f) A quarterly test of the backup facility's ability to assume full operations; and
- (g) Review of the Contingency Program at least annually and in connection with any significant changes to the Contractor's business operations and environment.

At SIB's discretion, it may observe any and/or all backup and recovery tests or require test results be provided.

**22. DISPUTES.**

(a) In the event of a dispute, the Contractor shall file a "Notice of Dispute" with a Deputy Treasurer of the STO within ten (10) days of discovery of the problem. Within ten (10) days, the Deputy Treasurer shall meet with the representatives of the Contractor and SIB identified in Paragraph 4 of Exhibit A for purposes of resolving the dispute. The decision of the Deputy Treasurer shall be final. In the event of a dispute, the language contained within this Agreement shall prevail over any other language including that of the RFP or the Contractor's Proposal. Contractor shall continue with the responsibilities under this Agreement during any dispute.

(b) As provided in Section 14 of Exhibit C, this Agreement is governed by and shall be interpreted in accordance with the laws of the State of California (without regard to any conflict of laws provisions).

(c) Any suit brought under this Agreement (including any action to compel arbitration or to enforce any award or judgment rendered thereby) shall be brought in State court sitting in Sacramento, California, the parties hereby waiving any claim or defense that such forum is not convenient or proper. Each party

**EXHIBIT E**  
**(Standard Agreement)**

agrees that any such court shall have in personam jurisdiction over it and consents to service of process in any manner authorized by State law.

(d) The rights and remedies provided herein are cumulative and are not exclusive of any rights or remedies that any party may otherwise have at law or in equity.

**23. MISCELLANEOUS.**

23.1 Waiver. The terms and conditions hereof may be waived only by a written instrument signed by the party waiving compliance. The failure of SIB or the Contractor to insist on strict compliance with this Agreement, or to exercise any right or remedy under this Agreement, shall not constitute a waiver of any rights provided under this Agreement, nor stop either party from thereafter demanding full and complete compliance nor prevent any party from exercising such a right or remedy in the future.

23.2 No Third Party Beneficiaries. Except as otherwise specifically provided for herein, nothing in this Agreement is intended or shall be construed to give any person, other than the parties hereto, their successors and permitted assigns, any legal or equitable right, remedy or claim under or in respect of this Agreement or any provision contained herein, provided that the foregoing shall not deprive any Account Owner or Beneficiary of any right, remedy or claim which such person may have under Applicable Law, independent of this Agreement.

23.3 No Partnership; Independent Contractor. As set forth in Section 8 of Exhibit C, the Contractor, and the agents and employees of Contractor, in the performance of this Agreement, shall act in an independent capacity and not as officers or employees or agents of the State. Furthermore, the Contractor shall have no authority to bind SIB.

23.4 Headings; Appendices and Schedules. Headings and subheadings of provisions of this Agreement and the Table of Contents are solely for the convenience of reference and are not a part of this Agreement and shall not affect the meaning, construction, operation or effect hereof. All attached Appendices and Schedules are a part of this Agreement.

23.5 Entire Agreement. This Agreement (including documents incorporated herein in Section 2 of this Exhibit E and in Exhibits A through D) incorporates, merges and supersedes any and all prior understandings and communications, whether written or oral, with respect to such subject matter.

23.6 Survival. Acknowledging that Section 14.5 requires the provision of Services subsequent to the termination of certain provisions of this Agreement, it is agreed that all provisions hereof relating to the provision of such continuing Services, and to the rights, duties and obligations of each party with respect to such provision, shall remain operative while such continuing Services are required to be provided pursuant to such Article, except as expressly provided therein. In addition, the obligations under Section 14.5, 14.11, 16, 17, 18, 20, 23, and definitions in Section 1 that are used in the aforementioned sections shall survive any termination of this Agreement. No such termination shall limit or otherwise affect the respective rights and obligations of the parties hereto accrued prior to the date of such termination.

23.7 Continuing Representations, Warranties and Covenants. Each of the representations, warranties and covenants made by the parties in this Agreement is true and correct as of the date hereof and shall be true and correct on and as of the Program Start Date and each of the representations, warranties and covenants made by the parties shall be true and correct at all times thereafter through the termination or expiration of this Agreement.

23.8 Amendment. As set forth in Section 2 of Exhibit C, no amendment or variation of the terms of this Agreement shall be valid unless made in writing, signed by the parties and approved as required. No oral

**EXHIBIT E**  
**(Standard Agreement)**

understanding or Agreement not incorporated in the Agreement is binding on any of the parties. The Contractor and SIB may agree to execute such additional documents, and perform such further acts, as may be reasonable and necessary to carry out the provisions of this Agreement.

23.9 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

23.10 Force Majeure. Except for payment obligations hereunder, neither party shall be liable to the other for any failure to comply with the terms of this Agreement, for any delays in the performance thereof or for failure to perform under the terms and provisions of this Agreement, where such failure or delay is due to causes beyond such party's reasonable control including, but not limited to, acts of God, acts of civil or military authority, acts of the State in its sovereign capacity, fires, floods, power failures, suspension of trading, epidemics, quarantine restrictions, wars, terrorism, riots, strikes, delays in transportation and freight embargoes.

23.11 Expenses. Except for costs and expenses specifically assumed by a party under this Agreement, each party hereto shall pay its own expenses incident to this Agreement and the transactions contemplated hereunder, including all legal and accounting fees and disbursements.

23.12 Successors and Assigns. As set forth in Section 3 of Exhibit C, this Agreement is not assignable by the Contractor, either in whole or in part, without the consent of the State in the form of a formal written amendment. Furthermore, this Agreement, any instrument or agreement executed pursuant to this Agreement, and the rights, covenants, conditions and obligations of Contractor and SIB contained therein, shall be binding upon the parties and their successors, assigns and legal representatives.

23.13. Reports. The parties may at any time following the execution of this Agreement mutually agree to change the due dates of any reports to be delivered hereunder.

23.14 Political Reform Act. Contractor acknowledges that SIB is subject to the provisions of the California Political Reform Act (Government Code Sections 81000 et seq., and all regulations adopted thereunder, including, but not limited to, California Code of Regulations, Sections 18700, et seq.) and Contractor shall comply promptly with any requirement thereunder. If required by law, the Contractor shall require its personnel, including without limitation, its Key Personnel and all later substitutions thereof, to file Statements of Economic Interests in compliance with the Conflict of Interest Code for the Office of the State Treasurer and the various boards, authorities, commissions, and committees chaired by the State Treasurer, including SIB (California Code of Regulations, Title 2, Division 2, Chapter 4, Section 1897). All such reports shall be filed simultaneously with SIB.

23.15 No Publicity. No publicity release or announcement concerning this Agreement or the transactions contemplated herein shall be issued by Contractor without advance written approval by SIB.

23.16 No Additional Services or Procurements. The Contractor may not submit a bid or be awarded a contract for the provision of services, procurement of goods or supplies, or any other related action which is required, suggested, or otherwise deemed to be an outgrowth of the advice or recommendations that the Contractor provides under this Agreement. Nothing in this provision shall prevent the Contractor from providing program management services to other persons including, but not limited to, other state agencies that establish and maintain qualified tuition programs pursuant to Section 529 of the Code.

23.17 Darfur Contracting Act. Effective January 1, 2009, all Invitations for Bids (IFB) or Requests for Proposals (RFP) for goods or services must address the requirements of the Darfur Contracting Act of 2008 (Darfur Contracting Act). (Public Contract Code sections 10475, et seq.; Stats. 2008, Ch. 272). The Darfur

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Contracting Act was passed by the California Legislature and signed into law by the Governor to preclude State agencies generally from contracting with “scrutinized” companies that do business in the African nation of Sudan (of which the Darfur region is a part), for the reasons described in Public Contract Code section 10475.

A scrutinized company is a company doing business in Sudan as defined in Public Contract Code section 10476. Scrutinized companies are ineligible to, and cannot, bid on or submit a proposal for a contract with a State agency for goods or services. (Public Contract Code section 10477(a)).

Therefore, Public Contract Code section 10478 (a) requires a company that currently has (or within the previous three years has had) business activities or other operations outside of the United States to certify that it is not a “scrutinized” company when it submits a bid or proposal to a State agency.

A scrutinized company may still, however, submit a bid or proposal for a contract with a State agency for goods or services if the company first obtains permission from the Department of General Services (DGS) according to the criteria set forth in Public Contract Code section 10477(b).

23.18 Iran Contracting Act. Effective June 1, 2011, Contractor must address the requirements of the Iran Contracting Act of 2010 (the Iran Contracting Act). The Iran Contracting Act was passed by the California Legislature and signed into law by the Governor to preclude State agencies generally from contracting with companies that engage in investment activities in Iran as defined in Public Contract Code section 2202.5.

Effective June 1, 2011, Contractor engaged in investment activities in Iran is ineligible to, and shall not, bid on, submit a proposal for, or enter into or renew, a contract with a State agency for goods or services. (Public Contract Code section 2203).

Contractor must certify that it is not engaged in investment activities in Iran as defined in Public Contract Code section 2202.5. Contractor engaged in investment activities in Iran, however, may submit a bid or proposal for a contract with a State agency for goods or services if it has been granted permission by the State Treasurer’s Office pursuant to the criteria set forth in Public Contract Code sections 2203(c) and/or 2203(d). Note that additional findings by the State Treasurer’s Office are required and will be made solely at the discretion of the State Treasurer’s Office.

23.19 Labor Neutrality Policy. SIB recognizes the value of labor organizing and encourages the entities with which it contracts to demonstrate that they also value this principle by encouraging management neutrality in labor organizing activities.

To remain “neutral” means not to take any action or make any statement that will directly or indirectly state or imply any support for or opposition to the selection by the Contractor’s employees of a collective bargaining agent, or preference or opposition to any particular union as a bargaining agent. Nothing in this section obligates or prohibits the Contractor from entering into private neutrality, labor peace or other lawful agreements with a labor organization seeking to represent or who currently represents the Contractor’s employees.

**STANDARD AGREEMENT - APPENDIX 1**

THE ACT

Appendix 1 to this Agreement, Article 19. Golden State Scholarshare Trust Act (69980 – 69994) (The Act), can be viewed at:

[https://leginfo.legislature.ca.gov/faces/codes\\_displayText.xhtml?lawCode=EDC&division=5.&title=3.&part=42.&chapter=2.&article=19](https://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=EDC&division=5.&title=3.&part=42.&chapter=2.&article=19).



**STANDARD AGREEMENT - APPENDIX 2**

**SCHOLARSHARE STATEMENT OF INVESTMENT POLICY**

Appendix 2 to this Agreement, ScholarShare Statement of Investment Policy, can be viewed at:

<https://www.treasurer.ca.gov/scholarshare/investpolicy.pdf>

**STANDARD AGREEMENT - APPENDIX 3**

**SCHOLARSHARE MONITORING PROCEDURES AND CRITERIA**

The current ScholarShare Monitoring Procedures and Criteria for the Direct Plan are detailed on the following pages of Appendix 3.

# **Golden State ScholarShare College Savings Trust**

## **Monitoring Procedures and Criteria**

Effective as of March 19, 2020  
(Adopted by the ScholarShare Investment Board on March 19, 2020)

**Golden State ScholarShare College Savings Trust  
Monitoring Procedures and Criteria**

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## I. BACKGROUND

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In 1996, Congress passed legislation establishing Internal Revenue Code Section 529 plans (college savings or 529 plans) to provide a tax-advantaged means to invest assets for higher educational purposes. California's program, the Golden State ScholarShare College Savings Trust (ScholarShare or Trust) was created in 1999 as a vehicle for California families<sup>1</sup> to save for college. Under federal law, participants in 529 plans cannot directly control investments, instead investments are held in state trusts.

As the administrator of the Trust, the ScholarShare Investment Board (SIB or the Board) directs investment and has a fiduciary responsibility for the assets invested by ScholarShare Participants.

SIB's fiduciary duties require that it:

- set appropriate investment policies and procedures,
- monitor investment performance and investment related qualitative factors, such as changes in the Program Manager's investment strategy or key investment personnel, and
- take corrective actions, if necessary.

Specifically, these monitoring procedures enable SIB to monitor performance and help it achieve consistent long-term investment success for ScholarShare Participants. In addition, it provides SIB with a road map for action if it is not satisfied with specific aspects of a fund's activities and/or investment performance.

### **ScholarShare 529 Plan Investment Structure**

ScholarShare offers a Plan sold directly to the public. Participants in the Plan choose from passive investment portfolios and active investment portfolios.

The portfolios in the Plan were designed by SIB to give families a selection of investment choices based on their educational savings needs and risk tolerance. Investment portfolios are comprised of one or more federally registered mutual funds with the exception of the funding agreements with TIAA-CREF Life Insurance Company (T-C Life). The funding agreements with T-C Life (Funding Agreements) are used as a part of the Plan's active and passive enrollment date and conservative portfolios, and Principal Plus Interest Portfolio. All of the portfolios, their investment objectives, their mutual fund make up, and a list of mutual funds and their corresponding benchmarks, are outlined in the ScholarShare Investment Policy separate document.

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<sup>1</sup> All United States citizens may open accounts, not just those who reside in California

## II. MONITORING PROCEDURES

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The SIB's monitoring procedures are designed to provide qualitative and quantitative information to the Board on investment performance to aid it in making the best decisions on behalf of Trust participants. Specifically, the procedures outline what will be monitored, how it will be monitored, and when it will be monitored; what is acceptable and unacceptable performance; and how underperformance may be addressed.

There are two major groups of monitoring activities: Ongoing Monitoring and Periodic Monitoring.

### **Ongoing Monitoring Activities**

Ongoing monitoring activities include measurement and assessment of investment performance and related investment activities. The differences in the structures for individual fund portfolios and multi-fund portfolios require different monitoring procedures as outlined below. Both SIB's Program Manager and independent Investment Consultant will provide monitoring reports.

#### ***Portfolio Construction***

- *Individual Fund Portfolios Investment Performance*  
Performance of each individual fund portfolio (each portfolio is made up of a single fund) is monitored relative to its benchmarks for a specific time period. Monitoring criteria can be found in Section V., the Investment Performance Criteria Schedules.
- *Multi-Fund Portfolios (Enrollment Date, Static, etc.) Investment Performance*  
Performance monitoring of portfolios in the Plan containing multiple funds will occur at the underlying fund level. Each underlying fund will have its performance compared to its primary prospectus benchmark. Specific monitoring criteria for each underlying fund can be found in Section V., the Investment Performance Criteria Schedules.

#### ***Quarterly Investment Performance Review by Program Manager***

As part of the ongoing reporting process, the Program Manager will report calendar quarter and trailing annualized performance of the funds to the SIB staff (Staff) and the Investment Consultant on a quarterly basis. The Program Manager will also provide to the Staff quarterly performance reports for each portfolio used by the Trust and each fund against its respective benchmark. In addition, the Program Manager is responsible for providing: i) an explanation of investment activities that caused under- or outperformance each quarter, ii) any major changes in investment related to personnel, organization and/or investment approach/strategy, and iii) any other reporting as required by law.

#### ***Quarterly Investment Performance Evaluation by Independent Investment Consultant***

Using monthly data provided by Morningstar, the Investment Consultant will provide a quarterly report for the Board comparing each underlying fund with its respective benchmark according to the investment performance criteria found in the Section V., the Investment Performance Criteria Schedules.<sup>2</sup> The quarterly monitoring report compares each underlying fund to a benchmark (see ScholarShare Investment Policy for funds and their benchmarks). Performance for each underlying fund is then categorized as Positive, Acceptable, Caution, or Watch using the criteria listed in the Investment Status Schedule.

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<sup>2</sup> Performance numbers are net of underlying mutual fund fees (not net of the SIB Administrative Fee or Program Manager Fee).

***Quarterly Monitoring of the T-C Life Funding Agreements (Active and Passive Enrollment Date and Conservative Portfolios and the Principal Plus Interest Portfolio)***

In addition to the quarterly investment performance evaluation, the Investment Consultant will include a summary of the health of the T-C Life General Account (General Account). Monitoring of the T-C Life Funding Agreements is based on the financial strength of the General Account, and not investment performance results relative to a stated benchmark. The Investment Consultant will gather information provided by T-C Life of the characteristics of the General Account in order to assess the firm's claims-paying abilities. Analysis of the information provided by T-C Life is subject to its availability, and may be lagged by one quarter. This review is based on the following:

- General Account Financial Strength Rating by the four rating agencies: Moody's Investors Service, Standard & Poor's, A.M. Best, and Fitch.
- Status of the Mortgage Portfolio: In Good Standing, In Good Standing with Restructured Terms, 90 days Overdue, or Foreclosure in Process.
- Bond Portfolio Grade: Investment Grade, Medium Grade, and High Yield.
- Account Diversification: Diversified across asset classes.

The Investment Consultant will monitor changes to any of the categories listed above. Should these changes be deemed significant, the Investment Consultant will provide the SIB with a memo detailing its findings and applying an investment status of Positive, Acceptable, Caution, or Watch.

**Periodic Monitoring Activities**

As part of its ongoing fiduciary responsibilities, the SIB and Investment Consultant should regularly (annually or more often if needed) review several qualitative aspects of the Program Manager's practices. Key factors include, but are not limited to a review of:

- Fund investment guidelines to ensure they are consistent with the SIB's mandate for the fund.
- Fund investment strategy and style, especially the buy/sell disciplines.
- Portfolio activity, specifically the turnover rate, number of holdings, and execution costs.
- Risk profile relative to the fund's benchmark.
- Organizational structure.
- Stability of fund personnel and organization.
- Contractual obligations to the SIB.
- Multi-fund portfolios against an appropriate custom asset-weighted benchmark.
- Efficacy of active versus passive management in the enrollment date portfolios.

### III. INVESTMENT STATUS

The quarterly investment reports provided by the Investment Consultant will rate all underlying funds as Positive, Acceptable, Caution or Watch (see Investment Status Schedule). These ratings will serve to summarize performance for each fund.

#### Investment Status Schedule

Performance Category	Active Funds	Passive Funds
Positive	<ul style="list-style-type: none"> <li>▪ Performance exceeds the benchmark</li> </ul>	<ul style="list-style-type: none"> <li>▪ Performance exceeds the benchmark (first 1-12 month period), or</li> <li>▪ Tracking error is within the allowable range<sup>3</sup> (short, medium and long time periods)</li> </ul>
Acceptable	<ul style="list-style-type: none"> <li>▪ Performance meets or is under the benchmark and is within the allowable range</li> </ul>	<ul style="list-style-type: none"> <li>▪ Performance does not exceed the benchmark but is within the allowable range (first 1-12 month period only)</li> </ul>
Caution	<ul style="list-style-type: none"> <li>▪ Performance is below allowable range but either:               <ul style="list-style-type: none"> <li>i) for less than six consecutive months<sup>4</sup>, or</li> <li>ii) the Board has not taken (or decided not to take) a formal action to place the underlying fund on Watch even though performance has been below allowable range for six months or longer.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>▪ Tracking error falls outside of the allowable range but either               <ul style="list-style-type: none"> <li>i) for less than six consecutive months, or</li> <li>ii) the Board has not voted to place the underlying fund on Watch</li> </ul> </li> </ul>
Watch <sup>4</sup>	<ul style="list-style-type: none"> <li>▪ Performance is below allowable range for more than six consecutive months and the Board has formally voted to place the underlying fund on Watch.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Tracking error falls outside of the allowable range for more than six consecutive months and the Board has formally voted to place the underlying fund on Watch.</li> </ul>

*Note: This chart addresses investment performance only. It is conceivable that the Investment Consultant, Staff and the Board may need to take into consideration qualitative factors (either positive or negative) when determining the status of a fund. Monitoring criteria and ranges shall be reviewed on an ad hoc basis to confirm their appropriateness based on prevailing market dynamics and conditions.*

<sup>3</sup> Ranges are shown in the Investment Performance Criteria Schedules

<sup>4</sup> The amount of time generally required before an underlying fund is put on Watch



If an underlying fund meets the criteria in the Investment Status Schedule for Caution, SIB may choose to place the underlying fund on Watch if performance does not improve. At a subsequent SIB meeting, the Investment Consultant and Staff will apprise the Board as to whether quantitative (see Section V., the Investment Performance Criteria Schedules) and/or qualitative conditions (as determined by the Investment Consultant which may include changes in investment strategy, changes in key personnel, changes in risk/capital market exposure or other risks identified by the Investment Consultant) warrant further action. If conditions are not improving, the Investment Consultant will provide a memo explaining the causes of underperformance and will make a recommendation whether or not to put the underlying fund on Watch.

### **Watch Status**

Once the Board receives the report and recommendation, it may decide to take no action or it may vote to place the underlying fund on Watch. In making this decision, the Board may use quantitative or qualitative information or a combination of both. Once on Watch, the underlying fund will receive heightened monitoring. Specifically, the Program Manager will provide a quarterly report explaining causes of underperformance or improvement. Additionally, the Investment Consultant and Staff will monitor the underlying fund carefully and provide additional reports as necessary. This heightened level of monitoring continues quarter-by-quarter until the Board releases the underlying fund from Watch or takes other corrective actions.

Generally, once an underlying fund is placed on Watch, it should be able to exhibit improvement within a time frame of 12 to 18 months. However, extenuating circumstances may require the Board to take action sooner (or later) than 12 to 18 months. Regardless, an underlying fund will remain on Watch until the Board votes to release it or take further action.

### **Improvement Occurs – Release from Watch**

If an underlying fund shows indications of improvement in one or more of the factors that caused it to be placed on Watch, it may be released from Watch. Examples of improvements warranting a change in status are:

- Improved investment performance.
- Investment style and/or risk characteristics return to, and remain at, levels originally agreed upon.
- Other factors such as organizational structure stabilizes, personnel adjustments, compliance requirements, etc. are met/satisfied.

The Investment Consultant and Staff will provide regular reports to the Board on any underlying fund on Watch. These reports will highlight the original reasons for placing the underlying fund on Watch and discuss how these issues have been addressed. If improvement occurs in an appropriate amount of time (generally 12 to 18 months) the Investment Consultant may make a recommendation to the Board to release the underlying fund from Watch, and the Board may vote to approve this recommendation or not.

### **TIAA-CREF Life Insurance Company Funding Agreements**

Applying an investment status to the T-C Life Funding Agreements is based on different criteria than those applied to underlying funds. Given that the monitoring of the T-C Life Funding Agreements is based on non-performance related issues, different criteria must apply to measure improvement during Watch. If Caution or Watch applies, the Investment Consultant will provide regular updates to the Staff until such time that improvement is noted (typically a 12 to 18 month period) in the characteristics that caused the T-C Life Funding Agreements to be placed on Caution or Watch.

## IV. CORRECTIVE MEASURES

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### **Improvement Does Not Occur – Corrective Measures**

If an underlying fund is not released from Watch within an appropriate period (generally 12 to 18 months), corrective action may be necessary. Differences in structural make up between the individual fund portfolios and the multi-fund portfolios means that corrective action will take different forms as explained below.

#### ***Individual and Multi-Fund Portfolios***

If the quantitative and/or qualitative performance of an individual fund or multi-fund portfolio does not improve, the Investment Consultant will conduct an analysis and provide the Board with options and a recommendation for action. Options include:

- Giving the fund more time,
- Closing it to new investment, or
- Replacing it (replacement specifics are outlined below).

For individual fund portfolios, the Board should take into consideration that Trust participants (and their advisors) have specifically chosen the individual fund (it is not just a part of the portfolio's asset allocation) and may want to give it ample time to improve or close it to new investment before considering replacing it. If the Board decides that funds must be replaced, either in an individual fund or multi-fund portfolio, the process is outlined below.

#### ***T-C Life Funding Agreements***

If no improvement is seen in the characteristics of the T-C Life Funding Agreements related to those characteristics that caused Caution or Watch status, the Investment Consultant may recommend that the SIB replace the T-C Life Funding Agreements with other options. While it is recognized that replacing the T-C Life Funding Agreements may be difficult, the Investment Consultant and Staff will work to provide a solution that is feasible given the nature of the underlying funding agreement.

### **Fund Replacement**

The SIB may replace funds on Watch as part of its fiduciary responsibility to monitor and take corrective action if required. The Investment Consultant will provide a memo on whether fund replacement should be considered and if so which funds may be suitable replacements<sup>5</sup>. The "Standard Timeframe" below shall be followed for funds currently on Watch, except when immediate action is necessary as provided under "Expedited Timeframe" below.

#### ***Standard Timeframe - Funds Currently on Watch***

If fund replacement is necessary for funds currently on Watch, SIB may consider funds that are offered by the Program Manager or an affiliated entity that are appropriate substitutes for the current fund(s). The Investment Consultant may also recommend that the SIB consider having:

- the Program Manager subcontract with an affiliated or non-affiliated entity to provide fund management services, subject to SIB approval; or
- the issuance of a Request For Proposals for fund management services by a third-party provider not affiliated with the Program Manager.

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<sup>5</sup> As stated above, SIB may want to act cautiously when considering whether or not to replace a fund that is the only fund in an individual fund portfolio since participants (and their advisors) have specifically chosen it.

The Program Manager will work collaboratively with the Investment Consultant to provide the Board with one or more recommended replacement funds, which may include funds offered by the Program Manager or funds offered by an alternative fund manager. The Investment Consultant will also provide the Board with a memo expressing its opinion of the Program Manager's recommendation.

For individual fund portfolios, if the Board determines that a fund warrants replacement, the Board should consider closing the individual fund portfolio to new investments and notify participants (and their advisors) of the planned action prior to implementation. Sufficient time (two to four months) between announcement and implementation should exist in order to allow participants sufficient time to assess the planned change and determine whether to participate in the change or move the assets to a substitute investment. This process enables the Board to exercise its fiduciary duties and still allow participants (and advisors) the ability to move their assets where they deem most appropriate.

For multi-fund portfolios, if the Board determines that a fund warrants replacement, it should work with the Program Manager on a case-by-case basis to consider removal of the fund from the portfolio's fund allocation. A new investment in a multi-fund portfolio must have more competitive performance characteristics than the fund that is being replaced while also maintaining (or enhancing) the integrity and expected results of the asset allocation processes used to construct the portfolio.

All of the above actions require Board approval.

Any new investments shall be closely monitored for an appropriate period of time as determined by the Investment Consultant and may be recommended for placement on Watch for further monitoring.

***Expedited Timeframe - Funds Currently on Watch Requiring Immediate Action***

In the event of unusual or precarious market movements or unforeseen circumstances (such as wholesale change in fund management, rapid deterioration in performance or portfolio composition, material unforeseen factors, etc.) where immediate fund replacement or corrective action may be necessary, as determined by the Investment Consultant, the Board may replace a fund or take corrective action. To expedite the process, SIB should first consider funds that are offered by the Program Manager or an affiliated entity that are appropriate substitutes for the current fund(s). If an appropriate substitute cannot be found from the Program Manager's or affiliated entity's existing fund offerings, then the Investment Consultant may recommend that the SIB consider having:

- the Program Manager subcontract with an affiliated or non-affiliated entity to provide fund management services, subject to SIB approval; or
- the issuance of a Request For Proposals for fund management services by a third-party provider not affiliated with the Program Manager.

If the Board determines that a fund must be removed, the Board should work with the Program Manager to consider removal of the fund from the portfolio's fund allocation. A new investment in a portfolio must maintain or enhance the integrity and expected results of the asset allocation processes used to construct the portfolio while removing the idiosyncratic risk of the fund being replaced.

All of the above actions require Board approval and the Board may delegate by formal action its authority to the Executive Director of SIB or the Chair of SIB, who may authorize a designee to act in its stead.

Any new investments shall be closely monitored for an appropriate period of time as determined by the Investment Consultant and may be recommended for placement on Watch for further monitoring.

As part of the review process, a full screening of the fund universe should be conducted by the Program Manager, in collaboration with the Investment Consultant, in which the Program Manager will provide the Board with one or more recommended alternative funds, which may include funds managed by an alternative fund manager in addition to funds offered by the Program Manager. The Investment Consultant will also provide the Board with a memo expressing its opinion of the Program Manager's recommendation. The Board may elect to remain invested in the Program Manager fund or move the assets to one of the alternative funds.

**Overall Assessment of Program Manager's Investment Services**

The SIB may determine that the Program Manager's overall investment services are unsatisfactory due to either quantitative reasons (sustained poor performance at the asset class and/or fund level) or qualitative reasons (See Definitions of Important Terms). General guidelines regarding the Program Manager's overall investment performance are outlined in Section 6 of the existing contract between SIB and the Program Manager (Agreement No. SIB 15-10).

## V. INVESTMENT PERFORMANCE CRITERIA SCHEDULES

**Table 1a: Actively Managed Funds**  
(Based on net-of-fee asset class performance)

Asset Class	Short-Term (rolling 12-month periods)	Medium-term (rolling 36-month periods)	Long-term (> 60 months)
Domestic Equity	Fund return < bench return -3.5% for 6 consecutive months	Fund return < bench return -1.75% for 6 consecutive months	VRR< 0.97 for 6 consecutive months
International Equity	Fund return < bench return -4.5% for 6 consecutive months	Fund return < bench return -2.0% for 6 consecutive months	VRR< 0.97 for 6 consecutive months
Fixed Income	Fund return < bench return -1.0% for 6 consecutive months	Fund return < bench return -0.5% for 6 consecutive months	VRR< 0.98 for 6 consecutive months
High Yield	Fund return < bench return -6.5% for 6 consecutive months	Fund return < bench return -3.25% for 6 consecutive months	VRR< 0.96 for 6 consecutive months

1<sup>st</sup> 1-12 month performance criteria is not annualized; all other criteria is on an annualized basis.  
Annualized return is the average annual return of either the fund or its benchmark.  
VRR – Value Relative Ratio – is calculated as: fund cumulative return / benchmark cumulative return.

<u>Fund</u>	<u>Asset Class</u>	<u>Benchmark</u>
T. Rowe Price Instl LC Growth	Domestic Equity	Russell 1000 Growth TR USD
T. Rowe Price Instl LC Value	Domestic Equity	Russell 1000 Value TR USD
TIAA-CREF Small Cap Equity	Domestic Equity	Russell 2000 TR USD
TIAA-CREF Real Estate Sec	Domestic Equity	FTSE NAREIT All Equity REITs TR
DFA Large Cap International	International Equity	MSCI World Ex US NR USD
DFA Emerg Mkts Core Equity	International Equity	MSCI EM NR USD
PIMCO Real Return	Fixed Income	BarCap US Trsy US TIPS TR USD
PIMCO Income Instl	Fixed Income	BarCap US Agg Bond TR USD
MetWest Total Return	Fixed Income	BC US Agg Bond TR USD
TIAA-CREF Inflation-Linked Bond	Fixed Income	BarCap US TIPS 1-10 Year TR USD
T. Rowe Price Instl Floating Rate	High Yield	S&P/LSTA Performing Loan TR
TIAA-CREF High Yield	High Yield	BofAML US HY C Pay BB-B Constd TR USD

**Table 1b: Passively Managed Funds**  
(Based on net-of-fee asset class performance)

Asset Class	Short-Term (rolling 12-month periods)	Medium-term (rolling 36-month periods)	Long-term (rolling 60-month periods)
Domestic Equity	Tracking Error > 0.30% for 6 consecutive months	Tracking Error > 0.25% for 6 consecutive months	Fd annlzd return < bench annlzd return -0.30% for 6 consecutive months
International Equity*	Tracking Error > 0.75% for 6 consecutive months	Tracking Error > 0.70% for 6 consecutive months	Fd annlzd return < bench annlzd return -0.30% for 6 consecutive months
Fixed Income	Tracking Error > 0.40% for 6 consecutive months	Tracking Error > 0.55% for 6 consecutive months	Fd annlzd return < bench annlzd return -0.35% for 6 consecutive months

1<sup>st</sup> 1-12 month performance criteria is not annualized; all other criteria is on an annualized basis.  
Annualized return is the average annual return of either the fund or its benchmark.  
VRR – Value Relative Ratio – is calculated as: fund cumulative return / benchmark cumulative return.

\* TIAA-CREF utilizes “fair market value” adjustment procedures for the TIAA-CREF International Equity Index Fund and TIAA-CREF Emerging Markets Equity Index Fund (the Funds). This adjustment increases or decreases the Funds’ actual closing price to compensate for pricing differences between international markets. This procedure can create an artificially high tracking error. Monitoring of the Funds takes this into account and corrects for it where data is available. TIAA-CREF has chosen to implement certain socially responsible investment policies including divesting from companies with major operations in the Sudan. Divesting from companies within the tracking index will create some degree of tracking error. If such divestitures cause tracking error to exceed the monitoring criteria, it is TIAA-CREF’s responsibility to notify SIB and the investment consultant and to quantify the extent to which the divestitures added to tracking error.

Fund	Asset Class	Benchmark
TIAA-CREF Equity Index	Domestic Equity	Russell 3000 TR USD
TIAA-CREF S&P 500 Index	Domestic Equity	S&P 500 TR
TIAA-CREF Intl Equity Index	International Equity	MSCI EAFE NR USD
TIAA-CREF Emerg Mkts Eq Index	International Equity	MSCI EM NR USD
TIAA-CREF Bond Index	Fixed Income	BarCap US Agg Bond TR USD

**Table 1c: T-C Life Funding Agreements**  
(Based on non-investment performance criteria)

Fund Name	Financial Strength	Mortgage Portfolio	Bond Portfolio	Account Diversification
T-C Life Funding Agreement	Moody’s = Aa2 Standard & Poor’s = AA A.M. Best = A+ Fitch = AA	100% in Good Standing	At least 90% Investment Grade	Portfolio is diversified across asset classes and types

**Monitor:** T-C Life Funding Agreements

**Table 1d: Social Choice Fund**  
(Based on net-of-fee asset class performance)

<b>Asset Class</b>	<b>Short-Term (rolling 12-month periods)</b>	<b>Medium-term (rolling 36-month periods)</b>	<b>Long-term (&gt; 60 months)</b>	<b>Morningstar Sustainability Rating</b>
Social Choice	Fund return < bench return -5.0% for 6 consecutive months	Fund return < bench return -2.5% for 6 consecutive months	VRR< 0.90 for 6 consecutive months	Above Average

1<sup>st</sup> 1-12 month performance criteria is not annualized; all other criteria is on an annualized basis.  
Annualized return is the average annual return of either the fund or its benchmark.  
VRR – Value Relative Ratio – is calculated as: fund cumulative return / benchmark cumulative return.

<u>Fund</u>	<u>Asset Class</u>	<u>Benchmark</u>
TIAA-CREF Social Choice Equity	Domestic Equity	Russell 3000 TR USD

## VI. DEFINITIONS OF IMPORTANT TERMS

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### A

**Active Management** – a money-management approach based on informed, independent investment judgment that seeks to add incremental value to that of a benchmark.

**American Depositary Receipt (ADR)** - A negotiable certificate issued by a U.S. bank representing a specific number of shares of a foreign stock traded on a U.S. stock exchange.

**Annualized Performance** – a measure that converts total cumulative performance into an annual average return. Industry practice is to compute the average annual return by compounding monthly return and then computing the geometric mean return.

**Asset Allocation** – the process of dividing investments among different kinds of assets, such as stocks, bonds, real estate, and cash, to optimize the risk/reward tradeoff based on an institution's specific situation and goals.

**Asset Class** – a type of investment, such as stocks, bonds, real estate, or cash, specifically:

- **Domestic Equity** - Ownership interests in U.S.-based corporations in the form of common stock or preferred stock. Domestic equity may include some limited exposure to real estate (REITs) and international stocks (ADRs) as listed on major U.S. stock market exchanges.
- **International Equity** - Ownership interests in non U.S.-based corporations in the form of common stock or preferred stock. International equity may include some limited exposure to global stocks (those involving more than one country, including the U.S.), emerging markets stocks, or other investment offerings as listed on major non-U.S. stock market exchanges.
- **Fixed Income** - Medium and long-term debt obligations of government, government sponsored entities, corporations, and/or other assets that pay a fixed dollar amount. Fixed income may include some limited exposure to structured and synthetic investments such as options and swaps.
- **High Yield** - A fixed income instrument that pays (yields) a higher rate of income (interest) than otherwise equivalent debt due to an increase in risk (such as a higher level of credit/default risk on a corporate bond). Generally, high yield bonds are considered to be those rated 'BB' or lower by one or more of the major rating agencies. High yield investments also include Leveraged Loans which pay a floating rate of interest and are senior to bonds in the capital structure.
- **Short Term** - A fixed income instrument that will expire within a relatively short time frame (often considered to be one year or less). Short Term bonds are highly conservative investments that can be liquidated quickly.



## B

**Barclay's Capital Intermediate Government/Credit Index** – a market value weighted performance benchmark for government and corporate fixed-rate debt issues with maturities between one and ten years.

**Barclay's Capital U.S. Aggregate Bond Index** – an unmanaged index generally representative of the U.S. investment grade fixed income universe. The index includes treasury securities, government agency bonds, mortgage-backed bonds, corporate bonds, and a small amount of foreign bonds traded in U.S.

**Barclay's Capital U.S. TIPS Index** – an unmanaged index generally representative of the U.S. inflation-indexed fixed-income universe.

**Barclay's Capital U.S. TIPS 1-10 Year Index** – an unmanaged index consisting of U.S. Treasury inflation-indexed bonds with maturities between 1 and 10 years.

**Barclay's Capital U.S. Treasuries 5-10 Year Index** – an unmanaged index consisting of U.S. Treasury bonds with maturities between 5 and 10 years.

**Benchmark** – a standard used for comparison. For example, the S&P 500 is a widely used benchmark thought to be representative of the domestic stock market as a whole.

**Benchmark Annualized Return** – the conversion of a benchmark's (e.g. S&P 500) cumulative gain or loss activity into an average annual return.

In the case of a contract, an agreement with the contracting entity can include agreements with a third-party to provide services. All of the terms under the signed contract typically apply to all the services provided by the multiple parties or service provider.

**BofAML US HY C Pay BB-B Index** – is an unmanaged index comprised of publicly placed, non-convertible, coupon bearing domestic debt. Issues in the index are less than investment grade as rated by Standard & Poor's Ratings Group or Moody's Investors Service, Inc., and must not be in default. The index focused on higher rated high yield securities. The index is limited to constituents possessing either a BB or B rating.

**Buy/Sell Disciplines** – describes under what conditions, and how frequently, a security is to be bought and sold.

## C

**Composite** – a combination or group of select securities.

## D

**Direct Plan** – a plan sold through which participants can invest without paying a "load," or sales fee. This type of plan, which you can buy directly from the program manager without the assistance of a broker, is generally less expensive because it waives or does not charge sales fees that may apply to advisor-sold plans.

**Diversified Approach** – a portfolio strategy designed to reduce exposure to risk by combining a variety of investments, such as stocks, bonds, and real estate, which are unlikely to all move in the same direction.

**Domestic Equity** – see Asset class for description.

**Dow Jones Wilshire 5000 Index** – a market capitalization-weighted index composed of approximately 5,000 publicly-traded companies that is designed to track performance of the U.S. stock markets.

## E

**Execution Costs** – the costs associated with completing a buy or sell of an asset or investment.

**Externally Managed Mutual Funds** – a portfolio of investments managed by a third party, outside of the Trust, for a stated fee.

## F

**FID Strategic Income Composite (Blended Benchmark)** – consists of 40% Merrill Lynch US High Yield Constrained Index, 15% Citigroup Non-US G7 Index, 30% Barclay's Capital U.S. Government Bond Index, and 15% J.P. Morgan EMBI Global Index.

**Fiduciary Responsibility** – a legal authority and ethical duty to make decisions regarding financial matters on behalf of another party

**Fixed Income** – see Asset class for description.

**FTSE NAREIT All Equity REITs Index** – is a free float adjusted market capitalization weighted index that includes all tax qualified REITs listed in the NYSE, AMEX, and NASDAQ National Market.

**Fund (or Mutual Fund)** – an investment portfolio that is managed by an external professional investment management firm. A mutual fund is typically highly diversified (after taking into account the investment firm's unique philosophy and approach) and includes investments on behalf of many share or unit holders. Mutual funds are "regulated investment companies" registered with the Securities and Exchange Commission.

**Fund Annualized return** – the conversion of a fund's cumulative gain or loss activity into an average annual return.

**Fund Review** – a review of a mutual fund's performance describing how the fund may be failing to meet specific criteria. This document is typically produced when a fund is placed on watch status.

## H

**High Yield** – see Asset class for description.

## I

**Investment Approach/Strategy** – the method employed by the mutual fund to achieve its stated added value quantitative.

**Investment Guidelines** – a list of requirements and criteria agreed upon by the fund and its client to achieve the portfolio's investment quantitatives. Such guidelines can include items such as (i) the types of asset to be employed, (ii) the maximum amount of exposure to any one security, (iii) maximum or minimum percentages of each type of asset, etc.

**Investment Manager or Investment Management Firm** – an organization responsible for investing assets on behalf of clients.

**Investment Options** – see Section I., Background for description.

**Investment Performance** – the gain or loss of a mutual fund, typically described in percentage terms.

**Investment Performance Criteria** – pre-determined expectations set for the fund, which are used to evaluate whether the fund is meeting its investment performance quantitative.

**Investment Risk** – the volatility of an investment's performance, with emphasis on the measurable possibility of an investment losing, or not gaining value.

**Investment Style** – a philosophy or approach of investing typically held by a broad group of investors (i.e., growth investors, value investors, etc.).

**International Equity** – see Asset class for description

## M

**Management Fees** – the fee charged by a fund's investment advisor for managing the fund.

**Merrill Lynch U.S. High Yield Master II Index** – an unmanaged index comprised of publicly placed, non-convertible, coupon bearing domestic debt. Issues in the index are less than investment grade as rated by Standard & Poor's Ratings Group or Moody's Investors Service, Inc., and must not be in default. Issues have a term to maturity of at least one year.

**MSCI All Country World (ACWI) xUS Index** – an equity performance measurement by Morgan Stanley Capital International of developed markets (Europe, Australia, Far East) and emerging markets excluding the U.S.

**MSCI Emerging Markets (EM) Index** – is a free float-adjusted market capitalization index that is designed to measure equity market performance of emerging markets. The index consists of the following 21 emerging market country indices: Brazil, Chile, China, Colombia, Czech Republic, Egypt, Hungary, India, Indonesia, Korea, Malaysia, Mexico, Morocco, Peru, Philippines, Poland, Russia, South Africa, Taiwan, Thailand, and Turkey.

**MSCI USA IMI ESG Index** – formerly the FTSE KLD US All Cap Sustainability Index. This benchmark, developed by Morgan Stanley Capital International (MSCI), holds companies with the highest environmental, social and governance (ESG) criteria in each sector of the U.S. equity market.

**Multi-fund Options** – investment options comprised of more than one individual fund.

## O

**Ongoing Monitoring** – continual (quarterly) evaluation of the qualitative and investment performance aspects of a funds' management and practices to determine their ability to continue to add value and meet pre-established criteria.

**Options** – a privilege sold by one party to another that offers the buyer the right, but not the obligation, to buy (call) or sell (put) a security at an agreed-upon price during a certain period of time or on a specific date.

**Organizational Structure** – a description of a fund's business-related characteristics such as personnel and team structure as well as its decision-making hierarchy.

**Outperformance** – when the result of activities of an investment over a given period of time exceeds expectations (i.e. the result of a growth-oriented fund is better than an assigned benchmark such as the Russell 3000 Growth Index).

## P

**Participants** – individuals electing to take part in the Trust's investment program by contributing assets to the investment options provided by the Trust.

**Passive Management** – a money-management approach that seeks to match the return and risk characteristics of a market or benchmark.

**Periodic Monitoring** – regular (annually, semi-annually) evaluation of the qualitative aspects of a fund's management and practices to determine if they meet pre-established criteria.

**Portfolios** – a stand alone (individual) investment or a collection of multiple investments. In most cases, these investments are mutual funds but may be separate accounts, such as the Social Choice portfolio. One or more portfolios may also represent an asset class. The term 'Portfolio' is also used to describe various participant options..

**Program Manager Fee** – the fee charged by the program administrator.

## Q

**Qualitative Considerations** – factors taken into account when assessing the Program Manager's overall performance in providing investment management services.

**Quantitative Considerations** – factors taken into account when assessing the Program Manager's overall investment performance.

**Quarterly** – a three-month period within one year (typically ending on 3/31, 6/30, 9/30, 12/31).

**Quarterly Performance** – the result of investment activities within a three-month period.

## R

**Rolling Periods** – specific time periods that are selected to include a finite amount of days, months, quarters, or years in which as the next unit (i.e. day) is entered, the earliest one from the past set is dropped retaining the finite number.

**Russell 1000 Index** – measures the performance of the 1,000 largest companies in the Russell 3000 Index.

**Russell 2000 Index** – measures the performance of the 2,000 smallest companies in the Russell 3000 Index, which represents approximately 8% of the total market capitalization of the Russell 3000 Index.

**Russell 3000 Index** – measures the performance of the 3,000 largest U.S. companies based on total market capitalization, which as of June 2011 reconstitution represented approximately 98% of the investable U.S. equity market.

**Russell 3000 Growth Index** – measures the performance of those Russell 3000 companies with higher price-to-book ratios and higher forecasted growth values.

**Russell 3000 Value Index** – measures the performance of those Russell 3000 companies with lower price-to-book ratios and lower forecasted growth values.

**Russell Mid Cap Index** – measures the performance of the smallest 800 companies in the Russell 1000 Index.

**Russell Mid Value Index** – measures the performance of those Russell Mid Cap companies with lower price-to-book ratios and lower forecasted growth rates.

## S

**S&P 500 Index** – a performance measurement of the stocks of 500 high quality companies as judged by the Standard & Poor's corporation. This index is widely used and thought to be representative of the entire U.S. stock market.

**S&P/LSTA Performing Loan Index** – an index designed to reflect the largest loan facilities in the leveraged loan market. It mirrors the market-value-weighted performance of the 100 largest institutional leveraged loans based upon actual market weightings, spreads and interest payments.

**S&P Mid Cap 400 Index** – a market capitalization-weighted index composed of 400 stocks, including reinvestment of dividends that is generally considered representative of mid-sized U.S. companies.

**Short term** – see Asset class for description.

Stand Alone Fund – an individual mutual fund that represents an entire offering as part of the program's investment options.

Status Report – a quarterly evaluation of a fund's performance while designated as being on Watch. This report reviews the reason for the fund being on Watch, for how long, and if the fund is addressing the issues pertaining to Watch.

**Structured Security** – a debt security with one or more special features, such as making payments based on an underlying index.

**Style** – a behavior of portfolio returns caused by an investment manager's investment philosophy and portfolio construction processes.

**Synthetic Security** – a security that is artificially created involving two or more instruments that has the same risk-reward profile as a strategy involving only one instrument.

**Swaps** – the exchange of one security for another to change the maturity (bonds), quality of issues (stocks or bonds), or because investment quantitatives have changed.

## T

**T-C Life Funding Agreements** – TIAA-CREF Life Insurance Company (T-C Life) investment portfolio which supports the various guaranteed fixed annuities. The General Account primarily invests in corporate and government bonds, structured finance instruments (such as mortgage-backed securities) and real estate.

**Three-Month T-Bill** – the 3-month T-Bill is an index that is typically constructed using a single issue U.S. Treasury purchased at the beginning of the month and held for a full month. Each month the index is rebalanced and the issue selected is the outstanding Treasury Bill that matures closest to, but not beyond, 3 months from the rebalancing date.

**Tracking Error** – the amount by which the performance of the portfolio typically differs (either plus or minus) from that of the benchmark.

## U

**Underlying Funds** – a set (two or more) of mutual funds that together comprise an offering as part of the program's investment options.

**Underperformance** – when the result of activities of an investment over a given period of time falls short of expectations (e.g. the result of a typical equity portfolio is lower than an assigned benchmark).

## V

**Value Relative Ratio** – a measure of a mutual fund's effectiveness by comparing a fund's return data to the specified benchmark. Calculated as "Fund Cumulative Return/Benchmark Cumulative Return."

## W

**Watch** – a condition assigned to a fund indicating that the fund's investment performance or other qualitative factors do not meet pre-determined criteria. This status allows time for the fund to take corrective action before being terminated.

**STANDARD AGREEMENT - SCHEDULE 3.2**

SUBCONTRACTORS

Pursuant to Section 3.2 of Exhibit E, SIB hereby approves the following entities as subcontractors:



## **STANDARD AGREEMENT - SCHEDULE 6.2**

The current investment performance criteria for the Direct Plan are detailed in the Investment Performance Criteria Schedules of the ScholarShare Monitoring Procedures and Criteria, attached as Appendix 3 to this Agreement. [The current investment objectives are shown below. SIB anticipates that these objectives will change as outlined in the winning RFP proposal and the Agreement.]

### **INVESTMENT OBJECTIVES FOR INVESTMENT OPTIONS**

#### **Investment Objectives for Portfolios Investing in Mutual Funds**

- The investment objective of each changing allocation pool shall be capital appreciation with reasonable safety of principal, consistent with the ages of the beneficiaries. For younger beneficiaries, the Investment Manager shall place a greater emphasis on capital appreciation. For older beneficiaries, the Investment Manager shall place a greater emphasis on preservation of capital.
- There shall be three types of static allocation pools. The first type shall be invested 100% in equity mutual funds at all times. The second type shall be invested approximately 70% in equity mutual funds and 30% in bond mutual funds at all times. The third type shall be invested approximately 45% in bond mutual funds and 55% in money market mutual funds at all times.
- The investment objective of the first type of static allocation pool shall be growth of capital over the long term.
- The investment objective of the second type of static allocation pool shall be to earn a competitive total return over the long term by allocating its assets among stock and bond mutual funds.
- The primary investment objective of the third type of static allocation pool is preservation of capital by allocating its assets among bond and money market mutual funds. Income is a secondary objective.
- There shall be pools that invest in a single underlying mutual fund. The investment objective of each such pool shall be the same as the investment objective of the mutual funds in which it invests.

#### **Investment Objective for Social Choice Portfolio**

- The investment objective of the Social Choice Portfolio is to provide capital market exposure and returns in line with the Russell 3000 index while giving special consideration to certain environmental, social and governance (ESG) criteria.

#### **Investment Objective for Principal Plus Interest Portfolio**

- The investment objective of the Principal Plus Interest Portfolio is to seek the preservation of principal.

**STANDARD AGREEMENT - SCHEDULE 8.2**

**SCHOLARSHARE ADMINISTRATIVE PERFORMANCE CRITERIA**

The current ScholarShare Administrative Performance Criteria for the Direct Plan are detailed on the following pages of Schedule 8.2. [SIB anticipates that these performance criteria will change as outlined in the RFP and Agreement.]



**SCHOLARSHARE 529 COLLEGE SAVINGS PLAN  
ADMINISTRATIVE PERFORMANCE CRITERIA  
(EFFECTIVE AS OF JANUARY 27, 2020)**

**ADOPTED BY THE SCHOLARSHARE INVESTMENT BOARD ON DECEMBER 19, 2019**

**These benchmarks represent minimum performance standards. The ScholarShare Investment Board fully expects the program manager to make every effort to exceed these standards.**

<p><b>Financial – New Accounts, Contributions, Redemptions</b></p>	<p>All correspondence related to financial transactions and dealing with service and account administration issues, including but not limited to, account processing and changes to accounts. Most correspondence is system generated letters.</p> <ul style="list-style-type: none"> <li>▪ <i>Accuracy (Correspondence):</i> Quality controls are performed on the financial and non-financial correspondence before it is sent to participants. No accuracy measurement is tracked since the letters are mostly system generated.</li> <li>▪ <i>Accuracy (Transactions):</i> 98% of new accounts set up and transactions/items processed accurately.</li> <li>▪ <i>Timeliness:</i> 99% of all items processed on day of receipt prior to the New York Stock Exchange (NYSE) close if in good order, or if received in good order after the NYSE close or on a non-business day, the next business day.</li> </ul> <p>Note: For items not received in good order, best efforts are made to promptly contact the Account Owner to resolve the matter either by phone or in writing.</p>
<p><b>Service Concerns and Compliance Inquiries</b></p>	<p>All service concerns or complaints are responded to by TFI with oversight from a Registered Principal. Quality controls are performed by a Registered Principal before the response letter is sent to participants.</p> <ul style="list-style-type: none"> <li>▪ <i>Timeliness:</i> 100% of service concerns and complaints are responded to within seven (7) business days.</li> </ul>
<p><b>Confirmations and Statements</b></p>	<p><b>Daily Confirmations:</b> Mailed every time ScholarShare participants make an account transaction.</p> <ul style="list-style-type: none"> <li>▪ <i>Accuracy:</i> 98% of confirmations are accurate upon distribution.</li> <li>▪ <i>Timeliness:</i> 100% of daily confirmations are mailed within five (5) business days following the transaction.</li> </ul> <p>Note: Confirmations are not sent for each payroll direct deposit or recurring contributions.</p> <p><b>Quarterly/Annual Account Statements:</b> 100% of statements (three (3) quarterly and one (1) annual statement) are prepared and delivered via mail, posting to the online account and/or electronic notification (email) to each Account Owner within five (5) business days following the transaction date or quarter end in keeping with the regulatory requirements.</p>

<p><b>Tax Reporting</b></p>	<p><b>Federal Tax Reports:</b></p> <ul style="list-style-type: none"> <li>▪ <i>Accuracy:</i> 100% of federal tax reports mailed to distributees and to the IRS are accurate.</li> <li>▪ <i>Timeliness:</i> 100% of IRS 1099-Q forms shall be prepared and distributed in accordance with Applicable Law which at this time requires the forms to be prepared and distributed by January 31<sup>st</sup> of the following calendar year.</li> </ul> <p><b>State Tax Reports:</b></p> <ul style="list-style-type: none"> <li>▪ <i>Accuracy:</i> 100% of state tax reports mailed are accurate.</li> <li>▪ <i>Timeliness:</i> 98% of state tax reports are mailed to the Franchise Tax Board by February 28<sup>th</sup> (via tape) or by March 31<sup>st</sup> (via electronic transmission) in accordance with State Tax law.</li> </ul>
<p><b>Enrollment Kit Processing</b></p>	<p><b>Enrollment Kits Mailed:</b></p> <ul style="list-style-type: none"> <li>▪ <i>Timeliness:</i> 98% of enrollment kits are mailed within five (5) business days of receiving the request.</li> </ul>
<p><b>Call Center</b></p>	<p><b>Answer Time - Within 30 Seconds:</b> 85% of customer calls are answered within 30 seconds.</p> <p><b>Abandonment Rate:</b> Less than 2% of customer calls are abandoned (when a caller hangs up after connecting, but before speaking with a representative).</p>
<p><b>Systems</b></p>	<p><b>Availability:</b> In the event of a system wide outage, TFI will notify the State within one (1) calendar day of the event. Unless impossible under the circumstances, TFI will notify the State of system outages in advance and will provide the State with estimates for how long systems will be down.</p> <p>All services and websites visible to Account Owners shall be available 98% of the time, 24 hours per day and 365 days per year exclusive of scheduled maintenance.</p> <p><b>Nightly Cycle Timeliness:</b> 98% of nightly files are processed before 8:00 AM PT. the following day.</p>
<p><b>Reports</b></p>	<p><b>Weekly Reports:</b> All agreed upon Plan statistics and metrics will be provided in weekly reports to the State. These reports will be received by the State no later than Wednesday of each week.</p> <p><b>Monthly Reports:</b> All agreed upon Plan statistics and metrics will be provided in monthly reports to the State. These reports will be received by the State no later than seven (7) business days from the end of the month.</p> <p><b>Quarterly Reports:</b> All agreed upon Plan statistics and metrics will be provided in quarterly reports to the State. These reports will be received by the State no later than 45 business days from the end of the quarter.</p>

<b>Deadlines, Inquiries, and Document Review</b>	<ul style="list-style-type: none"><li>• When a deadline is mutually agreed to by TFI and the State, that deadline will be met without exception. TFI and the State may agree upon a requested extension in writing, by letter or e-mail. This provision refers to all materials and projects generated by TFI, including reports, updates, marketing materials, and Web site updates.</li><li>• Inquiries or requests for information made by the State of TFI will be addressed by TFI within five (5) days of the initial request, unless another date is mutually agreed to in writing.</li><li>• TFI will allow the State to review and approve all final copies of all form letters, Web pages, annual reports and any other documents that will be distributed to or viewed by participants or the public, before these documents are sent out.</li><li>• When TFI provides the State with documents to be reviewed, TFI will allow the State a minimum of five (5) business days for review, unless otherwise mutually agreed upon in writing.</li></ul>
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Note: TIAA-CREF Tuition Financing, Inc. (TFI) constantly strives for excellence in all client experiences. The Performance Measurement standards are designed as a benchmark and service strategies are based upon dynamic forecasting models that factor in variables such as, but not limited to, historical volumes, trends and season peaks. Again, while striving for excellence, these benchmarks may be deemed unreasonable if there is an unexpected increase in volume due to unforeseen events such as market incidents, natural disasters, etc. Through our subcontractor Ascensus, we will continue to engage National Quality Review (NQR), an independent third party, to evaluate elements of processing and call center quality including, but not limited to accuracy, timeliness and completeness of information.

**STANDARD AGREEMENT - SCHEDULE 8.4**

ADMINISTRATIVE AND OTHER REPORTS

Performance

- Report on Investment Performance, Marketing Performance and Administrative Performance (due quarterly and annually)
- Report on Accounts, Assets, Contributions, Investment Results, Administration (due monthly and quarterly)

Investments

- Report on Compliance with Investment Policy (due monthly)
- Report on Investments as required by the Act (due monthly)

Marketing

- Report on Marketing Activities (due monthly)
- Report on Ongoing and Completed Marketing Efforts (due quarterly)

Administration

- Report on Records Administration and Customer Service (due monthly and/or quarterly)
- Annual Audited Financial Reports (due annually)
- Annual Report to Account Owners/Beneficiaries (due annually)
- Tax Reports to Internal Revenue Service, Franchise Tax Board, Account Owners/Beneficiaries (due annually)