

**NOTE: If Program Administration and Investment Management Services are awarded to different Bidders the final executed Agreement will include only those provisions set forth below that the Board deems relevant to the Services being rendered.**

## **ADDITIONAL PROVISIONS**

### **1. DEFINITIONS.**

"*Account*" means an individual retirement account or individual retirement annuity under Section 408(a), 408(b), or 408A of Title 26 of the United States Code established with the Program.

"*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less (a) net losses attributable to such Account, (b) any Withdrawals directed by the Account Owner, (c) any fees withdrawn from such Account in accordance with this Agreement, and (d) any federal or state tax withholding, if applicable.

"*Account Owner*" shall be the Eligible Employee for whose benefit the Account has been established.

"*Act*" shall mean the California Secure Choice Retirement Savings Trust Act Government Code section 100000 et seq and related provisions, as amended from time to time.

"*Administrative Performance Criteria*" shall mean the performance standards applicable to the Administrative Services as may be approved by the Board.

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

"*Agreement*" shall mean this Agreement, Exhibit C, and Exhibit D entered into between the Board and the Contractor.

"*Applicable Law*" shall mean all applicable laws, regulations, judgments, decrees, injunctions, writs and orders of any court, tribunal, arbitrator or Governmental Authority and rules, regulations, orders, licenses and permits of any Governmental Authority or Regulatory Body, including without limitation, all IRA Requirements, and all proposed and existing regulations, and Securities Exchange Commission ("SEC") requirements applicable to the Contractor or the Program. Any references to federal or state statutes or regulations shall be deemed to include a reference to any amendments thereof and any successor provisions thereto.

"*Award*" shall mean the award of the Agreement.

"*Beneficiary*" shall mean the person or persons entitled to receive all or a portion of the Account in the event of the Account Owner's death.

"*Board*" shall mean the California Secure Choice Retirement Savings Investment Board established pursuant to the Act.

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

"Code" shall mean the United States Internal Revenue Code, as amended from time to time.

"Contractor's Proposal" shall mean the Contractor's response to the RFP and any additional materials supplied to the Board prior to the Award.

"Eligible Employee" shall mean any Employee of an Eligible Employer who is at least eighteen years of age, provided however, that an Eligible Employee does not include: (i) Any Employee on whose behalf an employer makes contributions to a Taft-Hartley pension trust fund; (ii) any Employee covered under the federal Railway Labor Act (45 U.S.C. Sec. 151), or (iii) any Employee engaged in interstate commerce so as not to be subject to the legislative powers of the state, except insofar as application of this title is authorized under the United States Constitution or laws of the United States.

"Eligible Employer" shall mean an Employer, as defined in this Agreement, that has five or more Employees and does not provide a Tax-Favored Retirement Plan.

"Employee" shall mean any individual who is a resident of California, or a non-resident with California source income, under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee under Unemployment Insurance Code Sections 621 et seq and who receives an IRS Form W-2 with California wages from an Eligible Employer.

"Employer" shall mean an individual or non-governmental entity engaged in a business, industry, profession, trade, or other enterprise in the state, whether for profit or not for profit, determined to be an employer under common law rules applicable in determining an employer-employee relationship, except as provided in subdivisions (b)-(d) in Unemployment Insurance Code Section 606.5."

"ERISA" shall mean The Employee Retirement Income Security Act of 1974, as amended.

"Executive Director" shall mean the Executive Director, or designee, of the Board.

"FINRA" shall mean the Financial Industry Regulatory Authority.

"Gifter" shall mean any Person other than an Account Owner who contributes an amount to an Account.

"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.

"Individual Retirement Account" shall mean an individual retirement account as defined in Section 408(a) of the Code, or a Roth IRA as defined in Section 408A of the Code, as applicable.

"Investment Options" shall mean the options for investment of Accounts in the Trust, to be made available 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 to be set forth in the Monitoring Procedures to be adopted by the Board and attached as Appendix 3 to this Agreement.

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

"*Investment Services*" shall mean the Investment Services and related services to be provided by the Contractor in connection with the Program as provided in this Agreement.

"*IRA Requirements*" shall mean all federal tax laws, regulations, court decisions, and IRS guidance applicable to IRAs, including without limitation the regulations and guidance applicable to payroll deduction IRAs.

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

"*Key Investment Professional*" shall mean a professional decision maker whose action or advice as part of an Investment Option's or an Underlying Investment's decision-making process normally contributes to performance results.

"*Marketing Performance Criteria*" shall mean the performance standards applicable to the Marketing Services as may be approved by the Board.

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

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

"*Monitoring Procedures*" shall mean Monitoring Procedures and Investment Performance Criteria to be adopted by the Board and, when adopted, will be 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 Underlying Investment and each Investment Option at the close of trading on every Business Day.

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

"*Person*" shall mean a natural person or any entity.

"*Program*" shall mean the California Secure Choice Retirement Savings Program" offered by the California Secure Choice Retirement Savings Trust, and shall include any pilot program as defined in the California regulations, as amended, which are adopted for this Program.

"*Program Lists*" shall mean all lists, compilations and summaries of Account Owners, Beneficiaries, Eligible Employees, Eligible Employers, 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 and administration of the Program, including the Marketing Plan, the Program Disclosure Booklet, the Participation Agreement, the Program websites maintained by the Contractor, and any marketing materials, the application used to establish an Account, and other materials deemed necessary for the implementation of the Program.

*"Program Records"* shall mean the Program Materials, Program Lists, logos, slogans, trademarks, copyrighted materials and website content and marketing specific to the Program all as set forth in Section 15.1 of this Exhibit E.

*"Program Start Date"* shall mean a date to be determined based on the date contract is awarded, but likely a date during the [third quarter of 2018].

*"Program Year"* 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.

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

*"Request for Proposals"* or "RFP" shall mean Request for Proposals No. CSCRSIB07-17, for Program Administrator and Investment Management Services for the California Secure Choice Retirement Savings Program.

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

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

*"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 applicable 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 or Regulatory Body 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 Program.

*"State"* shall mean the State of California and, in certain instances, the Board 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 the Board in accordance with the provisions of Section 3.3 of this Exhibit E.

*"Tax-Favored Retirement Plan"* shall mean an employer-sponsored retirement plan; including but not limited to: defined benefit plans (e.g., single employer plans and Taft-Hartley Plans), defined contribution plans (e.g., Keough and 401(k)), Simple 401(k), Simplified Employee Pension ("SEP-

IRA") plans, and Savings Incentive Match Plan for Employees ("SIMPLE") plans; and automatic payroll deduction IRAs that qualify for favorable federal income tax treatment under the Internal Revenue Code.

"Term" shall mean the Initial Term together with any Extension Term or Terms as applicable in accordance with Section 13.1 of this Exhibit E.

"Trust" shall mean the California Secure Choice Retirement Savings Trust established by the Act.

"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 without regard to how the proceeds of such distribution will be used.

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

- (a) 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.
- (b) 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 Law; (ii) the terms and conditions of Exhibits A through E of this Agreement, including attachments; (iii) the RFP; (iv) Contractor's Proposal; and (v) any other provisions, terms, or materials incorporated herein.
- (c) 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**

The Board 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 the Board, the Executive Director, and employees of the State, and any consultants, advisors, auditors or legal counsel designated by the Board to review, evaluate or otherwise advise regarding the Trust or the Program.

### 3.2 General Duties.

- (a) The Contractor will provide overall management services for the compliance, investment, marketing, administration, recordkeeping and customer service functions of the Program in compliance with all RFP requirements and this Agreement.
- (b) The Contractor will manage the Program in compliance with all Applicable Law, including without limitation, the IRA Requirements and Securities Law Requirements.
- (c) In the event Applicable Law changes during the Term, the Contractor will comply with final rules and regulations once issued to the satisfaction of the Board.
- (d) On an ongoing basis, the Contractor will monitor for changes in the legal and regulatory environment that may materially affect Account Owners or the Program, and it will make recommendations for amendments or supplements to the Program processes and offering materials.
- (e) The Contractor must adhere to the Board's applicable standards and policies, as and when adopted by the Board. The Contractor must comply with the Americans with Disabilities Act ("ADA") and Section 508 of the Rehabilitation Act for any disclosures, plan descriptions, participation agreements and Program forms, and website.
- (f) 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 Applicable Law.
- (g) The Contractor will designate a dedicated Key Personnel (as defined in Section 3.6 below) team to serve the Board and it will notify the Board 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.
- (h) All work to be performed by the Contractor will be reviewed by the Board or its designee. Such review will not relieve the Contractor of any liability in connection with such work.
- (i) The Contractor may not engage an affiliate or a third party (including an approved subcontractor) to do anything on its behalf that the Contractor is prohibited from doing directly under this Agreement.
- (j) The Contractor must assist the Board with launching the Program by third quarter of 2018.

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

- (a) The Board approves the delegation and assignment by subcontract to the specific entities of the particular Services under this Agreement by the Contractor as set forth in the Contractor's Proposal, subject to the terms of a written subcontract approved in writing by the Board. 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 the Board, 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 3.3.
- (b) No delegation or subcontract by the Contractor pursuant to this Section 3.3 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 the Board, unless waived in whole or in part by the Board, that:

- (i) the subcontractor agrees to discharge the Services and perform the obligations of the Contractor to which such subcontract applies in accordance with the applicable provisions of this Agreement;
  - (ii) the Board 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 the Board;
  - (iv) that the subcontract may not be assigned without the prior written consent of the Board; and
  - (v) such other requirements as the Board may reasonably request.
- (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 the Board, shall assist the Board in enforcing such obligations and provisions.

#### 3.4 Standard of Care.

- (a) The Contractor acknowledges that it has fiduciary duties to the Board, the Program, the Trust, the Account Owners through Applicable Law for Services it provides (or causes to be provided) pursuant to this Agreement; provided, however, that the Board acknowledges that the Contractor does not provide investment advisory services directly to the Account Owners.
- (b) The Contractor acknowledges that it shall hold the assets of the Trust and administer the Accounts and amounts deposited therein on behalf of the Board and the Account Owners thereof and that it is subject to the requirement to use prudence and care in its respective dealings with the Trust, the Underlying Investments, and other assets held within the Trust, in accordance with Applicable Law and such other fiduciary requirements to which it is subject, if any.
- (c) The Contractor specifically agrees that in performing its duties and obligations 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, the Underlying Investments and other assets held within the Trust, the Accounts and Account Owners, 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 Program and the Trust solely in the interest of the Board and the Account Owners.

#### 3.5 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 the Board or the Program by such performance or use pursuant to this Agreement. The Contractor warrants that all employees

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

### 3.6 Contractor's Key Personnel

(a) The key members of the Contractor's staff will be identified in Attachment 6 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 the Board, 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, record keeping and customer service.

### 3.7 Changes in Control, Organization or Key Personnel

(a) The Contractor shall promptly, and in any case within five (5) calendar days, notify the Board 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, including resumes, to permit the Board to evaluate the changes within Contractor's organization under the same criteria as was used by the Board in its award of this Agreement to Contractor. The Contractor agrees to promptly provide the Board with such additional information as requested by the Board.

(b) During the Term of this Agreement, the Contractor shall notify the Board 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 the Board, then promptly after such a change.

(c) In the event of any changes to Key Personnel, the Contractor will immediately designate interim Key Personnel and, within six (6) months, permanent Key Personnel in conjunction with the notice provided pursuant to Section 3.7(a).

(d) The Board 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 3.7(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 paragraph 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 the Board shall take all action necessary for the Program Start Date to be in third quarter of 2018.

## **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 in writing by the Board and the Contractor):



(a) Representations and Warranties. Each of the representations and warranties made by the Board 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 by the Contractor in such form and substance as shall be mutually acceptable to the Board and the Contractor.
- (ii) Certificate of the Board. The Board 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 the Board and the Board's duties and responsibilities with respect to the Program 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 Board to make any representations as to the portions of the Program Disclosure Booklet describing the Contractor, and the investment risks associated with the Program 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 the Board 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 Program (including such duties and responsibilities which have been delegated or subcontracted pursuant to Section 3.3 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. The Contractor shall immediately notify the Executive Director in the event the representations in Contractor's certificate delivered pursuant to this Section 5(b) are no longer true or accurate. As soon as reasonably practicable following the delivery of such notice, the Contractor and the Executive Director shall consult as to whether modifications to the Program Disclosure Booklet are necessary or appropriate. The Contractor shall provide all reasonable assistance in connection with any revisions to the Program Disclosure Booklet resulting from such consultations. 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 Program of the Board or any other Persons (other than any Person to whom duties are delegated or subcontracted by the Contractor in accordance with Section 3.3 of this Exhibit E).

(c) Structuring of the Program. The Board and the Contractor shall have developed and agreed to the terms of the Program with the intent that the Program comply with all Applicable Law.

(d) Opinion of Contractor's Counsel. An opinion of counsel shall have been provided by the Contractor addressed to the Board, and addressing the matters to which the Contractor has delivered its certificate pursuant to Section 5(b)(iii) of this Exhibit E and with respect to its representations and warranties set forth in Section 10 of this Exhibit E.

(e) 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.

(f) Initial Marketing Plan. The Executive Director of the Board shall have reviewed and approved the initial Marketing Plan required to commence the marketing and selling of the Participation Agreements.

(g) 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 the Board and shall be finalized by the Contractor and available for such use.

(h) Administrative Systems. The Contractor shall have demonstrated to the satisfaction of the Board its ability to accept applications for Participation Agreements, to receive contributions and to establish Accounts in accordance with the Program requirements.

(i) Performance Guarantee. Unless otherwise agreed upon, the Contractor shall have delivered a performance guarantee, an irrevocable letter of credit or a contract bond, as described in Section 12.10 of this Exhibit E.

## **6. INVESTMENT SERVICES**

### **6.1 Creation of the Trust**

(a) The Contractor shall manage the Program in accordance with all Applicable Law (including without limitation the Code and the Act), 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 9.4 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 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 the Board 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; (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, or (iii) withhold taxes if required by Applicable Law.

### **6.2 Investment Policies**

(a) The Contractor must develop and recommend investment options, underlying investments and fee structures to appeal to retirement savers with various risk tolerances and varying contribution levels. Investments should be simple yet offer maximum flexibility to satisfy various Account Owner objectives and needs.

(b) The Contractor may recommend a proprietary line-up of Underlying Investments, investments from a single investment manager, or investments from multiple investment managers. In either case, the Contractor must support its recommendations to the Board, demonstrating the superiority of the recommendation over other possible investment line-ups.

(c) The Board must approve any and all recommended investment options. Per statute, the Board will establish a Statement of Investment Policy ("Investment Policy Statement") for the Program upon engagement of an investment consultant. The Contractor shall comply with the terms of the Investment Policy Statement, which shall be developed in cooperation with the Board and the Board's consultants.

- (d) The Contractor shall invest and manage the assets of the Trust in a manner to ensure that the Investment Options and the Underlying Investments shall be in compliance with Section 6.3 of this Exhibit E and the Investment Policy Statement to be adopted at all times. Each Underlying Investment shall be invested in assets described in the Investment Policy Statement. Upon engagement of an investment consultant, the Board will establish Monitoring Procedures and Investment Performance Criteria with which the Contractor will comply and by which the Contractor's performance will be measured. The Contractor must also demonstrate that it (and any investment management subcontractor) has rigorous internal monitoring procedures in place for all funds and other investment vehicles proposed as Underlying Investments. The Contractor shall provide regularly scheduled investment performance reports compared to agreed-upon benchmarks.
- (e) On at least a quarterly basis, and more frequently as requested or as necessitated by its fiduciary duty, the Contractor must inform the Board about significant changes in the investment climate, market conditions or investment philosophies that could affect Program investments.
- (f) The Contractor will provide to the Board a quarterly report describing the Contractor's compliance with the Investment Policy Statement in addition to the information set forth in Section 6.7 of this Exhibit E.

### 6.3 Investment Performance and Benchmarks

- (a) Except as otherwise agreed to by the Board and the Contractor, the Contractor shall at all times seek to provide performance consistent with Investment Performance Criteria for each Investment Option managed on behalf of the Board. The Contractor shall at all times adhere to all policies, procedures, and criteria as set forth in the 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) The Board shall assess the Contractor's overall performance in providing investment management services with consideration of, but not limited to, the following: level of the Board's confidence; material organizational changes pertaining to investment management operations; turnover of Key Personnel; adherence to investment mandates as determined by the Board; modifications to the Trust's active/passive allocation structure (due to performance related issues); relative performance of Investment Options; its compliance with Applicable Law, and the quality and speed of investment reporting functions.
- (c) Based on the performance of an Underlying Investment, the Contractor shall consider whether it is appropriate to recommend a change in any Underlying Investment and the Board may require a change in any Underlying Investment if the new investment satisfies the requirements in the Monitoring Procedures and the Investment Policy. In the event that the Contractor determines or the Board directs that a change in an Underlying Investment is appropriate or required, the Contractor shall be responsible for making a recommendation to the Board as to a suitable alternative investment. Such recommended investments shall be reviewed by the Board 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 the Board in writing prior to its implementation.
- (d) The Board shall have the right to 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) the Board reasonably determines that such a change is in the best interests of the Account Owners.

#### 6.4 Allocation Guidelines

The Contractor shall invest the assets in each of the Underlying Investments so that such assets are allocated as established by the Contractor and approved by the Board from time to time (the "Allocation Guidelines"). The initial Allocation Guidelines shall be the allocation guidelines established by the Contractor and approved by the Board as set forth in the Investment Policy Statement.

#### 6.5 Contributions; Accounts

The Contractor shall establish an individual Account in the Trust as it relates to the Program, with the Investment Option(s) and for the Account Owner as designated in the Participation Agreement or Account applications, for the receipt of contributions made on behalf of the Account Owner by any Giftors. 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 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 procedures agreed to from time to time by the Contractor and the Board, or as otherwise may be required by Applicable Law, on any Business Day; 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 procedures agreed to from time to time by the Contractor and the Board. Amounts credited to an Account as a result of contributions shall purchase units or shares of an Investment Option without delay. A Gifto shall forfeit any rights to contributions made to an Account by the Gifto. For purposes of Withdrawals from an Account, changes in the Beneficiary and for all other Account-related purposes, only the Account Owner (or his or her legally authorized designee) may give directions to the Contractor regarding the Account.

#### 6.5 Contributions at Default and Alternative Rates; Rollover Contribution Levels

Contractor shall accept payroll deduction contributions from Employers on behalf of Account Owners at (i) a default rate established from time to time by the Board subject to automatic escalation, or (ii) an alternative rate and/or alternative automatic escalation rate selected by the Account Owner. The minimum alternative contribution rate shall be 1% of the Account Owner's compensation per pay period. There shall be no minimum for rollover contributions into the Program. The minimum Rollover contribution out of the Program shall be as mutually agreed upon by the Board and the Contractor.

#### 6.6 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 Underlying Investment made after the market close;
- (iii) net purchase orders and net redemption orders for each Investment Option received by the Contractor each Business Day;

- (iv) the Contractor's deduction and payment of fees 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.

#### **6.7 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 the Board and Account Owners on a timely basis the financial information, reports and statements required of the Contractor under Applicable Law (including without limitation the Act, and the Code) and by this Agreement. In particular, the Contractor shall prepare and deliver to the Board, within thirty (30) calendar days immediately following the end of each calendar quarter, reports in a form satisfactory to the Board 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) its compliance with the Investment Policy Statement, and (vi) any other information mandated by the Act or reasonably requested by the Board.
- (b) The Contractor shall provide oral or written progress reports and attend meetings as 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 quarterly reports that include information on accounts, assets, contributions, investment trends, investment results, compliance with the Investment Policy Statement, and such other matters as may be specified by the Executive Director.

#### **6.8 Proxy Voting**

Decisions on voting of shares of all Underlying Investments held by the Program will be made by the Board on behalf of all Account Owners.

### **7. MARKETING SERVICES.**

#### **7.1 Marketing Services.**

- (a) The Contractor shall provide support for marketing services to the Board in support of the Marketing Plan for the Program, in a manner which is commercially reasonable and in compliance with this Agreement and all Applicable Law (the "Marketing Services"). The Contractor must coordinate with employers, participants, payroll providers, and retirement savings advocates to aggressively support the promotion of the Program. The Contractor will support the Board's efforts to reach all possible eligible individuals through initiatives directed specifically toward Eligible Employees and Eligible Employers. The Contractor must provide or enable investor education for and outreach across California to its diverse population, including marketing materials in languages other than English, including Spanish.

(b) The Contractor will provide an annual marketing commitment to enable the Board to create an annual marketing plan. The marketing commitment will be sufficient to implement a marketing plan that will reach the broadest audience of eligible individuals in California. The marketing plan will be based upon the Contractor's annual marketing commitment, to be used for marketing and promotional expenditures, excluding overhead charges. The annual marketing commitment will cover costs directly allocable to the marketing and promotion of the Program, including all marketing and disclosure materials used in the acquisition of new accounts but not including the Program Materials used for existing Accounts.

(c) No later than October 1 of each current Program Year, the Contractor working with any firms retained by the Board for marketing or public relations services will present to the Board for its review and approval a marketing plan for the following Program Year. The marketing plan should include all strategies and mechanisms anticipated to reach the broadest audience of Eligible Employers and Eligible Employees in California. The marketing plan will be based upon the Contractor's annual marketing commitment, to be used for marketing and promotional expenditures, excluding overhead charges. All marketing plans will be subject to the Board's approval. The allocation of the annual marketing commitment will also be subject to the Board's approval, and it will include the Board's discretion over the annual marketing commitment to proposed marketing concepts and promotional activities for the Program.

#### 7.2 Marketing Performance Criteria.

(a) The Marketing Performance Criteria 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 the Board may accept or reject, or it may request further modifications taking into consideration industry norms and national trends.

#### 7.3 Development and Approval of Program Materials.

(a) The Contractor shall only use Board-approved Program Materials in any marketing or outreach on behalf of the Program.

(b) The Contractor shall submit all Program Materials to the Board 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 have been approved in writing by the Board. It is agreed that normal turnaround time for review and approval of Program Materials submitted by the Contractor to the Board for approval will be ten (10) Business Days that the State is opened for business in the first Program Year, and five (5) Business Days that the State is opened for business in subsequent Program Years during the Term.

#### 7.4 Branding of Program Materials; the Contractor Promotions

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

(b) The Contractor may advertise to the general public, and develop marketing materials for distribution to third parties unrelated to the Program or the Trust, regarding the Contractor's status with respect to the Program and the Trust after prior approval of the Board of such advertisements or marketing materials.

(c) The Contractor shall display the "California Secure Choice" brand, and any "Plan brand" in a manner and at a level of prominence acceptable to the Board in connection with any California-specific promotions using the Contractor's brand.

#### **7.5 Promotional Materials**

If applicable, the Contractor agrees that all Program promotional materials shall comply with all Applicable Law regarding disclosures for IRAs and state-administered retirement 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, and (c) the provision that neither the principal deposited nor the investment return, if any, of the Program is guaranteed by the State, the Board, the Contractor or any of its affiliates, the federal government or any agency thereof, or any other Person. All Program Materials also must refer to the Trust as the issuer of any securities offered in connection with the Program.

#### **7.6 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 Eligible Employers, Eligible Employees, Account Owners, Giftors or Prospects without the prior written consent of the Board. Notwithstanding the foregoing, the Contractor may direct non-Program communications to any Eligible Employer, Eligible Employee, Account Owner, 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.

#### **7.7 Other State-administered Retirement Programs**

The Contractor shall not actively market other state's retirement programs that are similar to the Program (e.g., OregonSaves) to eligible California employees. Notwithstanding the foregoing, nothing in this Agreement shall prevent the Contractor from responding to unsolicited requests from California residents for information concerning other state-administered retirement programs.

#### **7.8 Marketing Reports**

The Contractor shall compile, prepare and provide to the Executive Director, within twenty (20) Business Days immediately following the end of each calendar quarter, a report containing a list of the Contractor's completed marketing activities during the preceding month, which report shall be in form and substance as approved by the Board. The Contractor also shall provide a written report of ongoing and completed marketing efforts and expenditures including an analysis of the effectiveness of its marketing strategies in form and substance as approved by the Board 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 necessary Administrative Services for the Program, including but not limited to the following:

(a) Develop rules and procedures for all processes related to the Program operations and implement a fraud protection program and provide a copy of such rules, procedures, and program to the Board on or before the Program Start Date, and as such rules, procedures, and fraud protection program is updated or otherwise modified;

(b) The Contractor will administer the Program, maintain all records, and comply with all Applicable Law and reporting requirements set forth under Applicable Law (including without limitation under the Code, the California Franchise Tax Board ("FTB"), federal and state tax, securities, and benefits regulatory requirements and guidance), and the Board-imposed administrative performance criteria. The Contractor's reporting requirements include the annual report and audit of the Program required by section 1000038 of the Government Code.

(c) Facilitate compliance with maximum contribution limits on IRAs and other IRS requirements affecting the Program and IRAs generally;

(d) Calculate daily NAVs and implement a fraud prevention program.

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

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

(g) Accept and process Account applications from any Eligible Employees under the Act received in good order online and through a central mailing location that can receive express deliveries and deliveries by normal US postal services;

(h) Maintain contact information for Account Owners and any duly authorized representatives, as applicable;

(i) Maintain separate accounting for each Account and Account Owner; and Account payment and distribution history;

(j) Create or designate a customer call center to respond to Account Owner inquiries from 8:00 a.m. to 7:00 p.m. Pacific Time (PT), Monday through Friday, except holidays. These customer service representatives must be available on the phone and through an online/website interface. There also must be a voice response unit and online servicing access in all other hours. The Contractor's customer service representatives must be knowledgeable about the Program, provide information about the Program, the Program Disclosure Booklet, the Program Materials, and Program policies and procedures, and engage in responsive conversation.

(k) Accept and process Withdrawals and rollovers for Accounts, including transactions via payroll deduction, ACH, direct deposits; and any other reasonably-related administrative services necessary to operate the Program;

(l) Prepare and provide all required monthly reports to federal and state entities regarding Accounts and account activity including without limitation, State and federal tax reporting documents (e.g., IRS forms 1099-Rs and 5498). The Contractor will also provide regularly scheduled reports to the Board regarding the number of new Accounts and assets, any relevant Account activity, and other Program administration information prescribed by the Board.

(m) The Contractor will also provide a quarterly report outlining customer service inquiries and results, the number and types of complaints and the manner in which they were resolved, and such other information as the Board requests, including prior year comparisons on requested information.

(n) Maintain a secure 24/7 online account access and account maintenance on a ".com" California Secure Choice ADA-compliant website and create or establish a web address with its own URL separate and unique to the Program, which provides access to Account information, including enabling users (i.e., prospective and existing Account Owners, as applicable) to:

(i) receive information about the Trust and the Program;



- (ii) enroll online;
  - (iii) download an Application to establish an Account with the Trust;
  - (iv) access all Account information;
  - (v) process Withdrawals online; and
  - (vi) make certain Account changes online
- (o) Accept direct deposits from Eligible Employers on behalf of Account Owners by payroll deduction and automatic checking/savings account Withdrawals;
- (p) Provide accurate 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 the Board reasonably requests;
- (q) 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 Beneficiaries, while still maintaining the confidentiality of information as required by Section 16 of this Exhibit E;
- (r) Provide a means for Account Owners 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;
- (u) Provide timely fulfillment of Program Materials, including but not limited to the Program Disclosure Booklet, and other promotional materials and forms, and maintain a systematic history of fulfillment activity at the customer service center established by the Contractor for each Prospect and Account Owner; and
- (v) 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.
- (w) The Contractor must attend or be represented at all Board meetings (monthly) unless otherwise notified by the Board Chair or his or her designee, and provide Program-related reports as requested by the Board or its staff.
- (x) The Contractor must also respond to the need for telephone consultation within a 24-hour period and be available at minimum to the Board and the staff between the hours of 8 a.m. – 5 p.m. PT.
- (y) Upon request, the Contractor shall provide the Board access to all Program Records. The Program Records shall be provided in a reasonable time and in a form acceptable to the Board. At its expense, the Contractor also shall provide the Board all Program Records in a useable electronic form after notice from the Board that the Agreement will terminate.
- (z) The Contractor's performance will be measured by Administrative Performance Criteria, which the Board will establish ("Administrative Benchmarks"), and which will be included as an exhibit or schedule to this Agreement. The Board and/or the Contractor may review and recommend modifications to the Administrative Benchmarks on an annual basis based on industry norms and national trends; any modifications will require approval by the Board.

## 8.2 Administrative Performance Criteria

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

### 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 and subject to the approval of the Board (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 the Board 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 the Board. The reports of activity shall include, among other things, the items set forth by the Board. The Contractor shall provide such reports in electronic and hard copy form to the Board 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 the Board's needs for such reports.

## **9. CONTRACTOR'S FEES AND CHARGES; SECURE CHOICE 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 this Agreement, the Trust, the Program and the 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 Program, including the Program Disclosure Booklet, and broker-dealer, investment advisor, transactional and other fees associated with investment of the Underlying Investments other than as acknowledged or set forth in Section 9.1(b), Section 9.2, Section 9.2(a) 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 the Board 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 Underlying Investment. The Program Management Fee will be calculated by multiplying the applicable annual rate by the daily market value of the Trust assets based on a 365/366 calendar year during the applicable period. The Program Management Fee and other fees permitted under Sections 9.2(a), 9.6, and 9.7 of this Exhibit E shall be the Contractor's sole compensation for performing all of the Services hereunder.

(c) [If applicable: The Contractor shall be entitled to charge an annual Account Maintenance Fee. The Fee will be deducted from each account on [the first day of each calendar year]].

(d) The Board and the Contractor may review fees annually based on industry norms and national trends. In the event of a change in Applicable Law during the term of this Agreement, which change materially impacts the duties of the Contractor hereunder (as mutually agreed upon by the Board and the Contractor), the Board 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 the Board

(a) The Contractor shall deliver to the Board 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 the Board.

(b) On or before the fifteenth (15) day of each month following the Program Start Date, the Contractor shall deliver to the Board, by electronic or other such means requested by the Board, 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 the Board as required by Section 9.2(a) 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.

(c) If, within seven calendar days following receipt of the report delivered pursuant to Section 9.2(b), the Board 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, the Board advises the Contractor that it objects to or wishes to confirm such calculation, the Board and the Contractor shall, in good faith, attempt to resolve such objection or complete such confirmation as soon as reasonably practicable. If the Board 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 the Board's failure to advise the Contractor with respect to any monthly calculation, nor any transfer by the Contractor in payment of a prior amount calculated and submitted but not objected to by the Board, shall prevent the Board from adjusting the Program Management Fee to reflect the Board'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.

(d) To collect the Program Management Fee to which it is entitled in accordance with the foregoing provisions of this Section 9.2, the Board on behalf of the Trust hereby authorizes the Contractor to deduct the Program Management Fee, directly from the assets of each Investment Option 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.

(e) In the event of a material default or breach under the Agreement, the Board 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 Board or State Obligation for Fees

(a) The Board 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 the Account Maintenance Fee], and payments, if any, 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 the Board approves specific account charges as set forth in Section 9.6 of this Exhibit E.

(b) 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.

#### 9.4 Secure Choice Administrative Fee

The Board will receive from the Contractor a monthly administrative fee (the "Secure Choice Administrative Fee" accrued and computed daily against the market value of the net assets of the Trust (based on a calendar year of 365/366 days) during the applicable period. The Secure Choice Administrative Fee shall remain in effect until such time as the Board 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 other programs, or to maintain the competitiveness of the Program. The Contractor will distribute the Secure Choice Administrative Fee to the Board on a monthly basis according to a payment schedule and procedures to be agreed upon by the Contractor and the Board.

#### 9.5 Withdrawal and Payment of Secure Choice 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 Secure Choice 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 the Board by the thirtieth (30th) day of such month. To pay the Secure Choice Administrative Fee to the Board as provided herein, the Board on behalf of the Trust hereby authorizes the Contractor to deduct, directly from the assets of each Investment Option, the pro rata portion of the Secure Choice 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 and the Annual Account Fees no fee, charge or penalty shall be imposed in connection with the establishment or maintenance of any Account or transaction therein, Withdrawals therefrom, or transfers thereof. 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) provided such amounts are approved in writing in advance by the Board.

(b) If required by Applicable Law, 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

The Board 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 bona fide services in connection with the Trust's investment in such funds, (ii) unless otherwise agreed to, such fees will not be paid or credited to the Trust, and (iii) such fees will be in addition to the Program Management Fee payable to Contractor hereunder. The Contractor shall specifically disclose the amount of such fees to the Board at the time it proposes such insurance company funding agreements or third-party funds as Underlying Investments.

#### 9.7 Payment of Taxes

The Board 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. The Board 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 [TBD] company, duly organized, validly existing and in good

standing under the laws of the State of [TBD]. 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 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's or approved subcontractor's personnel responsible for performing any Services will have all necessary licenses under Applicable Law. 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 state-sponsored retirement plan 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 state-sponsored retirement plans, 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 or other business relationship with the Board's program consultant (AKF Consulting) or with its investment consultant (Meketa Investment Group).

(e) Approvals and Filings. Except as noted in subparagraph (c), no consent, approval (except for the approval of the Board) 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 a registered investment adviser under the Investment Advisers Act of 1940, or it will engage an approved subcontractor that is, a registered investment adviser under the Investment Advisers Act of 1940, as amended, to perform Investment Services. The Contractor's or approved subcontractor's personnel responsible for performing Investment Services will have the necessary licenses under applicable federal and state securities law and regulatory requirements.

(h) Duty to Notify. The Contractor shall promptly, and in any case within five (5) calendar days, notify the Board 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) No Finder's Fees. 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 employed by the Contractor for the purpose of securing business. For breach or violation of this warranty, the Board 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 CALIFORNIA SECURE CHOICE**

(a) State Agency. The Board is an agency of the State of California created to administer the Trust and oversee the Program by, among other things, (i) contracting with private financial institutions, other financial and service providers, consultants, actuaries, counsel, auditors, third-party administrators, and other professionals, as necessary, (ii) adopting regulations for administration of the Program, and (iii) establishing an investment policy for the Program.

(b) Authority; Enforceability. The execution and delivery by the Board of this Agreement and the performance by the Board of its obligations hereunder, have been duly and validly authorized. The Board 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 the Board and constitutes a legal, valid and binding obligation of the Board, enforceable against it in accordance with its terms. Nevertheless, this Agreement is subject to the approval of DGS and this Agreement shall not be effective until and unless such approval is given by DGS.

(c) No Conflicts. The execution and delivery by the Board of this Agreement, the performance by the Board of its obligations hereunder, the offer and sale of interests by the Board 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 the Board or the Trust or (ii) conflict with or result in a violation or breach of, or constitute (with or without notice or lapse of time or both) a default under any agreement or other instrument to which the Board is a party, or any material obligation of the Board to a third party.

(d) Governmental Approvals and Filings. Except for the approval of DGS, 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 the Board and the consummation of the transactions contemplated hereby by the Board have been obtained.

(e) Compliance with Act. The Act establishes and creates the Trust pursuant to which the Program has been created. The Board shall not knowingly take any action that would jeopardize the compliance of the Program and the Trust with the requirements of the Act.

## **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 duties and 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 (i) violate the IRS Requirements or Securities Law Requirements (ii) cause the Program, the Trust, or any portion thereof to be treated as a pension plan under ERISA, or (iii) jeopardize the exemption from registration under or compliance with the federal or state 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 may directly or indirectly 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 the SEC, the IRS, 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 the Board 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 the Board the results of any periodic examination by any Governmental Authority or Regulatory Body 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 provide the Program Disclosure Booklet to Eligible Employers and Eligible Employees only so long as the certificate delivered by the Contractor to the Board pursuant to Sections 5(b)(iii) of this Exhibit E remains true and correct at the time of such offer and sale.

(e) The Board may seek such federal and State administrative rulings concerning the status of the Program and the Trust as it deems advisable. The Board may direct the Contractor to provide a draft of any such ruling request for comment and written approval by the Board. The Contractor, shall not disclose the existence or content of any such draft ruling request, submitted ruling request, correspondence relating thereto or response thereto prior to the public release thereof without the written consent of the Board. The Contractor shall, at the request of the Board, render reasonable assistance to the Board in the preparation of any such ruling request. The costs and expenses of the Board in connection with any such administrative ruling shall be paid by the Board, and any costs and expenses of the Contractor in connection therewith shall be paid by the Contractor. At no time during the Term shall the Contractor seek, or permit a subcontractor to seek, an IRS Letter Ruling, SEC No-Action Letter, or any other interpretation of Applicable Law by any Governmental Authority or Regulatory Body specifically relating to the Trust or the Program or relating to state-administered retirement savings programs generally, or seek review by any Governmental Authority or Regulatory Body of the Program Disclosure Booklet, independent of the efforts of the Board to obtain such interpretation and without the express written consent of the Board. The Contractor will not oppose the Board in any effort to obtain an interpretation of Applicable Law.

(f) In the event that the Trust or objectives of the Trust are adversely affected due to interpretations of Applicable Law, including without limitation, ERISA, federal tax law (including, if a Private IRS Letter Ruling negatively impacts the Trust or the IRS refuses to issue a Private Letter Ruling), State tax law, or federal or State securities laws, (i) the Board may terminate the Agreement pursuant to Section 13.5, or if the Board deems it to be in the best interests of the Account Owners

it may use commercially reasonable efforts to restructure the Trust and require that the Contractor use commercially reasonable efforts to restructure the Services hereunder within the constraints of Applicable Law to address such adverse consequences, and (ii) each of the parties hereto shall pay its own expenses in connection with such efforts through the date of such restructuring.

#### 12.2 Further Cooperation

The Contractor shall cooperate with the Board 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 the Board such further instruments and documents, and shall take such further action, as the Board 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 the Board properly authorized personnel.

#### 12.3 Compliance with Applicable Securities Law Requirements

The Contractor currently complies, and during the Term of this Agreement, the Contractor shall comply, in all material respects with all Securities Law Requirements applicable to all Services to be rendered hereunder, including without limitation, any investment services or to the administration of any Investment Options or proprietary Underlying Investments to which contributions to the Program are invested.

#### 12.4 Covenant to Notify

The Contractor will notify the Board as soon as practicable, but in any event within fifteen (15) Business Days, of any of the following involving the Contractor, its affiliates, any subcontractor 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 or Regulatory Body with jurisdiction over ERISA, federal or state tax or securities laws, with respect to any alleged violation of laws applicable to Services provided by the Contractor, its affiliates, related entities or any subcontractor;
- (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 or Regulatory Body of any "consent order", "cease and desist order" or similar order or sanction applicable to the Contractor, any affiliate, related entity or subcontractor with respect to any alleged 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 Law; and
- (d) Any administrative determination or entry of judgment in any proceeding described in subparagraph (a), above, that the Contractor, affiliate, related entity or subcontractor has violated any Applicable Law.



## 12.5 Legal Update

The Contractor shall update the Board 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 the Board. 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 required of the firm with the SEC; an updated copy of any Contractor's Schedule to its Form BD of FINRA regarding regulatory actions, and an updated copy of any Contractor's Item 11 Disclosure Information to its Form-ADV and any related Disclosure Reporting Page.

## 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 Applicable Law, including without limitation the IRA Requirements, or by the FTB;
- 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 the Board.

## 12.7 Audits

(a) Financial and Related Audits. The Executive Director may select a certified public accountant or firm of such accountants duly licensed to practice and practicing as such under the laws of the State to prepare annual audited financial statements for the Program. The Contractor shall, and shall cause its affiliates, related entities, subsidiaries, and subcontractors to cooperate fully, at its expense, with the preparation of the financial statements and to provide complete access to all Program records necessary to facilitate the preparation of the financial statements. Contractor shall provide the Board with any SSAE 16 or similar audit report received in connection with the Program.

(b) Performance Audit. No more than once annually, the Board or the Executive Director may arrange, or may require the Contractor to arrange for a performance audit of any or all of the services under this Agreement. The Board 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 the Board, the Department of General Services, the Bureau of State Audits, or their designated representative shall have the right to review and to copy any books and records and supporting documentation pertaining to the performance of this Agreement. Contractor agrees to maintain such records for possible audit for a minimum of three (3) years after final payment,

unless a longer period of records retention is stipulated. 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. The Board shall be entitled to conduct other audits with respect to the Trust from time to time, and shall give the Contractor reasonable notice of its intent to conduct any such audit. The Contractor shall, and shall cause its affiliates, related entities, subsidiaries, and subcontractors, as applicable, to cooperate fully and to provide complete access to all Program records in order to conduct such an audit.

12.8 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. The Board and the Contractor shall cooperate in the determination of whether a particular development warrants an amendment or supplement to the Program Disclosure Booklet. At the request of the Board, on each date that the Program Disclosure Booklet is amended or supplemented, the Contractor shall confirm in writing that the representations and statements contained in its certificate delivered pursuant to Section 5(b)(iii) of this Exhibit E remain true and correct as of such date.

12.9 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 the Board, shall be maintained by the Contractor in the amount of not less than ten million dollars (\$10,000,000.00). 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 an amount not less than ten million dollars (\$10,000,000.00), with a policy which contains, or is endorsed to contain, the following provisions:

(A) The State, the Board, 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 the Board, its officers, officials, employees, agents, and volunteers. Any insurance or self-insurance maintained by the Board, its officers, officials, employees, agents or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.

(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 the Board.

(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.
- (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.

#### 12.10. Performance Guarantees

Unless otherwise agreed upon, 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 the Board'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;
- (b) a Surety Bond payable to the Board 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, the Board will require that evidence of renewal be submitted to the Board no less than 60 days prior to the expiration date of the Bond; or
- (c) other alternative means to reasonably ensure performance by the Contractor that is mutually agreeable to the parties.

#### 12.11 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 20 of this Exhibit E, and shall be available for inspection and copying by the Board and its representatives at any time.

#### 12.12 Protection of Trademark

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

### **13. TERM OF AGREEMENT; TERMINATION.**

#### **13.1 Term of Agreement**

The Term of this Agreement shall be for a period of seven years, beginning on [term to be inserted], unless terminated earlier or extended by amendment (the "Initial Term"). At the pleasure of the Board, this Agreement may be extended for three 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 amendment executed by the Contractor and the Board, subject to approval by the California Department of General Services.

#### **13.2 Termination by the Board for Deficient Performance.**

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

- (i) If at any time the Board finds that the Contractor's marketing or administrative performance is not adequate as determined by comparison to the Marketing or Administrative Performance Criteria, and if the performance would be curable but it remains uncured for more than sixty (60) days after the Board has given written notice thereof to the Contractor (unless the Board reasonably determines such deficient performance would be curable over a longer period of time), then the Board may treat such deficient performance as a material breach and it may terminate this Agreement.
- (ii) If at any time the Board finds the Contractor in material breach of its obligations under Section 6.2(d) herein, then the Board may terminate this Agreement.
- (iii) If at any time the Board finds the Contractor's investment performance is otherwise deemed inadequate as set forth in Section 6.3(c) herein, and such performance remains uncured for more than a one (1) year period after the Board has given written notice thereof to the Contractor, then the Board 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, the Board 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, the Board 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 the Board'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 paragraph 7 of Exhibit C.

#### **13.3 Termination for Insolvency**

The Contractor shall notify the Board 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 the Board 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, the Board 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 paragraph 7 of Exhibit C.

#### 13.4 Termination for Expatriation

The Contractor shall notify the Board immediately in writing in the event that it [or its parent] files any notice with the SEC that Contractor intends to reincorporate offshore, or if no such notice is required that it [or its parent] intends to reincorporate offshore. In the event of such notice or reincorporation, the Board may terminate this Agreement and all further rights and obligations immediately by giving five (5) days' written notice to the Contractor. In this instance, the Board may require the Contractor to continue to provide Services under this Agreement until a replacement contractor can assume management of the Program.

#### 13.5 Termination Upon Adverse Interpretation of Applicable Law

In the event that the Trust or objectives of the Trust are adversely affected due to interpretations of Applicable Law and Board deems it in the best interests of the Account Owners to transfer assets and records of the Trust to a Person other than the Contractor, the Board may terminate this Agreement and all further rights and obligations immediately by giving five (5) days' written notice to the Contractor. In this instance, the Board may require the Contractor to continue to provide Services under this Agreement until such transfer of assets and records of the Trust is complete.

#### 13.6 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 the Board or due to termination of the Agreement, the Contractor shall do everything in its power to facilitate the transfer of such work from the Contractor to any workforce, agency, contractor, or other entity designated by the Board. The Contractor, its employees, agents, and subcontractors shall provide the Board, its staff, and whoever the Board selects to perform future work for the Program, complete, immediate, and unimpeded 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 the Board to ensure an orderly transition of services provided pursuant to a new agreement, except that the Contractor and the Board 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 Trust in a reasonable and sortable electronic form within a medium mutually agreed upon by the Contractor and the Board.

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

### 13.7 Collection of Fees

In addition to giving written notice of breach to the Contractor under Section 13.2, if such breach is not cured within the applicable time periods set forth in Section 13.2, the Board 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 the Board 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 the Board to be held in escrow during such period and may be used by the Board 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 the Board) will be transferred to the Contractor. Nothing in this Section 13.7 or any other provision of this Agreement shall limit the Board's right or ability to pursue any other remedy available to it at law or in equity or both.

### 13.8 Additional Termination at Board's Option

Unless otherwise specified by the provisions of Paragraph 7 of Exhibit C, this Agreement may not be terminated by the Board except "for cause" during the first seven years of its term. For avoidance of doubt, a termination under Section 13.2, Section 13.3, Section 13.4, or Section 13.5 shall be deemed a termination "for cause" within the meaning of the immediately preceding sentence. 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 the Board, for any reason. Upon receipt of a termination notice, the Contractor shall promptly discontinue all services affected unless the notice specifies otherwise.

### 13.9 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 the Board has provided written notice to the Contractor of extension of an Extension Term pursuant to Section 13.1.

### 13.10 Contractor Rights upon Termination

In the event of termination of this Agreement for any reason set forth in this Section 13, 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 transferred to the Board in accordance with Section 13.6 above. The Contractor shall not be entitled to additional compensation.

### 13.11 Software and Other Program Records to be Available to Trust

At the termination of this Agreement, the Contractor will cooperate with the Board 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. All Program Records and data shall be readily accessible to the Board and a successor contractor, at the Contractor's expense, in a reasonable and sortable electronic form within a medium mutually agreed upon by the Contractor and the Board.

### 13.12 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, Gifter 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.

#### **14. CONTACT PERSONS; MEETINGS.**

##### **14.1 Contact Persons**

The Board 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.

##### **14.2 Meetings**

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

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

##### **15.1 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 the Board's or the Contractor's possession and control or how that information is stored, 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.

##### **15.2 Ownership of Program Records; Contractor's Internal Information**

The Board 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 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 Program) (the "Contractor Intellectual Property"); provided, however, that the Board shall not be restricted in any manner in connection with the continuation of the Program after the Term of this Agreement in using the same or substantially the same structure of the Program 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 the Board a non-exclusive, perpetual, royalty-free, non-transferable license to so use the same or substantially the same structure of the Program or portions thereof (including the investment and allocation guidelines components) as have been in effect prior to termination or expiration of this Agreement.

#### 15.2 Use and Custody of Program Records

The Board 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 Section 13.9 of 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 the Board, upon its request, at the Contractor's expense, in a reasonable and sortable electronic form within a medium mutually agreed upon by the Contractor and the Board. Program Records reflecting Program Lists and transaction and Account specific data shall be made available to the Board upon its request, provided that the Board protects and safeguards such information consistent with the Board's privacy policy and the provisions set forth in Section 16. During the Term of this Agreement and so long as the Contractor is providing services to the Board in accordance with this Agreement, the Contractor shall at its sole discretion either transfer ownership to the Board, or obtain adequate license rights for the Board 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 the Board, 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 the Board. 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.

#### 15.4 Ownership and Use of Names and Property by Contractor

(a) The Board 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. The Board 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 the Board, 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.

### **16. CONFIDENTIALITY**

The requirements of confidentiality under this Agreement apply to 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 the Board's operation and personal information (including identification numbers or Account codes) which is considered confidential as defined by law or is designated as confidential by the Board 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, 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. The Board shall respond to questions by the Contractor regarding the classification of data. The Board 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 Program data with no generic account access.
- (v) Disaster recovery plan to protect Program 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.

(c) The Confidentiality Program and Privacy Policy shall be implemented and maintained in accordance with all applicable federal, State, and the State Treasurer's Office 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 shall not be required to keep confidential any data or information which is or becomes publicly available, is independently developed by the Contractor, or is rightfully obtained from third parties.

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

(g) 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.

(h) 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 the Board or required by Applicable Law.

(i) Contractor will arrange for its relevant subject matter experts to meet with the relevant subject matter experts of the Board once annually to review Contractor's security controls. The Board may view Contractor's security-related policies and procedures, however, no documentation may be copied, shared, transmitted or removed from Contractor's premises, except as mutually agreed. The parties shall mutually agree upon a convenient time and place for such meeting. Not more than once each year, and subject to Contractor's reasonable security requirements and availability of personnel, Contractor will at the Board's request arrange a tour of Contractor's data processing facilities for the Board's subject matter experts. Contractor will also, subject to its reasonable security requirements, permit site visits of its data processing facilities by governmental agencies with regulatory authority over the Board.

(j) The Contractor shall promptly notify the Board and the State Treasurer's Office Chief Information Security Officer promptly upon learning of a security incident involving the Board or Program's data such as breach or loss of data. Notification to the Board and the State Treasurer's Office Chief Information Security Officer must occur no more than twenty-four hours after a confirmed security incident.

## **17. LIABILITY AND INDEMNIFICATION.**

### **17.1 Indemnification by the Contractor**

As set forth in Section 5 of Exhibit C, the Contractor agrees to indemnify, defend and save harmless the Board, 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 by the Contractor, 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.

### **17.2 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. The Board shall pay its own costs associated with the defense of actions brought against the Board arising out of actions or inactions which are within the Board's scope of responsibility.

**18. 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 the Board, 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 the Board or its representatives. Any such review by the Board 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 the Board under this Section 18 shall be subject to the provisions of Section 16 of this Exhibit E.

**19. 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:

If to the Board:

Katie Selenski, Executive Director  
California Secure Choice Retirement Savings Investment Board  
915 Capitol Mall, Suite 435  
Sacramento, CA 95814  
Phone: (916) 653-1744  
Fax: (916) 653-3125

If to the Contractor: [TBD]

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.

**20. CONTINGENCY PROGRAM.** The Contractor at all times must have a Contingency Program to ensure that Program 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 the Board's discretion, it or its designees may observe any or all backup and recovery tests.

## **21. DISPUTES.**

- (a) In the event of a dispute, the Contractor shall file a "Notice of Dispute" with a Deputy Treasurer of the State Treasurer's Office 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 the Board 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 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.

## **22. MISCELLANEOUS.**

### **22.1 Waiver**

The terms and conditions hereof may be waived only by a written instrument signed by the party waiving compliance. The failure of the Board 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.

### **22.2 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.

### **22.3 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 the Board.

### **22.4 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.

### **22.5 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.

#### 22.6 Survival

Any provision of this Agreement which, either by its terms or to give effect to its meaning, must survive, including Sections 9.2(c), 13.5, 13.9, 13.10, 13.11, 15, 16, 17, 19 and 22.6 of this Exhibit E, shall survive the termination or expiration of this Agreement.

#### 22.7 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.

#### 22.8 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 understanding or Agreement not incorporated in the Agreement is binding on any of the parties. The Contractor and the Board 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.

#### 22.9 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.

#### 22.10 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.

#### 22.11 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.

#### 22.12 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 Board 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 the Board contained therein, shall be binding upon the parties and their successors, assigns and legal representatives.

#### 22.13. 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.

#### 22.14 Political Reform Act

Contractor acknowledges that the Board 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 the Board (California Code of Regulations, Title 2, Division 2, Chapter 4, Section 1897). All such reports shall be filed simultaneously with the Board.

#### 22.15 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 the Board.

#### 22.16 No Additional Services or Procurements

Neither the Contractor, nor any of its affiliates, related entities, subsidiaries, officers or directors, may 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.

#### 22.17 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 (Act). (Public Contract Code section 10475 et seq.) The 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 DGS according to the criteria set forth in Public Contract Code section 10477(b).

#### 22.18 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.

22.19 Evaluation of Contractor

Pursuant to Public Contract Code sections 10367 and 10369 within sixty (60) days after the completion of this Agreement, the State shall complete a written evaluation of Contractor's performance under this Agreement. If this Agreement is a contract for consultant services and if Contractor did not satisfactorily perform the work, a copy of the evaluation will be sent to the Department of General Services (DGS), Office of Legal Services, and to the Contractor within fifteen (15) working days of the completion of the evaluation in accordance with Public Contract Code section 10371.

## **SAMPLE 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)