NEBRASKA STATE TREASURER AND THE NEBRASKA INVESTMENT COUNCIL

Request for Proposals

INVESTMENT AND ADMINISTRATIVE SERVICES

Nebraska Achieving a Better Life Experience Program

July 20, 2015

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NEBRASKA STATE TREASURER AND NEBRASKA INVESTMENT COUNCIL
Request for Proposals

I. INTRODUCTION

The Nebraska State Treasurer (**Treasurer**) and the Nebraska Investment Council (**Council** and, together with the Treasurer, the **Issuer**) requests sealed proposals (**Proposals**) from qualified financial services companies (**Providers**, **you** or **your**) who wish to provide investment, administrative, customer service and marketing services (**Services**) for the Nebraska Achieving a Better Life Experience Program, a qualified ABLE program (**Nebraska ABLE** or **Program**) adopted under Section 529A of the Internal Revenue Code (**Code**) and Chapter 77 (**Enabling Act**) of the Nebraska Revised Statutes (Neb.Rev.Stat.), included as *Attachment D*.

Nebraska ABLE is a new program to be offered directly to the public. An advisor sold program is not contemplated by the Issuer at this time. The Program must offer a reasonable choice of investment options for eligible investors at a reasonable cost. The Program should focus advertising and planning on the dissemination of information about Nebraska ABLE throughout the State of Nebraska, reaching both rural and urban environments and the full spectrum of socio-economic groups, including non-traditional investors. This includes outreach relationships throughout the State with interested organizations and constituent bodies, such as disability organizations, public and private schools (K-12), school districts, Educational Service Units, Parent-Teacher Organizations, employers and similar entities.

In addition, the Issuer intends to offer the opportunity for other states to become a contracting state pursuant to Section 529A(e)(7) of the Code (**Contracting State**). The Treasurer has determined that the best way to offer a reasonable cost Program within the State of Nebraska is to also offer a Contracting State Program. Therefore, the Proposals sought pursuant to this RFP should be Proposals that include the option for an ABLE program to be offered by Contracting States (**Contracting State Program**) as well.

With respect to all Proposals, please note the following:

A. Providers are required to submit Proposals for the Services as one Proposal. Therefore, Providers who only provide part of the Services requested by this RFP should seek to partner with other firms to submit one Proposal for the Program.

   The Issuer, however, will accept more than one Proposal per Provider. Because of the uncertainty regarding implementation of the Proposed Rules (defined below), the Issuer understands that Providers may wish to submit more than one Proposal and/or work with different partners. Therefore, if needed, a Provider may submit more than one Proposal. Each Proposal submitted, however, must be submitted for all of the Services requested in this RFP.

B. Providers should submit their Proposals for Nebraska ABLE and the Contracting State Program as one Proposal, identifying changes to each of the items listed in the *Scope of Work (Section V)* for the Contracting State Program. The Issuer does not intend to commence a Contracting State Program until the Nebraska ABLE Program opens to eligible participants in Nebraska.

C. Providers should consider their ability to compensate the Office of the Treasurer beginning in year three (3) of the contract, for the services it and its consultants and advisors provide to Nebraska ABLE by receiving an asset based fee and/or fixed dollar commitment.

D. Providers should consider their ability to assist in securing states to participate in the Contracting State Program.

E. Providers should consider their ability to comply with the recently proposed rules under Section 529A (**Proposed Rules**), including (i) the possibility that the Proposed Rules may be amended prior to adoption, (ii) the possibility that the Proposed Rules may not be adopted immediately, if at all, and/or (iii) the industry best practices that may develop under the Proposed Rules. As noted above, Providers may submit additional Proposals taking into account each of the potential outcomes for the Proposed Rules. If Providers submit a single Proposal, describe the impact on the Proposal of any changes to the Proposed Rules.

F. Providers should consider their ability to provide domestic call center services.

G. Providers should consider their ability to provide Services that are compliant (**ADA Compliant**) with the requirements of the Americans with Disabilities Act (**ADA**).

H. The Issuer requests that all Providers interested in offering the Services submit a response in the manner described in this RFP. Based upon the responses to this RFP and, if the Issuer determines that such responses indicate that the goals of Nebraska ABLE can best be served by contracting with a Provider, the Issuer shall select a Provider who can best satisfy the needs of Nebraska ABLE.

A Pre-Proposal Conference will be held on Tuesday, **August 4, 2015,** at 2:00 P.M. CT at State Capitol Building, Lincoln, Nebraska 68509 (room to be announced prior to the Pre-Proposal Conference). Please advise the Treasurer's consultant, Mary Anne Busse, Managing Director, Great Disclosure LLC via email (mabusse@greatdisclosure.com) or phone (248-547-4500) by **July 30, 2015,** whether or not you plan to attend and for directions to the meeting site. You are encouraged to submit written questions via email prior to the date of the Pre-Proposal Conference (see Section III.B. of this RFP).

The issuance of the RFP or the receipt of any Proposals submitted pursuant hereto creates no obligation, expressed or implied, on the part of either the Issuer or the State of Nebraska (**State**). In addition, the State reserves the right, in its sole discretion, to change (i) the time, date and location of any meeting or Pre-Proposal Conference and (ii) the deadline for the submission of questions or Proposals under this RFP.

II. BACKGROUND INFORMATION

A. Treasurer

The State Treasurer's Office is currently comprised of five divisions – Treasury Management, Unclaimed Property, the Nebraska College Savings Program, the Nebraska Child Support Payment Center and the Nebraska Long-Term Care Savings Plan.

B. Nebraska ABLE

The following should particularly be noted:

1. In accordance with Section 529A of the Code, the Program will offer Nebraska ABLE only within the State and in such a manner as to maximize the benefits to the beneficiaries and to achieve the purposes of the Program as described in the Enabling Act.

2. The Program must operate without any cash outlay from the Issuer, the Program (except for the use of an Administrative Fee, if applicable) or the State.

3. Pursuant to the provisions of Section 529A of the Code, the Program intends to provide the opportunity for Contracting States to offer an ABLE program to residents of those states.

C. The Nebraska Investment Council

The Council manages the investments of over 30 different entities, including the Program. For all these entities, the Council's responsibilities are primarily asset management. See the Enabling Act for additional information regarding the Council's responsibilities to the Program. The members of the Council are:

Phyllis Chambers – Ex Officio (non-voting)
John H. Conley
Richard A. DeFusco, Ph. D., CFA
John M. Dinkel
John L. Maginn, CFA
Michael Walden-Newman
Don Stenberg – Ex Officio (non-voting)
Gail Werner-Robertson, Chairperson

The Council has final authority with regard to the investment options offered by Nebraska ABLE as well as the mutual funds or other investments (**Investments**) which comprise the investment options.

III. ANNOUNCEMENT

A. Response Submission

Providers who are interested in responding to this RFP shall submit an original and ten (10) copies of their written responses and all attachments to:

Nebraska State Treasurer
Room 2005, State Capitol Bldg
PO Box 94788
Lincoln, NE 68509-4788
Attention: Rachel Biar, Assistant State Treasurer
rachel.biar@nebraska.gov

A copy of each response should also be submitted electronically via email or other electronic media. Responses should be presented in accordance with the requirements of Section VI. of this RFP. **The hard copies of each response must be received in the Treasurer's Office no later than 2:00 P.M. CT on September 10, 2015. Responses received after this time will not be considered.**

As previously noted, the Issuer will accept more than one Proposal per Provider. However, the Provider should designate one person as the principal contact with respect to this RFP. All responses will be considered open offers for a period of 180 days following submission to the Issuer, unless otherwise stated in your response.

B. Clarification of Information

It is the responsibility of any prospective Provider to inquire about and clarify any aspect of the RFP. Each inquiry should include a specific reference to the question in the RFP for which clarification is sought. **Questions for clarification must be submitted in writing no later than July 30, 2015, at 4:00 P.M. CT and emailed or delivered to:**

Mary Anne Busse, Managing Director
Great Disclosure LLC
622 S. West Street
Royal Oak, Michigan 48067
Office: 248-547-4500
Email: mabusse@greatdisclosure.com

Questions and answers will be discussed at the Pre-Proposal Conference to be held August 4, 2015. Copies of questions and answers submitted in writing and presented at the Pre-Proposal Conference will be available on the Treasurer's website at the following link www.treasurer.nebraska.gov no later than August 12, 2015. Providers shall have full responsibility for accessing the website.

C. No Contact

Any contact concerning this RFP should be limited (preferably in writing). Mary Anne Busse is designated as the sole point of contact. The Issuer specifically requests that no contact concerning this RFP be made with the Treasurer or the Council, or their respective employees and advisors, during the selection process. Failure to honor this request may result in disqualification of the Provider.

IV. MINIMUM QUALIFICATIONS

A. Providers must clearly state and demonstrate within the Executive Summary of the Technical Proposal that they satisfy the following qualifications (Technical Proposal submission format is discussed under *Section VI. Submission Requirements*).

1. Maintain or manage at least $1 billion in assets;

2. Been in business for at least 5 years (including predecessor organizations);

3. Been rated by 2 or more nationally recognized rating services within the three highest rating categories for financial condition and operational performance. If the Provider has not been rated by a nationally recognized rating service, the Provider must describe the circumstances under which such ratings have not been conducted. The Provider shall also describe any alternative financial condition and operational performance measures that it believes will be helpful in considering the minimum qualifications of the Provider.

4. Maintain all applicable federal licenses and registrations necessary to conduct a financial services business (e.g. - registered Investment Advisor, Investment Company, member of the Federal Deposit Insurance Corporation (**FDIC**) and/or Broker/Dealer, as applicable); and

5. Comply with the requirements of the Enabling Act, Section 529A of the Code, the Proposed Rules as proposed and/or promulgated, any federal interpretive advice issued thereunder, federal and state securities laws and regulations, industry best practices, and the applicable rules and policies enacted from time to time, if any, by the Issuer (**Regulatory and Industry Requirements**).

B. If the Provider is a joint venture, partnership or other consortium of financial services companies, qualifications 1 through 3 may be satisfied by the members of such venture, partnership or consortium collectively. In addition, experience in the 529 marketplace is preferred, but not mandatory.

V. SCOPE OF WORK

The Provider will provide the Services to the Issuer and the participants in Nebraska ABLE and in the Contracting State Program, as applicable. Providers should affirm that they will fully satisfy the following General Requirements or elaborate on any modification or exception to them. **A Proposal that takes exception to any portion of the Scope of Work may be rejected.**

A. General Requirements and Considerations

1. **Mandatory Contractual Terms.** By submitting an offer in response to this RFP, a Provider, if selected for award, will be deemed to have accepted the terms of this RFP and the Agreement which is attached hereto and by this reference incorporated herein as *Attachment A*. The Issuer reserves the right to further negotiate the terms

of the Agreement, in its discretion. **Any exceptions to this RFP or the Agreement must be clearly identified in the Executive Summary of the Technical Proposal.**

2. **Agreement Duration.** If a Provider is selected pursuant to the RFP, the Agreement will become effective upon execution and will remain effective for a period of five years (with the possibility of two renewal terms of one year each at the sole option of the Treasurer) from the date the Program is first offered to the public.

3. **Compensation and Payment.** The Provider will be compensated for the Services under the Agreement solely through fees collected from Nebraska ABLE account owners, and, if applicable, Contracting State Program account owners consistent with the Provider's Financial Proposal.

   The Provider will not receive additional compensation for miscellaneous charges including, but not limited to, photocopying, postage, telephone, facsimile, shipping/handling and courier/messenger costs between the Provider's location(s) and the Issuer's offices. This type of administrative/operational expense may not be part of *Attachment C*, *Financial Proposal Schedule*.

   The Provider will not receive compensation for travel time or related expenses such as transportation, mileage, parking, etc., for meetings with the Treasurer, the Council or any vendors rendering Services to the Treasurer, the Council and/or the Provider. Travel related expense may not be part of *Attachment C, Financial Proposal Schedule*.

4. **Administrative Fee.** The Issuer intends to operate Nebraska ABLE initially on start-up funds made available pursuant to the Enabling Act. However, the Issuer reserves the right to charge an Administrative Fee to Nebraska ABLE participants in the future. For purposes of this RFP, the Provider should allow for a future Administrative Fee to be assessed either based on basis points or other method of calculation beginning with year three (3) of the Agreement.

5. **Confidential Information.** The Provider must recognize that all information concerning Nebraska ABLE and its participants is the sole property of the State, is confidential and is not to be used by the Provider for any other purpose. Other than in connection with the provision of the Services, Providers shall refrain from any direct communication with the participants in the Program, except as approved in advance by the Treasurer or his authorized representative.

6. **Audits.** The Provider will supply to the Issuer and any appropriate governmental entity all accountings, reports and information as may be required by the Issuer, the Enabling Act or Section 529A. The Enabling Act requires an annual audit by either the Auditor of Public Accounts or an independent accounting firm designated by the Treasurer. Each audit will be conducted on a calendar year basis and must be submitted to the Governor and the Legislature no later than November 1 for the prior calendar year. Compliance with these audit requirements is a requirement of any Provider without additional charge to the State, the Issuer, the Program, or any Contracting State.

7. **Separate Accounts.** Each account must be maintained as a separate account, identifying each account owner by social security number (or alternative identification code).

8. **Enrollments and Disbursements.** Enrollments and disbursements for an account must be made in accordance with Regulatory and Industry Requirements. The Provider must supply to the Treasurer any information required under Regulatory and Industry Requirements and, as the Treasurer's agent, prepare and file the proper tax and Social Security Administration, as applicable, reporting forms.

9. **Plan Features.**

   a. **Ease of Access.** Nebraska ABLE should be structured to allow for ease of access for participants including the use of assistive technology and effective, person-first methods for communicating and marketing to individuals with disabilities.

   b. **Minimum Contribution**. The Enabling Act does not require a minimum contribution. Any minimum contributions that may be proposed, however, must be of a minimal nature so as to enable the full spectrum of socio-economic groups to participate in Nebraska ABLE.

   c. **Maximum Contribution.** The Program has not established a maximum contribution limit other than that required under Section 529A.

   d. **Expense Ratio**. The Issuer is interested in offering best-in-class Investments while minimizing the cost to investors. Therefore, the total expense ratio for the Program should reflect those goals as well as the expected investment options outlined in 9.e. below. Consideration should be given to an expense ratio for the Program that reduces as assets in Nebraska ABLE attain certain breakpoints.

   e. **Investment Options**. Nebraska ABLE should be structured to offer maximum flexibility of use to participants. Therefore, Providers are encouraged to present streamlined, simplified investment options as part of its Proposal. The Proposal should also give consideration to the expected manner in which ABLE accounts may be utilized by investors. The Issuer anticipates that Nebraska ABLE will be used:

      1. To pay ordinary and routine expenses, requiring a checking account and/or debit card-type of functionality;
      2. To pay periodic (i.e. – monthly, quarterly) expenses, requiring short-duration Investments that can be accessed with minimal notice to the Program; and/or
      3. To pay for expenses anticipated at a later date, requiring a longer-term investing timeline.

      The Issuer is also willing to review alternative Program structures and encourages each Provider to present its best recommended lineup of investment options.

   f. **Enrollment Fee**. The Issuer is open to considering an enrollment fee and/or an account maintenance fee as part of a Provider's Proposal.

10. **Investment Strategy and Nebraska ABLE Goals.** It is the goal of the Issuer that the investment strategy and structure of Nebraska ABLE:

    a. maximizes the return and minimizes the risk of loss to each participant, including contributors, account owners and beneficiaries;

    b. ensures availability of funds to meet the qualified disability expenses of beneficiaries;

    c. encourages participation by minimizing any required account balances or contribution levels;

    d. in consideration of 9.e. above, offers participants an optimal choice of investment options and fund selections; and

    e. minimizes the overall fees charged to participants.

11. **Regulatory and Industry Requirements.** Nebraska ABLE and the Contracting State Program must be operated in compliance with all Regulatory and Industry Requirements. Specifically, the Treasurer intends to adopt the attached (*Attachment E*) Draft *Policy of Nebraska ABLE Program Regarding Safeguards to Distinguish Between Types of Distributions* unless he is informed in writing by an authorized representative of the U.S. Department of the Treasury or the Department of the Treasury otherwise provides formal interpretive advice that such policy violates IRC Section 529A of the Code or regulations lawfully promulgated thereunder.

12. **Contracting State Program.** In accordance with its authority under the Enabling Act, the Issuer intends to offer a Contracting State Program. The Issuer intends to offer an ABLE program to a Contracting State generally under the same terms and conditions it offers Nebraska ABLE to eligible Nebraska participants. It is expected that the specific terms and conditions including investment options, account administration, marketing and customer service will be negotiated in good faith with each Contracting State. However, each agreement with a Contracting State should include, at a minimum, substantially similar Services.

B. Financial Services

The Provider must possess the requisite knowledge and demonstrate previous experience in providing investment management services, including the ability to consistently deliver investment returns that meet or exceed their respective indexes in 3 - 5 year time periods.

The Issuer intends to select one Provider to provide the Services but will not rule out multiple investment managers included in the Provider's Proposal in an effort to promote new types of Proposals and choice among portfolio options. The Issuer emphasizes that ease of access and understanding and minimization of fees are top priorities.

The Provider must describe the specific Investments that would comprise each of the investment portfolios proposed.

Any Investments that would comprise an investment option must meet the requirements of the Council's Statement of Investment Philosophy (**Investment Philosophy Statement**) available at www.nic.ne.gov. The Council has final authority with regard to the investment options offered under Nebraska ABLE and the asset allocation within each investment option.

Performance information with regard to each investment option must be updated at least daily on the Nebraska ABLE website. The Provider must also comply with any performance related criteria recommended by the Issuer. On at least a quarterly basis, and more frequently as necessary, the Provider must inform the Council and its investment consultant about significant changes in the investment climate, market conditions or investment philosophies that could affect Nebraska ABLE Investments.

C. Account Administration

The Provider must possess the requisite knowledge and demonstrated previous experience in administering investment accounts, including the ability to deliver the performance standards outlined below.

The Provider must submit as part of the Technical Proposal a plan for the establishment and maintenance of accounts, as well as all aspects of customer service (*Section E* below) to Nebraska ABLE account owners. The Issuer has no particular preference with regard to the recordkeeping platform recommended by the Provider.

The account administration strategy referenced above will also address the location of the employees providing customer service and the installation of communications facilities that connect the Provider's work site to the servers necessary to access customer accounts. The Provider must also address performance standards for all facets of account administration. These standards will include at a minimum:

1. Availability of ADA Compliant account access and servicing;

2. Procedures for requests to change accounts, including quality controls;

3. Availability of live customer service representatives for both sales and service (number of representatives, hours during the day, days per year, online customer service) and access to electronic customer service at all other times; and

4. Procedures for ensuring security of account owner and beneficiary information including security measures for communication via internet or telephone or in writing.

The Provider must provide Nebraska ABLE enrollment online and through a central mailing location that can receive express deliveries by normal U.S. postal services. The Provider must utilize a Nebraska address for all written correspondence and enrollment forms. The Provider must also provide for qualified withdrawals from accounts online and via quick access methods such as checks and debit cards.

The Provider must process all contributions and withdrawals, maintain all records and comply with all Regulatory and Industry Requirements.

Additional service requirements are listed under *Section E, Customer Service*.

D. Marketing

The Provider must possess the requisite knowledge and demonstrated experience in marketing investment products to motivate and assist families in investing for qualified disability expenses.

Marketing efforts include advertising, marketing materials (enrollment kits and brochures), a toll-free number and website, and face-to-face marketing (group presentations, event marketing). This allows prospective account owners to choose the investment options that best suit their specific needs. Marketing should be conducted in-state year-round and must be conducted in an ADA Compliant manner.

It is expected that marketing efforts on behalf of Nebraska ABLE will be conducted on a joint basis between the Treasurer and the Provider. Because Nebraska ABLE is a new program, the Provider should expect to include branding strategies as part of its Proposal. The Provider should expect that the Treasurer will have limited available funds to contribute to the marketing of the Program.

General Requirements include:

1. The Provider will work with the Treasurer or his authorized representative on all aspects of the marketing and public relations campaigns undertaken. The Treasurer will have final approval of all marketing and public relations decisions.

2. Depending on the structure of the Provider's Proposal, including the structure of the Administrative Fee, if any, up to 100% of the marketing costs associated with the marketing efforts may be borne by the Provider.

3. Nebraska ABLE's website will, at all times, be the sole source of detailed information available via the internet regarding Nebraska ABLE. Any inquiries made on the Provider's website about Nebraska ABLE must be linked directly to Nebraska ABLE's website.

4. Each of Nebraska ABLE's website and the Provider's website must be compliant with the accessibility standards set forth in Title III of the ADA.

E. Customer Service

The Provider must possess the requisite knowledge and demonstrated experience in providing customer service for ABLE plans or similar products in a manner that substantially meets the performance guidelines specified in this *Section V*.

Inbound telephone and online inquiries require interacting with prospective participants by answering any questions they may have about Nebraska ABLE and by taking their names and addresses to send them information.

Live customer service representatives must be available to answer questions about Nebraska ABLE from at least 8:00 A.M. to 8:00 P.M. Central Time, Monday through Friday, except U.S. bank holidays. These customer service representatives must be trained by the Provider using materials approved in advance by the Treasurer or his authorized representative. An automated voice response unit and internet servicing access must be available at all times.

When calling the toll-free number for Nebraska ABLE, a prospective customer will have several options through a voice response unit. For example, they can listen to a prerecorded message that provides a general overview about Nebraska ABLE (approved by the Treasurer or his authorized representative and the Provider) or be transferred to a customer service representative to answer questions about Nebraska ABLE. All customer service options available to Nebraska ABLE participants and potential participants must be ADA Compliant.

1. General Requirements:

    a. Maintain a database of inbound callers seeking enrollment materials, including information such as:
        i. Caller's name, address and telephone number
        ii. County of residence
        iii. How the caller heard about Nebraska ABLE – social media, disability advocacy group, radio, newspaper, friend, etc.

    b. Provide the Treasurer with a monthly report monitoring daily call volumes, call durations, time of calls, hold time, and abandoned calls.

    c. Update or change prerecorded messages, question and answer scripts, and training scripts when required or needed throughout the year using scripts approved by the Treasurer or his authorized representative.

    d. Provide a means for all participants to express concerns, comments or complaints regarding Nebraska ABLE and create and maintain a website and toll-free voice response unit for customer service inquiries, account balance information, enrollment, and withdrawal and marketing requests.

    e. Provide a means for participants to contribute to their Nebraska ABLE accounts through the workplace.

    f. Agree to maintain the confidentiality of all participant and beneficiary information.

    g. Provide best-in-class ADA Compliant website capability including online enrollment, account maintenance and withdrawals.

    h. Ability to comply with Regulatory and Industry Requirements.

2. Service Level Requirements:

    a. Telephone Inquiries
        i. Abandonment Rate – less than 2%
        ii. Percent of Calls Answered within 30 seconds – 90%

    b. Correspondence:
        i. Financial Correspondence Timeliness – 99% of financially related correspondences are sent within two business days of receipt.
        ii. Non-Financial Correspondence Timeliness – 99% of non-financial correspondences are sent within seven business days of receipt.

c. Check Processing:
   i. Accuracy of Posting Payment – 99% of checks received are accurately posted to a matching account with the correct amount and with the day of receipt's trade date.
   ii. Check Posting Timeliness – 99% of the checks are posted to the account owner's account by the day after receipt.

d. Confirmations, Statements, Tax Reporting:
   i. Timeliness of Monthly, Quarterly and Year-End account owner Statements – 99% are mailed within seven business days of approval
   ii. Timeliness of Daily Confirmations – 99% of daily confirmations are mailed within five business days.
   iii. Accuracy of Confirmations, Statements and Tax Reports – 99% of confirmations, statements and tax reports are accurate.
   iv. Timeliness of Tax Reporting – 99% of federal tax reports are mailed or electronically transmitted, as applicable on the agreed-to date.

F. Reports

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

a. Quarterly Reports

   i. Contribution volumes by portfolio
   ii. Average account balance
   iii. Average contribution amount
   iv. Total contributions
      (a) For the quarter
      (b) Year-to-date
   v. Total Distributions for the quarter
   vi. Number of Accounts, by portfolio
   vii. Market value of Accounts
   viii. Call Center performance statistics
      (a) Average second delay
      (b) Number of calls
      (c) Abandon Rate
   ix. Performance data for all Portfolios as compared to independent benchmarks – quarterly YTD, 1-year, 3-year, and 5-year numbers for the Portfolios and each underlying mutual fund, as applicable
   x. Current asset allocation percentages of portfolios
   xi. Assets in dollars by portfolio
   xii. Account Demographics
      (a) Average beneficiary age
      (b) Accounts with custodial authority

b. Monthly Reports

   i. Financial reports.
   ii. Plan Market Value

iii. Total number of account owners/beneficiaries
iv. Total number of accounts with custodial authority
v. Number of new accounts
vi. Number of closed accounts
vii. Total contributions for the month
viii. Total distributions for the month
ix. Call Center performance statistics

c. Annual Reports

Annual tax information for Nebraska State income tax purposes

i. Calendar year contributions by account owner name/social security number
ii. Rollovers to another state's 529A Plan reported by account owner name/social security number
iii. Other information as requested by the Issuer for State income tax reporting purposes

The Provider will provide such other information as the Treasurer or his authorized representative may request to monitor and control the Agreement. The Provider must be available to attend all regularly scheduled Council meetings to review the investment management Services to be provided under the Agreement.

G. Program Start Date and Project Plan

The Treasurer intends to begin offering Nebraska ABLE as soon as possible during calendar year 2016 (**Program Start Date**). If the Issuer awards a contract under this solicitation, the new Provider will begin providing some of the Services outlined in this *Section V*, in advance of the Program Start Date.

The Provider will submit a project plan describing all steps necessary to begin offering Nebraska ABLE as of the Program Start Date.

VI. SUBMISSION REQUIREMENTS

A. Proposal Format

Each Proposal must be submitted in two parts:

Volume I – TECHNICAL PROPOSAL, and
Volume II – FINANCIAL PROPOSAL

The Technical Proposal and the Financial Proposal may be presented in one sealed package and as one document as long as each portion of the Proposal is clearly identified and separately sealed. An original and ten (10) copies of each Provider's Proposal are to be submitted along with an electronic version. Additional copies may be submitted by email, CD or other electronic media.

If the Provider is submitting an electronic version via email, this should be noted in the transmittal letter. If the Provider is submitting an electronic version via CD or other electronic media, this media should be included in the Proposal package. The Technical Proposal and Financial Proposal of any submitted Proposal must be separately identified and contained in separate files in any email, CD, or other electronic media versions of the Proposal.

The Proposed Rules may be amended prior to adoption or may not be adopted immediately, if at all. In light of the uncertainty regarding implementation of the Proposed Rules, Providers may submit additional Proposals that take into account each of the potential outcomes discussed in this RFP. If Providers submit a single Proposal, the impact on the Proposal of any changes to the Proposed Rules should be described in response to each item in Volume I and Volume II of the Proposal, as applicable. If no impact is expected, the Provider should so state in its Executive Summary.

All pages of each Proposal volume must be consecutively numbered from beginning to end and should follow the same format as this RFP.

B. General Preparation Instructions

The Provider's Proposal should address all points and questions outlined in this RFP. It should be clear and precise in response to the information, requirements and format described in this RFP.

C. Transmittal Letter

A transmittal letter must accompany the Proposal. The transmittal letter should be brief and signed by an individual who is authorized to commit the Provider to the Services and requirements as stated in this RFP. All Providers must acknowledge, in their transmittal letter, receipt of this RFP and any addenda to this RFP. The outside envelope should be sealed and clearly marked: "Response to Request for Proposals for the Nebraska Achieving a Better Life Experience Program ". All Bids must be submitted to:

Nebraska State Treasurer
Room 2005, State Capitol Bldg
PO Box 94788
Lincoln, NE 68509-4788
Attention: Rachel Biar, Assistant State Treasurer

D. VOLUME I – Technical Proposal Contents

The Technical Proposal must include a Table of Contents and a declaration of confidential sections of the Proposal (if any).

The Technical Proposal must also include an Executive Summary. The Executive Summary should clearly demonstrate that the Provider has an understanding of the objectives and goals of the Issuer set forth in this RFP, and an understanding of the Scope of Work (*Section V*). This Summary must clearly state and demonstrate the minimum qualifications as listed in *Section IV* of this RFP. It should also contain a brief synopsis of the contents of the entire Proposal as well as include an analysis of the effort and resources that will be needed to realize the objectives of this RFP. The Executive Summary will also identify any exceptions the Provider has taken to the requirements of

this RFP or the Agreement (*Attachment A.*) **A Proposal that takes exception to the requirements of this RFP or the Agreement terms may be rejected.**

1. **General Information**

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

   b. Furnish a copy of the Provider's annual report and audited financial statements for fiscal years 2013 and 2014 along with an analysis of each set of financial statements.

   c. Provide the most recent ratings reports on the Provider from any available agencies (e.g. - A.M. Best, Moody, Standard & Poor). Indicate the date the Provider was last reviewed by each rating service. State the current rating and identify and explain any and all rating changes during the last five years. If the Provider has not been rated by a nationally recognized rating service, describe the circumstances under which such ratings have not been conducted. The Provider shall also describe any alternative financial condition and operational performance measures that it believes will be helpful in considering the minimum qualifications of the Provider.

   d. List programs for which you provide (either currently, or within the last three years) investment and administrative services. Include the following information:

      i. Length of time of your involvement
      ii. Types of services you offer
      iii. Aggregate annual cash flow
      iv. Total assets of each plan
      v. Plan assets held by your company
      vi. Actual annual rates of return by investment option credited under each plan during the past three (3) years
      vii. Geographic locations served
      viii. Total number of accounts and/or participants

   e. Provide a brief history of the Provider, including ownership, current management, and any significant changes in the forgoing (i) during the last five years and/or (ii) expected or pending. Describe the firm(s), including who holds controlling interest in the firm(s). Provide a percentage breakdown of any party having a legal or beneficial interest of greater than five percent (5%). If the firm(s) is employee-owned/controlled, indicate what percentage of the ownership interest is employee-owned.

   g. Discuss organizational structure, including size and location(s).

h. Discuss whether the Provider or its parent or affiliate is a registered broker/dealer. If the Provider trades in securities with a parent or affiliate, describe any process designed to avoid conflict of interest. Describe if these systems negatively affect the Provider's ability to perform its duties and if so, what measures have been utilized to lessen this impact.

i. Providers must provide a statement of their firm's invested assets under management for the past five years. Indicate if mergers or acquisitions influenced any growth in that time.

j. Describe any conflicts the Provider may have that would not allow it to provide Services to any Contracting State.

2. **Plan of Service**

This section will provide a detailed discussion of the Provider's service capabilities demonstrating the Provider's ability to meet the requirements of this RFP. The Plan of Service will fully explain how the proposed Services will satisfy each requirement listed in this RFP (*Scope of Work – Section V*). It should indicate all significant capabilities or issues that will be examined to fulfill the Scope of Work. Providers must include a project plan to ensure the Program Start Date is achieved. This Plan of Service should be presented in the same numbered order in which the requirements appear in *Section V*.

The Plan of Service must also summarize any expected differences in Services to be provided to Contracting States. For example, explain whether different investment options would be proposed or whether marketing or account administration Services would be provided in a different manner.

The Provider must also propose a staffing plan to provide the Services required by this RFP in accordance with all required quality standards and will include resumes for those with principal responsibilities for managing the Provider's obligations under the Agreement as well as for those with principal responsibilities for each functional area.

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

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

a. **Financial Services.** Each Proposal should include the following:

i. Describe the specific Investments that would comprise each of the investment options in Nebraska ABLE including checking and debit card services. The Provider may also propose other investment options along with the specific Investments and an explanation of the consumer benefits of the additional options.

ii. Describe the Provider's due diligence process regarding selection and monitoring of the proposed Investments. Give examples of reasons for removal of Investments. Provide an example of and rationale for a recent change in an Investment as a result of the due diligence process.

iii. Describe the Provider's internal and outside Investments including the amount of revenue sharing with each Investment.

iv. Describe the Provider's internal investment management capabilities and breadth of Investments offered.

v. If non-proprietary Investments are proposed for inclusion in the investment options, describe the limitations, if any, on the (a) number of outside Investments that may be utilized or (b) the dollar amounts that can be allocated to outside Investments.

vi. Describe any limitations on the use of non-proprietary Investments and any additional fees that may be assessed in connection with the use of such non-proprietary Investments.

vii. Describe whether the Provider, its employees, and/or any affiliated or related entity will be paid fees or commissions (including those from revenue-sharing and commission recapture services to Nebraska ABLE) from sources other than Nebraska ABLE.

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

ix. Describe the access to and availability of funds held in an account including expected holds on accounts and any required advance notice for withdrawal requests.

b. **Account Administration**

Proposals will include, at a minimum, descriptions of:

i. The proposed account administration system, the number of accounts currently administered on this system under programs similar to Nebraska ABLE, the approximate dollar value of such accounts, and the frequency and volume of individual transactions that are processed on a daily and weekly basis.

ii. The reliability and integrity history, other market experience and uses of the proposed system.

iii. The level of ADA Compliance of the proposed system.

iv. Plans and procedures for accepting and processing new enrollments, maintaining individual accounts, including making changes to accounts, posting contributions (including payroll and Electronic Funds Transfer transactions), and ensuring that the current accumulated contributions and account value for each account owner are available on a daily basis.

v. Plans and procedures for complying with the administration and reporting requirements of Regulatory and Industry Requirements.

vi. Online access capabilities to the account administration system, including online enrollment, account maintenance and withdrawals.

vii. If applicable, the Provider's ability to coordinate all facets of account administration for the Program. Issues such as maximum contributions, distributions, rollovers and federal tax law and Social Security Administration reporting should be addressed.

viii. The Provider's account administration experience for plans similar to Nebraska ABLE.

ix. Procedures for generating account statements and reports, including information regarding format, frequency, transmittal methods, customization, etc. and any available sample reports.

x. A disaster recovery plan describing in detail, how Services will be resumed within twenty-four (24) hours of a disaster.

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

c. **Marketing**

i. Provider must propose a brand identity and marketing strategy to be utilized for eligible Program account owners.

ii. The Provider will outline existing relationships that it has with companies or firms that provide consulting or other marketing services that are expected to contribute in any way to the marketing of Nebraska ABLE.

iii. The Provider will provide samples of marketing and disclosure information that it currently uses for programs similar to Nebraska ABLE.

iv. The Provider will describe its ability to develop and maintain the Nebraska ABLE website, its maintenance and intended references to Nebraska ABLE on the Provider's website, and its ability to maintain both its and the Nebraska ABLE's website as ADA Compliant sites.

v. Describe any products that Provider currently offers to State residents that compete or potentially could compete with Nebraska ABLE. Indicate whether the Provider would agree to contract with the Treasurer to refrain from directly or indirectly offering any competing product for so long as the Provider is providing Services to Nebraska ABLE. If the Provider would not agree to contract to refrain from offering any competing product, explain how the Provider's offering of one or more competing products can be done consistent with an obligation to aggressively and effectively market and administer Nebraska ABLE.

vi. Provider shall provide a narrative description of the marketing services provided as part of the proposed Marketing Budget Breakdown contained in *Attachment B*. The narrative description should include the branding and marketing strategies the Provider proposes to implement. This description should include references to similar, successful marketing campaigns that the Provider has implemented.

vii. Provider shall propose budget percentages for all of the Program's promotion, marketing, and advertising services for each fiscal year during the term of the Agreement in the Marketing Budget Breakdown form attached hereto as *Attachment B*. The total dollar amount of the actual amount budgeted will be provided in the Financial Proposal, *Attachment C*. **Providers should not include any dollar amounts on *Attachment B*.** Although indirect expenditures, such as the costs of producing, printing and distribution of Program materials (**fulfillment**) are part of the Marketing Budget, these and any other indirect costs, will be excluded for purposes of evaluating the proposed Marketing Budget. If the Provider is awarded the contract, the Provider will be contractually required to adhere to the budget dollars submitted on *Attachment C*, adjusted as required pursuant to the Form of Agreement attached hereto as *Attachment A*.

d. **Customer Service**

i. The Provider will describe its strategies for transmitting and sharing databases of callers to and with Nebraska ABLE, as well as ensuring the confidentiality of the database.

ii. The Provider will include a discussion of the steps that will be taken to ensure that the Nebraska ABLE database is not combined with other databases maintained by the Provider.

iii. The Provider will provide the Treasurer with contingency plans or emergency plans for days and/or times when the call volume may exceed the successful Provider's ability to handle the calls quickly and expeditiously. The Provider will also provide the Treasurer with any contingency plans for handling telephone calls from non-English speaking callers and on an ADA Compliant basis.

iv. The Provider will outline procedures, including ADA Compliant procedures, for responding to verbal, written, and online inquires or complaints about Nebraska ABLE.

v. The Provider will outline procedures for the production and distribution of quarterly statements to account owners, as well as the Provider's ability to accommodate additional or more detailed reports if required by the Treasurer or his authorized representative.

vi. The Provider will include service levels achieved for similar plans currently under management. Describe how the Provider intends to meet the service level requirement contained in *Section V.E*. Provide anticipated service levels for each measure listed and describe the Provider's resources available for Nebraska ABLE.

e. **Contracting State Program**

The Provider will describe any proposed differences in the manner in which the Contracting State Program will be administered as follows:

i. Describe any alternative investment options that would be offered to Contracting States and the reasons for offering different Investments.

ii. Describe any changes to customer service or account administration that would be offered to Contracting States and the reasons for such changes in services to be offered.

iii. Describe any changes to marketing services, including the Marketing Budget Breakdown, for Contracting States and the reasons for such changes in services to be offered.

iv. Describe any changes in fees charged to participants in the Contracting State Program and the reasons for such changes in fees.

f. **Program Start Date and Project Plan**

Describe the Provider's proposed project plan as outlined in *Section V.G*. The project plan should also include an expected implementation timetable for a Contracting State Program.

3. **Capabilities**

Provider must describe in detail how it possesses the following capabilities:

a. Full Service - Provider must be a financial services firm experienced in all facets of investment management, account administration, marketing and customer service.

b. Contact Personnel - Provider must provide a senior level manager who will be responsible for the relationship between the Provider and the Issuer. The principal day-to-day contact must also be identified.

c. Project Management Team - Provider must list its project management team and describe both how the team will interact with the Issuer and staff and how the team will accomplish the requirements of this RFP. Please also provide addresses, telephone numbers, email addresses and summary resumes for all essential personnel who may provide these Services. Their resumes should include past experience servicing similar types of programs and any familiarity with agencies, authorities, and instrumentalities of the State.

d. Discuss whether the Provider is registered or licensed (or is exempt from such registration or licensure) under the Investment Advisors Act of 1940, otherwise by the U.S. Securities and Exchange Commission, any self-regulatory organization (as such term is defined in §3(a)(26) of the Securities Exchange Act of 1934, as amended), any regulatory agency of any state of the United States, or any U.S. Government department or agency.

e. State whether the Provider is a licensed member of the Securities Investor Protection Corporation (SIPC). If so, state the amount of SIPC protection the Provider provides.

f. Describe how the Provider proposes to properly evaluate the project management team on a continual basis to ensure that quality standards are met. The Provider will provide the Treasurer periodic analysis of the results of Program performance.

g. Provide three references that will be applicable to the specific Services requested in this RFP. The Issuer will have the right to contact any reference as part of the evaluation and selection process. If a Proposal uses a subcontractor(s), provide three references per subcontractor. If the Provider (or a subcontractor) provides this service or a similar service to a state or municipal government, the Provider must identify all such entities as a reference. References are to include descriptions of:

    i. The Provider's ability to manage contracts of comparable size and complexity;

    ii. The quality and breadth of services provided by the Provider;

    iii. Each client reference is to include the following information;
        a. Name of client organization: Name, title, and telephone number of point of contact for client organization;
        b. Value and type of contract(s) supporting the client organization, the date the work was performed or the duration of contract(s) supporting the client organization, and the service location; and
        c. If the Provider is no longer serving this client, an explanation of why the Provider is no longer providing the services.

4. **Legal Actions Summary**

The Provider(s) must include the following:

a. A statement as to whether there are any outstanding legal actions against the Provider, and a brief description of any such action.

b. A brief description of any settled or closed material legal actions against the Provider over the past five (5) years.

c. A brief description of any material pending or prior litigation against the Provider, its officers, directors, principals or key personnel related to participation in company, employer or government sponsored investment plans over the past three (3) years.

d. A statement as to whether or not the Provider has filed (or has filed against it) any bankruptcy or insolvency proceeding, and if so, provide details.

e. A brief description of any extraordinary investigation, examination, complaint, disciplinary action or other proceeding relating to or affecting the Provider or any of its employees, agents, etc. that has occurred within the last ten (10) years, which was commenced by any of the following: the U.S. Securities and Exchange Commission; any self-regulatory organization (as such term is defined in §3(a)(26) of the Securities Exchange Act of 1934, as amended); any Attorney General or any regulatory agency of any state of the United States; any U.S. Government department or agency, or any governmental agency regulating securities of any country in which the Provider is doing business.

5. **Indemnity Insurance**

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

6. **Subcontractors**

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

E. VOLUME II – Financial Proposal Contents

The Financial Proposal must contain all cost information in the format specified in *Attachment C*. All Financial Proposals will be typewritten or written legibly in ink. The signer will initial all erasures in ink.

All Financial Proposals (*Attachment C*) will be signed in ink as follows:

1. As an Individual – Sign with full name and address.

2. As a Partnership – Partners will sign with full names and business address.

3. As a Corporation – An authorized officer of the corporation will sign with full name and title and will include the name and address of the corporation.

VII. SELECTION PROCESS AND CRITERIA

A. Award of Contract

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

The Issuer reserves the right to engage additional Providers to Nebraska ABLE at any time.

B. Evaluation Criteria

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

1. Competitiveness of Investment performance and product features;

2. Financial stability and strength of Provider;

3. Customer service;

4. Costs charged to any account or any other entity;

5. ADA compliance;

6. Marketing commitment to reach potential customer base;

7. Administrative capacity and strategy;

8. Goal measurement and monitoring criteria; and

9. Any other quality or characteristic deemed in the best interests of the State or the Issuer.

Potential Providers are advised that materials contained in Proposals are subject to the Nebraska Public Records Statutes and may be viewed and/or copied by any member of the public, including news agencies and competitors, in accordance with the Public Records Statutes (Neb.Rev.Stat. – Sections 84-712 through 84-712.09). Providers claiming a statutory exception to the Nebraska Public Records Statutes should indicate on the outside of the envelope that confidential materials are included and should specify which statutory exception provision applies.

ATTACHMENT A – FORM OF AGREEMENT

PROGRAM MANAGEMENT AGREEMENT

This **PROGRAM MANAGEMENT AGREEMENT** ("**Agreement**"), dated as of _____, 2015 ("**Effective Date**"), is entered into by and among the Nebraska State Treasurer ("**Treasurer**"), the State Investment Officer on behalf of the Nebraska Investment Council ("**Council**") and _____, a **[insert state of incorporation]** ("**Contractor**").

W I T N E S S E T H:

WHEREAS, Sections 77-1401 through and including 77-1409 of the Nebraska Revised Statutes ("**Neb. Rev. Stat**."), as amended from time to time ("**Statute**"), provides for the establishment of an achieving a better life experience ("**ABLE**") program under Section 529A of the United States Internal Revenue Code of 1986, as amended from time to time, ("**Code**") entitled the Nebraska ABLE ("**Program**");

WHEREAS, Neb. Rev. Stat. Section 77-1402, provides the Treasurer with responsibility for the administration, operation and maintenance of the Program;

WHEREAS, Neb. Rev. Stat. Section 77-1409 authorizes the Treasurer to enter into contracts and agreements, retain entities to provide the Services; employees; experts; and consultants, and do all other things necessary or convenient to implement the Statute;

WHEREAS, Neb. Rev. Stat. Section 77-1406 provides that the State Investment Officer shall have the fiduciary responsibility for the investment of the money in the Program and any money credited to the Treasury Management Cash Fund for administrative expenses of the Program, including the selection of all Investment Options and the approval of all fees and other costs, except costs for administration, operation, and maintenance as appropriated by the Legislature, pursuant to the directions, guidelines, and policies established by the Council; and

WHEREAS, the Contractor will perform the various administrative, marketing, investment management and other services as more fully referred to and described below in the implementation and operation of the Program.

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

1. **DEFINITIONS; RULES OF CONSTRUCTION**.

(a) ***Definitions***.

The following terms used in this Agreement will have the respective meanings set forth below:

"***Account***" shall mean a separate account within the Program established in accordance with the Statute to fund Qualified Disability Expenses.

"***Account Owner***" shall mean an Eligible Individual who has entered into a Participation Agreement pursuant to the Code for the funding of Qualified Disability Expenses. The Account Owner and Beneficiary are the same Eligible Individual.

"***ADA***" shall mean the Americans with Disabilities Act.

"***Administrative Fee***" shall mean the portion of the Management Fee set forth on Exhibit C to this Agreement that is paid to the Treasurer in connection with the Treasurer's expenses to operate the Program.

"***Administrative Fund***" shall mean the administrative fund established by the Statute.

*"**Allocation Guidelines**"* shall mean the ranges determined in accordance with this Agreement and those set forth in Schedule A.

"***Applicable Law***" shall mean all applicable laws, judgments, decrees, injunctions, writs and orders of any court, tribunal, arbitrator or Governmental Authority and rules, regulations, orders, licenses and permits of any Governmental Authority.

"***Beneficiary***" shall mean an Eligible Individual who establishes an Account.

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

"***Contracting State***" shall mean a contracting state as that term is used in Section 529A(e)(7) of the Code.

"***Contracting State Program***" shall mean an ABLE program under Section 529A of the Code operated by the State of Nebraska on behalf of a Contracting State.

"***Eligible Individual***" shall have the same meaning as the term used in Section 529A of the Code.

"***FDIC***" shall mean the Federal Deposit Insurance Corporation.

"***Final Termination Date***" shall mean the date on which the Contractor no longer holds any assets under this Agreement and the Contractor no longer provides Services with respect to any Accounts.

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

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

"***Implementation Plan***" shall mean the implementation plan attached hereto as Schedule E designed to ensure the orderly implementation of the Program.

"***Investment Expenses***" shall mean the expense ratios and other fees and expenses, except the Management Fee, associated with the Investment Options and any underlying Investments.

"***Investment Options***" shall mean the investment options listed on Schedule A hereto and made available under the Program to Account Owners investing in the Program.

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

"***Losses***" shall mean all losses, costs, claims, causes of action, liabilities, penalties, damages and expenses (including, without limitation, reasonable attorney's fees and disbursements), excluding consequential, punitive and special damages.

"***Management Fee***" shall mean the fee payable to the Contractor for the Services as set forth in Exhibit C.

"***Material Adverse Effect***" shall mean a material adverse effect on (a) the business, operations or financial condition of the Contractor, the Treasurer, the Council or the Program, (b) the ability of any party to this Agreement to perform its material obligations under this

Agreement or (c) the validity or enforceability of a material provision of this Agreement or the material rights or remedies of any party to this Agreement.

"***Media Materials***" shall mean the Program Logo, any slogan developed specifically for the Program, any trade names, trademarks or service marks created specifically for the Program, any copyrighted materials relating solely or primarily to the Program, including materials contained in the Program Disclosure Documents that are related specifically to the State, the Treasurer, the Council or the Program, website content related specifically to the Program and marketing, advertising and public relations materials that are specific to the Program.

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

"***Non-Qualified Withdrawal***" shall mean a withdrawal from an Account other than (i) a Qualified Withdrawal, (ii) a withdrawal by reason of the death or disability of a Beneficiary or (iii) a withdrawal made in compliance with Section 529A(c)(3)(C).

"***Participation Agreement***" shall mean the agreement to be entered into by the Program and an Account Owner with respect to an Account in a form mutually agreed upon by the Contractor and the Treasurer, as amended from time to time with the approval of the Treasurer.

"***Person***" shall mean any individual.

"***Program Disclosure Documents***" shall mean the document(s) describing the Program prepared for distribution to persons in connection with their opening of Accounts and entering into Participation Agreements and to Account Owners and others having an interest in the Program.

"***Program Assets***" shall mean all assets of the Program within the Program.

"***Program Fiscal Year***" shall mean the twelve month period ending each June 30.

"***Program Logo***" shall mean the logo which has been designed and developed specifically for the Program.

"***Program Materials***" shall mean all records, books, correspondence, papers and files relating solely or primarily to the Program, whether or not in the possession of the Treasurer or the Council, including, without limitation, all lists, compilations and summaries of Account Owners, Beneficiaries or prospective Account Owners who contact the Contractor for the purpose of expressing an interest in the Program.

"***Program Records***" shall mean, collectively, the Program Materials and the Media Materials.

"***Program Start Date***" shall mean the date on which all conditions set forth in Section 10 have been satisfied or waived.

"***Qualified Disability Expenses***" shall have the meaning set forth in Section 529A(e)(5) of the Code.

"***Proposed Rules***" shall mean the rules proposed under Section 529A of the Code by the IRS on June 22, 2015.

"***Qualified ABLE Program***" shall have the meaning set forth in Section 529A(b) of the Code.

"***Qualified Withdrawal***" shall mean a withdrawal from an Account to pay the Qualified Disability Expenses of the Beneficiary of the Account.

"***RFP***" shall mean the Request for Proposals for Investment and Administrative Services issued by the Treasurer on July 20, 2015.

"***SEC***" shall mean the U.S. Securities and Exchange Commission.

"***Section 529A***" shall mean Section 529A of the Code.

"***Services***" shall mean the program management, marketing, administrative, investment management and other services to be provided in connection with the Program by the Contractor, which are described in Section 2(a) of this Agreement.

"***State***" shall mean the State of Nebraska.

"***Statute***" shall have the meaning set forth in the recitals to this Agreement.

"***Value***" shall mean, as applicable, an Investment's per share or per unit net asset value or other customarily calculated daily value.

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

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

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

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.

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

2. **ENGAGEMENT OF THE CONTRACTOR AS PROGRAM MANAGER; TERM; SUBCONTRACTING OF SERVICES; EMPLOYEES OF CONTRACTOR**.

(a) ***Engagement by the Treasurer and the Council***. The Contractor shall provide program management services to the Program as described in the RFP and the Contractor's proposal in accordance with the terms and conditions of this Agreement and the Exhibits attached to this Agreement and incorporated as part of this Agreement as follows (collectively, the "**Services**"):

Exhibit A: Request for Proposals for Investment and Administrative Services dated July 20, 2015.

Exhibit B: The Contractor's Technical Proposal dated _____, 2015.

Exhibit C: The Contractor's Financial Proposal dated _____, 2015.

Schedule A: Financial Services
Schedule B: Account Administration
Schedule C: Marketing
Schedule D: Customer Service
Schedule E: Implementation Plan

(b) ***Inconsistencies***. If there are any inconsistencies between the Agreement and any of the Exhibits, the terms of this Agreement shall prevail. If there are any inconsistencies between any of the Exhibits or Schedules, the terms of Exhibit A shall prevail.

(c) ***Term***. The term of this Agreement (the "**Term**") shall commence on the Effective Date and shall continue until the close of business on the fifth anniversary of the Program Start Date. At the option of the Treasurer, this Agreement may be extended for up to two (2) additional one-year terms (each such one-year term, a "**Renewal Term**") at the end of the Term, provided the Treasurer notifies the Contractor in writing of his intention to do so at least one hundred and eighty (180) days prior to the scheduled expiration date. Any extension of the Term and any Renewal Term will become effective only upon a written amendment to this Agreement executed by the Treasurer and the Council.

(d) ***Subcontracting of Services***. The Treasurer and the Council hereby acknowledge that the Contractor shall have the right to subcontract (i) services relating to marketing, information and distribution of the Program; (ii) transfer agency services required of the Contractor hereunder; and (iii) custody, fund accounting and certain administrative services required of the Contractor hereunder. However, the Contractor may not subcontract any portion of the Services provided under this Agreement without obtaining the prior written approval of the Treasurer, nor may the Contractor assign this Agreement or any of its rights or obligations hereunder, without the prior written approval of the Treasurer. Any such subcontract or assignment shall be subject to any terms and conditions that the Treasurer and, as applicable, the Council deem necessary to protect the interests of the State and the Program's Account Owners and Beneficiaries. The Contractor shall be liable and responsible for the actions of any subcontractor as if the Contractor had performed those duties itself.

(e) ***Employees of Contractor***. The Contractor shall utilize its personnel to perform the Services required under 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 obligation. The Contractor warrants that all employees engaged in providing the Services shall be qualified to perform the Services, shall be properly licensed and otherwise authorized to do so under all Applicable Law.

3. **STANDARD OF CARE**.

(a) The Contractor acknowledges that it has fiduciary duties to the Treasurer, the Council, the Program, the Account Owners and the Beneficiaries.

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

(c) The Contractor agrees to discharge its duties with respect to the Program in the interest of the Account Owners and the Beneficiaries of the Program. Notwithstanding the foregoing, the Treasurer is under no obligation to monitor the actions of the Contractor to insure that its actions conform to the requirements of this subsection 3(c) of the Agreement.

4. **THE INVESTMENT OPTIONS AND THE INVESTMENTS; INVESTMENT OF PROGRAM ASSETS; CONTRIBUTIONS; CREDITING OF CONTRIBUTIONS; WITHDRAWALS**.

(a) ***The Investment Options***. The proceeds from the contributions by Account Owners to Accounts pursuant to Participation Agreements will be allocated by the Contractor to each Investment Option of the Program in accordance with the Investment Option elections of Account Owners and any applicable Allocation Guidelines set forth in Section 5(b).

(b) ***Investment of Program Assets***. The Program Assets held in the Program will be invested and administered by the Contractor as set forth in the Program Disclosure Documents and in the registration statements for the Investments.

(c) ***Crediting of Contributions***. Contributions to the Program by Account Owners received in good order before the close of trading on the New York Stock Exchange (usually 4:00 P.M., Eastern Time) on any Business Day shall be credited to the Account to which the contribution is made on the same day. Contributions received in good order at or after the close of trading on the New York Stock Exchange or on a day other than a Business Day shall be credited on the next Business Day. Contributions shall be credited that same day to the applicable Investment Option at the Value per share calculated for that day for such Investment Option. A contribution shall be credited to an Account (i) once the documentation with respect to the Account is properly completed and such contribution is in good order and (ii) at a price equal to the Value next calculated for the applicable Investment Option after the contribution is credited.

(d) ***Distributions***. The Contractor shall process requests by Account Owners for distributions from the Accounts in compliance with (i) Section 529A of the Code, (ii) the Proposed Rules, (iii) regulations promulgated by the IRS, as amended from time to time, (iv) applicable private letter rulings, (v) other IRS guidance and (vi) the Program Disclosure Documents. The Value for an Investment Option applicable to a distribution shall be the Value next calculated for such Investment Option once such distribution request is received in good order.

5. **PROGRAM INVESTMENT OBJECTIVE; ALLOCATION GUIDELINES; MID-YEAR CHANGES IN ALLOCATION GUIDELINES; INVESTMENT POLICIES AND PERFORMANCE BENCHMARKS**.

(a) ***Program Investment Objective***. In accordance with the Code and the regulations proposed and/or promulgated thereunder, the Contractor shall seek to provide performance consistent with the investment objective of each Investment or Investment Option. The Contractor shall adhere to all policies, procedures, and criteria as set forth in this Agreement or otherwise by the Council or the Treasurer.

The Treasurer and the Council acknowledge that the Contractor does not guarantee any return of amounts contributed by Account Owners or any income or earnings thereon and that the investment of contributions made by Account Owners under the Program is subject to market risks.

(b) ***Allocation Guidelines***. The Contractor shall invest the Program Assets allocated to an Investment Option (including new contributions allocated to each Investment Option and the net earnings of each Investment Option) in accordance with the Allocation Guidelines. All Allocation Guidelines shall be substantially in the format set forth in Schedule A. On or before November 1 of each calendar year during the Term and any Renewal Term commencing with November 1, 2016, the Contractor shall submit to the Council for its consideration, the Contractor's recommended Allocation Guidelines for each Investment Option (as described on Schedule A) for the following calendar year. The Contractor shall make such recommendations consistent with the objective of the Program described in paragraph (a) of this Section 5 and the risk levels deemed appropriate by the Council. On or before March 31 of each such calendar year, the Council shall either (a) notify

the Contractor that the Council approves the Contractor's recommended Allocation Guidelines, as they may have been revised after consultation with the Council, or (b) deliver to the Contractor revised Allocation Guidelines that the Council deems appropriate in its sole discretion.

(c) ***Mid-Year Changes in Allocation Guidelines***. Notwithstanding anything to the contrary set forth above, the Council, upon written notice to the Contractor, may change the Allocation Guidelines at any time upon 30 days advance notice for application during the remaining portion of such calendar year.

(d) ***Investment Policies and Performance Benchmarks***. The investment objective, policies and allocation for each of the Investment Options shall be as set forth in Schedule A, as amended from time to time. The Council reserves the right to adopt additional investment policies applicable to the Program. In the event that such investment policies are adopted, they shall become part of this Agreement as if executed as of the date hereof.

(e) ***Proxy Voting***. The Council retains the right to vote all proxies of the Investments.

(f) ***Substitution, Removal or Addition of Investment Options***. The Contractor may recommend to the Council the substitution, removal or addition of Investment Options or Investments to the Program. The Council can choose to accept, reject or modify such recommendations in its sole discretion. The Council may, upon 30 days advanced notice to the Contractor, direct the substitution, removal or addition of Investment Options or Investments to the Program.

(g) ***Expense Ratios and Other Fees***. The Investment Expenses shall be set forth in Schedule A. The Contractor must provide written notice to the Council sixty (60) days in advance of any proposed increase. The Council shall have the authority to grant or deny such increase in its sole discretion. If the Council denies any request of the Contractor to increase the Investment Expenses, the Contractor may, nonetheless, implement such increase in Investment Expenses; provided, however, that before the increase in Investment Expenses becomes effective, the Contractor shall provide advanced written notice of its intent to implement the increase in Investment Expenses and the Council shall have the opportunity to direct the Contractor to (a) substitute the affected Investments and Investment Options with other Investments or Investment Options, (b) remove the affected Investments and Investment Options, and/or (c) modify the Asset Allocation Guidelines.

6. **MANAGEMENT FEE; COLLECTION; ADJUSTMENTS; NO APPROPRIATION; EXPENSES**.

(a) ***Management Fee***. The Contractor will be entitled to the Management Fee as set forth in Exhibit C, subject to adjustments as provided in paragraph (c) of this Section 6, which shall be the Contractor's sole compensation for performing all the Services hereunder. The investment management fee for each Investment is charged separately and is disclosed in the prospectus for each Investment and is in addition to the Management Fee payable directly to the Contractor. The Management Fee will accrue and be calculated by the Contractor daily and will be payable to the Contractor monthly. The Contractor will pay all of its direct and indirect costs and expenses in connection with this Agreement, the Program and the Services (including the Contractor's annual marketing commitment as set forth in Exhibit C, the preparation of all Program Disclosure Documents, and broker-dealer, investment advisor, transactional and other fees associated with the Investments), and none of such costs or expenses will be paid from or reimbursed out of assets of the Program (other than the Management Fee).

(b) ***Payment of the Management Fee; Audit by the Treasurer***. Commencing on the fifteenth day of each month after the Program Start Date, the Contractor will deliver to the

Treasurer a summary report of its calculation of the Management Fee for the preceding month, in a format and by a means, electronically or otherwise, to be agreed upon by the Contractor and the Treasurer. Such report will set forth, at a minimum, the net assets of the Program invested in each Investment for each day of the preceding month. If, within seven days following receipt of such calculation, the Treasurer does not advise the Contractor that it objects to such calculation, the Contractor will withdraw the portion of the Management Fee calculated with respect to the Program Assets from the Program. If the Treasurer advises the Contractor that it objects to such calculation, the Treasurer and the Contractor will, in good faith, attempt to resolve such objection as soon as reasonably practicable. If the Treasurer objects to a portion of such calculation, the Contractor may withdraw such portion of the Management Fee that is not in dispute. The calculation and collection of the Management Fee will remain subject to post-audit adjustment, and the Treasurer's failure to advise the Contractor with respect to any monthly calculation, nor any transfer by the Contractor in payment of a prior amount calculated and submitted but not objected to by the Treasurer, will not preclude subsequent adjustment of the Management Fee or the repayment by the Contractor of any overage to the Program.

(c) ***Adjustments to the Management Fee Due to Change in Law or Interpretation of Law; Modification or Restructuring of the Program or Modification of Services***. The Management Fee may be adjusted only upon mutual written agreement of the parties hereto and only in connection (i) with a mutually agreed upon change in the Program, (ii) if the Program is modified or restructured in response to a change in Applicable Law and such change materially impacts the duties of the Contractor hereunder (as mutually agreed upon by the Treasurer, the Council and the Contractor), or (iii) the Services or administrative systems are materially modified at the request of the Treasurer or the Council.

(d) ***Comparable Qualified ABLE Programs.*** The Contractor represents that the Management Fee is the lowest offered to any state with a comparable Qualified ABLE Program. In the event that the Contractor reduces or agrees to a program management fee which is less than the fees stated in Exhibit C for any state with a comparable Qualified ABLE Program, it shall offer the same fee schedule to the Program, and the Program shall automatically receive the benefit of any such more favorable terms.

(e) ***Administrative Fee***. Commencing on the second anniversary of the date of this Agreement and concurrently with the payment of the Management Fee to the Contractor, the Contractor shall pay the Administrative Fee to the Treasurer or his designee to cover the costs and expense of operating the Program.

7. **REPRESENTATIONS, WARRANTIES AND COVENANTS OF THE CONTRACTOR**. The Contractor hereby represents, warrants and covenants to the Treasurer and the Council as of the date hereof as follows:

(a) ***Organization of the Contractor***. The Contractor is a corporation duly organized, validly existing and in good standing under the laws of **[insert name of State]**. The Contractor is also duly qualified and in good standing in the State, and is in compliance with all material governmental approvals, consents, licenses, permits, certificates, franchises and requirements of law that are necessary for the Contractor to conduct its business and to enter into and perform its obligations under this Agreement and the other Program documents. The Contractor has the corporate power and authority to execute and deliver this Agreement and to perform its obligations hereunder.

(b) ***Authority***. 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. This Agreement has been duly and validly executed and delivered by the Contractor and constitutes the legal, valid and binding obligation of the Contractor enforceable against the Contractor in accordance with its terms.

(c) ***No Conflicts***. The execution and delivery by the Contractor of this Agreement and the performance by the Contractor of its duties and obligations hereunder do not: (i) conflict with or result in a breach of any of the terms, conditions or provisions of the articles of incorporation or by-laws of the Contractor; or (ii) conflict with or result in a violation of 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 or (iii) conflict with or result in a violation or breach of, or constitute (with or without notice or lapse of time or both) a default under, any material agreement to which the Contractor is a party, or any material obligation or responsibility which the Contractor has to any third party.

(d) ***Approvals and Filings***. On the date hereof, and on the date on which the conditions in Sections 10(a) and (b) have been satisfied, (i) no consent, approval or action of, or filing with or notice to, any governmental or regulatory authority is required on the part of the Contractor in connection with the execution, delivery and performance of this Agreement or the performance by the Contractor of its obligations hereunder and (ii) no consent or approval of any other Person, including the holders of any indebtedness or obligations of the Contractor, is required on the part of the Contractor in connection with the execution, delivery and performance of this Agreement by the Contractor or the performance by the Contractor of its obligations hereunder.

(f) ***Registration of Investments***. The Investments are registered as an investment company or exempt from registration under the Investment Company Act of 1940, as amended.

(g) ***Licenses and Approvals***. The Contractor shall obtain, at its expense, all licenses, permits, insurance, and governmental approvals, if any, necessary to the performance of its obligations under this Agreement.

(h) ***Registration***. The Contractor is (A) registered or exempt from registration under the Investment Advisors Act of 1940, as amended; and (B) registered or licensed by the U.S. Securities and Exchange Commission ("**SEC**"), any self-regulatory organization (as such term is defined in §3(a) (26) of the Securities Exchange Act of 1934, as amended), any regulatory agency of any state of the United States, or any U.S. Government department or agency, as applicable.

(i) ***1940 Act***. If the Program shall be required to register as an investment company under the Investment Company Act of 1940, as amended, then the Contractor will cooperate with the Treasurer in effecting such registration in a timely manner.

(j) ***Compliance with Laws***. The Contractor shall comply with all Applicable Law including all requirements of the ADA, IRS, FDIC, SEC, FINRA, MSRB and any other Governmental Authority to the extent such requirements are applicable to the Contractor or any of its subcontractors under this Agreement in the performance of its duties and obligations under this Agreement or a subcontract, as applicable. The Contractor also warrants that it shall comply with all Applicable Law in the performance of their duties and obligations under this Agreement. Failure to do so may be deemed a breach of this Agreement that has a Material Adverse Effect and grounds for termination of this Agreement, and denial of further work with the State. The Contractor further warrants that it shall require in any subcontract entered into pursuant to this Agreement a provision that requires such subcontractor to comply with all Applicable Law, including all requirements of the ADA, IRS, FDIC, the SEC, FINRA, MSRB and any other Governmental Authority, in the performance of its duties and obligations under the subcontract. Failure of a subcontractor

to so comply may be deemed a material breach of the subcontract and grounds for termination of the subcontract pursuant to its terms, and require the Contractor to continue to provide services either directly or indirectly through a replacement subcontract.

(k) ***No Litigation***. There is no action, suit, investigation or proceeding pending or, to the best knowledge of the Contractor, threatened against the Contractor before any court, arbitrator or administrative or governmental body which might result in a Material Adverse Effect on the operations of the Contractor or which might materially and adversely affect the ability of the Contractor to perform the Services hereunder. There is no action, suit, investigation, claim or proceeding pending, or to the best knowledge of the Contractor, threatened against the Contractor involving allegations of fraud, misrepresentation, willful misconduct, breach of fiduciary duty, violation of any federal or state securities law or regulation, or violation of any federal or state law or regulation enacted for the protection of banks, thrift institutions, insurance companies, or other financial institutions, nor has the Contractor settled any action, suit, investigation or claim for any of the foregoing.

(l) ***Pay-for-Play.*** The Contractor has not and will not pay any placement agent fees, finder's fee, cash solicitation fee, or fee for consulting, lobbying or obtaining business from the Treasurer or the Council directly or indirectly related to Contractor's Services or this Agreement.

(m) ***Continuing Representations, Warranties and Covenants***. Each of the representations, warranties and covenants made by the Contractor in this Agreement is true and correct (A) as of the date hereof, (B) on and as of the Program Start Date and (C) through the final day of the Term and each Renewal Term. Upon any material change in any of the representations, warranties or covenants made by the Contractor in this Agreement, Contractor shall immediately notify the Treasurer and Council in writing of such change.

8. **REPRESENTATIONS, WARRANTIES AND COVENANTS OF THE TREASURER AND THE COUNCIL**. The Treasurer and the Council hereby represent, warrant and covenant individually and not jointly to the Contractor as of the date hereof that:

(a) The execution and delivery of this Agreement by the Treasurer and the Council, and the performance by the Treasurer and the Council of its obligations hereunder, have been duly and validly authorized under Applicable Law; the Treasurer and the Council have the legal right, power and authority to execute and deliver this Agreement, and the Treasurer and the Council have the legal right, power and authority to perform his obligations hereunder; and this Agreement has been duly and validly executed and delivered by the Treasurer and the Council and constitutes the legal, valid and binding obligation of the Treasurer and the Council, enforceable in accordance with its terms.

(b) The execution and delivery of this Agreement by the Treasurer and the Council, the performance by the Treasurer and the Council of its obligations hereunder and the consummation of the transactions contemplated hereby do not: (a) conflict with or result in a violation of any term or provision of any law, rule, regulation, judgment, decree or injunction applicable to the Treasurer, the Council or the Program, or (b) conflict with or result in a violation or breach of, or constitute (with or without notice or lapse of time or both) a default under, any agreement or other instrument to which the Treasurer, the Council or the Program is a party, or any material obligation of the Treasurer, the Council or the Program to a third party.

(c) No additional consents, approvals or actions of, or filing with or notice to, any agency or instrumentality of the State is required in connection with the execution and delivery of this Agreement by the Treasurer and the Council and the performance of this Agreement by the Treasurer and the Council or the consummation by the Treasurer and the Council of the

transactions contemplated hereby, except such consents and approvals that will have been obtained upon execution and delivery of this Agreement.

(d) Except as provided in Section 10, no consent, approval or further action by a Governmental Authority is required to cause proceeds from the contributions by Account Owners to be invested in the Investment Options.

(e) The Program Assets shall only be used as authorized under Section 529A and the Applicable Law. The Program Assets shall not be subject to appropriation by the State or any subdivision thereof. The Program Assets shall not be subject to claims by creditors of the State.

9. **COOPERATION; IRS LETTER RULING; EXPENSES**.

(a) ***Cooperation***. The parties will cooperate with each other in a commercially reasonable manner in order that the conditions to the obligations of the Treasurer, the Council and the Contractor contained in Section 10 are satisfied and the duties and obligations of the parties hereunder may be effectively, efficiently and promptly discharged.

(b) ***IRS Letter Ruling; SEC No-Action Letter***. The Treasurer may seek such legal advice concerning the status of the Program as it deems advisable, including (i) preparing and filing on behalf of the Program, a private letter ruling from the IRS to the effect that the Program satisfies the qualification requirements of Section 529A and is exempt from federal taxation and addressing other issues agreed upon by the Contractor and the Treasurer (the "**IRS Letter Ruling**") and (ii) preparing and filing on behalf of the Program a no-action letter from the SEC staff to the effect that the Program and the operation of the Program will be exempt from the registration requirements of the Securities Act of 1933, as amended and the rules and regulations thereunder and exempt from the broker-dealer registration requirements of the Securities Exchange Act of 1934, as amended, and the rules and regulations thereunder ("**SEC No-Action Letter**"). At no time during the Term or Renewal Term shall the Contractor seek an IRS Letter Ruling, SEC No-Action Letter or any other interpretation of Applicable Law by any Governmental Authority specifically relating to the Program independent of the efforts of the Treasurer to obtain such interpretations and without the express written consent of the Treasurer, which consent shall not be unreasonably withheld to the extent consistent with the Program.

(c) ***Actions; Expenses***. In the event that the Treasurer determines to seek an IRS Letter Ruling or an SEC No-Action Letter, the Treasurer and the Contractor, except as otherwise consented to or approved by the other parties in writing or as expressly permitted or required by this Agreement, will take all commercially reasonable actions to obtain the IRS Letter Ruling and/or SEC No-Action Letter, and thereafter to meet their responsibilities hereunder with a view to the continuing applicability of the IRS Letter Ruling and/or SEC No-Action Letter. The Contractor will pay the fees and disbursements of its counsel in connection with the preparation of the requests for and efforts to obtain the IRS Letter Ruling and/or SEC No-Action Letter, as applicable.

(d) ***Further Cooperation***. In the event that the Program or objectives of the Program are adversely affected due to interpretations of existing federal tax law (including, without limitation, if an IRS Letter Ruling or SEC No-Action Letter negatively impacts the Program or the IRS refuses to issue an IRS Letter Ruling or the SEC refuses to issue the SEC No-Action Letter), State tax law or federal or State securities laws, (i) the Treasurer and the Contractor will use commercially reasonable efforts to restructure the Program within the constraints of Applicable Law to address such adverse consequences, and (ii) the Treasurer and the Contractor each will pay its own expenses in connection with such efforts through the date of such restructuring.

10. **CONDITIONS PRECEDENT TO THE PROGRAM START DATE**. On or before the Program Start Date, each of the following conditions must be satisfied or waived by the Contractor and the Treasurer:

(a) ***Tax Opinion***. The Contractor shall have obtained, at its sole expense, an opinion for the benefit of the Treasurer and the Council, in a form and substance reasonably acceptable to the Treasurer, from counsel to the Contractor, that the Program and the conversion of the Program and transfer of the assets of the Program to the Contractor satisfies the qualification requirements of Section 529A.

(b) ***State Tax Opinion***. The Contractor shall have obtained, at its sole expense, an opinion for the benefit of the Treasurer and the Council, in a form and substance reasonably acceptable to the Treasurer, that the Program, the Account Owners and the Beneficiaries will qualify for the State tax benefits and deferrals contemplated by the applicable provisions of the Code and any other applicable state law.

(c) ***Securities Opinion.*** The Contractor shall have obtained, at its sole expense, an opinion for the benefit of the Treasurer and the Council, in a form and substance reasonably acceptable to the Treasurer, that the interests in and the Participation Agreements relating to the Program are exempt from the registration requirements of the Securities Act of 1933, as amended, pursuant to Section 3(a)(2) thereof and from the registration and qualification requirements of the Trust Indenture Act of 1939, as amended, pursuant to Section 304(a)(4)(A) thereof, the Treasurer's and the Council's office may perform the functions in this Agreement and the Program Disclosure Documents without registration under the Securities Exchange Act of 1934, nothing in the Program Disclosure Documents contains an untrue statement of material fact, or omits a material fact necessary to be stated in order for such statements made in the Program Disclosure Documents not to be misleading in light of the circumstances in which such statements were made therein, and that the Trust is exempt from the registration requirements of the Investment Company Act of 1940, as amended, pursuant to Section 2(b) thereof.

(d) ***Opinion of Contractor's Counsel***. An opinion of counsel shall have been provided to the Contractor (with copies to the Treasurer and the Council), addressing the matters to which the Contractor has delivered its representations, warranties and covenants as set forth in Section 7.

(e) ***Representations and Warranties***. Each of the representations and warranties made by the Treasurer, the Council and the Contractor, respectively, in this Agreement will be true and correct in all material respects on and as of the Program Start Date (it being agreed and understood that each party may waive the effect of any misrepresentation by the other party).

(f) ***Participation Agreement and Program Disclosure Documents***.

(i) *Completion*. The Participation Agreement and the Program Disclosure Documents will be in form and substance acceptable to the Treasurer and the Contractor.

(ii) *Certificate of the Contractor*. The Contractor will have delivered to the Treasurer a Certificate, dated on the Program Start Date, executed on behalf of the Contractor, to the effect that (A) all portions of the Program Disclosure Documents are complete and accurate in all material respects and (B) the Program Disclosure Documents completely and accurately describe the Program and the Investment Options and do not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading.

11. **REPORTS AND FINANCIAL STATEMENTS; ACCOUNT STATEMENTS; ELECTRONIC DATA SUBMISSION; AUDITS**.

(a) ***Reports and Financial Statements***. The Contractor will prepare and deliver to the Council, the Council's designated investment adviser and custodian, and Treasurer (i) within ten (10) Business Days immediately following the end of each calendar quarter, reports on the performance of each of the Investments and the Administrative Fund, if applicable, in a form mutually satisfactory to the Treasurer, the Council and the Contractor, and (ii) within thirty (30) calendar days immediately following the end of each Program Fiscal Year, an annual statement of assets and liabilities and changes in net assets in a form mutually satisfactory to the Treasurer, the Council, the Council's designated investment adviser and custodian, and the Contractor, each such report to be prepared in accordance with generally accepted accounting principles applied on a consistent basis as of and for the periods involved.

(b) ***Account Statements***. The Contractor will prepare and deliver to each Account Owner within twenty (20) calendar days immediately following the end of the period to which they pertain, calendar quarter and calendar year statements (i) identifying the contributions made to each selected Investment Option in the relevant Account during the preceding period, (ii) the total contributions made to each selected Investment Option in such Account through the end of such period, (iii) applicable benchmark performance for the Investment Options as determined from time to time by the Council in its sole discretion; (iv) the total value of such Account(s) at the end of such period, (v) distributions made from each selected Investment Option in such Account during such period and (vi) such other information that the Treasurer or the Council request to have reported to the Account Owner.

(c) ***Compliance Requirements***. The Contractor shall:

(i) Keep the Program in compliance with Applicable Laws, the requirements of the Code and the regulations and rules of the Program promulgated thereunder and any amendments thereto, provided such amendments do not impair a material term of this Agreement, and to manage the Program to qualify as a "qualified ABLE program" under Section 529A, as amended, along with any regulations thereunder and notices issued with regard thereto, including the Proposed Rules as of the date hereof and such regulations when published as final; provided, however, that (A) compliance with any modifications to or interpretations of current or future regulations and/or rules relating to the Program can be achieved by the Contractor in a commercially reasonable manner and (B) the Treasurer and the Council cooperate in effectuating such compliance;

(ii) Keep adequate records of each Account, keep each Account separate from each other Account and provide the Treasurer with the information necessary to prepare the Account information and statements required by the Statute;

(iii) Compile information for statements and reports required to be prepared under the Code and provide such compilations to the Treasurer; and

(iv) Provide the Treasurer with copies of all regulatory filings and reports made by the Contractor in connection with the Program until the Final Termination Date of this Agreement.

(d) ***Tax Reports***. The Contractor shall:

(i) If there is any distribution from an Account to any individual or for the benefit of any individual during a calendar year, report such distribution to the Internal Revenue Service and either the Account Owner, the Beneficiary or the distributee to the extent required by federal law or regulation; and

(ii) Prepare and file statements, reports and information relating to Accounts to the extent required by federal and State tax law.

(e) ***Audits***. The Contractor shall prepare, at its expense, annual financial statements in accordance with generally accepted accounting principles for the Program within the time period specified in the Statute. Upon request, the Contractor shall provide such books, records, documents and accounting procedures and practices within its custody and control as are relevant to the performance of the Services for examination by the Treasurer and its outside auditors for a period of up to six years from the expiration of the Final Termination Date. Such audit shall meet the requirements of the Statute, as determined by the Treasurer. The Contractor shall agree that it will be held liable for any State audit exceptions caused by the Contractor and shall return to the State all payments made under this Agreement for which an exception has been taken or which has been disallowed because of such an exception.

12. **OWNERSHIP AND CUSTODY OF PROGRAM RECORDS**. The Treasurer shall own and have all right, title and interest in and to, and beneficial ownership of, the Program Records, which shall be readily accessible to the Treasurer, at the Contractor's expense, in a commercially reasonable manner. In performing the Services, and in the event of any action, suit, investigation or similar proceeding involving the Contractor that is brought in connection with the Program, the Contractor and its subcontractors will have full access to the relevant Program Records and to the fullest extent permitted by law, the Treasurer will cooperate, and will cause its officers and employees to cooperate, with the Contractor in connection with any such action, suit, investigation or similar proceeding.

13. **CONFIDENTIALITY**.

(a) The Contractor, the Treasurer and the Council agree to maintain all personal and financial information concerning the Account Owners and Beneficiaries related to the Program (except for disclosures to Account Owners of such information relating to them or their Accounts, disclosures required by Section 11(d) of this Agreement, and disclosures of information regarding Qualified Withdrawals) unless written authorization to disclose such information has been given by the appropriate party. The personal, technical, financial business and other information referred to above is referred to as "Confidential Information."

The Contractor will use Confidential Information solely for the purpose of performing the Services in accordance with this Agreement. The Contractor will hold all such information and all information generated in the performance of the Services in strict confidence indefinitely (even beyond the term and termination of this Agreement) and will not disclose such information without prior written authorization from the Treasurer and the Council. The Contractor will defend, indemnify and hold the Treasurer, the Council, and the Program harmless against and from all claims, damages, injuries, costs, expenses and losses arising out of the wrongful use or disclosure of such information by the Contractor or its current or former employees.

(b) This Section 13 will not restrict any disclosure required to be made by Applicable Law, except that no such disclosure will be made sooner (unless otherwise compelled) than five (5) Business Days immediately following the other party's receipt of written notice of such requirement, and such notice will include a copy of any Applicable Law. In the event either party is ordered to disclose Confidential Information, such party will afford to the other party a reasonable opportunity to participate and object, at the other party's expense, to any such disclosure.

(c) ***Public Records***. Pursuant to the Nebraska Public Records Statutes (Neb. Rev. Stat. - Sections 84-712 through 84-712.09), information or documents received by the Treasurer or the Council from the Contractor may be open to public inspection and copying unless exempt from disclosure.

(d) ***Use by Employees and Agents***. The requirement of confidentiality under this Agreement also applies to the subcontractors and delegates of any party and employees, attorneys and other professional advisers and agents of the parties hereto and such subcontractors and delegates. Each party hereto will use its best efforts to ensure that such persons adhere to the confidentiality requirements set forth herein. Use and disclosure of proprietary and Confidential Information by employees, agents, attorneys and other professional advisers to the extent necessary to carry out the terms and purposes of this Agreement is permitted.

14. **COMMUNICATIONS; THE CONTRACTOR AND AFFILIATE MARKETING AND ADVERTISING; MARKETING PROGRAM; MEDIA MATERIALS**.

(a) ***Communications***. The Contractor will be identified as the program manager for the Program, and the Program Logo, will be displayed, on (i) each application to open an Account and each Participation Agreement; (ii) the Program Disclosure Documents and any disclosure supplemental thereto; (iii) each Program Account statement; (iv) each pamphlet and other materials advertising the Program; (v) each advertising of the Program in print and electronic media; and (vi) other Program documents, including other Program forms and letterhead. The Program Logo shall at all times be represented with equal or greater prominence than the Contractor brand name and logo. All communications shall be made in accordance with all Applicable Laws, including the Statute and the rules and regulations, as may be in effect from time to time of the MSRB and FINRA. Any marketing, promotional and other written materials prepared by the Contractor must be submitted in advance to the Treasurer or his designee for approval, prior to use, which approval shall not be unreasonably withheld or delayed. If the Treasurer or his designee fails to respond within ten (10) business days after a request for approval is sent, such failure shall be deemed to constitute approval.

(b) ***The Contractor and Affiliate Marketing and Advertising***. The Contractor shall not, without the advance written consent of the Treasurer, make any mailings or contact with any Account Owners or Beneficiaries unrelated to the Program, unless such contact or communication is initiated or facilitated with no information obtained in relation to the Program and/or the Account Owner or Beneficiary's participation in the Program. The Contractor will not, and will cause its affiliates not to, (i) sell any list established in administering the Program of Account Owners or Beneficiaries or any name thereon to any third party, (ii) use any list of Account Owners or any name therein for any solicitation unrelated to the Program, or (iii) solicit any Beneficiaries. The internet websites for the Program, which is the property of the Program, shall be NebraskaABLE.com, ABLENebraska.com, and ABLEofNebraska.com, or such other URL as mutually agreed to by the parties.

(c) ***Marketing Expenditures and Promotional Activities***. The marketing and promotional activities performed by the Contractor for the Program shall include, but not be

limited to, the Services set forth in Schedule C. Within thirty (30) days of the execution of this Agreement (for the Treasurer's current fiscal year commencing July 1, 2015) and by not later than April 15 of each fiscal year thereafter (commencing with the fiscal year 2016), the Contractor will submit, in writing, a proposed marketing program for the immediately following calendar year. Prior to implementation, each marketing program must be satisfactory to the Treasurer. The Contractor will implement the marketing program, as approved in writing by the Treasurer, and any material changes to such program will require the prior written consent of the Treasurer.

15. **LIABILITY OF THE CONTRACTOR; INDEMNIFICATION BY THE CONTRACTOR; LIABILITY OF THE TREASURER AND ITS REPRESENTATIVES**.

(a) ***Contractor***.

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

(ii) *Indemnification by the Contractor*. The Contractor will, to the full extent permitted under Applicable Law, indemnify, defend and hold harmless the Program, the Treasurer, the Council, the Account Owners, Beneficiaries, the Program and the members, officers, employees and agents of any of them having responsibilities in connection with the Program and any successors of any of them (collectively, the "Program Indemnitees"), from and against any and all Losses suffered, incurred or sustained by the Program Indemnitees or to which any of them becomes subject, to the extent resulting from, arising out of or relating to a breach of this Agreement and constituting a negligent act or omission, willful misconduct or fraud by the Contractor or its officers, employees, agents, representatives, affiliates, delegates or subcontractors with respect to, related to or concerning this Agreement. Notwithstanding the foregoing, a Program Indemnitee will not be entitled to indemnification hereunder if it has been adjudicated that such Losses arose from a material violation of this Agreement by, or the negligent act or omission, willful misconduct or fraud of, or willful violation of law by, any Program Indemnitee (including any Program Indemnitee not seeking indemnification).

(b) ***Indemnification Procedures***. If there is asserted any claim, liability or obligation that in the judgment of a party indemnified above ("Indemnified Party") may give rise to any Losses, or if such Indemnified Party determines the existence of the foregoing whether or not the same shall have been asserted, such Indemnified Party shall give notice to the Contractor (including reasonable detail of the facts giving rise to same) upon receipt of notice of the assertion of any claim, liability or obligation, or receipt of notice of the filing of any lawsuit based upon such assertion, or, with respect to a claim not yet asserted against the Indemnified Party, promptly upon the determination by the Indemnified Party of the existence of the same. No Indemnified Party or Parties shall compromise or settle any claim or dispute to which this Section applies without the written consent of the Contractor. Such written consent will not be unreasonably withheld.

(c) ***Liability of the Treasurer and the Council***. The liability of the Treasurer and the Council under this Agreement is limited to the extent contemplated and provided by the State Tort Claims Act (Neb. Rev. Stat. Sections 81-8,209 through 81-8,235).

(d) ***No Personal Liability***. In no event shall any official, officer, employee or agent of the state of Nebraska, the Treasurer, the Council or the Program be personally liable or responsible for any representation, statement, covenant, or obligation contained in, or made in conjunction with, this Agreement, whether express or implied.

16. **TERMINATION OF AGREEMENT**.

(a) ***Termination***. This Agreement will terminate prior to the expiration of the Term or Renewal Term, if any, upon the occurrence of any of the following (each an "Early Termination Event"), subject to the provisions of subsection (b):

(i) at the Treasurer's election, if the Contractor breaches any provision of this Agreement (with respect to representations, covenants or otherwise) and such breach remains uncured for more than thirty (30) days after the Treasurer has given written notice thereof to the Contractor, and such breach has a Material Adverse Effect;

(ii) at the Treasurer's election, if the Contractor commences a voluntary case or other proceeding seeking rehabilitation, liquidation, reorganization or other relief with respect to itself or its debts under any rehabilitation, bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, rehabilitator, receiver, liquidator, custodian or other similar official of it or substantially all of its property, or will consent to any such relief or to the appointment of or taking possession by any such official in an involuntary case or other proceeding commenced against it, or will make a general assignment for the benefit of creditors, or file an answer admitting the material allegations of a petition filed against it in any such proceeding or fail generally to pay its debts as they become due, or will take any corporate action to authorize any of the foregoing;

(iii) at the Treasurer's election, if an involuntary case or other proceeding will be commenced against the Contractor seeking rehabilitation, liquidation, reorganization or other relief with respect to it or its debts under any rehabilitation, bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its property, and such involuntary case or other proceeding will remain undismissed and unstayed for a period of sixty (60) days;

(iv) at the Treasurer's election in the event of a change in Applicable Law which has a Material Adverse Effect on the ability of the State to operate the Program;

(v) at the Treasurer's election in the event the Treasurer determines that termination of the Agreement is in the best interest of the State, the Account Owners or the Beneficiaries;

(vi) at the Treasurer's election in the event the Nebraska legislature repeals and does not replace the Statute; or

(vii) notwithstanding any other provision of this Agreement, the Treasurer may, at any time at his sole discretion, terminate this Agreement, in whole or in part, upon one

hundred and eighty (180) days' notice to the Contractor, or at such later date as the Treasurer may establish in such notice.

(b) ***Existing Accounts***. In the event this Agreement is not renewed at the expiration of the Term or any Renewal Term, the Contractor shall continue to provide all Services after notice is provided through the actual termination of the Agreement in accordance with the terms of this Agreement, unless otherwise notified by the Treasurer. Notwithstanding the foregoing, the Treasurer may elect to have the Contractor continue to provide program management services beyond an Early Termination Event through the end of the initial Term or current Renewal Term, as applicable. The Contractor shall not solicit or accept new Accounts after the expiration of the Agreement.

(c) ***Transition Accounts***.

(i) In the event this Agreement is terminated by an Early Termination Event provided for in Paragraph 16(a) or is not renewed at the expiration of the Term or any Renewal Term, the Treasurer may require and the Contractor shall continue to provide, if required, those Services that the Treasurer determines are necessary and appropriate to enable the transition of the Program from program management by the Contractor to the Treasurer, its designated representatives or a new program manager (the "**Transition**"). The Contractor shall use its best efforts to facilitate the transfer of the Accounts and the Services from the Contractor to any workforce, agency, contractor, or other entity designated by the Treasurer that provides for reasonable consideration for the best interests of the Account Owners, is protective of the Treasurer's fiduciary obligations, and avoids the likelihood of an increase in economic loss, or the likelihood of resulting liability, to the Account Owners, Beneficiaries or the Treasurer.

(ii) The Contractor, its employees, agents and subcontractors shall provide the Treasurer, his staff and whoever the Treasurer 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 for up to one year as determined by the Treasurer to ensure an orderly Transition. The Contractor and the Treasurer must mutually agree upon any longer transition period.

(iii) 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 Program in a reasonable and storable electronic form within a medium mutually agreed upon by the Contractor and the Treasurer.

(iv) During the Transition, 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 Transition, 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 Transition, the Treasurer may, at his 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.

(v) The Contractor and its subcontractors shall each bear all of their own expenses in connection with any Transition.

17. **NOTICES**. Any notice given in connection with this Agreement shall be given in writing and shall be delivered either by hand to the other party; by courier; by certified mail, postage prepaid, return receipt requested, to the other party at the other party's address provided below; or by facsimile transmission or email transmission to the other party as noted below. Notice shall be deemed delivered immediately upon personal service and upon confirmation of transmission if sent by facsimile transmission. Notice provided in the United States mail shall be deemed delivered the third Business Day after the document has been deposited in the United States mail. Notice by email transmission shall be deemed delivered on the date the recipient provides written acknowledgement (via email or other method) of receipt of the same. Either party may change its physical address, facsimile number or email address by giving written notice of the change to the other party.

If to the Treasurer to:

Nebraska State Treasurer Don Stenberg, or his successor
State Capitol Building
P.O. Box 94788
Lincoln, NE 68509

With a Copy to (which shall not constitute notice):
Rachel Biar, Assistant State Treasurer
State Capitol Building
P.O. Box 94788
Lincoln, NE 68509

With a Copy to (which shall not constitute notice):

John E. Schembari, Esq.
Kutak Rock, LLP
1650 Farnam Street
Omaha, NE 68102

If to the Council to:

Michael Walden-Newman
State Investment Officer
Nebraska Investment Council
1526 K Street, Suite 400
Lincoln, NE, 68508

With a Copy to (which shall not constitute notice):
O'Neill, Heinrich, Damkroger, Bergmeyer & Shultz P.C., L.L.O
Attn: Christopher R. Heinrich
800 Lincoln Square
121 S. 13th St.
Lincoln, NE 68508

If to the Contractor to:

Telephone: _____
Facsimile: _____
Email: _____

18. **COMPLIANCE WITH CIVIL RIGHTS LAWS AND EQUAL OPPORTUNITY EMPLOYMENT**. The Contractor will comply with the Nebraska Fair Employment Practice Act and Title VI of the Civil Rights Act of 1964, as amended, so that no person shall, on the grounds of age, creed, sex, physical handicap, race, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under this Agreement or under any project, program, or activity supported by this Agreement. The Contractor shall also comply with the Federal Rehabilitation Act of 1973, as amended; the Americans with Disabilities Act of 1990 (PL 101-336), as amended; Section 5043 of the Rehabilitation Act of 1973, as amended; the Age Discrimination Act of 1975, as amended; and the Nebraska Fair Employment Act, as amended. The Contractor further agrees to include similar provisions in all subcontracts for services allowed in connection with this Agreement.

19. **DRUG-FREE WORKPLACE**. The Contractor shall maintain a drug-free workplace policy.

20. **WAIVER**. The terms and conditions hereof may be waived only by a written instrument signed by the party waiving compliance. The failure of the Treasurer, the Council or the Contractor to insist on strict compliance with this Agreement, or to exercise any right or remedy under this Agreement, will not constitute a waiver of any rights provided under this Agreement, nor estop either party from thereafter demanding full and complete compliance nor prevent either party from exercising such a right or remedy in the future. Any waiver by either party of any right under this Agreement will not constitute a waiver with respect to any separate or subsequent right or matter under this Agreement.

21. **FORCE MAJEURE**. Neither the Treasurer, the Council nor the Contractor (or the Contractor's affiliates, subcontractors or delegates) shall be liable for or deemed to be in default for any delay or failure to perform under this Agreement if such delay or failure to perform results from an act of God, civil or military authority, act of war, riot, insurrection or other occurrence beyond that party's control. In such case, the intervening cause must not be caused by the party asserting it and the excused party is obligated to promptly perform in accordance with the terms of this Agreement after the intervening cause ceases.

22. **STATE OF NEBRASKA PERSONNEL RECRUITMENT PROHIBITION**. The Contractor shall not knowingly recruit any State professional or technical personnel who have worked on the Program or who have had any influence on decisions affecting the Program for one (1) year following the completion of services provided, pursuant to this Agreement. This prohibition does not affect the right of the Contractor's organization to recruit employees for projects unrelated to the Program, provided such recruitment does not create a conflict of interest.

23. **STATE PROPERTY**. The Contractor shall be responsible for the proper care and custody of any state-owned personal property (such as vehicles or computers), which are furnished for the Contractor's use during the performance of this Agreements. The Contractor shall reimburse the State for any damage of such property, normal wear and tear excepted.

24. **PROHIBITION AGAINST ADVANCE PAYMENT**. No compensation or payments of any kinds will be made in advance of services actually performed and/or goods furnished.

25. **TAXES**. The State is not required to pay taxes of any kind and assumes no liability as a result of this Agreement. Any property tax payable on the Contractor's equipment which may be installed in a state-owned facility is the responsibility of the Contractor. The State shall not pay taxes based on the Contractor's income or property taxes for software.

26. **INSPECTION AND APPROVAL**. Final inspection and approval of all work required by this Agreement shall be performed by the designated State officials. The State shall have the right to enter any premises where the duties of the Contractor or any subcontractor under this Agreement are being performed and to inspect, monitor, or otherwise evaluate the work being performed. All inspections and evaluations shall be at reasonable times and in a manner that will not unreasonably delay work.

27. **NO THIRD-PARTY BENEFICIARIES**. Except as otherwise specifically provided for herein, nothing in this Agreement is intended or will 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.

28. **NO PARTNERSHIP; INDEPENDENT CONTRACTOR**. Nothing contained in this Agreement will be deemed or construed to create the relationship of a joint venture or partnership between the Contractor, the Treasurer or the Council. The Contractor will have no authority to bind the Treasurer or the Council without the written consent of the Treasurer or the Council, as appropriate. The Contractor is an independent contractor and will be free, subject to the terms and conditions of this Agreement, to exercise judgment and discretion with regard to the conduct of its business, including, without limitation, performing management, investment advisory and other services for qualified ABLE programs other than the Program and for other clients.

29. **HEADINGS**. Headings and subheadings of provisions of this Agreement are solely for the convenience of reference and are not a part of this Agreement and will not affect the meaning, construction, operation or effect hereof.

30. **ENTIRE AGREEMENT**. This Agreement, including all Exhibits and Schedules attached hereto, sets forth the entire understanding of the parties hereto with respect to the subject matter hereof and incorporates, merges and supersedes any and all prior understandings and communications, whether written or oral, with respect to such subject matter.

31. **GOVERNING LAW AND SEVERABILITY**. This Agreement shall be construed in accordance with and governed by the laws of the State of Nebraska. The venue of any action to enforce the provisions of this Agreement shall be Lancaster County, Nebraska. In the event any term of this Agreement is held to be invalid or unenforceable by a court, the remaining terms of this Agreement will remain in force.

32. **SURVIVAL**. Sections 1, 6, 12, 13, 15, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33 and 34 will survive the Final Termination Date.

33. **AMENDMENT**. This Agreement, including the Annexes hereto, may be amended only if such amendment is in writing and agreed to by the Treasurer, the Council and the Contractor.

34. **ATTORNEYS' FEES**. If either party brings any action or proceedings to enforce, protect or establish any right or remedy under the terms and conditions of this Agreement, the prevailing party shall, to the extent permitted by law, be entitled to recover reasonable attorneys' fees, as determined by a court of competent jurisdiction, in addition to any other relief awarded.

35. **TIME OF ESSENCE**. Time is expressly declared to be of the essence of this Agreement.

36. **COUNTERPARTS**. This Agreement may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered will be an original, but all of which taken together will constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective representatives duly authorized so to do on the date and year first above written.

TREASURER

By:
Name:
Title:

COUNCIL

By:
Name:
Title:

CONTRACTOR

By:
Name:
Title:

SCHEDULE A

FINANCIAL SERVICES

[TO BE COMPLETED FOLLOWING AWARD OF CONTRACT]

SCHEDULE B

ACCOUNT ADMINISTRATION

[TO BE COMPLETED FOLLOWING AWARD OF CONTRACT]

SCHEDULE C

MARKETING

[TO BE COMPLETED FOLLOWING AWARD OF CONTRACT]

SCHEDULE D

CUSTOMER SERVICE

[TO BE COMPLETED FOLLOWING AWARD OF CONTRACT]

SCHEDULE E

IMPLEMENTATION PLAN

[TO BE COMPLETED FOLLOWING AWARD OF CONTRACT]

ATTACHMENT B – MARKETING BUDGET BREAKDOWN

MARKETING BUDGET BREAKDOWN

CONTRACT INCEPTION THROUGH PROGRAM START DATE

Marketing Activity	% of Total Budget
Television Ads	%
Print Ads	%
Print Materials	%
Internet Marketing (including Social Media and online advertising)	%
Direct Mail	%
Fulfillment (producing, printing, and distribution of program materials)	%
Overhead/Indirect Expenses	%
Value Add	%
Educational Seminars	%
Other (Explain)	%
	100%

ANNUALLY FOLLOWING PROGRAM START DATE[1]

Marketing Activity	% of Total Budget
Television Ads	%
Print Ads	%
Print Materials	%
Internet Marketing (including Social Media and online advertising)	%
Direct Mail	%
Fulfillment (producing, printing, and distribution of program materials)	%
Overhead/Indirect Expenses	%
Value Add	%
Educational Seminars	%
Other (Explain)	%
	100%

[1] Include additional tables if necessary to show a change in budget in following years.

ATTACHMENT C – FINANCIAL PROPOSAL SCHEDULE

COSTS AND FEES

The Issuer is interested in offering best-in-class Investments while minimizing the cost to investors. Therefore, the total expense ratio for the Nebraska ABLE Program should reflect those goals.

The Issuer expects the successful Provider to fund its investment management, account administration, customer service and marketing expenses through its portion of the investment option's expense ratio and any proposed fees including an Account Maintenance Fee and/or Enrollment Fee, if proposed.

The Issuer is asking for this Financial Proposal Schedule to be completed based on an Agreement with a term of five years from the Program start date (with the possibility of two renewal terms of one year each at the sole option of the Treasurer), commencing upon completion and execution of the Agreement for the Services.

Please complete this Financial Proposal Schedule and include all fees that the Provider proposes to charge to manage the Program in this Attachment. Failure to complete this Attachment can result in elimination from further consideration.

If the Provider proposes a different fee structure and/or investment offerings for a Contracting State Program, please complete a separate Financial Proposal Schedule for each of the Nebraska ABLE Program and the Contracting State Program.

For example, if the investment options offered, Program Management Fee charged or Administrative Fee paid under the Nebraska ABLE Program would change in the event that a qualified ABLE program was also offered by one or more Contracting States, indicate that change in a separate Financial Proposal Schedule titled "Contracting State Program Financial Proposal Schedule."

1. DEFINITIONS

Account Maintenance Fee – an annual fixed or asset-based fee charged to participants in Nebraska ABLE.

Administrative Fee – the fee, if any, to be paid by the Provider to the Treasurer in consideration for administrative and marketing expenses incurred by the Treasurer in administering the Program.

Enrollment Fee – a fee charged to participants upon enrollment in Nebraska ABLE.

Program Management Fee – the fee to be assessed by the Provider to account owners in addition to the weighted average expense ratio.

Program Fiscal Year End – June 30.

State Fiscal Year End – June 30.

Weighted average operating expense ratio – weighted average operating expense ratio of the mutual funds or other investments underlying each investment option.

2. WEIGHTED AVERAGE OPERATING EXPENSE RATIO TABLES

Investment Options - Please complete the following table for each proposed fixed investment option, modifying the table as necessary. This table should be used to present information for investment options that would be composed of more than one investment vehicle.

	Specify Asset Allocation	Weighted Average Operating Expense Ratio[1]	Program Management Fee	TOTAL
Investment Option #1				
Investment Option #2				
Investment Option #3				
Investment Option #4				
Investment Option #5				
Investment Option #6				
Investment Option #7				
Investment Option #8				
The weighted average operating expense ratios for all portfolios in the Program will not exceed:				

[1] The Weighted Average Operating Expense Ratio should be expressed in basis points.

Please complete the following table for the stand alone mutual funds or other Investments proposed, modifying the table as necessary. Additionally, please include the amount of revenue sharing for each proposed Investment. Performance information should be provided for the cumulative periods ended June 30, 2015.

						Annualized Performance (%)				
Option[2]	**Fund Name**	**Morningstar Rating**	**Investment Portfolio**	**Ticker**	**Weighted Average Operating Expense Ratio**	**3 Yrs**	**5 Yrs**	**10 Yrs**	**Program Management Fee**	**TOTAL**
Cash										
Low Risk										
Domestic Fixed Income										
Inflation-Protected Fixed Income										
Large Cap Passive										
Large Cap Value										
Large Cap Growth										
Small Cap Core Equity										
International Core Equity										
Other Asset Classes, As Applicable										

[2] Add additional assets classes as applicable.

3. ADMINISTRATIVE FEE

The Treasurer does not plan to collect an Administrative Fee during the first two years of the Contract but will consider the need to receive an Administrative Fee for years three, four and five as well as the optional two – one-year extensions under any resulting Agreement.

Please complete the following table with regard to all Administrative Fees proposed to be paid to the Treasurer.

Summary Of Administrative Fee To Be Paid By Provider To The Treasurer[3]

	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6[4]	Year 7[4]
On fiscal year-end assets of: **Proposed Administrative Fee**	**N/A**	**N/A**	$_____M _____% and/or $_____ Check one: __Annually __Monthly	$____M _____% and/or $_____ Check one: __Annually __Monthly	$_____M _____% and/or $_____ Check one: __Annually __Monthly	$_____M _____% and/or $_____ Check one: __Annually __Monthly	$_____M _____% and/or $_____ Check one: __Annually __Monthly

[3] This table may be adjusted to reflect the actual method of determining the Administrative Fee. However, the information should be presented on a year by year basis.
[4] Assuming the Agreement is renewed for each of the additional one-year renewals.

4. ANNUAL MARKET BUDGET DETAILED ALLOCATIONS

All information provided in this table should be as of the proposed Program Start Date. All fees should be expressed in total dollars.

PERIOD	BUDGET[5]
Contract Year 1	
Contract Year 2	
Contract Year 3	
Contract Year 4	
Contract Year 5	
Contract Year 6[6]	
Contract Year 7[6]	

5. OTHER PROPOSED COSTS AND FEES

If the Provider proposes any other charges, including an Account Maintenance Fee and/or Enrollment Fee, they must be clearly described below. Any charge for Services not addressed in this Financial Proposal Schedule will not be allowed or paid pursuant to the terms of the Agreement.

Please define item, unit, fee and, as applicable, cost by Agreement year and any applicable waivers of such proposed costs. Indicate whether fees are proposed on a per account basis, asset basis and/or program basis and explain the purpose of such fee. Information may be included on additional pages, if necessary.

	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6[7]	Year 7[7]
Enrollment Fee	**$_____**	$ _____	$_____	$_____	$_____	$_____	$_____
Account Maintenance Fee	**$_____**	$ _____	$_____	$_____	$_____	$_____	$_____
Other Fee, if applicable	**$_____**	$ _____	$_____	$_____	$_____	$_____	$_____

[5] Provide the total amount to be expended annually based on the Provider's completed Attachment B – Marketing Budget Breakdown.
[6] Assuming the Agreement is renewed for each of the additional one-year renewals.
[7] Assuming the Agreement is renewed for each of the additional one-year renewals.

FINANCIAL PROPOSAL SCHEDULE SUBMITTED BY:

Signature	Title
Company	Date

ATTACHMENT D – NEBRASKA ABLE ENABLING ACT

77-1401. Terms, defined.

For purposes of sections 77-1401 to 77-1409:

(1) Account means an achieving a better life experience account established under the program for the purposes of funding future qualified disability expenses of a designated beneficiary;

(2) Contracting state means a state without a qualified program which has entered into a contract with a state with a qualified program to provide residents of the contracting state access to a qualified program;

(3) Designated administrator means any corporation or other entity whose powers and privileges are provided for in any general or special law, whether for profit or not, designated or retained by the State Treasurer for the purpose of administering, subject to the ongoing supervision of the State Treasurer, all or any portion of the investment, marketing, recordkeeping, administrative, or other functions of the program;

(4) Designated beneficiary means the individual with a disability named as the beneficiary of an account;

(5) Individual with a disability means an individual who is an eligible individual as defined under section 529A;

(6) Program means the qualified program established by the State Treasurer as provided in section 77-1402 and administered by the State Treasurer and, to the extent so delegated or contracted by the State Treasurer, one or more designated administrators;

(7) Qualified disability expenses means any expenses related to the blindness or disability of the individual with a disability which are made for the benefit of an individual who is the designated beneficiary, including education, housing, transportation, employment training and support, assistive technology and personal support services, health, prevention, and wellness, financial management and administrative services, legal fees, expenses for oversight and monitoring, and funeral and burial expenses; and other expenses which are approved under regulations promulgated under section 529A;

(8) Qualified program means a qualified ABLE program as defined under section 529A; and

(9) Section 529A means section 529A of the Internal Revenue Code of 1986, as amended, and any regulations promulgated thereunder.

Source: Laws 2015, LB591, § 1.
Operative Date: May 28, 2015

77-1402. State Treasurer; establish achieving a better life program or contract with another state.

(1) For purposes of administering accounts established to encourage and assist individuals and families in saving private funds for the purpose of supporting individuals with disabilities, the State Treasurer shall either establish the achieving a better life experience program as provided in sections 77-1403 to 77-1409 or contract with another state with a qualified program. The State Treasurer may enter into a contract with any contracting state to allow any resident of the contracting state to participate in the program established by the State Treasurer. Money from the Treasury Management Cash Fund may be appropriated for a program pursuant to section 77-1407 and to contract with another state with a qualified program under this section.

(2) Under a qualified program, one or more persons may make contributions to an account to meet the qualified disability expenses of the designated beneficiary of the account.

(3) If the State Treasurer establishes the program as authorized in this section, sections 77-1403 to 77-1409 apply.

Source: Laws 2015, LB591, § 2.
Operative Date: May 28, 2015

77-1403. Account owner; designated beneficiary.

(1) Unless otherwise permitted under section 529A, the owner of an account shall be the designated beneficiary of the account, except that if the designated beneficiary of the account is a minor or has a custodian or other fiduciary appointed for the purposes of managing such beneficiary's financial affairs, a custodian or fiduciary for such designated beneficiary may serve as the account owner if such form of ownership is permitted or not prohibited under section 529A.

(2) Unless otherwise permitted under section 529A, the designated beneficiary of an account shall be a resident of the state or of a contracting state. The State Treasurer shall determine residency of Nebraska residents for such purpose in such manner as may be required or permissible under section 529A or, in the absence of any guidance under section 529A, by such other means as the State Treasurer shall consider advisable for purposes of satisfying the requirements of section 529A.

Source: Laws 2015, LB591, § 3.
Operative Date: May 28, 2015

77-1404. Contributions.

Any person may make contributions to an account to meet the qualified disability expenses of the designated beneficiary of the account if the account and contributions meet the other requirements of sections 77-1403 to 77-1409 and the rules and regulations adopted and promulgated by the State Treasurer.

Source: Laws 2015, LB591, § 4.
Operative Date: May 28, 2015

77-1405. Qualified program.

The State Treasurer and, to the extent required by the terms of such designation, any designated administrator shall operate the program so that it constitutes a qualified program in compliance with the requirements of section 529A.

Source: Laws 2015, LB591, § 5.
Operative Date: May 28, 2015

77-1406. Investment options; state investment officer; fiduciary responsibility.

The State Treasurer and any designated administrator shall provide investment options for the investment of amounts contributed to an account, except that the state investment officer shall have fiduciary responsibility to make all decisions regarding the investment of the money in the expense fund and program fund created in section 77-1407 and any money credited to the Treasury Management Cash Fund for administrative expenses of the program, including the selection of all investment options and the approval of all fees and other costs charged to trust assets except costs for administration, operation, and maintenance of the trust as appropriated by the Legislature, pursuant to the directions, guidelines, and policies established by the Nebraska Investment Council. The State Treasurer shall not adopt and promulgate rules and regulations that in any way interfere with the fiduciary responsibility of the state investment officer to make all decisions regarding the investment of money in the expense fund and program fund or money of the program credited to the Treasury Management Cash Fund. The Nebraska Investment Council may adopt and promulgate rules and regulations to provide for the prudent investment of the assets of the program. The council or its designee also has the authority to select and enter into agreements with individuals and entities to provide investment advice and management of the assets held by the program, establish investment guidelines, objectives, and performance standards with respect to the assets held by the program, and approve any fees, commissions, and expenses, which directly or indirectly affect the return on assets.

Source: Laws 2015, LB591, § 6.
Operative Date: May 28, 2015

77-1407. Funds held in trust; ABLE Program Fund; ABLE Expense Fund; created; use; investment.

(1) Funds contributed to the program shall be held in trust by the State Treasurer. The State Treasurer shall credit money received by the program into three funds: The ABLE Program Fund, the ABLE Expense Fund, and the Treasury Management Cash Fund. The State Treasurer shall credit money received into the appropriate fund. The State Treasurer and Accounting Administrator of the Department of Administrative Services shall determine the state fund types necessary to comply with section 529A and state policy. The money in the funds shall be invested by the state investment officer pursuant to policies established by the Nebraska Investment Council. The program fund, the expense fund, and the Treasury Management Cash Fund shall be separately administered.

(2) The ABLE Program Fund is created. All money paid by participants in connection with accounts and all investment income earned on such money shall be deposited as received into separate accounts within the program fund. Contributions to the program may only be made in the form of cash. All funds generated in connection with accounts shall be deposited into the appropriate accounts within the program fund. A beneficiary shall not provide investment direction regarding contributions or earnings held by the program. Money accrued by designated beneficiaries in the program fund may be used for qualified disability expenses. Any money in the program fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(3)(a) The ABLE Expense Fund is created. The expense fund shall be used to pay costs associated with the program and shall be funded with fees assessed to the program fund.

(b) The State Treasurer shall transfer from the expense fund to the State Investment Officer's Cash Fund an amount equal to the pro rata share of the budget appropriated to the Nebraska Investment Council as permitted in section 72-1249.02, to cover reasonable expenses incurred for investment management of the program. Annually and prior to such transfer to the State Investment Officer's Cash Fund, the State Treasurer shall report to the budget division of the Department of Administrative Services and to the Legislative Fiscal Analyst the amounts transferred during the previous fiscal year. The report submitted to the Legislative Fiscal Analyst shall be submitted electronically.

(c) When the State Treasurer determines that the ABLE Program Fund is generating enough fees to make the program self-sustaining, it is the intent of the Legislature to reimburse the Treasury Management Cash Fund for startup costs of the program from the expense fund.

(d) Any money in the expense fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(4) Until the State Treasurer determines that the ABLE Program Fund is generating enough fees to make the program self-sustaining, the costs of establishing, administering, operating, and maintaining the program shall be paid from the Treasury Management Cash Fund and, to the extent permitted by section 529A, from money transferred from the expense fund to the Treasury Management Cash Fund, in an amount authorized by an appropriation from the Legislature. The Treasury Management Cash Fund shall not be credited with any money from the program other

than money transferred from the expense fund in an amount authorized by an appropriation by the Legislature or any interest income earned on the money from the program held in the Treasury Management Cash Fund.

(5) The assets of the program, including the program fund and excluding the expense fund and the Treasury Management Cash Fund, shall at all times be preserved, invested, and expended solely and only for the purposes of the program and shall be held in trust for the designated beneficiaries. No property rights in the program shall exist in favor of the state. Such assets of the program shall not be transferred or used by the state for any purposes other than the purposes of the program.

Source: Laws 2015, LB591, § 7.
Operative Date: May 28, 2015

Cross References

- **Nebraska Capital Expansion Act,** see section 72-1269.
- **Nebraska State Funds Investment Act,** see section 72-1260.

77-1408. Annual audited financial report; supplemental information.

(1) The State Treasurer shall submit an annual audited financial report, prepared in accordance with generally accepted accounting principles, on the operations of the program by November 1 to the Governor and the Legislature. The report submitted to the Legislature shall be submitted electronically. The State Treasurer shall cause the audit to be made either by the Auditor of Public Accounts or by an independent certified public accountant designated by the State Treasurer, and the audit shall include direct and indirect costs attributable to the use of outside consultants, independent contractors, and any other persons who are not state employees.

(2) The annual audit shall be supplemented by all of the following information prepared by the State Treasurer:

(a) Any related studies or evaluations prepared in the preceding year;

(b) A summary of the benefits provided by the program, including the number of designated beneficiaries in the program; and

(c) Any other information which is relevant in order to make a full, fair, and effective disclosure of the operations of the program, including the investment performance of the funds.

Source: Laws 2015, LB591, § 8.
Operative Date: May 28, 2015

77-1409. State Treasurer; rules and regulations; powers.

The State Treasurer may adopt and promulgate rules and regulations, enter into contracts and agreements, charge fees and expenses to the funds held under the program or to persons establishing or owning accounts, make reports, retain designated administrators, employees,

experts, and consultants, and do all other things necessary or convenient to implement sections 77-1401 to 77-1409.

Source: Laws 2015, LB591, § 9.
Operative Date: May 28, 2015

ATTACHMENT E – DRAFT NEBRASKA ABLE DISTRIBUTION POLICY

Draft Policy of Nebraska ABLE Program Regarding Safeguards to Distinguish Between Types of Distributions

Introduction

Proposed Treasury Regulations § 1.529A-2(h)(1) requires that, "A qualified ABLE program must establish safeguards to distinguish between distributions used for the payment of qualified disability expenses and other distributions, and to permit the identification of the amounts distributed for housing expenses as that term is defined for purposes of the Supplemental Security Income program of the Social Security Administration."

Findings

The 529A ABLE Program is modeled by the Congress and the Nebraska Legislature on the 529 College Savings Program.

Under IRC § 529 and the regulations thereunder, expenditures for the 529 College Savings Plans are limited to "qualified educational expenses."

The only "safeguard" to distinguish between qualified educational expenses and other expenses in a 529 College Savings Plan is that the taxpayer keep adequate records to prove the expenditures were for qualified educational expenses. There is no federal or state requirement that these records be filed with the Nebraska College Savings Program. The only enforcement of this requirement is a tax audit of the account owner.

Under proposed Treasury Regulations § 1.529A-2(h)(1) "qualified disability expenses" are broadly defined as expenditures "for the benefit of the designated beneficiary in maintaining or improving his or her health, independence, or quality of life."

Because this definition is far broader than "qualified educational expenses," there is far less probability that expenditures from ABLE accounts will fail to qualify as "qualified disability expenses" than expenditures from 529 College Savings Plans will fail to qualify as "qualified education expenditures."

Policy Statement

Therefore, since both the IRS and the State of Nebraska are satisfied that a requirement that the taxpayer keep adequate records to justify "qualified educational expenses" is a sufficient "safeguard" in the case of a college savings plan, and since "qualified disability expenses" are broadly defined to cover a much wider range of expenditures, it is the policy of the Nebraska ABLE Plan that ABLE plan participants certify that they will keep adequate records to meet the requirements of proposed Treasury Regulations § 1.529A-2(h)(1) but that there shall be no requirement that any of those records be presented to the Nebraska ABLE program as a condition of participation in the Nebraska ABLE Program.