

ILLINOIS ABLE IMPLEMENTING AGREEMENT

This Illinois ABLE Implementing Agreement (“Agreement”) is made and entered into as of the 9th day of January, 2017 (“Effective Date”) by and between the Office of the Illinois State Treasurer (“**Treasurer**”) and Ascensus College Savings Recordkeeping Services, LLC (“**Contractor**”).

WHEREAS, the Stephen Beck Jr. Achieving a Better Life Experience Act of 2014 was enacted on December 19, 2014, as part of The Tax Increase Prevention Act of 2014, P.L. 113-295 and codified as Section 529A of the Internal Revenue Code (“ABLE Act”) to address the difficulties people with blindness or a qualifying disability may have in being able to afford the additional expenses incurred as a result of their blindness or disability;

WHEREAS, the ABLE Act permits states to establish a new type of tax-advantaged savings program to assist persons with blindness or a qualifying disability in saving for disability-related expenses without jeopardizing their federal means-tested benefits (“ABLE Plan”);

WHEREAS, on January 15, 2016, a group of states across the nation entered into the ABLE Interstate Agreement (as may be amended from time to time, the “Interstate Agreement”), establishing an ABLE Consortium Advisory Committee (“Consortium”) whereby agreeing to participate in a multi-state procurement with the Office of the Illinois State Treasurer (“Illinois”) as the facilitating state;

WHEREAS, on June 8, 2016, in accordance with the Interstate Agreement, Illinois issued a Consortium-approved Request for Proposals ABLE Services (“RFP”), seeking investment management, administrative services, customer service, and outreach material support (collectively, the “Program”);

WHEREAS, the Contractor’s proposal was selected through a competitive procurement process, performed pursuant to Illinois law, to provide the services set forth in the RFP; and

WHEREAS, Illinois entered into an ABLE Master Agreement with the Contractor (“Master Agreement”) dated as of December 7, 2016 which provides for common Program elements, services and their corresponding costs that may be implemented by each state that is a member of the Consortium (“Member”).

WHEREAS, effective January 1, 2016, 15 ILCS 505/16.6 (“State Statute”) provides for the establishment of Illinois ABLE (“Member Plan”);

WHEREAS, the State Statute establishes Treasurer as the state entity responsible for implementing the Member Plan; and

WHEREAS, the Treasurer, as a Member, desires to enter into this Agreement with the Contractor for the provision of services for the Member Plan;

NOW, THEREFORE, in consideration of the above stated recitals and the mutual promises, covenants, representations, and conditions contained herein, the parties agree as follows:

1. MASTER AGREEMENT

The Master Agreement in Exhibit A, attached hereto and incorporated herein by this reference, is adopted by and between the Treasurer, as a Member, and Contractor for the Member Plan. In the event of a conflict between the terms of this Agreement and the Master Agreement, the terms of this Agreement shall prevail.

Unless otherwise defined herein, all capitalized terms shall have the meaning assigned to them in the Master Agreement.

2. TERM

The term of this Agreement shall commence on the Effective Date and will continue for the term of the Master Agreement, unless terminated in accordance with the terms of this Agreement. In the event the Master Agreement is terminated, this Agreement shall automatically terminate on the termination date of the Master Agreement.

3. SERVICES AND FEES

The Treasurer hereby selects the Base Services (Section 3.1 of the Master Agreement) at the pricing set forth in the Cost Schedule (Master Agreement Exhibit C), and opts out of the following Opt-Out Services:

- A. Master/Sub-Account Structure; and
- B. Advance Directives.

The Treasurer may amend its Service selection above by amending this Agreement to provide the then-desired Services, which shall include a mutually acceptable timeline for the implementation or removal of Services, as the case may be.

3.1 Reports

Pursuant to Sections 3.1.1.D, 3.1.2.V, and 3.2.1.J of the Master Agreement, the Contractor shall provide additional ad-hoc reports as reasonably requested by the Treasurer in writing. In accordance with Section 3.1.2.V (Reporting Requirement), Contractor shall provide the reports monthly; quarterly; calendar year-end; and fiscal year-end, which shall include tracking data as of the Member Plan's launch date, as applicable. The Contractor shall provide a) monthly reports within ten (10) business days immediately following the end of the month; and b) quarterly, calendar year-end, and fiscal year-end reports within ten (10) business days immediately following the end of the respective period.

3.2 State Administration Fee

Pursuant to Section 3.1.2.BB of the Master Agreement, the Contractor shall deposit the Member Plan's State Administration Fee in an account established by the Treasurer. Treasurer will provide Contractor the necessary and appropriate account information timely, in order for

Contractor to deposit said State Administration Fees (i.e., wiring instructions).

3.3 Deceased Account Owners

Contractor shall comply with the Illinois Department of Human Services' ("DHS") requests for the records of deceased Account Owners. Upon receiving such request(s), Contractor will notify Treasurer of the request(s), and will provide the requested records of deceased Account Owners to DHS.

3.4 Recordings and Correspondence

Contractor shall retain the in-bound and out-bound Account specific call recordings it makes pursuant to Section 3.2.1.E of the Master Agreement for a minimum of one (1) year. The correspondence and responses Contractor retains pursuant to Section 3.2.1.G of the Master Agreement shall be retained by Contractor for a minimum of five (5) years. If any litigation or claim involving this Agreement has been filed or any audit permitted hereunder has commenced before the expiration of the one (1) or five (5) year periods described in this Section, Contractor shall retain the recordings, correspondence, and responses in the case of any litigation or claim, for the later of the following: a) completion of the action and resolution of all issues which arise from it, or b) the end of the one (1) year period for recordings or five (5) year period for any correspondence and responses. In the case of any audit, Contractor shall retain the recordings, correspondence, and responses, for the later of the following: a) completion of the audit or b) the end of the one (1) year period for recordings or five (5) year period for any correspondence and responses.

4. INVOICING

The Treasurer shall have no liability to the Contractor for fees or compensation for the Services, absent the Treasurer's express written consent. The only compensation for the Services received by Contractor shall be at the pricing set forth in the Cost Schedule (Master Agreement, Exhibit C), which shall be payable only from amounts available in and withdrawn from the Member Plan assets. Notwithstanding the foregoing, in the event the Treasurer provides express written consent and incurs additional fees at the pricing set forth in the Cost Schedule (Master Agreement Exhibit C), the Contractor must submit itemized invoices for such fees. Contractor's failure to submit properly completed itemized billings may result in delays in payment. The Treasurer will process all invoices on a timely basis.

5. MARKS

The Treasurer hereby gives the Contractor permission to use and display the Treasurer's Marks on any Consortium-related website, subject to the Treasurer's prior approval.

6. TERMINATION AND EXPIRATION

6.1 Termination without Cause

- A. Following a four (4) year period after the Member Plan's launch date (the "Initial Period") the Treasurer may elect to terminate this Agreement at any time upon ninety (90) days' notice to the Contractor, with Transition to follow immediately.

- B. Notwithstanding subsection A. above, if the Contractor receives request to commence Transition (“Transition Notice”) from the Treasurer at least ninety (90) days prior to the completion of the Initial Period, the parties shall commence Transition ninety (90) days prior to the completion of the Initial Period and use commercially reasonable efforts to complete the Transition on an agreed upon date no sooner than ninety (90) days following the completion of the Initial Period.

6.2 Termination for Cause by the Treasurer

Notwithstanding any language to the contrary, this Agreement may be terminated by the Treasurer under any of the following circumstances:

- A. Contractor fails to make progress and thereby materially impacts performance of this Agreement in accordance with its terms;
- B. Any Services are rejected and are not promptly corrected by the Contractor, or are repeatedly rejected even though Contractor offers to correct Services promptly;
- C. There is sufficient evidence to show that fraud, collusion, conspiracy, or other unlawful means were used to obtain this Agreement;
- D. Contractor is guilty of misrepresentation in connection with another contract for services to the State of Illinois;
- E. Contractor is adjudged bankrupt or enters into a general assignment for the benefit of their creditors or receivership due to insolvency;
- F. Change in federal or Illinois law or rules, or the Contractor’s or Treasurer’s policies that would frustrate the purpose of this Agreement;
- G. Contractor disregards laws, ordinances, rules, or a Member’s instructions or its respective agents, acts in violation of any provision of this Agreement, or acts in conflict of any statutory or constitutional provision of the State of Illinois or the United States; or
- H. Contractor commits any breach of this Agreement or commits other unlawful acts.

Prior to terminating this Agreement for cause, the Treasurer shall issue a written warning that outlines the remedial action, necessary to bring the Contractor into conformance with this Agreement. If a) such remedial action is not completed to the reasonable satisfaction of the Treasurer within thirty (30) business days of Contractor’s receipt of said warning, or b) Contractor has failed to cure such breach in a reasonable time to be determined by the Treasurer a second written warning will be issued by the Treasurer. If satisfactory action is not taken by Contractor within five (5) business days of Contractor’s receipt of the second written warning, this Agreement may be cancelled, and the Treasurer may recover any and all damages involved with the transition to a new vendor. Failure by the Treasurer to issue a warning or cancel this Agreement does not waive any of the Treasurer’s rights to issue subsequent warnings. In the event the Treasurer terminates this Agreement pursuant to this Section 7.2, the Treasurer may

reduce the fee paid to Contractor in an amount sufficient to compensate the Treasurer for any damages suffered by it due to the Contractor's breach of this Agreement or other unlawful act by the Contractor on which the termination is based.

6.3 Termination by Contractor

In the event the Treasurer is in breach of this Agreement, and such breach has a material adverse effect on the Contractor, this Agreement may be terminated by the Contractor by providing the Treasurer ninety (90) days' written notice of such breach and Contractor's intent to begin the Transition with termination of this Agreement upon conclusion of the Transition, if the Treasurer has not cured the breach within the ninety (90) day period.

7. GOVERNING LAW

This Agreement shall be governed in all respects by the laws of the State of Illinois without regard to conflicts of law principles. Any action by Contractor against the Treasurer can only be brought in the Illinois Court of Claims.

8. NOTICES

All notices required under the terms of this Agreement shall be in writing and shall be deemed effective upon receipt when delivered by facsimile or e-mail, or seven (7) business days after being sent by registered or certified mail, postage prepaid, return receipt requested at the address listed below, or at such address as may be specified in writing by the parties hereto:

If to the Treasurer:
Chasse Rehwinkel
Director of Policy
Office of the Illinois State Treasurer
100 West Randolph St., Suite 15-600
Chicago, IL 60601
crehwinkel@illinoistreasurer.gov

If to Contractor:
Ascensus College Savings Recordkeeping Services, LLC
95 Wells Avenue, Suite 160
Newton, MA 02459
Attn: President
Redacted

With a copy to (shall not be considered notice):
Ascensus College Savings Recordkeeping Services, LLC
95 Wells Avenue, Suite 160
Newton, MA 02459
Attn: General Counsel

9. ASSIGNMENT

Each term and provision of this Agreement is binding and enforceable against and inures to the benefit of any successors of the Treasurer and any successors of Contractor, but neither this

Agreement nor any of the rights, interests, or obligations under this Agreement may be transferred or assigned by Contractor or Subcontractor, if applicable, without the Treasurer's prior written consent, which shall not be unreasonably withheld. Any attempt by Contractor or Subcontractor, if applicable, to transfer or assign any rights or obligations related to this Agreement without the prior written consent of the Treasurer, shall render this Agreement voidable by the Treasurer. The Treasurer may unilaterally bind any successor of the Contractor to the terms and conditions of this Agreement.

10. EXECUTION IN COUNTERPARTS

This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument. A party's electronic or scanned signature on this Agreement (e.g., a scanned PDF) shall have the legal equivalent of a manual signature for all purposes. This Agreement may be executed by facsimile or scanned image and each party has the right to rely upon a facsimile or scanned image counterpart of this Agreement signed by the other party to the same extent as if such had received an original counterpart.

11. ENTIRE AGREEMENT

This Agreement, including any exhibits is the complete and exclusive statement of understanding between the parties and supersedes all proposals or prior agreements, oral or written, and all other communications between the parties relating to the subject matter hereof. Any waiver or modification of the provisions of this Agreement will be effective only if in writing and signed by the party against whom it is to be enforced. All exhibits attached hereto or referenced in this Agreement, as they may be amended from time to time, are by this reference incorporated into and made a part of this Agreement.

[Signatures on the next page]

IN WITNESS WHEREOF, the parties have caused this Illinois ABLE Implementing Agreement to be executed by their duly authorized officers as of the Effective Date.

**OFFICE OF THE ILLINOIS STATE
TREASURER**

**ASCENSUS COLLEGE SAVINGS
RECORDKEEPING SERVICES, LLC**

Redacted

Michael W. Frerichs
Treasurer

Jeffrey P. Howkins
CEO/President

By: _____
Jay H. Rowell, Deputy Treasurer or
Justin R. Cajindos, Chief of Staff

Date: _____

Date: 1/9/2017

Julian A. Federle
Chief Policy and Programs Officer

Date: _____

Reviewed for Legal Sufficiency

Chief Procurement Officer

IN WITNESS WHEREOF, the parties have caused this Illinois ABLE Implementing Agreement to be executed by their duly authorized officers as of the Effective Date.

OFFICE OF THE ILLINOIS STATE
TREASURER

Redacted

Michael W. Frerichs
Treasurer

Redacted

By: _____

Justin R. Cajindos, Chief of Staff

Date: 1-9-17

Redacted

Juan A. Federle
Chief Policy and Programs Officer

Date: 1/9/2017

Redacted

Reviewed for bank sufficiency

Redacted

Chief Procurement Officer

ASCENSUS COLLEGE SAVINGS
RECORDKEEPING SERVICES, LLC

Jeffrey P. Howkins
CEO/President

Date: _____

SUPPLEMENTAL SIGNATURE PAGE TO THE
ILLINOIS ABLE IMPLEMENTING AGREEMENT

The Illinois ABLE Implementing Agreement is being supplemented with this signature page to comply with 30 ILCS 105/9.02(a)(1), which requires the following:

“Any new contract or contract renewal in the amount of \$250,000 or more in a fiscal year, or any order against a master contract in the amount of \$250,000 or more in a fiscal year, or any contract amendment or change to an existing contract that increases the value of the contract to or by \$250,000 or more in a fiscal year, shall be signed or approved in writing by the chief executive officer of the agency and shall also be signed or approved in writing by the agency’s chief legal counsel and chief fiscal officer.”

In accordance with this statute, the additional individuals listed below sign this Agreement.

Redacted

Keith Horton
General Counsel
(Approved as to form)

Date: 1/9/17

Redacted

Rodrigo Garcia
Chief Financial Officer

Date: 1/9/17