

CONTRACT FOR ACTUARIAL SERVICES

This Contract for Actuarial Services Agreement (the "Agreement") is entered into this ___ day of _____, 2017, by and between the FLORIDA PREPAID COLLEGE BOARD (the "Board"), an agency of the State of Florida, and _____, (the "Contractor"), a _____ doing business in the State of _____.

Section 1009.971(4)(l), Florida Statutes, empowers the Board to procure and contract for goods and services, employ personnel and engage the services of private consultants, actuaries, managers, legal counsel and auditors in a manner determined to be necessary for the Stanley G. Tate Florida Prepaid College Program (the "Prepaid") and/or the Florida College Savings Program (the "College Investment Plan") (collectively the "Plans").

Pursuant to Section 1009.972, funds received by the Board that are associated with the Prepaid Plan are deposited and held in the Prepaid Fund within the Prepaid College Trust Fund (the "Fund").

The Board is required by s. 1009.971(4)(f), Florida Statutes, to operate the Prepaid Fund in an actuarial sound manner.

NOW THEREFORE, in consideration of the services to be performed and the payments to be made, together with the mutual covenants and conditions hereinafter set forth, the parties agree as follows:

PART I

ACTUARIAL SERVICES

1. **REPRESENTATIONS AND WARRANTIES.** The Contractor covenants and warrants as follows:

(a) It is lawfully organized and constituted under all federal, state and local laws, ordinances and other authorities of its domicile, and is otherwise in full compliance with all legal requirements of its domicile.

(b) It is possessed in the legal authority and capacity to enter into and perform this Agreement.

(c) It has been duly authorized to operate and do business in all places where it will be required to conduct business under the Agreement; that it has obtained, at no cost to the State of Florida or the Board, all necessary licenses and permits required in connection with this Agreement; and that it will

fully comply with all laws, decrees, labor standards and regulations of its domicile and wherever performance occurs during its performance of this Agreement.

(d) It has no present interest, nor shall acquire any interest, which would conflict in any manner with its duties and obligations under the Agreement.

(e) To the best of the Contractor's knowledge, neither the execution, delivery, nor performance of this Agreement by the Contractor will violate any law, statute, order, rule, or regulation of, or judgment, order or decree by, any federal, state, local, or foreign court or governmental authority, domestic or foreign, to which the Contractor is subject nor will the same constitute a breach of, or default under, provisions of any agreement or contract to which it is a party or by which it is bound.

(f) It has the expertise and ability to perform all services required under this Agreement.

2. DESCRIPTION OF SERVICES. Pursuant to the authority of Section 1009.971(4)(f), Florida Statutes, the Contractor will serve as the Consulting Actuary for the Prepaid Plan. In this capacity, the Contractor will provide the following services:

(a) Analysis of the Fund's Actuarial Adequacy. The Contractor shall prepare an analysis report form of the Fund's actuarial adequacy each calendar quarter and annually as of June 30th. This report shall be due within timelines agreed upon by the Parties and contain an analysis of the Fund's actuarial adequacy up to and including the completion of the most recent enrollment period, utilizing the latest experience data as provided by the Board. The report shall include an update of all actuarial projects; sensitivity testing to changes in inflation assumptions and reconciliation of surplus, review of experience and recommendation of changes in assumptions other than inflation, if appropriate; providing projected monthly cash flows by major category in electronic form to the Board; and other services as may be required. In addition, as part of preparing such analysis and report, the Contractor shall review and analyze one (1) major assumption of the analysis, as agreed upon by the Board and the Contractor, each year throughout the term of this Agreement. The Contractor shall furnish fifty (50) copies of the report due to the Board and the Board expressly grants permission to the Contractor to reproduce the report for the purposes specified in this Agreement. Subsequent reports in the format described in this paragraph shall be due by the agreed upon date of each subsequent year during the term of this Agreement for the one (1) year period ended on the preceding June 30.

(b) Analysis of Contract Price Structure. The Contractor shall conduct an analysis of the advance payment contract price structure for prepaid contracts sold by the Board. The report of the analysis shall be due on an agreed upon due date by the Parties, but no later than one (1) month prior to June 30 of

each subsequent year. This report shall provide the Board various tables, matrices and factors necessary, as determined by the Board, to publish prepaid college contract prices by plan, payment option and age of the beneficiary for each contract. The services provided under this subparagraph shall also include illustrative prices at numerous different inflation assumptions produced as required by the Board prior to the completion of the report but such examples shall not be formally presented in the report. Contract prices shall be tested for adequacy and level break even rate of return shall be determined and disclosed in the report. Subsequent reports in the format described shall be due as agreed up for the upcoming enrollment periods during the term of this contract.

(c) Presentation of the Results of Actuarial Analysis. The Contractor shall appear before the Board or other entity, as necessary, to explain and substantiate the contents of the actuarial reports. The cost of these appearances shall be included in the contract price.

(d) Special Consultation and Advisory Services. The Contractor shall provide special consultation and advice to the Board regarding various financial, federal tax and actuarial planning matters. The Board and the Contractor shall agree upon the scope of these services and the estimated billable amount in writing prior to beginning work on each project provided, however, that the estimated billable amount for services does not exceed the amount specified in Exhibit A.

(e) Representation before the Internal Revenue Service. The Contractor shall provide representation for the Board before the IRS with respect to: (1) the tax status of the Florida Prepaid College Trust Fund; (2) the status of the Prepaid Plan as a “qualified state tuition program” under the Internal Revenue Code of 1986; (3) the application of the gift tax to purchasers of tuition and dormitory plans offered by the Board; and (4) such other issues as the Board may from time to time request representation. The Board and the Contractor shall agree upon the scope of these services, and the estimated billable amount, in writing prior to the Contractor beginning work on any matter. These consulting services shall be provided on an as-needed basis and subject to the fees outlined in Exhibit A.

(f) Additional Services as Specified in ITN 16-03, “Actuarial Services for the Stanley G. Tate Florida Prepaid College Program.” The Contractor shall provide or perform any and all services in ITN 16-03 and supporting appendices, which is expressly incorporated into this Agreement by reference as Exhibit XX; the questions and answers to questions regarding ITN 16-03 and supporting appendices, which are expressly incorporated into this Agreement by reference as Exhibit XX; and the Contractor’s response to ITN 16-03 and supporting appendices, as supplemented during the ITN process, which is expressly incorporated into this Agreement by reference as Exhibit XX.

3. **Term.**

(a) The term of the Agreement shall be for an initial period of five (5) years, commencing on July 1, 2017, and continuing through June 30, 2022. The Board reserves the right, in its sole discretion, to renew this Agreement for five (5) additional one (1) year periods under the terms and conditions set forth in this Agreement or under such terms and conditions as the parties may mutually agree upon.

(b) No provision for the automatic renewal or extension of this agreement is effective. Any renewal or extension shall be in writing and executed by both parties to this Agreement.

(c) Notwithstanding Paragraph 4(a) and (b), if the Contractor files for protection or reorganization or a petition for involuntary bankruptcy (all hereinafter referred to as the "bankruptcy petition") is filed against the Contractor, under the United States Bankruptcy Code, during the term of the Agreement, the term of the Agreement shall automatically convert to a single one (1) year Agreement terminating on the next June 30, after the bankruptcy petition is filed. In such event, the Board shall have the option to renew the Agreement or any portion of the Agreement under the terms and conditions set forth in this Agreement or such conditions as may be negotiated between the parties for a number of one (1) year Agreement extensions which shall be equal to the number five (5) minus the number of years remaining under the term of the Agreement pursuant to Paragraph 3(a), prior to the filing of the bankruptcy petition. Each such one (1) year Agreement renewal shall be contingent upon, among other things, availability of funds, continued need, and satisfactory performance by the Contractor. Such Agreement extensions shall be subject to an annual performance evaluation of the Contractor.

4. **TITLES.** All titles, headings, or captions respecting the context of the section or paragraphs of this Agreement are for convenience of reference only, and shall not be construed as a part or limitation of those provisions to which they refer.

PART II

SPECIAL TERMS

5. **INDEPENDENT CONTRACTOR.** The Board and Contractor represent and agree that they are acting in their individual capacities and not as agents, employees, partners, or associates of one another.

6. **PERSONNEL.** The Board may require the replacement of any personnel of the Contractor that the Board reasonably believes to be unable to carry out the responsibilities of the Agreement at any time. The Contractor shall warrant that personnel assigned to perform tasks will remain assigned for the agreed upon length of time and will not be replaced or reassigned except by mutual written

agreement between the parties. Nothing herein shall restrict or otherwise limit the right of the Contractor to terminate “for cause” the employment of any person assigned to perform tasks.

7. **AVAILABILITY OF FUNDS.** Performance by the Board under this Agreement shall be subject to and contingent upon the availability of monies lawfully appropriated to the Board and applicable for the purposes of this Agreement.

8. **MODIFICATION.** This Agreement and the documents attached and incorporated herein represent the entire agreement of the parties. Any alterations, variations, changes, modification or waivers of provisions of this Agreement shall only be valid when they have been reduced to writing, duly signed by each of the parties hereto, and attached to the original of this Agreement.

9. **SUBCONTRACTORS.** The Contractor may enter into written subcontracts for performance of functions under this Agreement. All subcontractors shall be subject to the prior written approval of the Board. The Board shall have the continuing right throughout the term of the Agreement to disapprove subcontractors if such disapproval would be in the best interests of the Board, and approval of any given subcontractor does not waive the Board’s prior approval for subsequent subcontractors. The Board shall have the right to inspect and acquire any of the subcontract documents executed between the Contractor and the subcontractor. No subcontract which the Contractor enters into with respect to performance under the Agreement shall in any way relieve the Contractor of any responsibility for performance of duties stipulated in this Agreement. The Board reserves the right to communicate directly with the subcontractor’s Project Manager regarding performance of tasks required in this Agreement.

10. **PUBLIC ACCESS TO RECORDS.** Section 1009.98(6) and 1009.981(6), Florida Statutes, provides that all information that identifies the purchasers, benefactors, beneficiaries or qualified beneficiaries of any advance payment contract or participation agreement under Part IV, Chapter 1009, Florida Statutes, is not subject to the provisions of Section 119.07(1), Florida Statutes, the Public Records Law. All other documents, papers, letters, or other materials relating to this Agreement that are made or received by the Contractor in conjunction with the Agreement, and which are required by law to be maintained, must be available for public access and for audit purposes for a period of three (3) years after the expiration of this Agreement. Said records shall also be maintained pursuant to Chapter 119, Florida Statutes, and other applicable Florida Statutes. The Board may cancel this Agreement if the Contractor refuses to allow public access to any document, papers, letters, or other materials subject to the provisions of Chapter 119, Florida Statutes, and made or received by the Contractor in conjunction with the Agreement.

11. INDEMNIFICATION. The Contractor shall act as an independent contractor and not as an employee of the Board in the performance of the tasks and duties which are subject of this Agreement. Subject to Paragraph 25(b) below, the Contractor shall and hereby agrees to indemnify, defend and save the Board, its officers, directors, employees and agents harmless from and against any and all third party claims, suits, actions, investigations and proceedings, and related costs and expenses (including litigation costs and reasonable attorney's fees) arising solely and directly from negligence or willful misconduct by the Contractor, or any subcontractor, in the performance of the tasks and duties which are the subject of this Agreement, including but not limited to:

(a) Obtaining consent of any nature whatsoever;

(b) Protecting the Board against claims for the unauthorized use of name or likeness of any person, libel, slander, defamation, disparagement piracy, plagiarism, unfair competition, and idea misappropriation, infringement of copyright title, patent, slogan or other property rights and any invasion of the right to privacy. The Contractor is not responsible for independently verifying the data given to it by the Board in performing its actuarial projections under this Agreement. The Contractor shall not be required hereunder to defend, indemnify or hold harmless the Board, its officers, employees and agents, or any of them, from any claim resulting from the acts or omissions of the Board, its officers, directors, employees, agents or any third party.

The indemnity obligations contained herein are contingent upon the Board giving the Contractor prompt notice of any such claim. Failure to do so will relieve the Contractor of any obligation or liability pursuant to this indemnification provision. The indemnity obligations contained herein shall survive the termination of this agreement and shall continue in full force and effect for a period of two (2) years following the earlier of the conclusion or termination of the Contractor's services under this agreement.

Nothing in this Agreement authorizes the Contractor to waive the Board's immunity from suit under the Eleventh Amendment to the United States Constitution or any waiver of the Board's sovereign immunity from suit as provided under Florida law.

12. CONTROLLING LAW AND LITIGATION VENUE. The validity, interpretation and performance of this Agreement shall be controlled by and construed under the laws of the State of Florida. Any and all litigation arising under this Agreement shall be instituted in accordance with Paragraph 25, in Leon County, Florida. All appeals shall be to the First District Court of Appeals.

13. WAIVER. Failure of either party to the Agreement to object or to take affirmative action with respect to any conduct of the other which is in violation of the terms of this Agreement shall not be construed as a waiver of the violation or breach, or any future violation or breach.

14. GENERAL CONDITIONS.

(a) Notwithstanding "prior approval" requirements that may be reserved to the Board under this Agreement or Sections 1009.971, 1009.98, or 1009.981, Florida Statutes, such requirement does not relieve or mitigate the Contractor's ultimate responsibility for insuring and guaranteeing the quality and timeliness of work and services to be provided by it or subcontractor employed by it under this Agreement. The Contractor is solely responsible for performing the services specified herein to the satisfaction of the Board.

(b) The Board reserves the right, in its own best interests, to unilaterally modify, reject, cancel or stop and plans, schedules or work in progress. Any such modification, rejection, cancellation or stoppage (other than for reason of the Contractor's failure to perform as agreed between the Board and the Contractor with respect to such plans, schedules or work in progress) shall not affect the right of the Contractor to receive payment with respect to work actually performed by it or any subcontractor prior to such modification, rejection, cancellation or stoppage.

15. APPROVAL OF FIRM'S WORK. All work produced for distribution by the Contractor shall be approved in advance, by the Board.

16. OWNERSHIP OF MATERIALS. The Board owns all materials developed and produced for the Board under this Agreement. The Contractor shall be permitted to retain one (1) complete copy of its work for its file.

17. AUDIT OF AGREEMENT PROCEDURES. The Board reserves the right to audit all of the Contractor's and approved subcontractors' procedures and financial and accounting records using Board employees, its designees or other state agencies as provided by law.

18. TERMINATION. The continuation of the Agreement shall be contingent upon the satisfactory performance and evaluations of the Contractor by the Board. The Board reserves the right to terminate this Agreement, or any part herein, at its direction and such termination shall be effective at such times as is determined by the Board, without any penalty to the Board. With mutual agreement of both parties, this Agreement, or any part herein, may be terminated on an agreed date prior to the end of the Agreement without penalty to either party. The Board further reserves the right to immediately terminate this Agreement by written notice to the Contractor for cause for breach of any provision of the Agreement by the Contractor for the Contractor's failure to perform to the Board's satisfaction any material requirement of the Agreement for any defaults in performance of the Agreement.

19. AGREEMENT PAYMENT SCHEDULE. The Board may withhold any payment, partial or whole, to the Contractor for non-performance or unsatisfactory performance or as liquidated damages as provided herein.

20. INVOICES. Any invoices submitted by the Contractor to the Board for payment must be in sufficient detail to ensure proper pre-audit and post-audit thereof.

21. ASSIGNMENT. This Agreement is not assignable by the Contractor except with the prior written approval of the Board.

22. TAXES. The Board shall have no responsibility for the payment of any federal, state, or local taxes which become payable by the Contractor or any of its subcontractors as a result of this Agreement.

23. TRAVEL. The Board shall not reimburse the Contractor for travel expenses incurred in connection with this Agreement.

24. DEFAULT. Failure by the Contractor to perform according to the terms of the Agreement and the attachments thereto shall be cause to hold the Contractor in default in which event any and all procurement costs and liquidated damages in the amount of One Hundred Dollars (\$100) per day may be charged against the Contractor, subject to the liability limitation in Paragraph 25(b) below. The Board may also withhold payment to the Contractor for nonperformance or unsatisfactory performance of the terms of this Agreement. The Board and the Contractor also agree that in the event that the Contractor fails to timely submit any of the report required by the provisions of Paragraph 2 of this Agreement, damage shall be sustained by the Board, and that it is and will be impractical and extremely difficult for the Board to ascertain and determine the amount of the actual damages sustained by reason of such failure. In the event that the Contractor submits any of the reports required by the terms of Paragraph 2 in an untimely manner, the Contractor shall be held responsible for liquidated damages in the amount of Two Hundred Fifty Dollars (\$250) per day, from the date that the report is due until the date that it is submitted, which amount shall be deducted by the Board from any payment due to the Contractor pursuant to an invoice submitted by the Contractor, subject to the limitation of liability in Paragraph 25(b) below. However, in no event shall the Contractor be responsible for the payment of any liquidated damages when a report required by the terms of Paragraph 2 of this Agreement is submitted in an untimely manner, and such untimely submission can be attributed to the actions for failure to act of the Board.

25. DISPUTE RESOLUTION AND LIABILITY LIMITS.

(a) Dispute Resolution. This Paragraph shall apply to the resolution of all claims, disputes or controversies related to or arising under this Agreement, including any extensions of the Agreement,

and shall constitute the sole procedure for the resolution of all such claims, disputes or controversies. Any controversy or claim arising out of or relating to this Agreement or the services (including any matter involving any parent, subsidiary, affiliate, successor in interest, or agent of the Board or Contractor) shall be submitted first to voluntary mediation.. The following procedures shall be used to resolve any controversy or claim (“dispute”) as provided in this Agreement. If any of these provisions are determined to be invalid or unenforceable, the remaining provisions shall remain in effect and binding on the parties to the fullest extent permitted by law.

Mediation

A dispute shall be submitted to mediation by written notice to the other party or parties. In the mediation process, the parties will try to resolve their differences voluntarily with the aid of an impartial mediator, who will attempt to facilitate negotiations. The mediator will be selected by agreement of the parties. If the parties cannot agree on a mediator, a mediator will be designated by the American Arbitration Association (“AAA”) or JAMS/Endispute at the request of a party. Any mediator so designated must be acceptable to all parties. The mediation will be conducted as specified by the mediator and agreed upon by the parties. The parties agree to discuss their differences in good faith and to attempt, with the assistance of the mediator, to reach an amicable resolution of the dispute. The mediation will be treated as a settlement discussion and therefore will be confidential. The mediator may not testify for either party in any later proceeding relating to the dispute. No recording or transcript shall be made of the mediation proceedings. Each party will bear its own costs in the mediation. The parties will share the fees and expense of the mediator equally.

(b) Limitation of Liability. To the fullest extent permitted by applicable law, the total aggregate liability of Contractor to the Board, regardless of whether such liability is based on breach of contract, tort, breach of warranties, failure of essential purpose or otherwise, under this Agreement or with respect to the services, shall be limited to the amount the Board actually pays to Contractor under this Agreement. The Board’s recourse with respect to any obligation or liability of Contractor hereunder shall be limited to the assets of the Contractor, and the Board shall have no recourse against, and shall bring no claim against, any partner of Contractor or any assets thereof. In no event will any party be liable for consequential, incidental, indirect, punitive or special damages (including loss of profits or business opportunities) regardless of whether such liability is based on breach of contract, tort, strict liability, failure of essential purpose or otherwise, even if advised or aware of the likelihood of such damages.

EXCEPT AS EXPRESSLY STATED HEREIN, THERE ARE NO WARRANTIES OF ANY KIND OR NATURE, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OR MERCHANTABILITY

OF FITNESS FOR A PARTICULAR PURPOSE OR USE, OR ANY WARRANTIES OF ANY PRODUCTS OR SERVICES.

26. **NOTICES.** All notices, requests or documents required hereunder shall be in writing and delivered personally or by certified mail, overnight delivery service or hand delivery , as follows:

If to the Board: Kevin Thompson
Executive Director
Florida Prepaid College Board
1801 Hermitage Blvd.
Suite 210
Tallahassee, FL 32308

Telephone: (850) 488-8514
FAX: (850) 488-3555

With a copy to: Jason Unger
GrayRobinson, P.A.
PO Box 11189
Tallahassee, FL 32302-3189

Telephone: (850) 577-9090

If to the Contractor: (Insert Name)
(Insert Title)
(Insert Address)
(Insert City, State, Zip)
Telephone: (Insert Phone #)

Notices delivered personally or by overnight delivery service or hand delivery shall be deemed received upon delivery. Notices given by fax shall be deemed effective upon transmission with a copy or cover sheet indicating confirmation of receipt at the number to which such notice was transmitted. Notices given by certified mail shall be deemed delivered ten (10) days after posting or upon receipt by the sender of the return receipt indicating that delivery was rejected by the addressee thereof.

27. **SEVERABILITY.** If any of the provisions of this Agreement are held invalid or unenforceable, such invalidity or unenforceability shall not affect any other provisions, and this Agreement shall be construed and enforced as if such provision had not been included.

28. **ENTIRE AGREEMENT.** This Agreement, together with the attachments thereto, constitutes the entire agreement of the parties.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed and attested by their respective officers thereunto duly authorized on the day and year first above written.

WITNESS

FLORIDA PREPAID COLLEGE BOARD

Signature

Kevin Thompson
Executive Director

Please Print Name

STATE OF FLORIDA)

COUNTY OF LEON)

Before me, the undersigned authority, personally came and appeared KEVIN THOMPSON, EXECUTIVE DIRECTOR of the FLORIDA PREPAID COLLEGE BOARD, who is personally known to me or who has produced _____ as identification and who executed the foregoing CONTRACT FOR ACTUARIAL SERVICES on behalf of the FLORIDA PREPAID COLLEGE BOARD and who also acknowledged before me that he is authorized to execute the same on behalf of said Board.

In witness whereof, I have placed my hand and seal in the county and state last aforesaid, this _____ day of _____, 2016.

Notary Public, State of Florida at Large

Printed Name:

My Commission Expires:

(INSERT FIRM NAME)

By: _____

Name: INSERT NAME

Title: INSERT TITLE

Attested to by: _____

(Corporate Seal)

Witness

STATE OF _____)

COUNTY OF _____)

Before me, the undersigned authority, personally came and appeared INSERT NAME, the INSERT TITLE of INSERT FIRM NAME, who is personally known to me or who has produced _____ as identification and who executed the foregoing CONTRACT FOR AUDIT SERVICES on behalf of INSERT FIRM NAME, and who also acknowledged before me that he is authorized to execute the same on behalf of said entity.

In witness whereof, I have placed my hand and seal in the county and state last aforesaid, this ____ day of _____, 2016.

Notary Public

Printed Name:

My Commission Expires:

Exhibit A

Pricing Schedule

Valuation and Pricing Services (Quarterly & Annual):

Annual Valuation FY 2017/2018	\$
Annual Valuation FY 2018/2019	\$
Annual Valuation FY 2019/2020	\$
Annual Valuation FY 2020/2021	\$
Annual Valuation FY 2021/2022	\$
Annual Valuation FY 2022/2023	\$
Annual Valuation FY 2023/2024*	\$
Annual Valuation FY 2024/2025*	\$
Annual Valuation FY 2025/2026*	\$
Annual Valuation FY 2026/2027*	\$

Special Consultation and Advisory Services:

Analysis of Actuarial Adequacy (Full Report)	\$, per report
Analysis of Actuarial Adequacy (Letter)	\$, per letter
Sensitivity Analysis or Actuarial Adequacy	\$, per sensitivity
Plan Prices (Full Report)	\$, per report
Plan Prices (Letter)	\$, per letter
Single Product Pricing for Full Age/Grade Range	\$, per product

Additional consulting services not specifically contemplated:

Title	Hourly Rate
	\$ per hour
	\$ per hour