

NORTH CAROLINA ABLE IMPLEMENTING AGREEMENT

This North Carolina ABLE ("NC ABLE") Implementing Agreement ("Agreement") is made and entered into as of the 10th day of January, 2017 ("Effective Date") by and between the North Carolina Department of State Treasurer ("**Treasurer**") on behalf of the NC ABLE Program Board of Trustees, 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, on August 4, 2015, Sections §147-86.70 to §147-86.73 of the North Carolina General Statutes ("State Statute") provide for the establishment of the NC ABLE Plan ("Member Plan" or "NC ABLE Plan");

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

WHEREAS, the Treasurer, as a Member, desires to enter into this Agreement with the Contractor for the provision of services for the NC ABLE 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 NC ABLE 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
- 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 on a monthly, quarterly, calendar year-end, fiscal year-end (which would include data as of the Member's Plan launch date, as applicable). The Contractor shall provide quarterly reports within thirty (30) days immediately following the end of the quarter, and calendar year-end, and fiscal year-end reports within thirty (30) days immediately following the end of the respective period. Contractor will attend the quarterly meetings of the NC ABLE Program Board of Trustees meetings in person or as requested by the Treasurer, with travel costs to be borne by Contractor.

3.2 State Administration Fee Disbursement, Collection, and Reporting

Pursuant to Section 3.1.2.BB of the Master Agreement, the Contractor shall deposit the NC ABLE Plan's State Administration Fee into an account established by the Treasurer. The NC ABLE State Administration Fees shall be assessed upon each Account, regardless of state residency, and remitted via wire transfer to the Treasurer in an agreed-upon manner along with a

report reflecting the State Administration Fee(s) collected in such period. Treasurer will provide Contractor the necessary and appropriate account information timely, in order for Contractor to deposit said State Administration Fee(s) (i.e., wiring instructions).

3.3 Deceased Account Owners

Contractor shall comply with the Treasurer's requests for the records of deceased Account Owners. Additionally, Contractor shall comply with requests for the records of deceased Account Owners by the North Carolina Department of Health and Human Services, Division of Medicaid Services ("NC DHHSMS"). Upon receiving such request(s), Contractor will notify Treasurer of said request(s) by the NC DHHSMS, and provide the requested records of deceased Account Owner(s) to NC DHHSMS upon direction from the Treasurer's office.

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. BILLING

The Treasurer shall have no liability to the Contractor for fees or compensation for the Services, and the Contractor shall not directly or indirectly charge the Treasurer any fees or compensation, 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

Following a four (4) year period after the Effective Date, the Treasurer may elect to terminate this Agreement at any time upon ninety (90) days' notice to the Contractor, with transition services to follow in accordance with Section 7.5 of the Master Agreement.

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, according to the timeline in the paragraph below, 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 North Carolina;
- 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 North Carolina legislation 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. STATE SPECIFIC STATUTES/PROVISIONS

A. GOVERNING LAW

This Agreement shall be governed in all respects by the laws of North Carolina without regard to conflicts of law principles.

B. VENUE AND JURISDICTION

The parties hereby agree that any action regarding the terms or performance or breach of this Agreement shall be brought in either state or federal court in and for Wake County, North Carolina, provided that the foregoing shall not be construed as a waiver of the right to remove to the U.S. District Court for the Eastern District of North Carolina sitting in the City of Raleigh, North Carolina.

C. ACCESS TO PERSONS AND RECORDS

Contractor and Subcontractors agree to maintain books and records related to the performance of this Agreement and necessary to support amounts paid to or collected by the Contractor or any Subcontractor under this Agreement for a minimum of six (6) years from the last action on this Agreement or after termination of this Agreement, whichever is longer. Contractor and Subcontractors further agree to cooperate fully with any audit and to make the books and records available for review and audit by the North Carolina State Auditor and the Treasurer, using the Treasurer's auditors. Contractor agrees to cooperate fully with any audit conducted by the North Carolina State Auditor or the Treasurer and to provide full access to all relevant materials. The six (6) year period shall be extended for the duration of any audit in progress during the term. Failure to maintain the books, records, and supporting documents required by this Section C shall establish a presumption in favor of the Treasurer for the recovery of any funds paid to or collected by the Contractor or any Subcontractor under this Agreement for which adequate books, records, and supporting documentation are not available to support their purported disbursement or collection.

D. STANDARD OF CARE

Contractor acknowledges that it has fiduciary duties to the extent required by applicable law with regard to the Services provided under this Agreement. The Contractor will perform the Services and discharge its duties under this Agreement in a manner consistent with the Applicable Legal Requirements (as defined in Section 3.B. of the Master Agreement) with the same degree of care, skill, prudence and diligence 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 like character and with like aims.

E. DEALINGS WITH OTHER FINANCIAL INTERMEDIARIES

Prior to any such dealings or transactions as such relate to this Agreement, the Contractor shall fully disclose in writing to the Treasurer its financial interests in any individual or entity with which it has dealings or transacts business on behalf of the Treasurer (which shall not be construed to include portfolio holdings of the Contractor's other clients). If the Treasurer, in its sole and absolute discretion, determines that such transactions conflict with or potentially conflict with its interests, the Treasurer may require the Contractor to cease its dealings with such entity on behalf of the Treasurer. The Contractor shall also disclose any other fact or relationship that would compromise or materially affect its ability to faithfully perform its duties hereunder.

F. INSURANCE

Contractor shall have in force during this Agreement fiduciary liability insurance (including errors and omissions) and commercial general liability insurance, with limits of at least \$2,000,000 per each claim or each occurrence, as applicable, and employee dishonesty and theft insurance with limits of \$5,000,000. Upon request by the Treasurer, Contractor shall furnish suitable proof that said coverage is in full force and effect.

G. INDEPENDENT CONTRACTOR

Contractor shall be considered to be an independent contractor and as such shall be wholly responsible for the work to be performed and for the supervision of its employees. Contractor represents that it has, or will secure at its own expense, all personnel required in performing the services under this Agreement. Such employees shall not be employees of, or have any individual contractual relationship with the Treasurer. Contractor shall notify Treasurer if Contractor desires to utilize off-shore subcontractors to perform Services hereunder prior to this action taking place.

H. EQUAL EMPLOYMENT OPPORTUNITY

Contractor shall comply with all State and federal laws relating to equal employment opportunity.

I. PUBLIC RECORDS ACT

Contractor understands and acknowledges the Department of State Treasurer is a governmental agency subject to the North Carolina Public Records Act, N.C. Gen. Stat. § 132 as the same may be interpreted under North Carolina law and/or amended from time to time (the "Public Records Act"). As such, notwithstanding anything to the contrary contained in this Agreement, Contractor acknowledges and agrees that (i) any information determined in good faith by the Treasurer to be subject to disclosure under the Public Records Act will not be treated as confidential information under this Agreement or any other agreement with Contractor and may be disclosed by the Treasurer as provided in the Public Records Act.

Contractor acknowledges that (i) in order to be eligible for information provided to the Treasurer by Contractor to be eligible for the "trade secret" exception to the Public Records Act, the information must be marked or designated as "confidential" or as a "trade secret" at the time of its initial disclosure to the Treasurer, and (ii) regardless whether material is marked or designated as "confidential," it will be exempted from the Public Records Act only when authorized by state law. (See N.C. Gen. Stat. §§ 66-152 and 132-1.2(1) for more information.).

J. DEBARRED VENDORS LIST

Contractor warrants that it is not listed on the North Carolina Department of Administration, Division of Purchase and Contract's List of Debarred Vendors (see <http://ncadmin.nc.gov/government-agencies/procurement/contracts/debarred-vendors>).

K. GIFT POLICY

Contractor represents and warrants that it has reviewed the Treasurer's policy entitled "Prohibition of Gifts to State Employees," available at <https://www.nctreasurer.com/Inside-The-Department/OpenGovernment/Pages/Department-Policies.aspx>. Neither Contractor nor any of its officers, partners, principals or affiliates has made or will make any gift or favor to any State of North Carolina employee that would violate that policy.

L. CHARITABLE DONATIONS POLICY

Contractor represents and warrants that it has reviewed the Treasurer's policy entitled "Charitable Donations Policy

<https://www.nctreasurer.com/Inside-The-Department/OpenGovernment/Pages/Department-Policies.aspx>.

Neither Contractor nor any of its officers, partners, principals or affiliates has made on or after December 1, 2009, or will make, any charitable donation in excess of \$150.00 as a result of a direct or indirect solicitation by an employee of the State of North Carolina.

M. IRAN DIVESTMENT ACT CERTIFICATION

Contractor certifies that as of the date of execution, it is not listed on the Final Divestment List created by the Treasurer pursuant to N.C.G.S. 147-86.58(1).

N. FORCE MAJEURE

Neither Contractor nor Treasurer shall be deemed to be in default of its obligations hereunder if it is prevented from performing such obligations by any act of war, hostile foreign action, power interruption, common carrier delay, acts or orders of governmental authority, fire, nuclear or other explosion, riot, strikes, civil insurrection, earthquake, flood, hurricane, tornado, or other catastrophic events or an act of God.

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:

Mary Buonfiglio (or her successor)

Deputy Director, Supplemental Retirement Plans

NC Department of State Treasurer

3200 Atlantic Avenue

Raleigh, NC 27604

If to Contractor:

Ascensus College Savings Recordkeeping Services, LLC
95 Wells Avenue, Suite 160
Newton, MA 02459
Attn: President
Fax: 617-454-6302

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. The Treasurer's rights, duties and obligations under this Agreement shall continue without interruption notwithstanding any reorganization of State government in accordance with N.C. Gen. Stat. § 143A-6.

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.

[Signature Page Follows]

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

**NORTH CAROLINA DEPARTMENT
OF STATE TREASURER**

**ASCENSUS COLLEGE
SAVINGS RECORDKEEPING
SERVICES, LLC**

By: _____
Dale R. Folwell, CPA
State Treasurer of North Carolina

By: _____
Jeff Howkins
CEO & President

Date: _____

Date: _____