

**STATE OF WASHINGTON**  
**Washington Student Achievement Council**

**REQUEST FOR PROPOSALS (RFP)**

**RFP NO. 17-RFP147**

**NOTE:** If you download this RFP from an agency website located at: <http://www.wsac.wa.gov/>, you are responsible for sending your name, address, email address, and telephone number to the RFP Coordinator in order for your organization to receive any RFP amendments or bidder questions/agency answers.

**PROJECT TITLE:** Washington College Savings Program

**PROPOSAL DUE DATE:** November 30, 2016 – 5:00 p.m., *Pacific Standard Time*, Olympia, Washington, USA.

Emailed bids will be accepted. Faxed bids will not be accepted.

**ESTIMATED TIME PERIOD FOR CONTRACT:** June 30, 2017– June 29, 2027. The Agency reserves the right to extend the Contract for up to two additional one-year periods at the sole discretion of the Agency.

**BIDDER ELIGIBILITY:** This procurement is open to those Bidders that satisfy the minimum qualifications stated herein and that are available for work in Washington State.

**ELECTRONIC AVAILABILITY:** The contents of this RFP, any revisions to this REFP, and written answers to questions will be available on the Agency website at <http://www.wsac.wa.gov/> and at Washington's Electronic Business Solution (WEBS) website at <https://fortress.wa.gov/ga/webs/>.

Bidders are solely responsible for:

- \* Properly registering with WEBS at <https://fortress.wa.gov/ga/webs/>, and maintaining an accurate vendor profile in WEBS.
- \* Downloading the RFP packet consisting of the RFP, Exhibits, and incorporated documents related to the RFP for which you are interested in submitting.
- \* Downloading all current and subsequent revisions to the RFP to ensure receipt of all RFP documents.

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# 1. INTRODUCTION

## 1.1 PURPOSE AND BACKGROUND

The Washington Student Achievement Council (**Agency**), is issuing this Request for Proposals (**RFP**) to solicit Proposals from firms interested in providing program management services to the Washington College Savings Program (**Program**) as further described in *Section 4. Objectives and Scope of Work*.

### *The Program*

The Program is a new qualified tuition program (as defined by Section 529 of the Code, and commonly known as a 529 college savings plan) to be offered directly to the public pursuant to Chapter 28B.95 RCW. An advisor sold program may be considered by the Agency in the future but is not part of this RFP. The Program must offer a reasonable choice of investment options for investors at a reasonable cost. The Agency may award one or more Contract(s) to provide the Services described in this RFP.

The Agency intends to focus Program advertising and planning on the dissemination of information about the Program throughout the State of Washington, 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 public and private schools (K-12), school districts, parent-teacher organizations, employers and similar entities.

Chapter 28B.95 RCW was amended June 9, 2016 by Senate Bill 6601, Chapter 69, Laws of 2016 (SB 6601) to provide policy goals for the Program as follows:

- Process: To have an investment manager design a thoughtful, well-diversified glide path for age-based portfolios and offer a robust suite of investment options;
- People: To have a well-resourced, talented, and long-tenured investment manager;
- Parent: To demonstrate that the GET Committee is a good caretaker of college savers' capital and can manage the plan professionally;
- Performance: To demonstrate that the Program's options have earned their keep with solid risk-adjusted returns over relevant time periods; and
- Price: To demonstrate that the investment options are a good value.

SB 6601 also requires that:

- The Agency create an expedited process by which account owners can complete a direct rollover from GET to the Program, from the Program to GET, or from the Program or GET to a 529 plan sponsored by another state;
- The initial minimum contribution to a new account cannot exceed \$25;
- The program is open to residents and nonresidents of the State;
- The Agency promote, advertise and publicize the Program and develop materials to educate potential investors on the differences between the Program and GET and how the two plans can complement each other to save for higher education; and
- Beginning January 1, 2018, fees charged to account owners cannot exceed 50 bps for any investment option on an annual basis.

## ***The Agency and GET***

The Washington State Legislature created the Agency in July 2012 (Chapter 28B.77 RCW). By statute, the Agency provides strategic planning, oversight, advocacy, and programs to support increased student success and higher levels of educational attainment in Washington. Among its program administration duties, the Agency is charged with ensuring the quality of state financial aid programs and services that support educational access and affordability; providing college savings opportunities through the GET program; and preparing underrepresented middle and high school students for postsecondary education through early outreach and success programs such as College Bound and GEAR UP.

For the past 17 years, GET has helped families save and prepare for their children's future higher education pursuits as the State's sole state-sponsored 529 plan. GET is a prepaid tuition plan that is priced and valued based on the most expensive resident, undergraduate tuition and state-mandated fees at the State's highest-priced public university. Since 1998, customers have opened more than 160,000 GET accounts and have already used more than 44,000 of those accounts to help pay for their students' college expenses at colleges, universities, and technical schools nationwide, and in at least 15 foreign countries. The GET Committee oversees GET, and sets policies and investment direction.

Chapter 28B.95 RCW directs the Agency to develop, administer, and promote the Program alongside GET with the GET Committee's oversight.

## **1.2 DEFINITIONS**

Definitions for the purposes of this RFP include:

**Administrative Fee** – The fee payable to the Agency to support the administration and marketing of the Program.

**Agency** – The Washington Student Achievement Council is the agency of the State of Washington that is issuing this RFP.

**Apparent Successful Bidder** – The Bidder selected as the entity to perform the Services, subject to completion of Contract negotiations and execution of a written Contract.

**Bidder** – Individual or company interested in the RFP and that may or does submit a Proposal in order to attain a Contract with the Agency.

**Code** – the Internal Revenue Code of 1986, as amended.

**Contract** – the agreement entered into between the Contractor and the Agency.

**Contractor** – Individual or company whose Proposal has been accepted by the Agency and is awarded a fully executed, written Contract.

**Enabling Act** – Chapter 28B.95 RCW, as amended June 9, 2016 by Engrossed Second Substitute Senate Bill 6601, Chapter 69, Laws of 2016.

**FDIC** – Federal Deposit Insurance Corporation.

**GET** – The Advanced College Tuition Payment Program (a 529 prepaid tuition plan) authorized by the Enabling Act.

**GET Committee** – The Committee on Advanced Tuition Payment and College Savings. This five-member board provides oversight for GET, and will also provide oversight for this RFP and the Program.

**Program Start Date** – June 30, 2017.

**Proposal** – A formal offer submitted in response to this solicitation.

**Proposed Rules** – The rules proposed by the U.S. Department of the Treasury under Section 529 of the Code.

**Regulatory and Industry Requirements** – The Enabling Act, Section 529 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 Agency.

**Request for Proposals (RFP)** – Formal procurement document in which a service or need is identified but no specific method to achieve it has been chosen. The purpose of an RFP is to permit the Bidder community to suggest various approaches to meet the need at a given price.

**Services** – The services to be provided to the Program pursuant to this RFP.

**State** – The State of Washington.

**Washington’s Electronic Business Solution (WEBS)** – An online vendor registration and notification system through which the State conducts most of its procurements for goods and services. Prospective vendors can register at:

<http://www.des.wa.gov/services/ContractingPurchasing/Business/Pages/WEBSRegistration.aspx>.

## 2. GENERAL INFORMATION FOR BIDDERS

### 2.1 RFP COORDINATOR

The RFP Coordinator is the sole point of contact in the Agency for this procurement. All communication between the Bidder and the Agency upon release of this RFP shall be with the RFP Coordinator, as follows:

Name	Don Alexander
Email Address	<a href="mailto:DonA@wsac.wa.gov">DonA@wsac.wa.gov</a>
Mailing Address	Washington Student Achievement Council 917 Lakeridge Way SW P.O. Box 43430 Olympia, WA 98504-3430
Physical Address for Delivery	917 Lakeridge Way SW Olympia, WA 98502
Phone Number	(360) 753-7816

Any other communication will be considered unofficial and non-binding on the Agency. Bidders are to rely on written statements issued by the RFP Coordinator. Communication directed to parties other than the RFP Coordinator may result in disqualification of the Bidder.

### 2.2 ESTIMATED SCHEDULE OF PROCUREMENT ACTIVITIES

Issue RFP	October 4, 2016
Question & answer period	October 4, 2016 through October 24, 2016
Pre-Proposal Conference	October 24, 2016
Issue last addendum to RFP	October 27, 2016
Bidder complaint period ends (see Section 6.5)	November 21, 2016
Proposals due	November 30, 2016
Evaluate Proposals	December 1, 2016 through December 30, 2016
Conduct oral interviews with finalists, if required	January 11, 2017
Announce Apparent Successful Bidder and send notification via email to unsuccessful Bidders	January 25, 2017
Hold debriefing conferences (if requested)	February 1, 2017
Protest period closes	February 8, 2017
Negotiate Contract	January 25, 2017 through March 22, 2017
Contract effective date	March 23, 2017

The Agency reserves the right to revise the above schedule.

### **2.3 PRE-PROPOSAL CONFERENCE**

A Pre-Proposal Conference is scheduled to be held on **October 24, 2016 at 10:00 a.m.**, PDT in Olympia, Washington. The location of the Pre-Proposal Conference is 917 Lakeridge Way SW, Olympia, WA 98504-3430. All prospective Bidders should attend; however, attendance is not mandatory. Please advise the [RFP Coordinator](#) via email or phone by **October 20, 2016** whether or not you plan to attend and for directions to the meeting site. Prospective Bidders may attend via teleconference. You are encouraged to submit written questions via [email](#) prior to the date of the Pre-Proposal Conference

The Agency will be bound only to the Agency's written answers to questions. Questions arising at the Pre-Proposal conference or in subsequent communication with the RFP Coordinator will be documented and answered in written form. A copy of the questions and answers will be sent to each prospective Bidder that has received a copy of the RFP or made the RFP Coordinator aware of its interest in this procurement.

The Agency 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.

### **2.4 CLARIFICATION OF INFORMATION**

It is the responsibility of any prospective Bidder 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 **October 21, 2016**, at 4:00 P.M. PT and emailed to the [RFP Coordinator](#).

Questions and answers will be discussed at the Pre-Proposal Conference to be held October 24, 2016. Copies of questions and answers submitted in writing and presented at the Pre-Proposal Conference will be available on the Agency's website at the following link [www.wsac.wa.gov](http://www.wsac.wa.gov) and on WEBS at <https://fortress.wa.gov/ga/webs/> no later than October 27, 2016. Bidders shall have full responsibility for accessing the website.

### **2.5 SUBMISSION OF PROPOSALS NOTE:**

The Proposal must be received by the RFP Coordinator no later than 5:00 p.m. PST on November 30, 2016.

Proposals must be submitted electronically via email to [Don Alexander](#), the RFP Coordinator, at the email address listed in *Section 2.1*. Bidders may provide Proposals as email attachments (30 MB limit), or may upload their Proposals to a file sharing site or secure file transfer site and provide a link. Documents must be formatted in a Microsoft Word or PDF file format. Zipped files cannot be received by the Agency and cannot be used for submission of Proposals. The cover submittal letter and the Certifications and Assurances Form must have a scanned signature of the individual within the organization authorized to bind the Bidder to the offer. The Agency does not assume responsibility for problems with Bidder's email system. If the Agency's email system is not working, appropriate allowances will be made.

Bidders should allow sufficient time to ensure timely receipt of the Proposal by the RFP Coordinator. Late Proposals will not be accepted and will be automatically disqualified from further consideration, unless the Agency's email system is found to be at fault. All Proposals and any accompanying documentation become the property of the Agency and will not be returned.

Proposals may not be transmitted by fax.

## **2.6 MULTIPLE OR ALTERNATE PROPOSALS**

A Bidder may submit multiple Proposals in response to this solicitation. One Proposal must be complete in all respects. This complete Proposal shall be designated by the Bidder as the “Primary Proposal” and each of its Technical, Management and Financial PDF or Microsoft Word files labeled as such, while each additional Proposal shall be designated numerically in sequence (i.e. – “Proposal #2”, “Proposal #3”, etc.) and each of their PDF or Microsoft Word files labeled as such. Each such multiple Proposal is to include only that information which differs from the information in the primary Proposal.

A Bidder may also submit an alternate Proposal in response to this RFP. Any such alternate Proposal or Proposals must still seek to meet the overall purpose of this RFP and comply with the Enabling Act but may deviate from any specific programmatic goal/process required by this RFP. An alternate Proposal must be submitted in addition to a Proposal which fully addresses the specific requirements of the RFP. Such alternate Proposal may be considered if overall performance would be improved and if the acceptance of an alternate Proposal is in the best interest of the State. The preparation and numbering of the alternate Proposal shall be the same as described for multiple Proposals (i.e. – “Alternate Proposal #1”, “Alternate Proposal #2”, etc.).

## **2.7 PROPRIETARY INFORMATION/PUBLIC DISCLOSURE**

Proposals submitted in response to this competitive procurement shall become the property of the Agency.

All Proposals received shall remain confidential until the Contract, if any, resulting from this RFP is signed by the Agency and the Apparent Successful Bidder; thereafter, the Proposals shall be deemed public records as defined in Chapter 42.56 RCW.

The Bidder must clearly designate any information in the Proposal that the Bidder desires to claim as proprietary and exempt from disclosure under the provisions of Chapter 42.56 RCW or other state or federal law that provides for the nondisclosure of the document. The page, as well as the particular exception from disclosure upon which the Bidder is making the claim must be identified. ***Each page claimed to be exempt from disclosure must be clearly identified by the word “Confidential” printed on the lower right hand corner of the page.***

The Agency will consider a Bidder’s request for exemption from disclosure; however, the Agency will make a decision predicated upon Chapter 42.56 RCW. Designating the entire Proposal exempt from disclosure will not be honored. The Bidder must be reasonable in designating information as confidential. If any information is designated as proprietary in the Proposal, such information will not be made available until the affected Bidder has been given an opportunity to seek a court injunction against the requested disclosure.

## **2.8 REVISIONS TO THE RFP**

In the event it becomes necessary to revise any part of this RFP, addenda will be provided via email to all individuals who have made the RFP Coordinator aware of their interest. Addenda will also be published on <http://www.wsac.wa.gov/> and on **WEBS**. For this purpose, the published questions and answers and any other pertinent information shall be provided as an addendum to the RFP and will be placed on the websites.

*If you downloaded this RFP from the Agency website located at: <http://www.wsac.wa.gov/>, you are responsible for sending your name, email address, and telephone number to the [RFP Coordinator](#) in order for your organization to receive any RFP addenda.*

The Agency also reserves the right to cancel or to reissue the RFP, in whole or in part, prior to execution of a Contract.

## **2.9 MINORITY & WOMEN-OWNED BUSINESS PARTICIPATION**

In accordance with Chapter 39.19 RCW, the State encourages participation in all of its contracts by firms certified by the Office of Minority and Women's Business Enterprises (**OMWBE**). Participation may be either on a direct basis in response to this solicitation or on a subcontractor basis. However, no preference will be included in the evaluation of Proposals, no minimum level of MWBE participation shall be required as a condition for receiving an award, and Proposals will not be rejected or considered non-responsive on that basis.

The established annual procurement participation goals for MBE is 10%, and for WBE 4%, for this type of project. These goals are voluntary. For information on certified firms, Bidders may contact OMWBE at (360)664-9750 or <http://www.omwbe.wa.gov>.

## **2.10 ACCEPTANCE PERIOD**

Proposals must provide ninety (90) days for acceptance by the Agency from the due date for receipt of Proposals.

## **2.11 RESPONSIVENESS**

All Proposals will be reviewed by the RFP Coordinator to determine compliance with administrative requirements and instructions specified in this RFP. The Bidder is specifically notified that failure to comply with any part of the RFP may result in rejection of the Proposal as non-responsive.

The Agency also reserves the right at its sole discretion to waive minor administrative irregularities.

## **2.12 MOST FAVORABLE TERMS**

The Agency reserves the right to make an award without further discussion of the Proposal submitted. Therefore, initial Proposals should be submitted on the most favorable terms which the Bidder can propose. As set forth below in Section 6, initial Proposals will be evaluated and up to three (3) finalists will be identified. The Agency may seek additional information from the finalists to obtain best and final offers and final Proposals to the Agency.

The Apparent Successful Bidder should be prepared to accept this RFP for incorporation into a Contract resulting from this RFP. Contract negotiations may incorporate some or all of the Bidder's Proposal. It is understood that the Proposal will become a part of the official procurement file on this matter without obligation to the Agency.

## **2.13 CONTRACT AND GENERAL TERMS & CONDITIONS**

The Apparent Successful Bidder will be expected to enter into a Contract that is substantially the same as *Exhibit B – Form of Contract*, which includes standard State required general terms and conditions. In no event is a Bidder to submit its own standard contract terms and conditions in response to this RFP. The Bidder may submit exceptions as allowed in *Exhibit A – Certifications and Assurances Form* to this solicitation. All exceptions to *Exhibit B – Form of Contract* must be submitted as an attachment to *Exhibit A – Certifications and Assurances Form*. The Agency will review requested exceptions and accept or reject the same at its sole discretion.

## **2.14 COSTS TO PROPOSE**

The Agency will not be liable for any costs incurred by the Bidder in preparation of a Proposal submitted in response to this RFP, in conduct of a presentation, or any other activities related to responding to this RFP.

## **2.15 NO OBLIGATION TO CONTRACT**

This RFP does not obligate the State or the Agency to contract for the Services specified herein.

## **2.16 REJECTION OF PROPOSALS**

The Agency reserves the right at its sole discretion to reject any and all Proposals received without penalty.

## **2.17 COMMITMENT OF FUNDS**

The Director of the Agency or the Director's delegate is the only individual who may legally commit the Agency to the expenditures of funds for a Contract resulting from this RFP. No cost chargeable to the proposed Contract may be incurred before receipt of a fully executed Contract.

## **2.18 INSURANCE COVERAGE**

Bidders are requested to review the provisions of *Section 19, Exhibit B – Form of Contract*, entitled "*Insurance*," which is incorporated by reference.

## **2.19 PERIOD OF PERFORMANCE**

The period of performance of any Contract resulting from this RFP is tentatively scheduled to begin on or about June 30, 2017 and to end on June 29, 2027. The Agency reserves the right to extend the Contract for up to two one-year periods. Amendments extending the period of performance, if any, shall be at the sole discretion of the Agency.

## **2.20 CONTRACTING WITH CURRENT OR FORMER STATE EMPLOYEES**

Specific restrictions apply to contracting with current or former state employees pursuant to Chapter 42.52 RCW. Bidders should familiarize themselves with the requirements prior to submitting a Proposal that includes current or former state employees.

## **2.21 AMERICANS WITH DISABILITIES ACT (ADA)**

The Agency complies with the Americans with Disabilities Act (**ADA**). Bidders may contact the [RFP Coordinator](#) to receive this RFP in braille or on audio tape.

### 3. MINIMUM QUALIFICATIONS

Unless otherwise specified, as of October 4, 2016, a Bidder must meet all of the following mandatory minimum qualifications as outlined below in order to be considered for the Contract award.

- A. Licensed to do business in the State or provide a commitment that it will become licensed in the State within thirty (30) calendar days of being selected as the Apparent Successful Bidder;
- B. Agree to provide the Services as detailed in *Section 4, Objectives and Scope of Work*, as well as all other requirements as stated in this RFP;
- C. Have a total of \$5 billion or more of assets under management for 529 Plan and/or institutional clients (can be satisfied by an investment manager with which the Bidder proposes to subcontract under this RFP);
- D. Have been in business for a minimum of five years;
- E. Been rated by 2 or more nationally recognized rating services within the three highest rating categories for financial condition and operational performance. If the Bidder has not been rated by a nationally recognized rating service, the Bidder must describe the circumstances under which such ratings have not been conducted. The Bidder shall also describe any alternative financial condition and operational performance measures that it believes will be helpful in considering the minimum qualifications of the Bidder;
- F. Maintain all applicable federal licenses and registrations necessary to conduct a financial services business (e.g. - registered Investment Advisor, Investment Company, member of the FDIC and/or Broker/Dealer, as applicable);
- G. Comply with Regulatory and Industry Requirements;
- H. Comply with State Office of the Chief Information Officer (OCIO) IT [Security Standards No. 141.10, "Securing Information Technology Assets"](#).
- I. Have adequate fiduciary insurance coverage. At a minimum, each Bidder must provide proof of Errors and Omissions/Professional Liability Insurance of \$15 million or more per occurrence; and
- J. The key professionals and/or organization must not have, nor could they potentially have, a conflict with the Agency or its consultants specified under Chapter 42.52 RCW.

Bidders who do not meet these minimum qualifications will be rejected as non-responsive and will not receive further consideration. Any Proposal that is rejected as non-responsive will not be evaluated or scored.

## 4. OBJECTIVES AND SCOPE OF WORK

The Contractor will provide the Services to the Agency and the participants in the Program, as applicable. Bidders should affirm that they will fully satisfy the following General Requirements. Any modification or exceptions to the Scope of Work must be submitted on *Exhibit A – Certifications and Assurances Form*. A Proposal that takes exception to any portion of the Scope of Work may be considered non-responsive.

### 4.1 GENERAL REQUIREMENTS AND CONSIDERATIONS

- A. **Mandatory Contractual Terms.** By submitting an offer in response to this RFP, a Bidder, if selected for award, will be deemed to have accepted the terms of this RFP and the Form of Contract which is attached to and part of this RFP as *Exhibit B*. The Agency reserves the right to further negotiate the terms of the Contract, in its discretion.
- B. **Contract Duration.** If a Bidder is selected pursuant to the RFP, the Contract will become effective upon execution and will remain effective for a period of ten (10) years (with the possibility of two renewal terms of one year each at the sole option of the Agency) from the Program Start Date.
- C. **Compensation and Payment.** The Contractor will be compensated for the Services under the Contract solely through fees collected from the Program account owners consistent with the Bidder's Cost Proposal.

The Contractor 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 Contractor's location(s) and the Agency's offices. This type of administrative/operational expense may not be part of *Exhibit D – Cost Proposal Schedule*.

The Contractor will not receive compensation for travel time or related expenses such as transportation, mileage, parking, etc., for meetings with the Agency or any vendors rendering Services to the Agency and/or the Contractor. Travel related expense may not be part of *Exhibit D – Cost Proposal Schedule*.

- D. **Administrative Fee.** The Agency intends to operate the Program initially on limited start-up funds made available pursuant to the Enabling Act. However, the Agency will require that it be paid an Administrative Fee beginning as of the Program Start Date in order to cover administrative and marketing costs, repay any funds borrowed from GET, and discharge any cash deficit in the Agency's Program administrative account within five years from the Program Start Date. The Administrative Fee could take the form of a fee charged to Program participants or a fee otherwise paid by the Contractor to the Agency. For purposes of this RFP, the Bidder should allow for an Administrative Fee to be assessed either based on basis points or other method of calculation beginning as of the Program Start Date.
- E. **Confidential Information.** The Bidder must recognize that all information concerning the Program and its participants is the sole property of the State, is confidential and is not to be used by the Bidder for any other purpose. Other than in connection with the provision of the Services, Bidders shall refrain from any direct communication with the participants in the Program, except as approved in advance by the Agency or its authorized representative.

- F. **Audits.** The Contractor will supply to the Agency and any appropriate governmental entity all accountings, reports and information as may be required by the Agency and/or Regulatory and Industry Requirements. The Agency requires an annual audit by an independent accounting firm approved by the Agency. Each audit will be conducted on a fiscal year basis. Compliance with these audit requirements is a requirement of any Bidder without additional charge to the State, the Agency or the Program.
- G. **Separate Accounts.** Each account must be maintained as a separate account with a unique identifying number for each account owner and beneficiary.
- H. **Enrollments and Disbursements.** Enrollments and disbursements for an account must be made in accordance with Regulatory and Industry Requirements. The Contractor must supply to the Agency any information required under Regulatory and Industry Requirements and, as the Agency's agent, prepare and file the proper tax reporting forms.
- I. **Plan Features.**
1. **Minimum Contribution.** The Enabling Act requires that the Program may not require an initial minimum contribution of more than \$25 when opening an account.
  2. **Maximum Contribution.** The Program has not yet established a maximum contribution limit other than that required under Section 529 of the Code. A maximum contribution limit will be set prior to the Program Start Date.
  3. **Expense Ratio.** The Agency 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 Section 9.d. below. In addition, the Enabling Act requires that beginning January 1, 2018, fees charged to an account owner may not exceed 50 bps for any investment option on an annual basis. Bidders should also consider proposing a reduction in the expense ratio charged for an investment option once the Program attains certain breakpoints in total assets under management.
  4. **Investment Options.** The Program should be structured to offer maximum flexibility of use to participants. Therefore, Bidders are encouraged to present best-in-class investment options including age-based options and fixed allocation and/or individual fund investment options as part of its Proposal. The Agency is also willing to review alternative Program structures and encourages each Bidder to present its best recommended lineup of investment options (*see Section 2.6 - Multiple or Alternate Proposals*).
  5. **Enrollment Fee/Account Maintenance Fee.** The Agency is open to considering an enrollment fee and/or an account maintenance fee as part of a Bidder's Proposal. Any such fee could be collected as an Administrative Fee or as part of the Bidder's management fee.
- J. **Investment Strategy and the Program Goals.** It is the goal of the Agency that the investment strategy and structure of the Program:
1. Maximizes the return and minimizes the risk of loss to account owners and beneficiaries;
  2. Ensures availability of funds to meet the qualified higher education expenses of beneficiaries;
  3. Encourages participation by minimizing any required account balances or contribution levels;
  4. In consideration of Section 9.d. above, offers participants a reasonably diversified choice of investment options and fund selections; and
  5. Minimizes the overall fees charged to participants (*see sub-section 9.c. above*).

- K. **Regulatory and Industry Requirements.** The Program must be operated in compliance with all Regulatory and Industry Requirements.

## **4.2 FINANCIAL SERVICES**

The Bidder 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 and 10-year time periods.

The Agency intends to select one Bidder to provide the Services but will consider multiple investment managers included in the Bidder's Proposal in an effort to promote new types of Proposals and choice among portfolio options. The Agency emphasizes that ease of understanding and minimization of fees charged to account owners are top priorities.

The Bidder must describe with reasonable specificity the types of investments or investment products that would comprise each of the investment options proposed, and provide examples.

Any investments that would comprise an investment option must meet the requirements of the Agency's investment policy when adopted (*see RCW 28B.95.150(3)*). The Agency has final authority with regard to the investment options offered under the Program and the asset allocation within each investment option.

Investment performance information with regard to each investment option must be updated at least daily on the Program website. The Contractor must also comply with any performance related criteria recommended by the Agency. On at least a quarterly basis, and more frequently as necessary, the Contractor must inform the Agency and account owners about significant changes in the investment climate, market conditions or investment philosophies that could affect the Program investments.

## **4.3 ACCOUNT ADMINISTRATION**

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

The Bidder 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 4.5* below) to Program account owners.

As suggested by proposed federal regulations, it is important for states with dual Section 529 programs to coordinate records administration services. This ensures that contributions for a single beneficiary are not above the maximum limits for more than one program and that distributions from the programs meet the requirements of the Code.

The Agency has obtained a perpetual license to the Banner 2000 software that GET uses for its records administration. This perpetual license can be extended to include records administration for the Program. The Agency will favorably consider Proposals that will utilize Banner 2000 software for records administration of the Program. Additional hardware and software costs, personnel costs and all other records administration costs, will be the responsibility of the Contractor. These costs will be recovered by the Contractor through the operating expense ratio of the Program.

Although the Agency will favorably consider Proposals that utilize Banner 2000 as a single records administration system for the Program and GET, it will also favorably consider alternate Proposals that utilize different options for records administration for the Program as well as alternate Proposals that utilize an alternative option for records administration for both the Program and GET. Any alternative records administration system for the Program must allow for an application program interface between Banner 2000 utilized for GET and the Bidder's records administration system. In addition, GET customer service representatives must, at a minimum, be able to view account records on the proposed Program records administration system in order to service account owners with accounts in both GET and the Program.

Any alternate Proposal submitted under the guidelines of *Section 2.6 – Multiple or Alternate Proposals* must address the specifics outlined in this *Section 4.3 – Account Administration*.

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 Bidder's work site to the servers necessary to access customer accounts. The Bidder must also address performance standards for all facets of account administration. These standards will include at a minimum:

- A. Procedures for requests to make changes to accounts, including quality controls;
- B. 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
- C. Procedures for ensuring security of account owner and beneficiary information including security measures for communication via internet or telephone or in writing.

The Bidder must provide for Program enrollment online and through a central mailing location that can receive express deliveries by normal U.S. postal services. The Agency prefers that the Bidder utilize a Washington address for all written correspondence and enrollment forms. The Bidder must also provide for qualified withdrawals from accounts online.

The Bidder must propose an expedited process, as required by the Enabling Act, by which account owners can complete a direct rollover from GET to the Program, from the Program to GET, or from the Program to a 529 plan sponsored by another state.

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

Additional service requirements are listed under *Section 4.5 – Customer Service*.

#### **4.4    *MARKETING***

The Enabling Act requires that the Agency develop materials to educate potential investors on the differences between the Program and GET and how the two plans can complement each other to save for higher education. It is, therefore, the intent of the Agency to coordinate the marketing and education aspects of the Program with GET. The Agency believes that it is in the interest of Washington families to present the 529 plans as two options under a single program name, tentatively called the College Savings Programs of Washington (CSPW) in order to allow for a clear comparison of the Program and GET,

making it possible for average consumers to understand the similarities and differences of the two plans. Integrated marketing efforts will include advertising (digital and traditional), marketing materials (enrollment kits and brochures), and face-to-face marketing (group presentations, event marketing). This will allow prospective purchasers to choose the plan(s) that best suit their needs.

It is the intent of the Agency to conduct all marketing for the Program itself and, therefore, will not require marketing Services to be provided by the Contractor. **However, if a Bidder chooses to submit an alternate Proposal that would include marketing Services as provided for in Section 2.6, the following Scope of Work is required:**

- A. The Bidder must possess the requisite knowledge and demonstrated experience in marketing investment products to educate families in investing for qualified higher education expenses.
- B. Marketing efforts include advertising (both digital and traditional), 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.
- C. Because GET and the Program will be marketed as two plans under one program, it is expected that marketing efforts on behalf of the Program will be conducted on a joint basis between the Agency and the Bidder, at the discretion of the Agency. Because the Program is a new program, the Bidder should expect to include branding strategies as part of its Proposal. The Bidder should expect that, other than an Administrative Fee, the Agency will have limited available funds to contribute to the marketing of the Program.
- D. General Requirements include:
  1. The Contractor will work with the Agency or its authorized representative on all aspects of the marketing and public relations campaigns undertaken. The Agency will have final approval of all marketing and public relations decisions.
  2. Depending on the structure of the Contractor's Proposal, including the structure of the Administrative Fee, 100% of the marketing costs associated with the marketing efforts may be borne by the Contractor.
  3. The Program's website will, at all times, be the sole source of detailed information available via the internet regarding the Program. Any inquiries made on the Contractor's website about the Program must be linked directly to the Program's website.
  4. Each of the Program's website and the Contractor's website should be compliant with the accessibility standards set forth in Title III of the ADA.

#### **4.5 CUSTOMER SERVICE**

The Bidder must possess the requisite knowledge and demonstrated experience in providing customer service for 529 plans or similar products in a manner that substantially meets the performance guidelines specified in this Section 4.5.

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

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

When calling the toll-free number for the Program, 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 the Program (approved by the Agency or its authorized representative and the Contractor) or be transferred to a customer service representative to answer questions about the Program. Callers must also be provided an option to transfer to a GET customer service representative. All customer service options available to the Program participants and potential participants should be ADA compliant.

#### **A. General Requirements:**

1. Maintain a database of inbound callers seeking enrollment materials, including information such as:
  - a. Caller's name, address and telephone number
  - b. County of residence
  - c. How the caller heard about the Program – social media, radio, newspaper, friend, etc.
2. Provide the Agency with a monthly report monitoring daily call volumes, call durations, time of calls, hold time, and abandoned calls.
3. Update or change prerecorded messages, question and answer scripts, and training scripts when required or needed throughout the year using scripts approved by the Agency or its authorized representative.
4. Provide a means for all participants to express concerns, comments or complaints regarding the Program 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.
5. Provide a means for participants to contribute to Program accounts through the workplace.
6. Agree to maintain the confidentiality of all participant and beneficiary information.
7. Coordinate with GET, including on-site meetings at GET offices, for cross-training of GET and Program customer service representatives to (i) enhance the customer service experience; (ii) ensure the ability of Program and GET customer service representatives to provide account owners with basic plan and account information on the other Agency plan; and (iii) allow for Program and GET customer service representatives to transfer calls to customer service representatives for the other Agency plan.
8. Ability to comply with Regulatory and Industry Requirements.

## **B. Service Level Requirements:**

1. Telephone Inquiries
  - a. Abandonment Rate – less than 2%
  - b. Percent of Calls Answered within 30 seconds – 90%
2. Correspondence/Research:
  - a. Financial Correspondence Timeliness – 99% of financially related correspondences are sent within two business days of receipt.
  - b. Non-Financial Correspondence Timeliness – 99% of non-financial correspondences are sent within five business days of receipt.
  - c. Problem research
    1. 99% of written complaints or inquiries received – begin researching within 24 hours of receipt at the Contractor processing facility.
    2. 99% of the written complaints or inquiries received – complete initial communication within 48 hours of receipt at the Contractor processing facility.
3. Check Processing:
  - a. 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.
  - b. Check Posting Timeliness – 99% of the checks are posted to the account owner's account by the day after receipt.
4. Confirmations, Statements, Tax Reporting:
  - a. Timeliness of Monthly, Quarterly and Year-End account owner Statements – 99% are mailed within seven business days of approval.
  - b. Timeliness of Daily Confirmations – 99% of daily confirmations are mailed within five business days.
  - c. Accuracy of Confirmations, Statements and Tax Reports – 99% of confirmations, statements and tax reports are accurate.
  - d. Timeliness of Tax Reporting – 99% of federal tax reports are mailed or electronically transmitted, as applicable on the agreed-to date.
5. Website up-time
  - a. Website availability measured on a 24-hour x 7-day basis, not including scheduled downtime – 99%.

## **4.6 REPORTS**

The Contractor 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 Agency. Reports will include, at a minimum:

### **A. Weekly Reports**

1. Financial reports
2. Plan market value
3. Total number of account owners/beneficiaries
4. Total number of accounts with custodial authority

5. Number of new accounts
6. Number of closed accounts
7. Total contributions for the week
8. Total distributions for the week
9. Call center performance statistics

#### **B. Monthly Reports**

1. Financial reports
2. Plan market value
3. Total number of account owners/beneficiaries
4. Total number of accounts with custodial authority
5. Number of new accounts
6. Number of closed accounts
7. Total contributions for the month
8. Total distributions for the month
9. Call center performance statistics

#### **C. Quarterly Reports**

1. Contribution volumes by portfolio
2. Average account balance
3. Average contribution amount
4. Total contributions – for the quarter and year to date
5. Total distributions for the quarter
6. Number of accounts, by portfolio
7. Market value of accounts
8. Call center performance statistics – average second delay, number of calls, abandon rate
9. 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
10. Current asset allocation percentages of portfolios
11. Assets in dollars by portfolio
12. Account Demographics – average beneficiary age, accounts with custodial authority

#### **D. Annual Reports**

1. Calendar year contributions by account owner name/unique identification number
2. Rollovers to and from other states' 529 Plan reported by account owner name/unique identification number
3. Other information as requested by the Agency

The Contractor will provide such other information as the Agency or its authorized representative may request to monitor and control the Contract. The Agency also has a strong interest in obtaining real-time access to the data referenced in this *Section 4.6*. The Contractor must be available to attend all regularly scheduled GET Committee meetings (in person or via teleconference as reasonably requested by the Agency) to review the Services to be provided under the Contract.

#### **4.7 PROGRAM START DATE AND PROJECT PLAN**

The Agency intends to begin offering the Program as soon as possible with a goal of June 30, 2017. If the Agency awards a Contract under this solicitation, the Contractor may begin providing some of the Services outlined in this *Section 4*, in advance of the Program Start Date.

The Bidder will submit a project plan and schedule describing all steps necessary to begin offering the Program as of the Program Start Date. The project plan and schedule will identify any required involvement of Agency staff and resources.

### **5. PROPOSAL CONTENTS**

Proposals must be written in English and submitted electronically to the RFP Coordinator in the order noted below:

1. Letter of Submittal, including signed Certifications and Assurances Form (*Exhibit A* to this RFP);
2. Technical Proposal;
3. Management Proposal; and
4. Cost Proposal.

Proposals must provide information in the same order as presented in this document with the same headings. This will not only be helpful to the evaluators of the Proposal, but should assist the Bidder in preparing a thorough response.

Items marked “mandatory” must be included as part of the Proposal for the Proposal to be considered responsive; however, these items are not scored. Items marked “scored” are those that are awarded points as part of the evaluation conducted by the evaluation team.

#### **5.1 LETTER OF SUBMITTAL (MANDATORY)**

The Letter of Submittal and the attached *Certifications and Assurances Form* must be signed and dated by a person authorized to legally bind the Bidder to a contractual relationship, e.g. the President or Executive Director if a corporation, the managing partner if a partnership, or the proprietor if a sole proprietorship. The Letter of Submittal should be brief and must acknowledge receipt of this RFP and any addenda to this RFP.

#### **5.2 TECHNICAL PROPOSAL (SCORED)**

The Technical Proposal must include a table of contents and a declaration of confidential sections of the Proposal (if any) (*see Section 2.7*).

The Technical Proposal must also include an Executive Summary. The Executive Summary should clearly demonstrate that the Bidder has an understanding of the objectives and goals of the Agency set forth in this RFP, and an understanding of *Section 4 – Objective and Scope of Work*. This Summary must clearly state and demonstrate the Bidder’s ability to meet the minimum qualifications as listed in *Section 3* 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.

#### **A. General Information**

1. State the name, address, principal place of business, telephone number, and fax number/email address of legal entity or individual with whom Contract would be written.
2. Provide the name, address, and telephone number of each principal officer (President, Vice President, Agency, Chairperson of the Board of Directors, etc.)
3. State the legal status of the Bidder (sole proprietorship, partnership, corporation, etc.) and the year the entity was organized to do business as the entity now substantially exists.
4. Provide a brief history of the Bidder, including ownership, current management, and any significant changes in the foregoing (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.
5. Provide Federal Employer Tax Identification number or Social Security number and the Washington Uniform Business Identification (UBI) number issued by the State Department of Revenue. If the Bidder does not have a UBI number, the Bidder must state that it will become licensed in the State within thirty (30) calendar days of being selected as the Apparent Successful Bidder.
6. State the location of the facility or facilities from which the Bidder would operate if selected as the Apparent Successful Bidder.
7. Furnish a copy of the Bidder’s annual report and audited financial statements for fiscal years 2014 and 2015 along with an analysis of each set of financial statements.
8. Provide the most recent ratings reports on the Bidder from any available agencies (e.g. - A.M. Best, Moody, Standard & Poor). Indicate the date the Bidder 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 Bidder has not been rated by a nationally recognized rating service, describe the circumstances under which such ratings have not been conducted. The Bidder shall also describe any alternative financial condition and operational performance measures that it believes will be helpful in considering the minimum qualifications of the Bidder.
9. Provide copies of the Bidder’s most recent SOC1 and SOC2 reports prepared in accordance with Statement on Standards for Attestation Engagements (SSAE) No. 16, Reporting on Controls at a Service Organization.
10. Discuss organizational structure, including size and location(s).
11. Discuss whether the Bidder 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 (**Exchange Act**), any regulatory agency of any state of the United States, or any U.S. Government department or agency.

12. State whether the Bidder is a licensed member of the Securities Investor Protection Corporation (SIPC). If so, state the amount of SIPC protection the Bidder provides.
13. Discuss whether the Bidder or its parent or affiliate is a registered broker/dealer. If the Bidder trades in securities with a parent or affiliate, describe any process designed to avoid conflicts of interest. Describe if these systems negatively affect the Bidder's ability to perform its duties and if so, what measures have been utilized to lessen this impact.
14. Bidders 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.
15. Describe the Bidder's computer security and disaster recovery preparedness as it relates to Program records that would be maintained by the Bidder if it is awarded the Contract. Describe how the Bidder will comply with State [Office of the Chief Information Officer \(OCIO\) IT Security Standards No. 141.10, "Securing Information Technology Assets"](#) to maintain security and guard against website downtime, or any computer applications, or any information system.
16. Identify any State employees or former State employees employed by the firm or on the firm's governing board as of the date of the Proposal. Include their position and responsibilities within the Bidder's organization. If, following a review of this information, it is determined by the Agency that a conflict of interest exists, the Bidder may be disqualified from further consideration for the award of a Contract.

## **B. Work Plan**

This section will provide a detailed discussion of the Bidder's service capabilities demonstrating the Bidder's ability to meet the requirements of this RFP. The Work Plan will fully explain how the proposed Services will satisfy each requirement listed in this RFP (*Section 4 – Objective and Scope of Work*). It should indicate all significant capabilities or issues that will be examined to fulfill the Scope of Work. Bidders must include a project plan to ensure the Program Start Date is achieved. This Work Plan should be presented in the same numbered order in which the requirements appear in *Section 4*.

In addition to addressing the requirements described in *Section 4*, Bidders must submit the following as part of their Work Plan:

1. **Financial Services.** Each Proposal should include the following:
  - a. Describe the Bidder's approach to age-based portfolios. Discuss the Bidder's recommended number of portfolios and glide paths and the process by which the team develops and recommends age-based portfolios and glide paths. Detail the construction of each portfolio, types of strategies (asset class/manager style) and managers (including ticker if applicable) utilized, the appropriate benchmark to use to measure investment performance of the portfolio(s), and the allocation to each. Indicate whether you recommend passive investment management, active investment management or a combination of both. Be sure to detail the overall asset allocation of each portfolio. Describe the process the Bidder would use for rebalancing, including the frequency. Provide, where applicable, data in a file format compatible with Microsoft Excel;

- b. Describe the Bidder's approach to fixed allocation portfolios and the recommended number, if any, of fixed allocation portfolios. Detail the construction of each portfolio, types of strategies (asset class/manager style) and managers (including ticker if applicable) utilized, the appropriate benchmark to use to measure investment performance of the portfolio(s), and the allocation to each. Indicate whether the Bidder recommends passive investment management, active investment management or a combination of both. Be sure to detail the overall asset allocation of each portfolio. Describe the process the Bidder would use for rebalancing, including the frequency. Provide, where applicable, data in a file format compatible with Microsoft Excel;
- c. Describe the Bidder's approach to individual fund portfolios. Discuss the Bidder's recommended number of individual funds, if any. Detail the types of strategies (asset class/manager style) and managers (including ticker if applicable) recommended. Indicate whether the Bidder recommends passive investment management, active investment management or a combination of both, and state the reasons for the recommendations. Provide, where applicable, data in a file format compatible with Microsoft Excel;
- d. Describe the Bidder'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;
- e. Describe the Bidder's ability to unitize assets, particularly the daily calculation of a net asset value and portfolio accounting for the age-based portfolios and any other custom investment option(s) the Bidder proposes for the Program;
- f. Describe whether the Bidder can produce custom benchmarks, particularly for age-based portfolios and explain how such custom benchmarks are produced;
- g. Describe the Bidder's internal and outside investments including the amount of revenue sharing with each investment;
- h. Describe the Bidder's internal investment management capabilities and breadth of investments offered;
- i. 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. Describe any additional fees that may be assessed in connection with the use of such non-proprietary investments;
- j. Describe whether the Bidder, 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 the Program) from sources other than Program;
- k. Describe how investment management fees may be used to reduce or offset other proposed service fees;
- l. 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; and
- m. Describe how the Bidder would work with the GET Committee to provide an FDIC insured or otherwise "safe" investment option if such an option is not included in the Bidder's Proposal.

## 2. Account Administration

If the Bidder's Proposal will utilize the Banner 2000 recordkeeping system, the Proposal will include, at a minimum, descriptions of:

- a. The Bidder's strategy to provide account maintenance and customer service to account owners;
- b. Plans and procedures for complying with the administration and reporting requirements of Regulatory and Industry Requirements;
- c. Online access capabilities to the account administration system, including online enrollment, account maintenance and withdrawals;
- d. The Bidder's ability to coordinate all facets of account administration for the Program. Issues such as maximum contributions, aggregation with GET accounts, distributions, rollovers and federal tax law reporting should be addressed;
- e. The Bidder's account administration experience for plans similar to Program; and
- f. A disaster recovery plan describing in detail how Services will be resumed within twenty-four (24) hours of a disaster.

If the Bidder's Proposal will not utilize the Banner 2000 recordkeeping system, the Proposal will include, at a minimum, descriptions of:

- a. The proposed account administration system, the number of accounts currently administered on this system under programs similar to Program, the approximate dollar value of such accounts, and the frequency and volume of individual transactions that are processed on a daily and weekly basis;
- b. The reliability and integrity history, other market experience and uses of the proposed system;
- c. The level of ADA compliance of the proposed system (will not be scored);
- d. 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;
- e. Plans and procedures for complying with the administration and reporting requirements of Regulatory and Industry Requirements;
- f. Online access capabilities to the account administration system, including online enrollment, account maintenance and withdrawals;
- g. The Bidder's ability to coordinate all facets of account administration for the Program. Issues such as maximum contributions, aggregation with GET accounts, distributions, rollovers and federal tax law reporting should be addressed;

- h. The Bidder's account administration experience for plans similar to Program;
- i. Procedures for generating account statements and reports, including information regarding format, frequency, transmittal methods, customization, etc. and any available sample reports;
- j. A disaster recovery plan describing in detail how Services will be resumed within twenty-four (24) hours of a disaster;
- k. The Bidder'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;
- l. The Bidder's ability to provide the Agency with real-time access to Program data referenced in *Section 4.6 – Reports*;
- m. The Bidder's proposed expedited process which will allow account owners to complete a direct rollover from GET to the Program, from the Program to GET, or from the Program to a 529 plan sponsored by another state; and
- n. The Bidder's proposed method by which (i) an application program interface between Banner 2000 and the Bidder's proposed recordkeeping system will be accomplished and (ii) information and account records will be accessible by GET customer service representatives.

**3. Marketing (if included as part of an alternate Proposal (see Sections 2.6 and 4.4))**

- a. Bidder must propose a brand identity and marketing strategy to be utilized for eligible Program account owners that coordinates and is complimentary to the GET brand identity and overall CSPW brand identity. Any marketing strategy must be coordinated and integrated with the overall marketing strategy for CSPW.
- b. The Bidder 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 the Program.
- c. The Bidder will provide samples of marketing and disclosure information that it currently uses for programs similar to the Program.
- d. The Bidder will describe its ability to develop and maintain the Program website, its maintenance and intended references to the Program on the Bidder's website, and its ability to maintain both its and the Program's website as ADA compliant sites (ADA compliance will not be scored).
- e. Describe any products that the Bidder currently offers to State residents that compete or potentially could compete with the Program. Explain how the Bidder's offering of one or more competing products can be done consistent with an obligation to aggressively and effectively market and administer the Program.

- f. The Bidder shall provide a narrative description of the marketing services provided as part of the proposed Marketing Budget Breakdown contained in *Exhibit C*. The narrative description should include the branding and marketing strategies the Bidder proposes to implement. This description should include references to similar, successful marketing campaigns that the Bidder has implemented.
- g. The Bidder shall propose budget percentages for all of the Program's promotion, marketing, and advertising services for each fiscal year during the term of the Contract in *Exhibit C– Marketing Budget Breakdown*. The total dollar amount of the actual amount budgeted will be provided in *Exhibit D – Cost Proposal*. Bidders should not include any dollar amounts on *Exhibit C*. Although marketing-related costs, such as the costs of producing, printing and distribution of Program materials (fulfillment) are part of the marketing budget, these and any other similar costs, will be excluded for purposes of evaluating and scoring the proposed marketing budget. If the Bidder is awarded the Contract, the Bidder will be contractually required to adhere to the budgeted amount submitted on *Exhibit D*, adjusted as required pursuant to *Exhibit B – Form of Contract*.

#### **4. Customer Service**

- a. The Bidder will describe its strategies for transmitting and sharing databases of callers to and with Program, as well as ensuring the confidentiality of the database.
- b. The Bidder will include a discussion of the steps that will be taken to ensure that the Program database is not combined with other databases maintained by the Bidder.
- c. The Bidder will provide the Agency with contingency plans or emergency plans for days and/or times when the call volume may exceed the successful Bidder's ability to handle the calls quickly and expeditiously. The Bidder will also provide the Agency with any contingency plans for handling telephone calls from non-English speaking callers and on an ADA compliant basis (ADA compliance will not be scored).
- d. The Bidder will outline procedures for responding to verbal, written, and online inquires or complaints about the Program.
- e. The Bidder will outline procedures for the production and distribution of quarterly statements to account owners, as well as the Bidder's ability to accommodate additional or more detailed reports if required by the Agency or its authorized representative.
- f. The Bidder will include service levels achieved for similar plans currently under management. Describe how the Bidder intends to meet the service level requirement contained in *Section 4.5(2)*. Provide anticipated service levels for each measure listed and describe the Bidder's resources available for the Program.

#### **C. Project Plan**

Describe the Bidder's proposed project plan as outlined in *Section 4.7*.

### 5.3 **MANAGEMENT PROPOSAL**

#### **A. Project Management (SCORED)**

1. **Project Team Structure/Internal Controls** – Provide a description of the proposed project team structure and internal controls to be used during the term of the Contract, including any subcontractors. Provide an organizational chart of your firm indicating lines of authority for personnel involved in performance of this potential Contract and relationships of this staff to other programs or functions of the firm. This chart must also show lines of authority to the next senior level of management. Include who within the firm will have prime responsibility and final authority for the work.
2. **Staff Qualifications/Experience** – Identify staff who will be assigned to the potential Contract, indicating the responsibilities and qualifications of such personnel, and include the amount of time each will be assigned to the project. Provide resumes for the named staff, which include information on the individual's particular skills related to this project, education, experience, significant accomplishments, and any other pertinent information. The Bidder must commit that staff identified in its Proposal will actually perform the assigned work. Any staff substitution must have the prior approval of the Agency.
3. **Subcontractors** – Identify any subcontractors intended to be used in the performance of the Contract, and the role each proposed subcontractor will perform in providing the Services. If the Bidder will use no subcontractors, so state.

#### **B. Experience of the Bidder (SCORED)**

1. List programs for which the Bidder provides (either currently, or within the last three years) the following services: investment management, account administration, marketing and/or customer service. Include the following information:
  - a. Length of time of involvement
  - b. Types of services offered
  - c. Aggregate annual cash flow
  - d. Total assets of each plan
  - e. Plan assets held by the Bidder
  - f. Actual annual rates of return by investment option credited under each plan during the past three (3) years
  - g. Geographic locations served
  - h. Total number of accounts and/or participants
2. Include other relevant experience that indicates the qualifications of the Bidder, and any subcontractors, for the performance of the potential Contract.
3. Include a list of any other contracts the Bidder has had during the last five years that relate to the Bidder's ability to perform the Services. List contract reference numbers, contract period of performance, contact persons, telephone numbers, and fax numbers/email addresses.

**C. Related Information (MANDATORY)**

1. If the Bidder or any subcontractor contracted with the State during the past 24 months, indicate the name of the agency, the contract number(s) and project description, and/or other information available to identify the contract(s).
2. If the Bidder's staff or subcontractor's staff was an employee of the State during the past 24 months, or is currently a State employee, identify the individual(s) by name, the agency previously or currently employed by, job title or position held, and separation date.
3. If, in the last five years, the Bidder has had a contract terminated that is similar to the one anticipated in this RFP, describe such event. If the termination was for default (defined as notice to stop performance due to the Bidder's non-performance or poor performance), describe and if the issue was either (a) not litigated due to inaction on the part of the Bidder, or (b) litigated, and such litigation determined that the Bidder was in default, please explain. Submit full details of the alleged default including the other party's name, address, and phone number. Present the Bidder's position on the matter. The Agency will evaluate the facts and may, at its sole discretion, reject the Proposal on the grounds of the past experience. If no such termination for default has been experienced by the Bidder in the past five years, so indicate.

**D. References (MANDATORY)**

1. List names, addresses, telephone numbers, and email addresses of three (3) business references for the Bidder and three (3) business references for the lead staff person, for whom work has been accomplished, and briefly describe the type of service provided. Do not include current Agency staff as references. The Bidder and the lead staff person must grant permission to the Agency to contact the references and others who may have pertinent information regarding the Bidder's and the lead staff person's qualifications and experience to perform the services required by this RFP. The Agency may evaluate references at the Agency's discretion.
2. Provide a list of all qualified tuition programs (names, addresses, telephone numbers, and email addresses of the principal contact) for which the Bidder has provided any services, or has provided any services within the last 10 years.

**E. OMWBE Certification (OPTIONAL AND NOT SCORED)**

Include proof of certification issued by the Washington State Office of Minority and Women's Business Enterprises (OMWBE) if certified minority-owned firm or women-owned firm(s) will be participating on this project. For information: <http://www.omwbe.wa.gov>.

## **F. Legal Actions Summary (MANDATORY)**

The Bidder must include the following:

1. A description of any material litigation, arbitration, or administrative action (collectively, legal matters) to which the Bidder is currently a party, or within the last 7 years has been a party that relates to any functions the Bidder proposes to provide the Program, including the status of current legal matters. For purposes of this RFP, material litigation, arbitration, or administrative action means any matter in which the amount at issue equals or exceeds \$1,000,000; or in which a decree, award, judgment or settlement would have a financial impact on the Bidder equal to or exceeding \$1,000,000. In the case of a settlement that is confidential, you may provide a general description of the allegations and the parties without revealing their identity.
2. A description of any investigation by any governmental agency or self-regulatory agency to which your firm is currently subject or has been subject in the last 5 years; or of any consent decree, consent order or settlement agreement your firm has entered into in the last 5 years.
3. A statement as to whether or not the Bidder or any subcontractor has filed (or has filed against it) any bankruptcy or insolvency proceeding, and if so, provide details.
4. A brief description of any extraordinary investigation, examination, complaint, disciplinary action or other proceeding relating to or affecting the Bidder or any subcontractor or any of their respective 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; Municipal Securities Rulemaking Board; the Financial Industry Regulatory Authority or any other self-regulatory organization (as such term is defined in §3(a)(26) of the Exchange Act; 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 Bidder is doing business.

## **G. Insurance (MANDATORY)**

1. Describe the Bidder's insurance policies and amount of coverage for the liability insurance and additional insurance provisions outlined in *Section 19, Exhibit B – Form of Contract*.
2. Within 30 days of receiving notice that it is the Apparent Successful Bidder, the Contractor shall have furnished the Agency with copies of insurance policies and all endorsements required by *Section 19, Exhibit B – Form of Contract*, as well as the certificate(s) of insurance executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements set forth in *Exhibit B*.
3. Award of the Contract is subject to the Agency's review of the policies and acceptance of the insurance coverage provided.

## **5.4 COST PROPOSAL (SCORED)**

The evaluation process is designed to award this procurement not necessarily to the Bidder of least cost, but rather to the Bidder whose Proposal best meets the requirements of this RFP. The Cost Proposal must contain all cost information in the form specified in *Exhibit D*.

## 6. EVALUATION AND CONTRACT AWARD

### 6.1 EVALUATION PROCEDURE

Responsive Proposals will be evaluated strictly in accordance with the requirements stated in this RFP and any addenda issued. The evaluation of Proposals shall be accomplished by an evaluation team(s), to be designated by the Agency, which will determine the ranking of the Proposals.

The Agency, at its sole discretion, may elect to select the top-scoring firms as finalists for an oral presentation.

The RFP Coordinator may contact the Bidder for clarification of any portion of the Bidder's Proposal.

### 6.2 EVALUATION WEIGHTING AND SCORING

The following weighting and points will be assigned to the Proposal for evaluation purposes:

<i>Technical Proposal – 70%</i>		<i>700 points</i>
Project Approach/Methodology	250 points (maximum)	
Financial Services	175 points (maximum)	
Account Administration	175 points (maximum)	
Customer Service	100 points (maximum)	
<i>Management Proposal – 10%</i>		<i>100 points</i>
Project Team Structure and Internal Controls	40 points (maximum)	
Staff Qualifications/Experience	20 points (maximum)	
Experience of the Bidder	40 points (maximum)	
<i>Cost Proposal – 20%</i>		<i>200 points</i>
<b>TOTAL</b>		<b>1000 POINTS</b>

Any alternate Proposals submitted as outlined in *Section 2.6* will be scored with similar weighting and points assigned to the Services included in the Proposal.

#### **Best and Final Offer**

The Agency will score all responsive Proposals and identify up to three (3) finalists. The Agency may seek clarifications from each finalist and ask for Proposals designated as the finalists' Best and Final Offer, which will be rescored using the scale set forth above.

### **6.3 ORAL PRESENTATIONS MAY BE REQUIRED**

The Agency may, after evaluating the written Proposals, elect to schedule oral presentations of the finalists. Should oral presentations become necessary, the Agency will contact the top-scoring firm(s) from the written evaluation to schedule a date, time, and location. Commitments made by the Bidder at the oral interview, if any, will be considered binding.

The scores from the written evaluation and the oral presentation combined together will determine the Apparent Successful Bidder.

The Agency reserves the right to award the Contract to the Bidder whose Proposal is deemed to be in the best interest of the Agency and the State.

### **6.4 NOTIFICATION TO BIDDERS**

The Agency will notify the Apparent Successful Bidder of their selection in writing upon completion of the evaluation process. Individuals or firms whose Proposals were not selected for further negotiation or award will be notified separately by email.

### **6.5 COMPLAINT PROCEDURE**

Complaints may be made by any vendor who is a prospective Bidder. The complaint process occurs early in the solicitation to catch mistakes and errors before vendors must submit a bid. A vendor may file a complaint based on one or more of the following reasons:

- The solicitation unnecessarily restricts competition.
- The evaluation/scoring process is unfair or flawed.
- The requirements are inadequate or insufficient so that a response is difficult to prepare.

Complaints must be in writing, describe the reason(s) for the complaint, and provide sufficient basis for the complaint. The complaint must state the RFP number, the reason(s) for the complaint with specific facts and complete statements of the basis for the complaint. A description of the corrective action or remedy being requested must also be included. Complaints must be signed by the vendor or an authorized agent.

Complaints may be submitted by mail, email, or hand delivered and must be addressed to the RFP Coordinator.

Complaints must be received by the RFP Coordinator no later than 5:00 PM, local time, in Olympia, Washington on the fifth (5th) business day prior to when the bids are due. Complaints received less than five (5) business days prior to when the bids are due will be reviewed and considered only as time permits.

The RFP Coordinator will respond in writing to all complaints within three (3) business days of receipt of the complaint, and a copy of the response will be posted on [WEBS](#). The response will include the decision, how the review was conducted, and the basis upon which a decision was made. The Agency decision regarding the complaint is not appealable or repeatable.

## **6.6 DEBRIEFING OF UNSUCCESSFUL BIDDERS AND PROTEST PROCEDURE**

Any Bidder who has submitted a Proposal and been notified that they were not selected for Contract award may request a debriefing. The request for a debriefing conference must be received by the RFP Coordinator within three (3) business days after either the Unsuccessful Bidder Notification is emailed to the Bidder or the Notice of Successful Bidder is posted on WEBS, whichever is sooner. Debriefing requests must be received by the [RFP Coordinator](#) no later than 5:00 PM, local time, in Olympia, Washington on the third (3<sup>rd</sup>) business day following the transmittal of the Unsuccessful Bidder Notification or posting of the Notice of Successful Bidder on WEBS, whichever is sooner. The debriefing must be held within three (3) business days of the request.

Requests for a debriefing conference must be in writing, describe the reason(s) the debriefing conference is being requested, and provide sufficient basis for the request. The request for a debriefing conference must state the RFP number, the reason(s) for the request with specific facts and complete statements of the basis for the request. A description of the corrective or remedial action being requested must also be included. Requests for a debriefing conference must be signed by the vendor or an authorized Agent.

Discussion at the debriefing conference will be limited to the following:

- The Agency's failure to follow the process articulated in the RFP.
- Evaluation and scoring of the Bidder's Proposal.
- Critique of the Bidder's Proposal based on the evaluation.
- Review of Bidder's final score in comparison with other final scores without identifying the other firms.

The RFP coordinator will schedule the debriefing conference for a maximum of one hour which must be held within three (3) business days of the request, and will promptly notify the Bidder of the debriefing conference date and time. Comparisons between Proposals or evaluations of the other Proposals will not be allowed. Debriefing conferences may be conducted in person or on the telephone.

Protests may be made only by Bidders who submitted a response to this solicitation document and who have participated in a debriefing conference. Upon completing the debriefing conference, the Bidder is allowed five (5) business days to file a protest of the acquisition with the RFP Coordinator. Protests must be in writing and received by the RFP Coordinator no later than 5:00 PM, local time, in Olympia, Washington on the fifth business day following the debriefing. Protests may be submitted by [email](#), but must then be followed by the document with an original signature.

Bidders protesting this procurement shall follow the procedures described below. Protests that do not follow these procedures shall not be considered. This protest procedure constitutes the sole administrative remedy available to Bidders under this procurement.

All protests must be in writing, addressed to the RFP Coordinator, and signed by the protesting party or an authorized Agent. The protest must state the RFP number, the grounds for the protest with specific facts and complete statements of the action(s) being protested. A description of the relief or corrective action being requested should also be included.

Only protests stipulating an issue of fact concerning the following subjects shall be considered:

- A matter of bias, discrimination, or conflict of interest on the part of an evaluator.
- Errors or flaws in the scoring process.
- Non-compliance with procedures described in the procurement document or Agency policy.

Protests not based on one or more of the three issues immediately above will not be considered. Protests will be rejected as without merit if they address issues such as: 1) an evaluator's professional judgment on the quality of a Proposal, or 2) the Agency's assessment of its own or other agencies' needs or requirements.

Upon receipt of a protest, a protest review will be held by the Agency. The Agency Director, or an employee delegated by the Director who was not involved in the procurement, will consider the record and all available facts and issue a decision within ten (10) business days of receipt of the protest. If additional time is required, the protesting party will be notified of the delay.

In the event a protest may affect the interest of another Bidder that also submitted a Proposal, such Bidder will be given an opportunity to submit its views and any relevant information on the protest to the RFP Coordinator.

The final determination of the protest shall:

- Find the protest lacking in merit and uphold the Agency's action; or
- Find only technical or harmless errors in the Agency's acquisition process and determine the Agency to be in substantial compliance and reject the protest; or
- Find merit in the protest and provide the Agency options which may include:
  - Correct the errors and re-evaluate all Proposals; and/or
  - Reissue the solicitation document and begin a new process; or
  - Make other findings and determine other courses of action as appropriate.

If the Agency determines that the protest is without merit, the Agency will enter into a Contract with the Apparent Successful Bidder. If the protest is determined to have merit, one of the alternatives noted in the preceding paragraph will be taken. The RFP Coordinator will post a copy of the protest and determination on [WEBS](#).

## **7. RFP EXHIBITS**

Exhibit A	Certifications and Assurances
Exhibit B	Form of Contract (including General Terms and Conditions)
Exhibit C	Marketing Budget Breakdown
Exhibit D	Cost Proposal Schedule
Exhibit E	Chapter 28B.95 RCW

## EXHIBIT A

### CERTIFICATIONS AND ASSURANCES

I/we make the following certifications and assurances as a required element of the Proposal to which it is attached, understanding that the truthfulness of the facts affirmed here and the continuing compliance with these requirements are conditions precedent to the award or continuation of the related contract:

I/we declare that all answers and statements made in the Proposal are true and correct.

1. The prices and/or cost data have been determined independently, without consultation, communication, or agreement with others for the purpose of restricting competition. However, I/we may freely join with other persons or organizations for the purpose of presenting a single Proposal.
2. The attached Proposal is a firm offer for a period of ninety (90) days following receipt, and it may be accepted by the Agency without further negotiation (except where obviously required by lack of certainty in key terms) at any time within the 90-day period.
3. In preparing this Proposal, I/we have not been assisted by any current or former employee of the State of Washington whose duties relate (or did relate) to this Proposal or prospective contract, and who was assisting in other than his or her official, public capacity. If there are exceptions to these assurances, I/we have described them in full detail on a separate page attached to this document.
4. I/we understand that the Agency will not reimburse me/us for any costs incurred in the preparation of this Proposal. All Proposals become the property of the Agency, and I/we claim no proprietary right to the ideas, writings, items, or samples, unless so stated in this Proposal.
5. Unless otherwise required by law, the prices and/or cost data which have been submitted have not been knowingly disclosed by the Bidder and will not knowingly be disclosed by him/her prior to opening, directly or indirectly, to any other Bidder or to any competitor.
6. I/we agree that submission of the attached Proposal constitutes acceptance of the solicitation contents and the attached Form of Contract, which contains general terms and conditions. If there are any exceptions to these terms, I/we have described those exceptions in detail on a separate page attached to this document.
7. No attempt has been made or will be made by the Bidder to induce any other person or firm to submit or not to submit a Proposal for the purpose of restricting competition.
8. I/we grant the Agency the right to contact references and others who may have pertinent information regarding the ability of the Bidder and the lead staff person to perform the services contemplated by this RFP.
9. If any staff member(s) who will perform work on this contract has retired from the State of Washington under the provisions of the 2008 Early Retirement Factors legislation, his/her name is noted on a separate page attached to this document.

We (circle one) **are** / **are not** submitting proposed Contract exceptions (*see Section 2.13 – Contract and General Terms & Conditions*). If Contract exceptions are being submitted, I/we have attached them to this form.

**On behalf of the Bidder submitting this Proposal, my name below attests to the accuracy of the above statement. We are submitting a scanned signature of this form with our Proposal.**

---

Signature of Bidder

---

Title

Date

## EXHIBIT B

### PROGRAM MANAGEMENT AGREEMENT

This **PROGRAM MANAGEMENT AGREEMENT** (“**Agreement**”), dated as of \_\_\_\_\_, 2016 (“**Effective Date**”), is entered into by and among the state of Washington, Washington Student Achievement Council (“**Agency**”) and \_\_\_\_\_, a [insert State of incorporation] (“**Contractor**”).

#### WITNESSETH:

**WHEREAS**, Chapter 28B.95 Revised Code of Washington (“**RCW**”), as amended from time to time (“**Statute**”), provides for the establishment of a college savings plan that is a qualified tuition program (“**529 Plan**”) under Section 529 of the United States Internal Revenue Code of 1986, as amended from time to time, (“**Code**”) entitled Washington College Savings Program (“**Program**”);

**WHEREAS**, Chapter 28B.95 RCW provides the Agency with responsibility for the administration, operation and maintenance of the Program;

**WHEREAS**, Chapter 28B.95 RCW authorizes the Agency to enter into contracts and agreements, retain employees, experts, consultants and entities to provide the Services and do all other things necessary or convenient to implement the Statute;

**WHEREAS**, RCW 28B.95.032 provides that the Committee on advanced tuition payment and college savings (“**Committee**”) shall have the fiduciary responsibility for the investment of the money in the Program, including the selection of all Investment Options; and further, the Committee is responsible for the approval of all fees and other costs, except costs for administration, operation, and maintenance as appropriated by the Washington State Legislature, pursuant to the directions, guidelines, and policies established by the Agency; 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 contractually bound by the terms and conditions set forth in this Agreement, the Agency and the Contractor agree as follows:

#### **1. DEFINITIONS; RULES OF CONSTRUCTION; ORDER OF PRECEDENCE.**

##### **(a) Definitions.**

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

“**Account**” means “Individual college savings program account” as defined in RCW 28B.95.020(13).

“**Account Owner**” means “Owner” as defined in RCW 28B.95.020(18).

“**Administrative Fee**” means the portion of the Management Fee set forth on Exhibit D to this Agreement that is paid to the Agency in connection with the Agency’s expenses to operate the Program.

**“Age-Based Options”** means Investment Options where either (i) amounts invested on behalf of a Beneficiary remain in a single investment option for the life of the investment (with the Underlying Investments and allocation percentages becoming more conservative as the Beneficiary ages) or (ii) amounts invested on behalf of a Beneficiary are transferred through a progression of successively more conservative portfolios at periodic intervals as the Beneficiary ages.

**“Allocation Guidelines”** means the ranges determined in accordance with this Agreement and those set forth in Schedule B.

**“Applicable Law”** means all state and federal laws and rules including securities laws, the Graham Leach Bliley Act (Financial Modernization Act of 1999), the Code (including Section 529), judgments, decrees, injunctions, writs and orders of any court, tribunal, self-regulatory organization, arbitrator or Governmental Authority, and rules, regulations, orders, licenses and permits of any Governmental Authority.

**“Beneficiary”** means “Eligible beneficiary” as defined at RCW 28B.95.020(8).

**“Business Day”** means a day on which the New York Stock Exchange is open for trading.

**“Code”** means the United States Internal Revenue Code of 1986, as amended from time to time.

**“College Savings Program Account”** has the meaning set forth at RCW 28B.95.020(4).

**“Eligible Contributor”** has the meaning set forth at RCW 28B.95.020(9).

**“FDIC”** means the Federal Deposit Insurance Corporation.

**“Final Termination Date”** means 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”** means the Financial Industry Regulatory Authority.

**“Governmental Authority”** means 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”** means the implementation plan attached hereto as Schedule F designed to ensure the orderly implementation of the Program.

**“Investment Expenses”** means the expense ratios and other fees and expenses, except the Management Fee, associated with the Investment Options and any Underlying Investments.

**“Investment Options”** means the investment options listed on Schedule B hereto and made available under the Program to Account Owners investing in the Program.

**“IRS”** means the United States Internal Revenue Service.

**“IRS Proposed Rules”** means the rules proposed under Section 529 of the Code by the IRS.

**“Losses”** means 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”** means the fee payable to the Contractor for the Services as set forth in Exhibit D.

**“Material Adverse Effect”** means a material adverse effect on (a) the business, operations or financial condition of the Contractor, the Agency 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”** means 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 Agency or the Program, website content related specifically to the Program and marketing, advertising and public relations materials that are specific to the Program.

**“MSRB”** means the Municipal Securities Rulemaking Board.

**“Non-Qualified Withdrawal”** means 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 529(c)(3)(A).

**“Participation Agreement”** means "Participant college savings program account contract" as defined at RCW 28B.95.020(19)".

**“Person”** means any individual, corporation, partnership, joint venture, limited liability company, joint stock company or other similar organization, trust or any other entity, an unincorporated organization, a government or any agency or political subdivision thereof, a court, or any other legal entity whether acting in an individual, fiduciary or other capacity.

**“Program Disclosure Documents”** means 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”** refers to all assets held in the College Savings Program Account and in each Account Owner’s Account.

**“Program Fiscal Year”** means the twelve-month period ending each June 30.

**“Program Logo”** means the logo which has been designed and developed specifically for the Program.

**“Program Manager”** (or **“Contractor”**) means the individual or company whose Proposal has been accepted by the Agency and is awarded a fully executed, written contract.

**“Program Materials”** means all records, books, correspondence, papers, data, electronically stored information, and files relating solely or primarily to the Program, Account Owners, and Beneficiaries, whether or not in the possession of the Agency, 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”** means, collectively, the Program Materials and the Media Materials.

**“Program Start Date”** means the date on which all conditions set forth in Section 10 have been satisfied or waived.

**“Qualified Expenses”** has the meaning set forth in Section 529(e)(3) of the Code.

**“Qualified Tuition Program”** has the meaning set forth in Section 529(b) of the Code.

**“Qualified Withdrawal”** means a withdrawal from an Account to pay the Qualified Expenses of the Beneficiary of the Account.

**“RFP”** means the Request for Proposals for Investment and Administrative Services issued by the Agency on October 4, 2016 and any amendments thereto.

**“SEC”** means the U.S. Securities and Exchange Commission.

**“Section 529”** means Section 529 of the Code.

“**Services**” means 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**” means the State of Washington.

“**Statute**” has the meaning set forth in the recitals to this Agreement.

“**Underlying Investments**” mean the mutual funds or other investment vehicles that comprise the Investment Options.

“**Value**” means, as applicable, an Underlying 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.

(c) **Order of Precedence.** Each of the items listed below is incorporated into this Agreement. In the event of an inconsistency in this Agreement, the inconsistency shall be resolved by giving precedence in the following order:

- (i) Applicable federal and State statutes and regulations.
- (ii) The terms and conditions contained in this Agreement, and Schedules A – F hereto;
- (iii) Exhibit A – Request for Proposals No. RFP No. 17-RFP147.
- (iv) Exhibit B – Contractor’s Technical Proposal dated \_\_\_\_\_, 2016.
- (v) Exhibit C – Contractor’s Management Proposal dated \_\_\_\_\_, 2016.
- (vi) Exhibit D – Contractor’s Cost Proposal dated \_\_\_\_\_, 2016.
- (vii) Any other provision, term or material incorporated herein by reference or otherwise incorporated

## **2. ENGAGEMENT; TERM; SUBCONTRACTING OF SERVICES; EMPLOYEES OF CONTRACTOR.**

(a) **Engagement by the Agency.** The Contractor shall provide program management services to the Program as described in the RFP, the Contractor’s Proposal, and the Schedules and Exhibits attached to this Agreement. (collectively, the “**Services**”):

- Exhibit A: Request for Proposals RFP No. 17-RFP147 dated October 4, 2016.
- Exhibit B: The Contractor's Technical Proposal dated \_\_\_\_\_, 2016.
- Exhibit C: The Contractor's Management Proposal date \_\_\_\_\_, 2016.
- Exhibit D: The Contractor's Cost Proposal dated \_\_\_\_\_, 2016.
- Schedule A: General Terms and Conditions
- Schedule B: Financial Services
- Schedule C: Account Administration
- Schedule D: Marketing
- Schedule E: Customer Service
- Schedule F: Implementation Plan

(b) **Term.** The term of this Agreement (“**Term**”) shall commence on the Effective Date and shall continue until the close of business on the tenth (10<sup>th</sup>) anniversary of the Program Start Date. At the option of the Agency, 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 Agency notifies the Contractor in writing of its 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 Agency.

(c) **Subcontracting of Services.** The Agency hereby acknowledges that the Contractor shall have the right to subcontract [(i) services relating to [marketing] 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 Agency, nor may the Contractor assign this Agreement or any of its rights or obligations hereunder, without the prior written approval of the Agency. Any such subcontract or assignment shall be contingent on the following in order to protect the interests of the Agency and the Program's Account Owners and Beneficiaries: Before the Agency's approval of any subcontract or assignment is effective, the Contractor shall (i) have provided all prospective subcontractors and assignees with a copy of this executed Agreement and documents annexed hereto and (ii) obtained the prospective subcontractor's or assignees signed affirmation that it has received a copy of this executed Agreement and documents annexed hereto, and agrees to be bound by all terms and conditions to which the Contractor is bound. Notwithstanding the foregoing, the Contractor is responsible for ensuring that all terms, conditions, assurances and certifications set forth in this Agreement are carried forward to any subcontracts. The Contractor shall be liable and responsible for the actions of any subcontractor as if the Contractor had performed those duties itself.

(d) **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 Agency, 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.

#### **4. THE INVESTMENT OPTIONS; INVESTMENT OF ASSETS; CREDITING OF CONTRIBUTIONS; DISTRIBUTIONS.**

(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 Account Owner Assets.* Account Owner assets held in Accounts in the Program will be invested and administered by the Contractor as set forth in the Program Disclosure Documents and in the registration statements or other applicable disclosure documents for the Underlying Investments.

(c) *Crediting of Contributions.* Contributions to the Program by Account Owners and Eligible Contributors 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 529 of the Code, (ii) the IRS Proposed Rules, (iii) additional 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; INVESTMENT POLICIES AND PERFORMANCE BENCHMARKS; VOTING; CHANGE IN INVESTMENT OPTIONS; INVESTMENT EXPENSES.**

(a) *Program Investment Objective.* In accordance with the Code and the IRS Proposed Rules, the Contractor shall seek to provide performance consistent with the investment objective of each Underlying Investment or Investment Option. The Contractor shall adhere to all policies, procedures, and criteria as set forth in this Agreement or otherwise by the Agency.

The Agency acknowledges 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 and other risks that Contractor agrees to identify and disclose to the Agency and Account Owners.

(b) *Allocation Guidelines.* The Contractor shall invest the Account Owner assets held in Accounts 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 B. On or before November 1 of each calendar year during the Term and any Renewal Term commencing with November 1, 2017, the Contractor shall submit to the Agency for its consideration, the Contractor's recommended Allocation Guidelines for each Investment Option (as described on Schedule B) 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 Agency. On or before March 31 of each such calendar year, the Agency shall either (a) notify the Contractor that the Agency approves the Contractor's recommended Allocation Guidelines, as they may have been revised after consultation with the Agency, or (b) deliver to the Contractor revised Allocation Guidelines that the Agency deems appropriate in its sole discretion.

(c) **Mid-Year Changes in Allocation Guidelines.** Notwithstanding anything to the contrary set forth above, the Agency, 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 policies, performance benchmarks, objectives and allocations for each of the Investment Options shall be as set forth in Schedule B, as amended from time to time. The Agency reserves the right to revise or adopt additional investment policies applicable to the Program. In the event that existing or additional investment policies are revised or adopted, they shall become part of this Agreement as if executed as of the date hereof.

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

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

(g) **Expense Ratios and Other Fees.** The Investment Expenses shall be set forth in Schedule B. The Contractor must provide written notice to the Agency sixty (60) days in advance of any proposed increase. The Agency shall have the authority to grant or deny such increase in its sole discretion.

## **6. MANAGEMENT FEE; COLLECTION; ADJUSTMENTS; COMPARABLE PROGRAMS; ADMINISTRATIVE FEE.**

(a) **Management Fee.** The Contractor will be entitled to the Management Fee as set forth in Exhibit D, 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 Underlying Investment is charged separately and is disclosed in the prospectus (or other applicable disclosure documents) for each Underlying 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 D, the preparation of all Program Disclosure Documents, and broker-dealer, investment advisor, transactional and other fees associated with the Underlying 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 Agency.*** On the fifteenth day of each month after the Program Start Date, the Contractor will deliver to the Agency 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 Agency. Such report will set forth, at a minimum, the net assets of the Program invested in each Underlying Investment for each day of the preceding month. Subject to the requirements of Section 17(d) and Section 19(f), if, within seven business days following receipt of such calculation, the Agency 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 Agency advises the Contractor that it objects to such calculation, the Agency and the Contractor will, in good faith, attempt to resolve such objection as soon as reasonably practicable. If the Agency 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 Agency'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 Agency, 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 Agency and the Contractor), or (iii) the Services or administrative systems are materially modified at the request of the Agency.

(d) ***Comparable Qualified Tuition Programs.*** The Contractor represents that the Management Fee is the lowest offered to any state with a comparable Qualified Tuition Program. In the event that the Contractor reduces or agrees to a program management fee which is less than the fees stated in Exhibit D for any state with a comparable Qualified Tuition 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 Program Start Date and concurrently with the payment of the Management Fee to the Contractor, the Contractor shall pay the Administrative Fee to the Agency or its 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 Agency 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.

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

(f) **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.

(g) **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 SEC, any self-regulatory organization (as such term is defined in §3(a) (26) of the Securities Exchange Act of 1934, as amended (“**Exchange Act**”), any regulatory agency of any state of the United States, or any U.S. Government department or agency, as applicable.

(h) **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 Agency in effecting such registration in a timely manner.

(i) **Compliance with Laws.** The Contractor shall comply with all Applicable Law including all requirements of the 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 its duties and obligations under this Agreement. Failure to do so may be deemed by the Agency to be 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 Agency. 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 IRS, FDIC, the SEC, FINRA, MSRB and any other Governmental Authority, in the performance of its duties and obligations under the subcontract. The Contractor further represents and warrants that the Agency will be an express and intended third party beneficiary of each subcontract. Failure of a subcontractor to so comply with the requirements set forth in this paragraph (i) may be deemed by the Agency to be 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.

(j) **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.

(k) **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 State directly or indirectly related to Contractor's Services or this Agreement.

(l) **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 Termination Date. Upon any material change in any of the representations, warranties or covenants made by the Contractor in this Agreement, the Contractor shall immediately notify the Agency in writing of such change.

## **8. REPRESENTATIONS, WARRANTIES AND COVENANTS OF THE AGENCY.**

The Agency hereby represents, warrants and covenants to the Contractor as of the date hereof that:

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

(b) The execution and delivery of this Agreement by the Agency, the performance by the Agency 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 Agency 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 Agency or the Program is a party, or any material obligation of the Agency 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 Agency and the performance of this Agreement by the Agency or the consummation by the Agency 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 may be provided for 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 529 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 Agency 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 Agency 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 529 and is exempt from federal taxation and addressing other issues agreed upon by the Contractor and the Agency (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 Exchange Act, 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 Agency to obtain such interpretations and without the express written consent of the Agency, which consent shall not be unreasonably withheld to the extent consistent with the Program.

(c) **Actions; Expenses.** In the event that the Agency determines to seek an IRS Letter Ruling or an SEC No-Action Letter, the Agency 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 Agency 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 Agency 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 Agency:

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

(b) **Securities Opinion.** The Contractor shall have obtained, at its sole expense, an opinion for the benefit of the Agency, in a form and substance reasonably acceptable to the Agency: 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, from the registration and qualification requirements of the Trust Indenture Act of 1939, as amended, pursuant to

Section 304(a)(4)(A) thereof, and from the registration requirements of the Washington State Securities Act, Chapter 21.20 RCW; that the State may perform the functions in this Agreement and the Program Disclosure Documents without registration under the Exchange Act: that 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 Program is exempt from the registration requirements of the Investment Company Act of 1940, as amended, pursuant to Section 2(b) thereof.

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

(d) ***Representations and Warranties.*** Each of the representations and warranties made by the Agency 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, in writing, the effect of any misrepresentation by the other party).

(e) ***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 Agency and the Contractor.

(ii) ***Certificate of the Contractor.*** The Contractor will have delivered to the Agency 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; COMPLIANCE REQUIREMENTS; TAX REPORTS; AUDITS.**

(a) ***Reports and Financial Statements.*** The Contractor will prepare and deliver to the Agency and the Agency's designated investment consultant and custodian (i) within ten (10) Business Days immediately following the end of each calendar quarter, reports on the performance of each of the Underlying Investments, and the financial statements for the College Savings Program Account, in a form mutually satisfactory to the Agency 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 Agency, the Agency's designated investment consultant 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 Agency 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 Agency requests to have reported to the Account Owner.

(c) **Compliance Requirements.** The Contractor shall keep the Program in compliance with Applicable Law and to manage the Program to qualify as a “Qualified Tuition Program” under Section 529, as amended, along with any regulations thereunder and notices issued with regard thereto, including the IRS Proposed Rules as of the date hereof and such regulations when published as final; provided, however, that 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; including, but not limited to

(i) Keep adequate records of each Account, keep each Account separate from each other Account and provide the information necessary to prepare the Account information and statements required by Applicable Law;

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

(iii) Provide the Agency 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 IRS and either the Account Owner, the Beneficiary or the distributee to the extent required by Applicable Law; and

(ii) Prepare and file statements, reports and information relating to Accounts to the extent required by Applicable 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. The Contractor shall, at its expense, retain a firm as Program Auditor to audit the program each fiscal year and submit a written audit report to the Agency within 90 days of the fiscal year end. Such audit and audit report by the Program auditor shall meet the requirements of the Program, as determined by the Agency. 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 Agency, outside auditors it retains, or the Washington State Auditor for a period of up to six years from the expiration of the Final Termination Date. The Contractor shall agree that it will be held liable for any audit exceptions taken by outside auditors or the Washington State Auditor caused by the Contractor, and shall return to the Agency all payments made under this Agreement for which an exception has been taken or which has been disallowed because of such an exception.

## **12. PROGRAM RECORDS MAINTENANCE; OWNERSHIP AND CUSTODY OF PROGRAM RECORDS.**

(a) **Program Records Maintenance.** The Contractor shall maintain books, records, documents, data and other evidence relating to this Agreement and performance of the services described herein, including but not limited to accounting procedures and practices that sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Agreement. The

Contractor shall retain such records for a period of six (6) years following the Final Termination Date. At no additional cost, these records, including materials generated under the Agreement, shall be subject at all reasonable times to inspection, review or audit by the Agency, personnel duly authorized by the Agency, the Office of the State Auditor, and federal and state officials so authorized by Applicable Law or agreement. If any litigation, claim or audit is commenced before the expiration of the six (6) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.

(b) ***Ownership and Custody of Program Records.*** The Agency shall own and have full access and all right, title and interest in and to, and beneficial ownership of, the Program Records, which shall be readily exportable or downloadable to the Agency, at the Contractor's expense. 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 Agency 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) ***Confidential Information.*** To the extent allowable by Applicable Law, the Contractor and the Agency agree to maintain all proprietary, personal, technical, financial, business, and other information concerning the parties, the Program, the Services, the Account Owners and the Beneficiaries (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 proprietary, personal, technical, financial, and 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 Agency. The Contractor will defend, indemnify and hold the Agency 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) ***Washington Public Records Act.*** The Contractor acknowledges that the Agency is subject to Chapter 42.56 RCW ("**Public Records Act**") and that this Agreement and any record owned, used or retained by the Agency in connection with the Program shall be a public record as defined in Chapter 42.56 RCW, and is subject to disclosure absent an applicable exemption. The Contractor agrees to provide Agency with the fullest assistance to comply with any public records request it may receive.

(c) ***Contractor's Proprietary or Confidential Information.*** Confidential Information includes the "**Contractor's Proprietary or Confidential Information,**" which means information owned by the Contractor to which the Contractor claims a protectable interest under law, including but not limited to information protected by copyright, patent, trademark or trade secret laws. Any information that is claimed by the Contractor to be Contractor's Proprietary or Confidential Information must be clearly identified as such by Contractor. To the extent consistent with Chapter 42.56 RCW, the Agency shall maintain the confidentiality of the Contractor's information that is identified, preferably labeled, as Contractor's Proprietary or Confidential Information. The Contractor acknowledges that the Agency is a public organization and that the terms and conditions of this Agreement (including all schedules and exhibits and amendments hereto) and other Contractor information including Confidential

Information, may be subject to disclosure under Applicable Law, including the Public Records Act. If such a disclosure request is made of the Agency, the Agency shall, within ten (10) business days prior to release, notify the Contractor of any such request, in order to provide the Contractor time to seek judicial relief if it believes such information should not be released. Subject to a court of competent jurisdiction issuing an order prohibiting such release or the requesting party notifying the Agency in writing prior to the Agency's planned release that it has rescinded its request for disclosure, the Agency shall release and disclose all requested information without liability therefore.

The Agency's sole responsibilities shall be limited to maintaining the above information in a secure manner and to notify the Contractor of requests for disclosure, for so long as the Agency retains the Contractor's information. Failure by the Contractor to so identify, preferably label, such materials or to timely respond after notice of request for public disclosure has been given shall be a waiver by the Contractor of any claim that such information is exempt from disclosure.

(d) ***Opportunity to Participate.*** In the event either party is faced with a request or motion to disclose Confidential Information or Program Materials, 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.

(e) ***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.

(f) ***Notification and Mitigation.*** If the party receiving Confidential Information ("**Receiving Party**") becomes aware of any unauthorized use or disclosure of the Confidential Information of the party disclosing Confidential Information ("**Disclosing Party**"), the Receiving Party promptly and fully shall notify the Disclosing Party of all facts known to it concerning such unauthorized use or disclosure and shall mitigate any potential harm and further use or disclosure of such Confidential Information.

(g) ***Return of Confidential Information and Program Materials.*** Subject to the further terms of this Section, and except as otherwise permitted under this Agreement, at any time upon written request by the Disclosing Party, the Receiving Party promptly shall: (i) return to the Disclosing Party, or at the Disclosing Party's request, delete or destroy, all Confidential Information (and all copies thereof) of the Disclosing Party then in its possession or control, in whatever form, or, in the case of a written request by the Disclosing Party, the Confidential Information specified in such request as then in the Receiving Party's possession or control, in whatever form; and (ii) unless the Disclosing Party otherwise consents in writing, deliver to the Disclosing Party, or at the Disclosing Party's request, delete or destroy, any copies, duplicates, summaries, abstracts or other representations of any such Confidential Information or any part thereof, in whatever form, then in the possession or under the control of the Receiving Party. Notwithstanding the foregoing: (x) the Receiving Party may retain copies of the Disclosing Party's Confidential Information to the extent required by Applicable Law and/or to the extent otherwise permitted under this Agreement; and (y) if any return, deletion or destruction of Confidential Information will have an adverse effect on a party's ability to exercise its rights and/or perform its obligations under this Agreement, then the parties shall discuss reasonably available alternatives to such return, deletion or destruction.

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

(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 Law, including the Statute and the rules and regulations, as may be in effect from time to time of the SEC, the MSRB and FINRA. Any marketing, promotional and other written materials prepared by the Contractor must be submitted in advance to the Agency or its designee for review and approval, prior to use, which approval shall not be unreasonably withheld or delayed.

(b) **The Contractor and Affiliate Marketing and Advertising.** The Contractor shall not, without the advance written consent of the Agency, 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 \_\_\_\_\_, 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 D. Within thirty (30) days of the execution of this Agreement (for the Agency's current fiscal year commencing July 1, 2016) and by not later than April 15 of each fiscal year thereafter (commencing with the fiscal year commencing July 1, 2017), 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 Agency. The Contractor will implement the marketing program, as approved in writing by the Agency, and any material changes to such program will require the prior written consent of the Agency.

#### **15. PERFORMANCE STANDARDS**

(a) **Service Interruption.** The Agency acknowledges that unplanned outages may occur from time to time and will be resolved by the Contractor as soon as practicable. If any of the systems and/or processes associated with providing the above mentioned services are interrupted, the Contractor shall adhere to a Recovery Time Objective (RTO) of 12 hours.

(b) **Disaster Recovery and Security.** The Contractor shall coordinate with the Agency to help ensure that appropriate disaster recovery procedures are in place for all processes and systems relating to support of the Program. The contractor shall adhere to a 12-hour Recovery Point Objective (RPO).

(c) **Failing to Meet Performance Standards.** The inability by the Contractor to perform the Services or to meet the performance standards set forth in Section 4 of the RFP, in this Section 15, or in Section 15 of Schedule A, General Terms and Conditions shall be considered a breach of this Agreement for purposes of Section 17, if the Contractor fails to (i) meet any of the fourteen (14) performance

standards identified in Section 4.5 of the RFP by more than 5% for any consecutive three-month period; (ii) satisfy the requirements of Sections 15(a) and 15(b) of this Agreement; or (iii) satisfy the requirements of Section 15 of Schedule A, General Terms and Conditions. In the Agency's sole discretion, a monetary penalty may be imposed against the Contractor payable to the Agency in an amount not to exceed 2% of the Contractor's Management Fee for the month in which the breach occurred.

**16. LIABILITY OF THE CONTRACTOR; INDEMNIFICATION BY THE CONTRACTOR; LIABILITY OF THE STATE 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 Agency and the Program for any and all Losses suffered, incurred or sustained by the Agency, an Account Owner, Beneficiary, the Program or their respective employees, agents, representatives, affiliates, delegates or subcontractors, or to which the Agency, 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 or any of its subcontractors of their duties, obligations, representations, warranties or covenants under this Agreement, or 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 Agency, the Committee, 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 by the Contractor or any of its subcontractors of their 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. Notwithstanding the foregoing, a Program Indemnitee seeking indemnification 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 that Program Indemnitee seeking indemnification.

(b) ***Indemnification Procedures.*** If there is asserted any claim, liability or obligation that in the judgment of Program Indemnitee may give rise to any Losses, or if such Program Indemnitee determines the existence of the foregoing whether or not the same shall have been asserted, such Program Indemnitee 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 Program Indemnitee, promptly upon the determination by the Indemnified Party of the existence of the same. No Program Indemnitee or other Party 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 Agency.*** The liability of the Agency under this Agreement is limited to the extent contemplated and provided by RCW Chapter 4.92, Actions and Claims Against State.

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

(e) **Limited Waiver.** The Contractor waives its immunity under Title 51 RCW to the extent it is required to indemnify, defend and hold harmless the Program Indemnities.

## 17. TERMINATION OF AGREEMENT.

(a) **Termination.** Subject to the provisions of Schedule A, 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 paragraph (b):

(i) at the Agency’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 Agency has given written notice thereof to the Contractor, and such breach has a Material Adverse Effect;

(ii) at the Agency’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 Agency’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 Agency’s election in the event of a change in Applicable Law which has a Material Adverse Effect on the ability of the Agency to operate the Program;

(v) at the Agency’s election in the event the Committee determines that termination of the Agreement is in the best interest of the Agency, the Account Owners or the Beneficiaries;

(vi) at the Agency’s election in the event the Washington State Legislature repeals and does not replace the Statute;

(vii) at the Agency’s election upon ten (10) days’ notice to the Contractor, or at such later date as the Agency may establish in such notice; or

(viii) at the Agency’s election in the event funding from State, federal, or other sources is withdrawn, reduced, or limited in any way after the Effective Date and prior to the Final Termination Date.

(b) ***Damages.***

(i) In the event of termination or suspension pursuant to Section 17(a)(i), the Contractor shall be liable for damages as authorized by Applicable Law including, but not limited to, any cost difference between the original Agreement and the replacement or cover contract and all administrative costs directly related to the replacement contract, e.g., cost of the competitive bidding, mailing, advertising and staff time.

(ii) The Agency reserves the right to suspend all or part of the Agreement, withhold further payments, or prohibit the Contractor from incurring additional obligations of funds during investigation of the alleged compliance breach and pending corrective action by the Contractor or a decision by the Agency to terminate the Agreement. A termination shall be deemed a termination for convenience under Section 17(a)(vii) if it is determined that the Contractor: (1) was not in default; or (2) failure to perform was outside of its control, fault or negligence.

(iii) The rights and remedies of the Agency provided in this Agreement are not exclusive and are, in addition to any other rights and remedies, provided by Applicable Law.

(c) ***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 Agency. The Contractor shall not solicit or accept new Accounts after the termination of the Agreement.

(d) ***Transition.***

(i) In the event this Agreement is terminated by an Early Termination Event provided for in Section 17(a) or is not renewed at the expiration of the Term or any Renewal Term, the Agency may require and the Contractor shall continue to provide, if required, those Services that the Agency determines are necessary and appropriate to enable the transition of the Program from program management by the Contractor to the Agency, 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 Agency that provides for reasonable consideration for the best interests of the Account Owners, is protective of the Agency’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 State. The Contractor shall have no right or title to or interest in the Accounts, assets held in the Accounts, Program Assets, or any Program Records.

(ii) The Contractor, its employees, agents and subcontractors shall provide the Agency, its staff and whoever the Agency 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, including but not limited to, the Program Records.

(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 specified by the Agency.

(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 Agency may, at its discretion, require the Contractor to pay into an escrow account Management Fees otherwise payable to the Contractor pursuant to Section 6 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.

**18. NOTICES.** Any notice given in connection with this Agreement shall be given in writing and shall be delivered either (i) 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 and (ii) by 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 email 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 or email address by giving written notice of the change to the other party.

If to the Agency to:

Washington Student Achievement Council

Telephone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_  
Email: \_\_\_\_\_

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

[Name]

Telephone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_  
Email: \_\_\_\_\_

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

[Name]

Telephone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_  
Email: \_\_\_\_\_

If to the Contractor to:

[Name]

Telephone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_  
Email: \_\_\_\_\_

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

[Name]

Telephone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_  
Email: \_\_\_\_\_

**19. INSURANCE**

(a) **Required Coverages.** At the Contractor's sole cost and expense, the Contractor shall procure and maintain in effect as of and after the Effective Date and through and including the Final Termination Date the insurance coverages described in the schedule at paragraph (h), below. Insurance may be maintained with one or more carriers, each of which must: (i) be authorized to do business in the State or be eligible surplus lines insurers acceptable to the Agency and having agents in the State upon which service of process may be made; and (ii) have a financial strength rating of A- or better and a financial size category of A-X or better, each as reported in the most recent edition of Best's Insurance Reports (or any successor or replacement rating agency). Any exception shall be reviewed and approved by the Agency's risk manager, or the risk manager for the State before the Effective Date. If an insurer is not admitted under Chapter 48.18 RCW, all insurance policies and procedures for issuing the insurance policies must comply with Chapter 48.15 RCW and 284-15 WAC.

Any insurance or self-insurance available to the Agency shall be in excess of, and non-contributing with, any insurance that the Contractor is required to procure and maintain. The Contractor's insurance policies shall apply on a primary basis. To the extent that claims are paid under any insurance coverage resulting in a reduction of the remaining coverage amounts, the Contractor shall procure additional insurance as needed to continually meet and maintain the coverage amounts described in the schedule at paragraph (h), below.

(b) **Additional Insureds and Evidence of Coverage.** By endorsement to all liability policies except for the Professional Liability/Errors & Omissions and Cybersecurity and Privacy Breach Policies insurance and Workers' Compensation insurance, the Agency and the State shall be named as additional insureds for all liability arising from the Agreement. On or before the Effective Date, thereafter upon each insurance policy renewal, and otherwise promptly following the Agency's request from time to time, the Contractor shall provide the Agency with certificates of insurance, together with copies of all insurance policies and applicable endorsements, evidencing the Contractor's compliance with the requirements set forth in this Section 19. If at any time during the period when insurance is required by this Agreement, an insurer fails to comply with the requirements of the Agreement, as soon as the Contractor has knowledge of any such failure, the Contractor shall immediately notify the Agency and

immediately replace such insurance with insurance meeting the Agreement requirements set forth herein. Within ten (10) business days following the Contractor's receipt of the Agency's written request, the Contractor shall provide (or cause to be provided) to the Agency a certified copy of any insurance policies that are required under this Section 19.

(c) **Claims-Made Coverage.** If and to the extent any insurance coverage required under this Agreement is purchased on a "claims-made" basis, such insurance must: (a) cover the acts or omissions of the Contractor and any subcontractors, as applicable, up through and including the Final Termination Date; and (b) be continuously maintained by the Contractor, with full prior acts coverage, for at least six (6) years beyond the Final Termination Date.

(d) **Notice of Cancellation.** The Contractor shall procure (or cause to be procured) endorsement(s) to its insurance policies that identify the Agency as a scheduled party to receive written notice thirty (30) days in advance of the cancellation of any insurance required hereunder. The Agency shall be provided written notice before cancellation or non-renewal of any insurance referred to therein, in accordance with the following specifications:

(i) Insurers subject to Chapter 48.18 RCW (Admitted and Regulated by the Insurance Commissioner): the insurer shall give the State 45 days' advance notice of cancellation or non-renewal. If cancellation is due to non-payment of premium, the State shall be given ten (10) days advance notice of cancellation.

(ii) Insurers subject to Chapter 48.15 RCW: The State shall be given twenty (20) days advance notice of cancellation. If cancellation is due to non-payment of premium, the State shall be given ten (10) days advance notice of cancellation.

(e) **Subcontractor Insurance.** If the Contractor elects to have an approved subcontractor provide any Services to the Agency, prior to providing any such Services, the Contractor must furnish to the Agency a certified copy of the applicable insurance policy or policies reflecting coverages of the type and amount agreed upon by the Contractor and the Agency.

(f) **Worker's Compensation Coverage.** Prior to performing Services under this Agreement, the Contractor shall provide or purchase worker's compensation coverage for its employees, as may be required of an "employer" as defined in Title 51 RCW, and shall maintain full compliance with Title 51 RCW during the course of this Agreement. The Agency will not be responsible for payment of premiums or for any other claim or benefit for the Contractor, or any subcontractor or employee of the Contractor, which might arise under Applicable Law during the performance of duties and Services under this Agreement. However, should the Contractor fail to secure insurance coverage or fail to pay premiums on behalf of its employees, the Agency may deduct the amount of premiums and any penalties owing from the amounts payable to the Contractor under this Agreement and require the Contractor to transmit the same to the Agency. The Agency will not be held responsible in any way for claims filed by the Contractor or its employees for Services performed under the terms of this Agreement.

(g) **Excess Coverage.** By requiring insurance herein, the Agency does not represent that coverage and limits will be adequate to protect the Contractor, and such coverage and limits shall not limit the Contractor's liability under the indemnities and reimbursements granted to the Agency in this Agreement.

(h) *Schedule of Insurance Coverages.*

Type of Insurance Coverage	Minimum Policy Limits		Additional Requirements
	Per Occurrence/ Claim	Annual Aggregate	
<b>Workers' Compensation</b>	Per State law requirements	Per State law requirements	The policy shall be written to meet the statutory requirements for the state in which the work is to be performed, including occupational disease and occupational health and safety laws. The policy must include a waiver of subrogation in favor of the Agency, the State and their affiliates.
<b>Employer's Liability</b>	<ul style="list-style-type: none"> <li>• Each Accident: \$1,000,000</li> <li>• Disease, Each Employee: \$1,000,000</li> <li>• Disease, Policy Limit: \$1,000,000</li> </ul>	N/A	Employers liability insurance covering the risks of the Contractor's employees' bodily injury by accident or disease
<b>Commercial General Liability</b>	\$10,000,000	\$50,000,000	CGL insurance shall be written on ISO occurrence form CG 00 01 (or a substitute form providing equivalent coverage). All insurance shall cover liability assumed under an insured contract (including the tort liability of another assumed in a business contract), and contain separation of insureds (cross liability) condition. The policy must include a waiver of subrogation in favor of the State, the Agency and their affiliates.
<b>Business Automobile Liability</b>	\$1,000,000	\$5,000,000	Business Automobile Liability (owned, hired, or non-owned) covering the risks of bodily injury (including death) and property damage, including coverage for contractual liability. The policy shall cover liability arising out of "Any Auto" and include a waiver of subrogation in favor of the State, the Agency and its affiliates. Business auto coverage shall be written on ISO form CA 00 01, 1990 or later edition, or substitute liability form providing equivalent coverage.
<b>Professional Liability / Errors &amp; Omissions</b>	\$25,000,000	\$50,000,000	Must include coverage for internet and information technology professional services including but not limited to coding errors, web portal, security/privacy. The policy must include a waiver of subrogation in favor of the Agency and its affiliates.

Type of Insurance Coverage	Minimum Policy Limits		Additional Requirements
	Per Occurrence/ Claim	Annual Aggregate	
Cyber-Security and Privacy Breach	\$50,000,000	\$150,000,000	<p>As a separate policy or in coordination with other coverages, must include but is not limited to coverage for first-party costs and third-party claims from:</p> <ol style="list-style-type: none"> <li>1. Failure to protect data, including unauthorized disclosure, use or access;</li> <li>2. Security failure or privacy breach;</li> <li>3. Failure to disclose such breaches as required by law, regulation or contract;</li> <li>4. Costs associated with notifications, public relations, crisis management advice, credit monitoring, postage, advertising, forensic examinations to determine cause and scope of data breach, Agency risk mitigation services, and other services to assist in managing and mitigating a cyber-incident;</li> <li>5. Interruptions of business operations;</li> <li>6. RTO expenses;</li> <li>7. Network security failure;</li> <li>8. Communications and media liability (e.g., infringement of copyright, title, slogan, trademark, trade name, trade dress, service mark or service name in the policyholder's covered material);</li> <li>9. Computer fraud;</li> <li>10. Forgery;</li> <li>11. Money and securities;</li> <li>12. Employee dishonesty;</li> <li>13. Cyber-extortion;</li> <li>14. Cyber-terrorism;</li> <li>15. Electronic Funds Transfer, computer, and electronic transmissions fraud and theft;</li> <li>16. Failure to comply with RCW 19.255.020 and 42.56.590, Health Insurance Portability &amp; Accountability Act of 1996 ("<b>HIPAA</b>"), Family Educational Rights and Privacy Act ("<b>FERPA</b>"), PCI Data Security Standard, Graham Leach Bliley Act; and</li> <li>17. Other cyber-liability or cyber-crime expenses, and provide for associated crisis management and public relations expense.</li> </ol> <p>The policy must include a waiver of subrogation in favor of the State, the Agency and their affiliates.</p>

Type of Insurance Coverage	Minimum Policy Limits		Additional Requirements
	Per Occurrence/ Claim	Annual Aggregate	
<b>Umbrella or Excess Liability</b>	The greater of: (a) the fees due and to be due under the Agreement; and (b) \$50,000,000	The greater of: (a) the fees due and to be due under the Agreement; and (b) \$50,000,000	Umbrella policy providing excess limits over the primary policies. For Workers' Compensation, Employer's Liability, Commercial General Liability and Business Automobile Liability coverages. The policy must include a waiver of subrogation in favor of the State, the Agency and their affiliates.

(i) **Identification.** Each insurance policy must reference the RFP number and Agency name.

**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 Agency 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 Agency 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. INSPECTION AND APPROVAL.** Final inspection and approval of all work required by this Agreement shall be performed by the designated State officials. The Agency 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.

**23. 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.

**24. 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 and the Agency. The Contractor will have no authority to bind the Agency without the written consent of the Agency. 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 Tuition Programs other than the Program and for other clients.

**25. 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.

**26. 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.

**27. GOVERNING LAW AND SEVERABILITY.** This Agreement and matters related to it shall be construed in accordance with and governed by the laws of the State. Jurisdiction and venue for any action to enforce the provisions of this Agreement, or to resolve disputes related to it, shall be Thurston County Superior Court, Washington. 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.

**28. SURVIVAL.** Sections 1, 6, 12, 13, 14, 15, 16, 19 through and including 31, and Section 15 of Schedule A will survive the Final Termination Date.

**29. AMENDMENT.** This Agreement, including the schedules, exhibits, attachments and other documents annexed hereto, may be amended only if such amendment is in writing and agreed to by the Agency and the Contractor.

**30. 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.

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

**32. 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.

[CONTRACTOR'S NAME]

Washington Student Achievement Council

\_\_\_\_\_  
**Signature**

\_\_\_\_\_  
**Signature**

\_\_\_\_\_  
**Title**

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Title**

\_\_\_\_\_  
**Date**

**APPROVED AS TO FORM:**

\_\_\_\_\_  
**Assistant Attorney General**

\_\_\_\_\_  
**Date**

## FORM OF CONTRACT – SCHEDULE A

### GENERAL TERMS AND CONDITIONS

1. **DEFINITIONS.** As used throughout this Schedule A, all capitalized terms, unless otherwise defined, shall have the meaning as defined in the Agreement.
2. **ACCESS TO DATA AND PROGRAM MATERIALS.** In compliance with RCW 39.26.180, the Contractor shall provide access to all data, audit reports and other Program Records generated that are relevant to this Agreement, to the Agency, the State Joint Legislative Audit and Review Committee, and the Agency’s auditors or at no additional cost. This includes access to all information that supports the findings, conclusions, and recommendations of the Contractor’s audits and reports, including computer models and methodology for those models.
3. **ADVANCE PAYMENTS PROHIBITED.** No payments in advance of or in anticipation of goods or Services to be provided under this Agreement shall be made by the Agency.
4. **AMERICANS WITH DISABILITIES ACT (ADA) OF 1990, PUBLIC LAW 101-336, 28 CFR Part 35.** The Contractor must comply with the ADA, which provides comprehensive civil rights protection to individuals with disabilities in the areas of employment, public accommodations, state and local government services, and telecommunications.
5. **ATTORNEYS’ FEES.** In the event of litigation or other action brought to enforce Agreement terms, each party agrees to bear its own attorney fees and costs.
6. **CONFLICT OF INTEREST.** Notwithstanding any determination by the State Executive Ethics Board or other tribunal, the Agency may, in its sole discretion, by written notice to the Contractor terminate this Agreement if it is found after due notice and examination by the Executive Director of the Agency, and/or the delegate authorized in writing to act on the Executive Director's behalf (“**Agent**”) that there is a violation of the Ethics in Public Service Act, Chapter 42.52 RCW; or any similar statute involving the Contractor in the procurement of, or performance under this Agreement.

In the event this Agreement is terminated as provided above, the Agency shall be entitled to pursue the same remedies against the Contractor as it could pursue in the event of a breach of the Agreement by the Contractor. The rights and remedies of the Agency provided for in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law. The existence of facts upon which the Agent makes any determination under this clause shall be an issue and may be reviewed as provided in the “Disputes” clause of this Agreement.

7. **COPYRIGHT PROVISIONS.** Unless otherwise provided, all materials produced under this Agreement shall be considered "works for hire" as defined by the U.S. Copyright Act and shall be owned by the Agency. The Agency shall be considered the author of such materials. In the event the materials are not considered “works for hire” under the U.S. Copyright laws, the Contractor hereby irrevocably assigns all right, title, and interest in materials, including all intellectual property rights, to the Agency effective from the moment of creation of such materials.

Materials means all items in any format and includes, but is not limited to, data, reports, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, sound reproductions and/or the Program Records. Ownership includes the right to copyright, patent, register and the ability to transfer these rights.

For materials that are delivered under the Agreement, but that incorporate pre-existing materials not produced under the Agreement, Contractor hereby grants to the Agency a nonexclusive, royalty-free, irrevocable license (with rights to sublicense others) in such materials to translate, reproduce, distribute, prepare derivative works, publicly perform, and publicly display. The Contractor warrants and represents that Contractor has all rights and permissions, including intellectual property rights, moral rights and rights of publicity, necessary to grant such a license to the Agency.

The Contractor shall exert all reasonable effort to advise the Agency, at the time of delivery of materials furnished under this Agreement, of all known or potential invasions of privacy contained therein and of any portion of such document that was not produced in the performance of this Agreement.

The Agency shall receive prompt written notice of each notice or claim of infringement received by the Contractor with respect to any data delivered under this Agreement. The Agency shall have the right to modify or remove any restrictive markings placed upon the data by the Contractor.

**8. COVENANT AGAINST CONTINGENT FEES.** The Contractor warrants that no person or selling agent has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide employees or bona fide established agents maintained by the Contractor for securing business. The Agency shall have the right, in the event of breach of this clause by the Contractor, to annul this Agreement without liability or, in its discretion, to deduct from the Management Fee or recover by other means the full amount of such commission, percentage, brokerage or contingent fee.

**9. DISALLOWED COSTS.** The Contractor is responsible for any audit exceptions or disallowed costs incurred by its own organization or that of its subcontractors.

**10. DISPUTES.** Except as otherwise provided in this Agreement, when a dispute arises between the parties and it cannot be resolved by direct negotiation, either party may request a dispute hearing with the Agent.

- (a) The request for a dispute hearing must:
  - (i) Be in writing;
  - (ii) State the disputed issue(s);
  - (iii) State the relative positions of the parties;
  - (iv) State the Contractor's name, address, and contact number; and
  - (v) Be mailed to the Agent and the other party's (respondent's) contract manager within three (3) working calendar days after the parties agree that they cannot resolve the dispute.

(b) The respondent shall send a written answer to the requester's statement to both the Agent and the requester within five (5) working calendar days.

(c) The Agent shall review the written statements and reply in writing to both parties within ten (10) working days. The Agent may extend this period if necessary by notifying the parties.

(d) During the pendency of the dispute, the Contractor agrees to assent to the Agency's position, and the Agency agrees that such assent will not constitute a waiver of any claim or defense the Contractor may have asserted.

(e) The parties agree that this dispute process shall precede any action in a judicial, quasi-judicial or arbitration forum.

Nothing in this Agreement shall be construed to limit the parties' choice of a mutually acceptable Alternative Dispute Resolution method in addition to the dispute resolution procedure outlined above.

**11. INDUSTRIAL INSURANCE COVERAGE.** The Contractor shall comply with the provisions of Title 51 RCW, Industrial Insurance. If the Contractor fails to provide industrial insurance coverage or fails to pay premiums or penalties on behalf of its employees, as may be required by law, the Agency may collect from the Contractor the full amount payable to the Industrial Insurance accident fund. The Agency may deduct the amount owed by the Contractor to the accident fund from the amount payable to the Contractor under this Agreement, and transmit the deducted amount to the Department of Labor and Industries, (L&I) Division of Insurance Services. This provision does not waive any of L&I's rights to collect from the Contractor.

**12. LIMITATION OF AUTHORITY.** Only the Agent or Agent's delegate by writing (delegation to be made prior to action) shall have the express, implied, or apparent authority to alter, amend, modify, or waive any clause or condition of this Schedule A. Furthermore, any alteration, amendment, modification, or waiver or any clause or condition of this Schedule A is not effective or binding unless made in writing and signed by the Agent.

**13. NONDISCRIMINATION.** During the performance of this Agreement, the Contractor shall comply with all federal and state nondiscrimination laws, regulations and policies.

**14. NONCOMPLIANCE WITH NONDISCRIMINATION LAWS.** In the event of the Contractor's non-compliance or refusal to comply with any nondiscrimination law, regulation, or policy, this Agreement may be rescinded, canceled or terminated in whole or in part, and the Contractor may be declared ineligible for further contracts with the Agency. The Contractor shall, however, be given a reasonable time in which to cure this noncompliance. Any dispute may be resolved in accordance with the "Disputes" procedure set forth in Section 10 of this Schedule A.

## 15. PRIVACY AND DATA SECURITY

(a) **Personal Information.** Personal information including, but not limited to information designated in HIPAA and all rules and modifications thereto, FERPA and all rules and modifications thereto, and RCW 19.55.010 and RCW 42.56.590 (“**Personal Information**”) that is collected, used, or acquired in connection with this Agreement shall be protected against unauthorized use, disclosure, modification or loss. The Contractor shall ensure its directors, officers, employees, subcontractors or agents use Personal Information solely for the purposes of accomplishing the services set forth herein. The Contractor and its subcontractors agree not to release, divulge, publish, transfer, sell or otherwise make known to unauthorized persons Personal Information without the express written consent of the Agency or as otherwise required by law.

(b) **Data Security Program.** The Contractor shall maintain in effect at all times a comprehensive data security program that includes reasonable and appropriate administrative, technical and physical security measures designed to detect, prevent and mitigate the risk of identity theft and protect against the destruction, loss, unauthorized access, disclosure, use and/or alteration of data (whether or not encrypted), including Confidential Information, in the Contractor's possession or under the Contractor's control, and which shall be no less rigorous than those measures that are required to be maintained by the Contractor or the Agency to comply with Applicable Law. The Contractor will provide the data security program to the Agency for its review, and the Agency shall have the right to provide feedback and comment on the Contractor's data security program.

(c) **Compliance with Security Policies and Procedures; Contractor Information Security Officer; and Security Certifications.**

(i) **Compliance with Security Policies and Procedures.** The Contractor shall comply with: (A) security requirements and obligations required by Applicable Law; (B) Agency security policies and procedures; (C) the then-current ISO (International Organization for Standardization) and IEC (International Electrotechnical Commission) ISO/IEC 27000 series of Information Security Management Systems standards (“**ISO Security Standards**”); (D) then-current Statement on Standards for Attestation Engagements (SSAE) No. 16, (E) then-current Payment Card Industry Data Security Standard (PCI DSS), (F) then-current Graham Leach Bliley Act requirements, and (G) Contractor's security standards, policies, guidelines and procedures, provided that, at the Agency's discretion, the Agency Security Policies and Procedures shall take precedence over any inconsistencies or conflicts with the Contractor's security standards, policies, guidelines and procedures (subsections (A) through (G) are collectively referred to as the "**Security Policies and Procedures**"). If there is a change in the Security Policies and Procedures from and after the Effective Date that the Contractor disagrees with, the Contractor may submit a waiver request to the Agency. The Agency will evaluate the waiver request and either approve it, whereupon Contractor shall not be obligated to comply change, or reject the waiver request, whereupon Contractor shall comply with such change.

(ii) **Contractor Information Security Officer Responsibilities.** The Contractor shall designate a corporate officer ("**Information Security Officer**") who shall, at no cost or expense to the Agency:

- A. Be responsible to ensure the Contractor's initial and on-going compliance with the Security Policies and Procedures;
- B. Upon the Agency's request, provide a written certification to the Agency, confirming the Contractor's compliance with the Security Policies and Procedures; and
- C. Upon the Agency's request, including following any certification related to the Contractor's compliance with the Security Policies and Procedures, meet with Agency representatives to discuss the Contractor's certification, the Security Policies and Procedures or other related matters.

(iii) **Security Certifications.** The Contractor represents and warrants to the Agency that the Contractor incorporates the following in the development, management and delivery of its information security management services:

- A. ISO Security Standards,
- B. SSAE 16,
- C. Payment Card Industry Data Security Standard (PCI DSS), and
- D. Graham Leach Bliley Act.

If the Contractor is, or if and when the Contractor becomes certified under the ISO Security Standards or other security services standard, the Contractor shall maintain such certification(s) on an on-going basis and the Contractor shall provide the Agency with a copy of such certification(s) upon request. The Contractor shall provide Agency with full and complete copies of any ISO Security Standards audits and reviews, SOC 1 reports, SOC 2, reports, and other security audits, reports and reviews, whether conducted internally by the Contractor or through a third party, within five (5) days of a request by the Agency and within twenty (20) days of the Contractor's receipt of such audits, reports and reviews. If there are deficiencies cited and/or recommendations made, the Information Security Officer and other appropriate personnel from the Contractor shall meet with Agency to review the deficiencies and recommendations and develop a plan of action to address such items.

(iv) **Security Breaches.** If the Contractor discovers or is notified of the destruction, loss and/or unauthorized access, disclosure, use and/or alteration of Agency data, including Confidential Information, or any attempt to access Agency data, including Confidential Information, that is reasonably likely to result in the destruction, loss and/or unauthorized access, disclosure, use and/or alteration of Agency data, including Confidential Information, (each such event, a "**Security Event**"), the Contractor shall without undue delay and unless prohibited by Applicable Law: (a) promptly (and not more than within 24 hours) notify the Agency in writing of the Security Event; (b) investigate the Security Event and provide reasonable cooperation with the Agency's investigation of the Security Event, including periodic updates with respect to the Contractor's investigation of the Security Event; (c) if the source of the Security Event is not within the control of the Contractor, provide reasonable cooperation with the Agency's development of a risk assessment, root cause analysis and corrective action plan, including the Agency's mitigation and remediation activities; and (d) and provide reasonable cooperation with the Agency in complying with, the requirements of all applicable personal information laws and other Applicable Law. If the source of the Security Event is within the control of the Contractor's personnel, the Contractor shall: (e) promptly provide a written report to the Agency that sets forth the Contractor's risk assessment, root cause analysis and corrective action plan; (f) implement the corrective action

plan and mitigate the effects of the Security Event as soon as practicable; and (g) provide the Agency periodic updates with respect to the Contractor's mitigation and corrective action efforts. If the security breach is caused by the negligence of the Contractor or a subcontractor, such party shall reimburse the Agency for actual costs incurred by the Agency in responding to, and mitigating damages caused by, any Security Event.

(d) **Personal Information and Data Breach Notification Laws.** The Contractor acknowledges that certain information or Program Records collected, used, or acquired by the Contractor in connection with this Agreement may include Personal Information pertaining to residents in the State and other states that have enacted personal information and data breach notification laws, including RCW 19.55.010 and RCW 42.56.590 requiring under some circumstances individual notice and other reporting requirements within forty days of discovery of the Security Event (“**Personal Information and Data Breach Notification Laws**”). The Contractor agrees to comply with RCW 19.255.020 and 42.56.590 and all other applicable Personal Information and Data Breach Notification Laws. If and to the extent any unauthorized access, disclosure or use of Personal Information: (a) is attributable to a breach by the Contractor of its obligations under the Agreement, or for failing to adopt or enforce its own technology security policy, or for failing to comply with the Agency security policies and procedures; and (b) triggers notice or other requirements under a Personal Information or Data Breach Notification Law, the Contractor shall assume responsibility for and pay all costs to comply with legal obligations relating to such unauthorized access, disclosure or use of Personal Information, including the reasonable costs of providing notices, a toll-free call center / help desk, credit monitoring services and identity theft insurance to affected individuals for up to two (2) years. The Contractor agrees to pay the Agency for all associated costs incurred by the Agency in responding to or recovering from said Security Event. Nothing contained herein shall be deemed to release Contractor from its indemnification obligations as set forth in the Agreement.

(e) **HIPAA.** If the Contractor (or any subcontractor) will, or will likely, have access to protected health information (as defined in the regulations promulgated under HIPAA) of the Agency, the Contractor and any applicable subcontractor(s) shall execute the then-current form of Business Associate Agreement of the Agency.

(f) Any breach of these privacy provisions by the Contractor is grounds for termination of the Agreement and return of all Program Materials.

**16. REGISTRATION WITH DEPARTMENT OF REVENUE.** The Contractor shall complete registration with the Washington State Department of Revenue and be responsible for payment of all taxes due on payments made under this Agreement.

**17. RIGHT OF INSPECTION.** The Contractor shall provide right of access to its facilities to the Agency, or any of its officers, or to any other authorized agent or official of the State or the federal government, at all reasonable times, in order to monitor and evaluate performance, compliance, and/or quality assurance under this Agreement.

**18. SITE SECURITY.** While on Agency premises, the Contractor, its agents, employees, or subcontractors shall conform in all respects with physical, fire or other security policies or regulations.

**FORM OF CONTRACT – SCHEDULE B**

**FINANCIAL SERVICES**

**[TO BE COMPLETED FOLLOWING AWARD OF CONTRACT]**

**FORM OF CONTRACT – SCHEDULE C**  
**ACCOUNT ADMINISTRATION**  
**[TO BE COMPLETED FOLLOWING AWARD OF CONTRACT]**

**FORM OF CONTRACT – SCHEDULE D**  
**MARKETING**  
**[TO BE COMPLETED FOLLOWING AWARD OF CONTRACT]**

**FORM OF CONTRACT – SCHEDULE E**

**CUSTOMER SERVICE**

**[TO BE COMPLETED FOLLOWING AWARD OF CONTRACT]**

**FORM OF CONTRACT – SCHEDULE F**  
**IMPLEMENTATION PLAN**  
**[TO BE COMPLETED FOLLOWING AWARD OF CONTRACT]**

## EXHIBIT C

### MARKETING BUDGET BREAKDOWN

Please provide the following information if the Bidder is submitting an alternate Proposal as provided in *Section 2.6* of the RFP.

#### CONTRACT INCEPTION THROUGH PROGRAM START DATE

<b>Marketing Activity</b>	<b>% of Total Budget</b>
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 Added	%
Educational Seminars	%
Other (Explain)	%
	<b>100%</b>

**ANNUALLY FOLLOWING PROGRAM START DATE<sup>1</sup>**

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

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<sup>1</sup> Include additional tables if necessary to show a change in budget in following years.

## EXHIBIT D

### COST PROPOSAL SCHEDULE

#### COSTS AND FEES

The Agency is interested in offering best-in-class investments while minimizing the cost to investors. In addition, Chapter 28B.95 RCW requires that beginning January 1, 2018, fees charged to account owners may not exceed one-half of one percent for any investment option on an annual basis. Therefore, the total expense ratio for the Program should reflect those goals and requirements.

The Agency expects the successful Bidder to fund its investment management, account administration, customer service and marketing expenses, if applicable, 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. A Bidder may propose that an Account Maintenance Fee and/or Enrollment Fee is payable to the Agency to support its administrative and marketing costs to operate the Program.

The Agency is asking for this Cost Proposal Schedule to be completed based on a Contract with a term of ten years from the Program Start Date (with the possibility of two renewal terms of one (1) year each at the sole option of the Agency), commencing upon completion and execution of the Contract for the Services.

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

#### 1. DEFINITIONS

**Account Maintenance Fee** – An annual fixed or asset-based fee charged to participants in the Program.

**Administrative Fee** – The fee to be paid by the Contractor to the Agency in consideration for administrative and marketing expenses incurred by the Agency in administering the Program.

**Enrollment Fee** – A fee charged to participants upon enrollment in the Program.

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

**Program Fiscal Year** – The year ending June 30.

**State Fiscal Year** – The year ending 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 AND PROGRAM MANAGEMENT INFORMATION AND FEE TABLES**

**THE WEIGHTED AVERAGE OPERATING EXPENSE RATIOS FOR ALL PORTFOLIOS IN THE PROGRAM WILL NOT EXCEED: \_\_\_\_\_**

**Age-Based Investment Options** – Please complete the following for each proposed Age-Based investment option, modifying the table as necessary.

		<b>Weighted Average Operating Expense Ratio<sup>1</sup></b>	<b>Program Management Fee</b>	<b>Administrative Fee<sup>2</sup></b>	<b>TOTAL</b>
<b>Age-Based Option #1</b>	<b><u>Specify Year of Enrollment or Age of Child</u></b>				
<b>Age-Based Option #2</b>					
<b>Age-Based Option #3</b>					
<b>Age-Based Option #4</b>					
<b>Age-Based Option #5</b>					
<b>Age-Based Option #6</b>					
<b>Age-Based Option #7</b>					
<b>Age-Based Option #8</b>					

**Fixed Allocation Investment Options** - Please complete the following table for each proposed fixed allocation 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.

		<b>Weighted Average Operating Expense Ratio<sup>1</sup></b>	<b>Program Management Fee</b>	<b>Administrative Fee<sup>2</sup></b>	<b>TOTAL</b>
<b>Investment Option #1</b>	<b><u>Specify Asset Allocation</u></b>				
<b>Investment Option #2</b>					
<b>Investment Option #3</b>					
<b>Investment Option #4</b>					
<b>Investment Option #5</b>					
<b>Investment Option #6</b>					

<sup>1</sup>The Weighted Average Operating Expense Ratio should be expressed in basis points.

<sup>2</sup> If applicable.

**Stand-Alone Investment Options.** 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 September 30, 2016.

Option <sup>3</sup>	Fund Name	Morningstar Rating	Investment Portfolio	Ticker	Annualized Performance (%)			Weighted Average Operating Expense Ratio	Program Management Fee	Administrative Fee <sup>4</sup>	TOTAL
					3 Yrs	5 Yrs	10 Yrs				
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											

**Breakpoints.** Please provide your proposed breakpoint fee reductions with respect to Program management expenses. Breakpoints can be based on total assets under management or any other method proposed by the Bidder. Please explain your method for calculating any possible breakpoints.

<sup>3</sup> Add additional assets classes as applicable.

<sup>4</sup> If applicable.

**3. ADMINISTRATIVE FEE**

The Agency requires an Administrative Fee to provide for its expenses in administering the Program. The proposed Administrative Fee can be calculated as a flat rate and/or basis points. The Agency will also consider providing for its administrative costs through an Account Maintenance Fee and/or Enrollment Fee.

Please complete the following table with regard to all Administrative Fees proposed to be paid to the Agency. If the Administrative Fee is to be charged as an asset-based fee calculable as part of the overall basis point limit of 50 bps per investment option, also include the Administrative Fee in the tables listed in Section 2 of this Cost Proposal Schedule.

**Summary of Administrative Fee to be Paid by Bidder to the Agency<sup>5</sup>**

	<b>Year XX<sup>6</sup></b>	<b>Year 11<sup>7</sup></b>	<b>Year 12<sup>7</sup></b>
<b>Proposed Administrative Fee</b>	On fiscal year-end assets of \$_____M _____ % and/or \$_____	On fiscal year-end assets of \$_____M _____ % and/or \$_____	On fiscal year-end assets of \$_____M _____ % and/or \$_____
	Check one: __Annually __Monthly	Check one: __Annually __Monthly	Check one: __Annually__Monthly
	<b>and/or</b>	<b>and/or</b>	<b>and/or</b>
	Enrollment Fee \$_____ per [account owner] [account] [beneficiary]	Enrollment Fee \$_____ per [account owner] [account] [beneficiary]	Enrollment Fee \$_____ per [account owner] [account] [beneficiary]
	Account Maintenance Fee \$ _____ annually [note exceptions]	Account Maintenance Fee \$ _____ annually [note exceptions]	Account Maintenance Fee \$ _____ annually [note exceptions]

<sup>5</sup> 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.

<sup>6</sup> Complete the table by providing a column for each of the ten (10) years of the proposed Contract.

<sup>7</sup> Assuming the Contract is renewed for each of the additional one-year renewals.

**4. ANNUAL MARKETING BUDGET DETAILED ALLOCATIONS**  
*(IF APPLICABLE TO AN ALTERNATE PROPOSAL)*

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

<b>PERIOD</b>	<b>BUDGET<sup>8</sup></b>
<b>Contract Year 1</b>	
<b>Contract Year 2</b>	
<b>Contract Year 3</b>	
<b>Contract Year 4</b>	
<b>Contract Year 5</b>	
<b>Contract Year 6</b>	
<b>Contract Year 7</b>	
<b>Contract Year 8</b>	
<b>Contract Year 9</b>	
<b>Contract Year 10</b>	
<b>Contract Year 11<sup>9</sup></b>	
<b>Contract Year 12<sup>9</sup></b>	

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<sup>8</sup> Provide the total amount to be expended annually based on the Bidder's completed *Exhibit C – Marketing Budget Breakdown*.

<sup>9</sup> Assuming the Contract is renewed for each of the additional one-year renewals.

**5. OTHER PROPOSED COSTS AND FEES**

If the Bidder 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 Cost Proposal Schedule will not be allowed or paid pursuant to the terms of the Contract.

Please define item, unit, fee and, as applicable, cost by Contract 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.

	<b>Year XX<sup>10</sup></b>	<b>Year 11<sup>11</sup></b>	<b>Year 12<sup>11</sup></b>
<b>Enrollment Fee</b>	\$ _____	\$ _____	\$ _____
<b>Account Maintenance Fee</b>	\$ _____	\$ _____	\$ _____
<b>Other Fee, if applicable</b>	\$ _____	\$ _____	\$ _____

**COST PROPOSAL SCHEDULE SUBMITTED BY:**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Company

\_\_\_\_\_  
Date

<sup>10</sup> Complete the table by providing a column for each of the ten (10) years of the proposed Contract.

<sup>11</sup> Assuming the Contract is renewed for each of the additional one-year renewals.

## **EXHIBIT E**

### **CHAPTER 28B.95 RCW**

#### **28B.95.010**

##### **Washington advanced college tuition payment program—Washington college savings program—Established.**

(1) The Washington advanced college tuition payment program is established to help make higher education affordable and accessible to all citizens of the state of Washington by offering a savings incentive that will protect purchasers and beneficiaries against rising tuition costs.

(2) Subject to the availability of amounts appropriated for this specific purpose, the Washington college savings program is established to provide an additional financial option for individuals, organizations, and families to save for college.

(3) These programs are designed to encourage savings and enhance the ability of Washington citizens to obtain financial access to institutions of higher education. In addition, the programs encourage elementary and secondary school students to do well in school as a means of preparing for and aspiring to higher education attendance. These programs are intended to promote a well-educated and financially secure population to the ultimate benefit of all citizens of the state of Washington.

[ 2016 c 69 § 1; 1997 c 289 § 1.]

#### **28B.95.020**

##### **Definitions.**

The definitions in this section apply throughout this chapter, unless the context clearly requires otherwise.

(1) "Academic year" means the regular nine-month, three-quarter, or two-semester period annually occurring between August 1st and July 31st.

(2) "Account" means the Washington advanced college tuition payment program account established for the deposit of all money received by the office from eligible purchasers and interest earnings on investments of funds in the account, as well as for all expenditures on behalf of eligible beneficiaries for the redemption of tuition units and for the development of any authorized college savings program pursuant to RCW 28B.95.150.

(3) "Advisor sold" means a channel through which a broker dealer, investment advisor, or other financial intermediary recommends the Washington college savings program established pursuant to RCW 28B.95.010 to eligible investors and assists with the opening and servicing of individual college savings program accounts.

(4) "College savings program account" means the Washington college savings program account established pursuant to \*RCW 28B.95.010.

(5) "Committee on advanced tuition payment and college savings" or "committee" means a committee of the following members: The state treasurer, the director of the office of financial management, the director of the office, or their designees, and two members to be appointed by the governor, one representing program participants and one private business representative with marketing, public relations, or financial expertise.

(6) "Contractual obligation" means a legally binding contract of the state with the purchaser and the beneficiary establishing that purchases of tuition units in the advanced college tuition payment program will be worth the same number of tuition units at the time of redemption as they were worth at the time of the purchase, except as provided in RCW 28B.95.030(7).

(7) "Dual credit fees" means any fees charged to a student for participation in college in the high school under RCW 28A.600.290 or running start under RCW 28A.600.310.

(8) "Eligible beneficiary" means the person designated as the individual whose education expenses are to be paid from the advanced college tuition payment program or the college savings program. Qualified organizations, as allowed under section 529 of the federal internal revenue code, purchasing tuition unit contracts as future scholarships need not designate a beneficiary at the time of purchase.

(9) "Eligible contributor" means an individual or organization that contributes money for the purchase of tuition units, and for an individual college savings program account established pursuant to this chapter for an eligible beneficiary.

(10) "Eligible purchaser" means an individual or organization that has entered into a tuition unit contract with the governing body for the purchase of tuition units in the advanced college tuition payment program for an eligible beneficiary, or that has entered into a participant college savings program account contract for an eligible beneficiary. The state of Washington may be an eligible purchaser for purposes of purchasing tuition units to be held for granting Washington college bound scholarships.

(11) "Full-time tuition charges" means resident tuition charges at a state institution of higher education for enrollments between ten credits and eighteen credit hours per academic term.

(12) "Governing body" means the committee empowered by the legislature to administer the Washington advanced college tuition payment program and the Washington college savings program.

(13) "Individual college savings program account" means the formal record of transactions relating to a Washington college savings program beneficiary.

(14) "Institution of higher education" means an institution that offers education beyond the secondary level and is recognized by the internal revenue service under chapter 529 of the internal revenue code.

(15) "Investment board" means the state investment board as defined in chapter 43.33A RCW.

(16) "Investment manager" means the state investment board, another state, or any other entity as selected by the governing body, including another college savings plan established pursuant to section 529 of the internal revenue code.

(17) "Office" means the office of student financial assistance as defined in chapter 28B.76 RCW.

(18) "Owner" means the eligible purchaser or the purchaser's successor in interest who shall have the exclusive authority to make decisions with respect to the tuition unit contract or the individual college savings program contract. The owner has exclusive authority and responsibility to establish and change the asset investment options for a beneficiaries' individual college savings program account.

(19) "Participant college savings program account contract" means a contract to participate in the Washington college savings program between an eligible purchaser and the office.

(20) "State institution of higher education" means institutions of higher education as defined in RCW 28B.10.016.

(21) "Tuition and fees" means undergraduate tuition and services and activities fees as defined in RCW 28B.15.020 and 28B.15.041 rounded to the nearest whole dollar. For purposes of this chapter, services and activities fees do not include fees charged for the payment of bonds heretofore or hereafter issued for, or other indebtedness incurred to pay, all or part of the cost of acquiring, constructing, or installing any lands, buildings, or facilities.

(22) "Tuition unit contract" means a contract between an eligible purchaser and the governing body, or a successor agency appointed for administration of this chapter, for the purchase of tuition units in the advanced college tuition payment program for a specified beneficiary that may be redeemed at a later date for an equal number of tuition units, except as provided in RCW 28B.95.030(7).

(23) "Unit purchase price" means the minimum cost to purchase one tuition unit in the advanced college tuition payment program for an eligible beneficiary. Generally, the minimum purchase price is one percent of the undergraduate tuition and fees for the current year, rounded to the nearest whole dollar, adjusted for the costs of administration and adjusted to ensure the actuarial soundness of the account. The analysis for price setting shall also include, but not be limited to consideration of past and projected patterns of tuition increases, program liability, past and projected investment returns, and the need for a prudent stabilization reserve.

[ 2016 c 69 § 2; 2015 3rd sp.s. c 36 § 6; 2015 c 202 § 5. Prior: 2012 c 229 § 606; 2011 1st sp.s. c 11 § 168; 2007 c 405 § 8; 2005 c 272 § 1; 2004 c 275 § 59; 2001 c 184 § 1; 2000 c 14 § 1; 1997 c 289 § 2.]

NOTES:

\*Reviser's note: The Washington college savings program account is created in RCW 28B.95.085.

Short title—2015 3rd sp.s. c 36: See note following RCW 28B.15.031.

Findings—Intent—2015 c 202: See note following RCW 28A.320.196.

Effective date—2012 c 229 §§ 101, 117, 401, 402, 501 through 594, 601 through 609, 701 through 708, 801 through 821, 902, and 904: See note following RCW 28B.77.005.

Effective date—2011 1st sp.s. c 11 §§ 101-103, 106-202, 204-244, and 301: See note following RCW 28B.76.020.

Intent—2011 1st sp.s. c 11: See note following RCW 28B.76.020.

Part headings not law—2004 c 275: See note following RCW 28B.76.090.

## **28B.95.025**

### **Offices and personnel.**

The office shall maintain appropriate offices and employ and fix compensation of such personnel as may be necessary to perform the advanced college tuition payment program and the Washington college savings program duties. The office shall consult with the governing body on the selection, compensation, and other issues relating to the employment of the program director. The positions are exempt from classified service under chapter 41.06 RCW. The employees shall be employees of the office.

[ 2016 c 69 § 3; 2011 1st sp.s. c 11 § 169; 2000 c 14 § 2; 1998 c 69 § 2.]

NOTES:

Effective date—2011 1st sp.s. c 11 §§ 101-103, 106-202, 204-244, and 301: See note following RCW 28B.76.020.

Intent—2011 1st sp.s. c 11: See note following RCW 28B.76.020.

Effective date—1998 c 69: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 20, 1998]." [ 1998 c 69 § 6.]

## **28B.95.030**

### **Washington advanced college tuition payment program.**

(1) The Washington advanced college tuition payment program shall be administered by the committee on advanced tuition payment which shall be chaired by the director of the office. The committee shall be supported by staff of the office.

(2)(a) The Washington advanced college tuition payment program shall consist of the sale of tuition units, which may be redeemed by the beneficiary at a future date for an equal number of tuition units regardless of any increase in the price of tuition, that may have occurred in the interval, except as provided in subsection (7) of this section.

(b) Each purchase shall be worth a specific number of or fraction of tuition units at each state institution of higher education as determined by the governing body, except as provided in subsection (7) of this section.

(c) The number of tuition units necessary to pay for a full year's, full-time undergraduate tuition and fee charges at a state institution of higher education shall be set by the governing body at the time a purchaser enters into a tuition unit contract, except as provided in subsection (7) of this section.

(d) The governing body may limit the number of tuition units purchased by any one purchaser or on behalf of any one beneficiary, however, no limit may be imposed that is less than that necessary to achieve four years of full-time, undergraduate tuition charges at a state institution of higher education. The governing body also may, at its discretion, limit the number of participants, if needed, to ensure the actuarial soundness and integrity of the program.

(e) While the Washington advanced college tuition payment program is designed to help all citizens of the state of Washington, the governing body may determine residency requirements for eligible purchasers and eligible beneficiaries to ensure the actuarial soundness and integrity of the program.

(3)(a) No tuition unit may be redeemed until two years after the purchase of the unit.

(b) Units may be redeemed for enrollment at any institution of higher education that is recognized by the internal revenue service under chapter 529 of the internal revenue code. Units may also be redeemed to pay for dual credit fees.

(c) Units redeemed at a nonstate institution of higher education or for graduate enrollment shall be redeemed at the rate for state public institutions in effect at the time of redemption.

(4) The governing body shall determine the conditions under which the tuition benefit may be transferred to another family member. In permitting such transfers, the governing body may not allow the tuition benefit to be bought, sold, bartered, or otherwise exchanged for goods and services by either the beneficiary or the purchaser.

(5) The governing body shall administer the Washington advanced college tuition payment program in a manner reasonably designed to be actuarially sound, such that the assets of the trust will be sufficient to defray the obligations of the trust including the costs of administration. The governing body may, at its discretion, discount the minimum purchase price for certain kinds of purchases such as those from families with young children, as long as the actuarial soundness of the account is not jeopardized.

(6) The governing body shall annually determine current value of a tuition unit.

(7) For the 2015-16 and 2016-17 academic years only, the governing body shall set the payout value for units redeemed during that academic year only at one hundred seventeen dollars and eighty-two cents per unit. For academic years after the 2016-17 academic year, the governing body shall make program adjustments it deems necessary and appropriate to ensure that the total payout value of each account on October 9, 2015, is not decreased or diluted as a result of the initial application of any changes in tuition under section 3, chapter 36, Laws of 2015 3rd sp. sess. In the event the committee or governing body provides additional units under chapter 36, Laws of 2015 3rd sp. sess., the committee and governing body shall also increase the maximum number of units that can be redeemed in any year to mitigate the reduction in available account value during any year as a result of chapter 36, Laws of 2015 3rd sp. sess. The governing body must notify holders of tuition units after the adjustment in this subsection is made and must include a statement concerning the adjustment.

(8) The governing body shall promote, advertise, and publicize the Washington advanced college tuition payment program. Materials and online publications advertising the Washington advanced college tuition payment program shall include a disclaimer that the Washington advanced college tuition payment program's guarantee is that one hundred tuition units will equal one year of full-time, resident, undergraduate tuition at the most expensive state institution of higher education, and that if resident, undergraduate tuition is reduced, a tuition unit may lose monetary value.

(9) In addition to any other powers conferred by this chapter, the governing body may:

- (a) Impose reasonable limits on the number of tuition units or units that may be used in any one year;
- (b) Determine and set any time limits, if necessary, for the use of benefits under this chapter;
- (c) Impose and collect administrative fees and charges in connection with any transaction under this chapter;
- (d) Appoint and use advisory committees and the state actuary as needed to provide program direction and guidance;
- (e) Formulate and adopt all other policies and rules necessary for the efficient administration of the program;
- (f) Consider the addition of an advanced payment program for room and board contracts and also consider a college savings program;
- (g) Purchase insurance from insurers licensed to do business in the state, to provide for coverage against any loss in connection with the account's property, assets, or activities or to further insure the value of the tuition units;
- (h) Make, execute, and deliver contracts, conveyances, and other instruments necessary to the exercise and discharge of its powers and duties under this chapter;
- (i) Contract for the provision for all or part of the services necessary for the management and operation of the program with other state or nonstate entities authorized to do business in the state;
- (j) Contract for other services or for goods needed by the governing body in the conduct of its business under this chapter;
- (k) Contract with financial consultants, actuaries, auditors, and other consultants as necessary to carry out its responsibilities under this chapter;
- (l) Solicit and accept cash donations and grants from any person, governmental agency, private business, or organization; and
- (m) Perform all acts necessary and proper to carry out the duties and responsibilities of this program under this chapter.

[ 2016 c 69 § 4; 2015 3rd sp.s. c 36 § 7; 2015 c 202 § 6. Prior: 2011 1st sp.s. c 12 § 2; 2011 1st sp.s. c 11 § 170; 2005 c 272 § 2; 2000 c 14 § 3; 1997 c 289 § 3.]

**NOTES:**

Short title—2015 3rd sp.s. c 36: See note following RCW 28B.15.031.

Findings—Intent—2015 c 202: See note following RCW 28A.320.196.

Effective date—2011 1st sp.s. c 11 §§ 101-103, 106-202, 204-244, and 301: See note following RCW 28B.76.020.

Intent—2011 1st sp.s. c 11: See note following RCW 28B.76.020.

**28B.95.032**

**Washington college savings program.**

(1) The Washington college savings program shall be administered by the committee, which shall be chaired by the director of the office. The committee shall be supported by staff of the office.

(2) The Washington college savings program shall consist of the college savings program account and the individual college savings program accounts, and shall allow an eligible purchaser to establish an individual college savings program account for an eligible beneficiary whereby the money in the account may be invested and used for enrollment at any institution of higher education that is recognized by the internal revenue service under chapter 529 of the internal revenue code. Money in the account may also be used to pay for dual credit fees.

(3) The Washington college savings program is open to eligible purchasers and eligible beneficiaries who are residents or nonresidents of Washington state.

(4) The Washington college savings program shall not require eligible purchasers to make an initial minimum contribution in any amount that exceeds twenty-five dollars when establishing a new account.

(5) The committee may contract with other state or nonstate entities that are authorized to do business in the state for the investment of moneys in the college savings program, including other college savings plans established pursuant to section 529 of the internal revenue code. The investment of eligible contributors' deposits may be in credit unions, savings and loan associations, banks, mutual savings banks, purchase life insurance, shares of an investment company, individual securities, fixed annuity contracts, variable annuity contracts, any insurance company, other 529 plans, or any investment company licensed to contract business in this state.

(6) The governing body shall determine the conditions under which control or the beneficiary of an individual college savings program account may be transferred to another family member. In permitting such transfers, the governing body may not allow the individual college savings program account to be bought, sold, bartered, or otherwise exchanged for goods and services by either the beneficiary or the purchaser.

(7) The governing body shall promote, advertise, and publicize the Washington college savings program.

(8) The governing body shall develop materials to educate potential account owners and beneficiaries on (a) the differences between the advanced college tuition payment program and the Washington college savings program, and (b) how the two programs can complement each other to save towards the full cost of attending college.

(9) In addition to any other powers conferred by this chapter, the governing body may:

(a) Impose limits on the amount of contributions that may be made on behalf of any eligible beneficiary;

(b) Determine and set age limits and any time limits for the use of benefits under this chapter;

(c) Establish incentives to encourage participation in the Washington college savings program to include but not be limited to entering into agreements with any public or private employer under which an employee may agree to have a designated amount deducted in each payroll period from the wages due the employee for the purpose of making contributions to a participant college savings program account;

(d) Impose and collect administrative fees and charges in connection with any transaction under this chapter;

(e) Appoint and use advisory committees and the state actuary as needed to provide program direction and guidance;

(f) Formulate and adopt all other policies and rules necessary for the efficient administration of the program;

(g) Purchase insurance from insurers licensed to do business in the state, to provide for coverage against any loss in connection with the account's property, assets, or activities;

(h) Make, execute, and deliver contracts, conveyances, and other instruments necessary to the exercise and discharge of its powers and duties under this chapter;

(i) Contract for the provision for all or part of the services necessary for the management and operation of the Washington college savings program with other state or nonstate entities authorized to do business in the state for the investment of moneys;

(j) Contract for other services or for goods needed by the governing body in the conduct of its business under this chapter;

(k) Contract with financial consultants, actuaries, auditors, and other consultants as necessary to carry out its responsibilities under this chapter;

(l) Review advisor sold 529 college savings plan programs used by other states to supplement direct-sold channels, provide additional program access and options, increase overall college savings by residents, and if deemed appropriate, establish an advisor sold option for the Washington college savings program;

(m) Solicit and accept gifts, bequests, cash donations, and grants from any person, governmental agency, private business, or organization; and

(n) Perform all acts necessary and proper to carry out the duties and responsibilities of the Washington college savings program under this chapter.

(10) It is the intent of the legislature to establish policy goals for the Washington college savings program. The policy goals established under this section are deemed consistent with creating a nationally competitive 529 savings plan. The Washington college savings program should support achievement of these policy goals:

(a) Process: To have an investment manager design a thoughtful, well-diversified glide path for age-based portfolios and offer a robust suite of investment options;

(b) People: To have a well-resourced, talented, and long-tenured investment manager;

(c) Parent: To demonstrate that the committee is a good caretaker of college savers' capital and can manage the plan professionally;

(d) Performance: To demonstrate that the program's options have earned their keep with solid risk-adjusted returns over relevant time periods; and

(e) Price: To demonstrate that the investment options are a good value.

(11) The powers, duties, and functions of the Washington college savings program must be performed in a manner consistent with the policy goals in subsection (10) of this section.

(12) The policy goals in this section are intended to be the basis for establishing detailed and measurable objectives and related performance measures.

(13) It is the intent of the legislature that the committee establish objectives and performance measures for the investment manager to progress toward the attainment of the policy goals in subsection (10) of this section. The committee shall submit objectives and performance measures to the legislature for its review and shall provide an updated report on the objectives and measures before the regular session of the legislature during even-numbered years thereafter.

[ 2016 c 69 § 5.]

### **28B.95.035**

#### **Committee members—Liability.**

No member of the committee is liable for the negligence, default, or failure of any other person or members of the committee to perform the duties of office and no member may be considered or held to be an insurer of the funds or assets of any of the advanced college tuition payment program or any of the Washington college savings program.

[ 2016 c 69 § 7; 1998 c 69 § 3.]

#### **NOTES:**

Effective date—1998 c 69: See note following RCW 28B.95.025.

### **28B.95.040**

#### **Purchase of tuition units or establishment of savings plans by organizations— Rules—Scholarship fund.**

The governing body may, at its discretion, allow an organization to purchase tuition units or establish savings plans for future use as scholarships. Such organizations electing to purchase tuition units or establish Washington college savings program accounts for this purpose must enter into a contract with the governing body which, at a minimum, ensures that the scholarship shall be freely given by the purchaser to a scholarship recipient. For such purchases, the purchaser need not name a beneficiary until four months before the date when the tuition units are first expected to be used.

The governing body shall formulate and adopt such rules as are necessary to determine which organizations may qualify to purchase tuition units or establish Washington college savings program accounts for scholarships under this section. The governing body also may consider additional rules for the use of tuition units or Washington college savings program accounts if purchased as scholarships.

The governing body may establish a scholarship fund with moneys from the Washington advanced college tuition payment program account. A scholarship fund established under this authority shall be administered by the office and shall be provided to students who demonstrate financial need. Financial need is not a criterion that any other organization need consider when using tuition units as scholarships. The office also may establish its own corporate-sponsored scholarship fund under this chapter.

[ 2016 c 69 § 8; 2011 1st sp.s. c 11 § 171; 1997 c 289 § 4.]

NOTES:

Effective date—2011 1st sp.s. c 11 §§ 101-103, 106-202, 204-244, and 301: See note following RCW 28B.76.020.

Intent—2011 1st sp.s. c 11: See note following RCW 28B.76.020.

**28B.95.045**

**Rollover of 529 accounts to state-sponsored plans or eligible 529 plans—Report.**

(1) The committee shall create an expedited process by which owners can complete a direct rollover of a 529 account from (a) a state-sponsored prepaid tuition plan to a state-sponsored college savings plan, (b) a state-sponsored college savings plan to a state-sponsored prepaid tuition plan, or (c) a state-sponsored prepaid tuition plan or a state-sponsored college savings plan to an out-of-state eligible 529 plan.

(2) The committee shall report annually to the governor and the appropriate committees of the legislature on (a) the number of accounts that have been rolled into the Washington college savings program from out of state and (b) the number of accounts rolled out of the Washington college savings program to 529 plans into other states.

[ 2016 c 69 § 6.]

**28B.95.050**

**Contractual obligation—Legally binding—Use of state appropriations.**

The Washington advanced college tuition payment program is an essential state governmental function. Contracts with eligible participants shall be contractual obligations legally binding on the state as set forth in this chapter. If, and only if, the moneys in the account are projected to be insufficient to cover the state's contracted expenses for a given biennium, then the legislature shall appropriate to the account the amount necessary to cover such expenses.

The tuition and fees charged by an eligible institution of higher education to an eligible beneficiary for a current enrollment shall be paid by the account to the extent the beneficiary has remaining unused tuition units for the appropriate school.

[ 2000 c 14 § 4; 1997 c 289 § 5.]

**28B.95.060**

**Washington advanced college tuition payment program account.**

(1) The Washington advanced college tuition payment program account is created in the custody of the state treasurer. The account shall be a discrete nontreasury account retaining its interest earnings in accordance with RCW 43.79A.040.

(2)(a) Except as provided in (b) of this subsection, the governing body shall deposit in the account all money received for the program. The account shall be self-sustaining and consist of payments received from purchasers of tuition units and funds received from other sources, public or private. With the exception of investment and operating costs associated with the investment of money

by the investment board paid under RCW 43.33A.160 and 43.84.160, the account shall be credited with all investment income earned by the account. Disbursements from the account are exempt from appropriations and the allotment provisions of chapter 43.88 RCW. Money used for program administration is subject to the allotment of all expenditures. However, an appropriation is not required for such expenditures. Program administration shall include, but not be limited to: The salaries and expenses of the program personnel including lease payments, travel, and goods and services necessary for program operation; contracts for program promotion and advertisement, audits, and account management; and other general costs of conducting the business of the program.

(b) All money received by the program from the office for the GET ready for math and science scholarship program shall be deposited in the GET ready for math and science scholarship account created in RCW 28B.105.110.

(3) The assets of the account may be spent without appropriation for the purpose of making payments to institutions of higher education on behalf of the qualified beneficiaries, making refunds, transfers, or direct payments upon the termination of the Washington advanced college tuition payment program. Disbursements from the account shall be made only on the authorization of the governing body.

(4) With regard to the assets of the account, the state acts in a fiduciary, not ownership, capacity. Therefore the assets of the program are not considered state money, common cash, or revenue to the state.

[ 2011 1st sp.s. c 11 § 172; 2007 c 214 § 13; 2000 c 14 § 5; 1998 c 69 § 4; 1997 c 289 § 6.]

NOTES:

Effective date—2011 1st sp.s. c 11 §§ 101-103, 106-202, 204-244, and 301: See note following RCW 28B.76.020.

Intent—2011 1st sp.s. c 11: See note following RCW 28B.76.020.

Effective date—1998 c 69: See note following RCW 28B.95.025.

**28B.95.070**

**Washington advanced college tuition payment program account—Powers and duties of the investment board.**

(1) The investment board has the full power to invest, reinvest, manage, contract, sell, or exchange investment money in the account. All investment and operating costs associated with the investment of money shall be paid pursuant to RCW 43.33A.160 and 43.84.160. With the exception of these expenses, the earnings from the investment of the money shall be retained by the account.

(2) All investments made by the investment board shall be made with the exercise of that degree of judgment and care pursuant to RCW 43.33A.140 and the investment policy established by the state investment board.

(3) As deemed appropriate by the investment board, money in the account may be commingled for investment with other funds subject to investment by the board.

(4) The authority to establish all policies relating to the account, other than the investment policies as set forth in subsections (1) through (3) of this section, resides with the governing body. With the exception of expenses of the investment board set forth in subsection (1) of this section, disbursements from the account shall be made only on the authorization of the governing body, and money in the account may be spent only for the purposes of the program as specified in this chapter.

(5) The investment board shall routinely consult and communicate with the governing body on the investment policy, earnings of the trust, and related needs of the program.

[ 2000 c 14 § 6; 1997 c 289 § 7.]

## **28B.95.080**

### **Washington advanced college tuition payment program account—Actuarial soundness—Adjustment of tuition credit purchases.**

The governing body shall annually evaluate, and cause to be evaluated by the state actuary, the soundness of the advanced college tuition payment program account and determine the additional assets needed, if any, to defray the obligations of the account. The governing body may, at its discretion, consult with a nationally recognized actuary for periodic assessments of the account.

If funds are determined by the governing body, based on actuarial analysis to be insufficient to ensure the actuarial soundness of the account, the governing body shall adjust the price of subsequent tuition credit purchases to ensure its soundness.

If there are insufficient numbers of new purchases to ensure the actuarial soundness of the account, the governing body shall request such funds from the legislature as are required to ensure the integrity of the program. Funds may be appropriated directly to the account or appropriated under the condition that they be repaid at a later date. The repayment shall be made at such time that the account is again determined to be actuarially sound.

[ 2016 c 69 § 10; 2011 1st sp.s. c 12 § 3; 1997 c 289 § 8.]

## **28B.95.085**

### **Washington college savings program account—Initial cash deficit.**

(1) The Washington college savings program account is created in the custody of the state treasurer. The account shall be a discrete nontreasury account retaining its interest earnings in accordance with RCW 43.79A.040.

(2) The governing body shall deposit in the account all moneys received for the program. The account shall be self-sustaining and consist of payments received for the purposes of college savings for the beneficiary. With the exception of investment and operating costs associated with the investment of money by a nonstate entity or paid under RCW 43.08.190, 43.33A.160, and 43.84.160, the account shall be credited with all investment income earned by the account. Disbursements from the account are exempt from appropriations and the allotment provisions of chapter 43.88 RCW. Money used for program administration is subject to the allotment of all expenditures. However, an appropriation is not required for such expenditures. Program administration includes, but is not limited to: The salaries and expenses of the Washington college savings program personnel including lease payments, travel, and goods and services necessary for program operation; contracts for Washington college savings program promotion and advertisement, audits, and account management; and other general costs of conducting the business of the Washington college savings program.

(3) The account is authorized to maintain a cash deficit in the account for a period no more than five fiscal years to defray its initial program administration costs. By December 31, 2017, the governing body shall establish a program administration spending plan and a fee schedule to discharge any projected cash deficit to the account. The legislature may make appropriations into the account for the purpose of reducing program administration costs.

(4) The assets of the account may be spent without appropriation for the purpose of making payments to institutions of higher education on behalf of the qualified beneficiaries, making refunds, transfers, or direct payments upon the termination of the Washington college savings program. Disbursements from the account shall be made only on the authorization of the governing body.

(5) With regard to the assets of the account, the state acts in a fiduciary, not ownership, capacity. Therefore the assets of the program are not considered state money, common cash, or revenue to the state.

[ 2016 c 69 § 9.]

## **28B.95.087**

### **Washington college savings program—Investment manager's authority— Owner's investment options—Reports—Legislative review of fees and expenses— Governing body's authority.**

(1) The investment manager has the full power to invest, reinvest, manage, contract, sell, or exchange investment money in the Washington college savings program without limitation as to the amount pursuant to RCW 43.84.150 and 43.33A.140. All investment and operating costs associated with the investment of money must be paid to the investment manager as allowed by RCW 43.33A.160 and 43.84.160. With the exception of these expenses and the administrative costs authorized in RCW 28B.95.032 and 28B.95.085, one hundred percent of all earnings from investments accrue directly to the owner of the individual college savings program account.

(2) The governing body may allow owners to self-direct the investment of moneys in individual college savings program accounts through the selection of investment options. The governing body may provide plans that it deems are in the interests of the owners and beneficiaries.

(a) The investment manager, after consultation with the governing body, shall provide a set of options for owners to choose from for investment of individual college savings program account contributions, including an age-based investment option.

(b) The investment manager has the full authority to invest moneys pursuant to the investment directions of the owner of a self-directed individual college savings program account.

(3) Annually on each December 1st, the committee shall report to the governor and the appropriate committees of the legislature regarding the total fees charged to each investment option offered in the Washington college savings program. It is the intent of the legislature that fees charged to the owner not exceed one-half of one percent for any investment option on an annual basis. Beginning January 1, 2018, fees charged to the owner may not exceed one-half of one percent for any investment option on an annual basis.

(4) In the next succeeding legislative session following receipt of a report required under subsection (3) of this section, the appropriate committees of the legislature shall review the report and consider whether any legislative action is necessary with respect to the investment option with fees that exceed one-half of one percent, including but not limited to consideration of whether any legislative action is necessary with respect to reducing the fees and expenses associated with the underlying investment option. With the exception of fees associated with the administration of the program authorized in RCW 28B.95.032 and 28B.95.085, all moneys in the college savings program account, all property and rights purchased with the account, and all income attributable to the account, shall be held in trust for the exclusive benefit of the owners and their eligible beneficiaries.

(5) All investments made by the investment manager shall be made with the exercise of that degree of judgment and care expressed in chapter 43.33A RCW.

(6) As deemed appropriate by the investment manager, money in the Washington college savings program account may be commingled for investment with other funds subject to investment by the investment manager.

(7) The authority to establish all policies relating to the Washington college savings program and the Washington college savings program account, other than investment policies resides with the governing body. With the exception of expenses of the investment manager as provided in subsection (1) of this section, disbursements from the Washington college savings program account shall be made only on the authorization of the governing body or its designee, and moneys in the account may be spent only for the purposes of the Washington college savings program as specified in this chapter.

(8) The investment manager shall routinely consult and communicate with the governing body on the investment policy, earnings of the trust, and related needs of the Washington college savings program.  
[ 2016 c 69 § 13.]

## **28B.95.090**

### **Advanced college tuition payment program—Discontinuation—Use of units—Refunds.**

(1) In the event that the legislature determines that the advanced college tuition payment program is not financially feasible, or for any other reason, the legislature may declare the discontinuance of the program. At the time of such declaration, the governing body will cease to accept any further tuition unit contracts or purchases.

(2) The remaining tuition units for all beneficiaries who have either enrolled in higher education or who are within four years of graduation from a secondary school shall be honored until such tuition units have been exhausted, or for ten fiscal years from the date that the program has been discontinued, whichever comes first. All other contract holders shall receive a refund equal to the value of the current tuition units in effect at the time that the program was declared discontinued.

(3) At the end of the ten-year period, any tuition units remaining unused by currently active beneficiaries enrolled in higher education shall be refunded at the value of the current tuition unit in effect at the end of that ten-year period.

(4) At the end of the ten-year period, all other funds remaining in the account not needed to make refunds or to pay for administrative costs shall be deposited to the state general fund.

(5) The governing body may make refunds under other exceptional circumstances as it deems fit, however, no tuition units may be honored after the end of the tenth fiscal year following the declaration of discontinuance of the program.

[ 2016 c 69 § 12; 2005 c 272 § 3; 1997 c 289 § 9.]

## **28B.95.092**

### **Advanced college tuition payment program—Reopening—Reinvigorating the program.**

The governing body shall begin and continue to accept applications for new tuition unit contracts and authorize the sale of new tuition units by July 1, 2017. Upon reopening the advanced college tuition payment program, in any year in which the total annual sale of tuition units is below five hundred thousand, the governing body shall determine how to reinvigorate the advanced college tuition payment program to incentivize Washingtonians to enter into tuition unit contracts and purchase tuition units.

[ 2016 c 69 § 11.]

## **28B.95.100**

### **Programs—Planning—Consultation with public and private entities—Cooperation.**

(1) The governing body, in planning and devising the advanced college tuition payment program and the Washington college savings program, shall consult with the investment board, the state treasurer, the office of financial management, and the institutions of higher education.

(2) The governing body may seek the assistance of the state agencies named in subsection (1) of this section, private financial institutions, and any other qualified party with experience in the areas of accounting, actuary, risk management, or investment management to assist with preparing an accounting of the programs and ensuring the fiscal soundness of the advanced college tuition payment program account and the Washington college savings program account.

(3) State agencies and public institutions of higher education shall fully cooperate with the governing body in matters relating to the programs in order to ensure the solvency of the advanced college tuition payment [program] account and the Washington college savings program account and ability of the governing body to meet outstanding commitments.

[ 2016 c 69 § 14; 2000 c 14 § 7; 1997 c 289 § 10.]

## **28B.95.110**

### **Washington advanced college tuition payment program—Refunds.**

(1) The intent of the Washington advanced college tuition payment program is to redeem tuition units for attendance at an institution of higher education. Refunds shall be issued under specific conditions that may include the following:

(a) Certification that the beneficiary, who is eighteen years of age or older, will not attend an institution of higher education, will result in a refund not to exceed the current value, as determined by the governing body, in effect at the time of such certification minus a penalty at the rate established by the governing body. The refund shall be made no sooner than ninety days after such certification, less any administrative processing fees assessed by the governing body;

(b) If there is certification of the death or disability of the beneficiary, the refund shall be equal to one hundred percent of any remaining unused tuition units at the current value, as determined by the governing body, at the time that such certification is submitted to the governing body, less any administrative processing fees assessed by the governing body;

(c) If there is certification by the student of graduation or program completion, the refund shall be as great as one hundred percent of any remaining unused tuition units at the current value, as determined by the governing body, at the time that such certification is submitted to the governing body, less any administrative processing fees assessed by the governing body. The governing body may, at its discretion, impose a penalty if needed to comply with federal tax rules;

(d) If there is certification of other tuition and fee scholarships, which will cover the cost of tuition for the eligible beneficiary. The refund shall be equal to one hundred percent of the current value of tuition units, as determined by the governing body, in effect at the time of the refund request, less any administrative processing fees assessed by the governing body. The refund under this subsection may not exceed the value of the scholarship;

(e) Incorrect or misleading information provided by the purchaser or beneficiaries may result in a refund of the purchaser's investment, less any administrative processing fees assessed by the governing body. The value of the refund will not exceed the actual dollar value of the purchaser's contributions; and

(f) The governing body may determine other circumstances qualifying for refunds of remaining unused tuition units and may determine the value of that refund.

(2) With the exception of subsection (1)(b), (e), and (f) of this section no refunds may be made before the units have been held for two years.

[ 2005 c 272 § 4; 2001 c 184 § 3; 2000 c 14 § 8; 1997 c 289 § 12.]

#### **NOTES:**

Effective date—2001 c 184 § 3: "Section 3 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2001." [ 2001 c 184 § 5.]

## **28B.95.115**

### **Washington college savings program—Refunds.**

The intent of the Washington college savings program is to make distributions from individual college savings program accounts for beneficiaries' attendance at public or private institutions of higher education. Federal penalties and taxes associated with 529 savings plan refunds may apply to any refund issued by the Washington college savings plan. Refunds shall be issued under specific conditions that may include the following:

(1) Certification that the beneficiary, who is eighteen years of age or older, will not attend a public or private institution of higher education, will result in a refund not to exceed the current value at the time of such certification. The refund shall be made no sooner than ninety days after such certification, less any administrative processing fees assessed by the governing body;

(2) If there is certification of the death or disability of the beneficiary, the refund shall be equal to one hundred percent of the current value at the time that such certification is submitted to the governing body, less any administrative processing fees assessed by the governing body;

(3) If there is certification by the student of graduation or program completion, the refund shall be as great as one hundred percent of the current value at the time that such certification is submitted to the governing body, less any administrative processing fees assessed by the governing body. The governing body may, at its discretion, impose a penalty if needed to comply with federal tax rules;

(4) If there is certification of other tuition and fee scholarships that will cover the cost of tuition for the eligible beneficiary, the refund may not exceed the value of the scholarship or scholarships, less any administrative processing fees assessed by the governing body;

(5) Incorrect or misleading information provided by the purchaser or beneficiaries may result in a refund of the purchaser's and contributors' contributions, less any administrative processing fees assessed by the governing body. The value of the refund must not exceed the actual dollar value of the purchaser's or contributors' contributions; and

(6) The governing body may determine other circumstances qualifying for refunds of remaining unused participant Washington college savings program account balances and may determine the value of that refund.

[ 2016 c 69 § 15.]

#### **28B.95.120**

##### **Tuition units exempt from bankruptcy and enforcement of judgments.**

In regard to bankruptcy filings and enforcement of judgments under Title 6 RCW, tuition units purchased more than two years prior to the date of filing or judgment will be considered excluded personal assets.

[ 2005 c 272 § 5.]

#### **28B.95.125**

##### **Washington college savings program account deposits—Effect of bankruptcy filings and enforcement of judgments.**

With regard to bankruptcy filings and enforcement of judgments under Title 6 RCW, participant Washington college savings program account deposits made more than two years before the date of filing or judgment are considered excluded personal assets.

[ 2016 c 69 § 16.]

#### **28B.95.150**

##### **College savings program—Authorization and parameters.**

(1) The committee may establish a college savings program. If such a program is established, the college savings program shall be established, in such form as may be determined by the committee, to be a qualified state tuition program as defined by the internal revenue service under section 529 of the internal revenue code, and shall be administered in a manner consistent with the Washington advanced college tuition payment program. The committee, in planning and devising the program, shall consult with the state investment board, the state treasurer, the state actuary,

the legislative fiscal and higher education committees, and the institutions of higher education. The governing body may, at its discretion, consult with a qualified actuarial consulting firm with appropriate expertise to evaluate such plans for periodic assessments of the program.

(2) Up to two hundred thousand dollars of administrative fees collected from guaranteed education tuition program participants may be applied as a loan to fund the development and startup of a college savings program. This loan must be repaid with interest before the conclusion of the biennium following the biennium in which the committee draws funds for this purpose from the advanced college tuition payment program account.

(3) The committee, after consultation with the state investment board or other contracted investment manager, shall determine the investment policies for the college savings program. Program contributions may be invested by the state investment board, in which case it and not the committee shall determine the investment policies for the college savings program, or the committee may contract with an investment company licensed to conduct business in this state to do the investing. The committee shall keep or cause to be kept full and adequate accounts and records of the assets of each individual participant in the college savings program.

(4)(a) The governing body may elect to have the state investment board serve as investment manager for the funds in the college savings program. Members of the state investment board and its officers and employees are not considered an insurer of the funds or assets and are not liable for any action or inaction.

(b) Members of the state investment board and its officers and employees are not liable to the state, to the fund, or to any other person as a result of their activities as members, whether ministerial or discretionary, except for willful dishonesty or intentional violations of law. The state investment board in its discretion may purchase liability insurance for members.

(c) If selected by the governing body to be the investment manager, the state investment board retains all authority to establish all investment policies relating to the investment of college savings program moneys.

(d) The state investment board shall routinely consult and communicate with the committee on the investment policy, earnings of the accounts, and related needs of the college savings program.

(5) The owner has exclusive authority and responsibility to establish and change the asset allocation for an individual participant college savings program account.

(6) Neither the state nor any eligible educational institution may be considered or held to be an insurer of the funds or assets of the individual participant accounts in the college savings program created under this section nor may any such entity be held liable for any shortage of funds in the event that balances in the individual participant accounts are insufficient to meet the educational expenses of the institution chosen by the student for which the individual participant account was intended.

(7) The committee shall adopt rules to implement this section. Such rules shall include but not be limited to administration, investment management, recordkeeping, promotion, and marketing; compliance with internal revenue service standards and applicable securities regulations; application procedures and fees; start-up costs; phasing in the savings program and withdrawals therefrom; deterrents to early withdrawals and provisions for hardship withdrawals; and reenrollment in the savings program after withdrawal.

(8) The committee may, at its discretion, determine to cease operation of the college savings program if it determines the continuation is not in the best interest of the state. The committee shall adopt rules to implement this section addressing the orderly distribution of assets.

[ 2016 c 69 § 17; 2012 c 198 § 16; 2011 1st sp.s. c 12 § 4; 2001 c 184 § 2.]

NOTES:

Effective date—2012 c 198: See note following RCW 70.94.6532.

## **28B.95.160**

### **GET ready for math and science scholarship program—Tuition units—Ownership and redemption.**

Ownership of tuition units purchased by the office for the GET ready for math and science scholarship program under RCW 28B.105.070 shall be in the name of the state of Washington and may be redeemed by the state of Washington on behalf of recipients of GET ready for math and science scholarship program scholarships for tuition and fees except that during the 2013-2015 fiscal biennium any unused tuition units may be used for the college bound scholarship program established in chapter 28B.118 RCW.

[ 2013 2nd sp.s. c 4 § 962; 2011 1st sp.s. c 11 § 173; 2007 c 214 § 12.]

#### **NOTES:**

Effective dates—2013 2nd sp.s. c 4: See note following RCW 2.68.020.

Effective date—2011 1st sp.s. c 11 §§ 101-103, 106-202, 204-244, and 301: See note following RCW 28B.76.020.

Intent—2011 1st sp.s. c 11: See note following RCW 28B.76.020.

## **28B.95.170**

### **Legislative advisory committee.**

(1)(a) A legislative advisory committee to the committee on advanced tuition payment is established. The advisory committee shall consist of the following members:

(i) Two members from each of the two largest caucuses of the house of representatives appointed by the speaker of the house of representatives. At least one member from each caucus shall be a member of the house of representatives ways and means committee and at least one member from each caucus shall be a member of the house of representatives higher education committee; and

(ii) Two members from each of the two largest caucuses of the senate appointed by the president of the senate. At least one member from each caucus shall be a member of the senate ways and means committee and at least one member from each caucus shall be a member of the senate higher education and workforce development committee.

(b) All members must be appointed by June 30, 2011, and must serve a term of no less than two years.

(c) Vacancies on the advisory committee shall be filled by appointment by either the president of the senate or the speaker of the house of representatives. All such vacancies shall be filled from the same political party and from the same house as the member whose seat was vacated.

(d) The members of the advisory committee shall serve without additional compensation, but shall be reimbursed in accordance with RCW 44.04.120 while attending meetings of the advisory committee and of the committee on advanced tuition payment.

(e) The advisory committee shall appoint its own chair and vice chair and shall meet at least once annually.

(2) The advisory committee shall provide advice to the committee on advanced tuition payment and the state actuary regarding the administration of the program including, but not limited to, pricing guidelines, the tuition unit price, and the unit payout value.

(3) Staff support for the advisory committee must be jointly provided by the senate committee services and the house of representatives office of program research.

[ 2011 1st sp.s. c 12 § 6.]

NOTES:

Effective date—2011 1st sp.s. c 12 §§ 1 and 6: "Sections \*1 and 6 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect immediately [June 6, 2011]." [ 2011 1st sp.s. c 12 § 8.]

\*Reviser's note: Section 1 of this act was vetoed.

**28B.95.900**

**Construction of chapter—Limitations.**

This chapter shall not be construed as a promise that any beneficiary shall be granted admission to any institution of higher education, will earn any specific or minimum number of academic credits, or will graduate from any such institution. In addition, this chapter shall not be construed as a promise of either course or program availability.

Participation in the advanced college tuition payment program or the Washington college savings program does not guarantee an eligible beneficiary the right to resident tuition and fees. To qualify for resident and respective tuition subsidies, the eligible beneficiary must meet the applicable provisions of RCW 28B.15.011 through 28B.15.015.

This chapter shall not be construed to imply that the redemption of tuition units in the advanced college tuition payment program shall be equal to any value greater than the undergraduate tuition and services and activities fees at a state institution of higher education as computed under this chapter. Eligible beneficiaries will be responsible for payment of any other fee that does not qualify as a services and activities fee including, but not limited to, any expenses for tuition surcharges, tuition overload fees, laboratory fees, equipment fees, book fees, rental fees, room and board charges, or fines.

[ 2016 c 69 § 18; 1997 c 289 § 11.]