

**CONTRACT
BETWEEN THE STATE OF TENNESSEE,
DEPARTMENT OF TREASURY
AND
ENVISION FINANCIAL SYSTEMS, INC.**

This Contract, by and between the State of Tennessee, Department of Treasury, hereinafter referred to as the "State", and Envision Financial Systems, Inc., hereinafter referred to as the "Contractor," is for the provision of recordkeeping software systems known as PowerAgent and PAWeb to enable the State to administer its 529 College Savings Plan, and for the provision of associated maintenance, repair updates (e.g. bug fixes), storage, disaster recovery, and the remote access and hosting of such software system applications, as further defined in the "SCOPE OF SERVICES."

The Contractor is for-profit corporation.
Contractor Place of Incorporation or Organization: California
Contractor Edison Registration ID #

A. SCOPE OF SERVICES:

A.1. The Contractor shall provide all service and deliverables as required, described, and detailed herein and shall meet all service and delivery timelines as specified by this Contract.

A.2. Software Access and Licenses.

a. PowerAgent Software.

1. Description. The Contractor is the owner of the PowerAgent software which will enable the State to administer its 529 College Savings Plan (hereinafter referred to as the "Plan") by performing subsidiary accounting of Plan participant accounts, accepting deposits from and making withdrawals to Plan participants and their respective beneficiaries, the daily processing of trades with Plan investment providers and transfer agents, and providing its standard data extracts for the State to issue Plan participant statements and tax forms, including, but not limited to, 1099Qs. The State is responsible for issuing, or having issued on its behalf, these documents.
2. Access to Software. The Contractor agrees to provide the State on-line computer access to its PowerAgent software in the manner described in subsection c below

b. PAWeb Software.

1. Description. The Contractor is the owner of the PAWeb software, which is a configurable real-time internet portal that will allow Plan participants to inquire, transact and maintain their accounts such as making beneficiary and address changes.
2. Access to Software. The Contractor agrees to provide the State on-line computer access to its PAWeb software in the manner as described in subsection c below.

c. Host System. The PowerAgent software and PAWeb software (collectively the "Software") shall be accessed via the shared host computer system (as updated and modified) maintained and operated by or on behalf of the Contractor (the "Host System"). The Software will not be physically delivered to the State or installed on any system of the State. The Software and the Host System are collectively referred to as the "System", and access and use of the System shall be a "Service" provided by the Contractor. The Software shall be accessible to the State through the Host System via a secure Internet connection supplied to the State by the Contractor. The System shall be accessible by the State twenty-four (24) hours a day, three hundred sixty-five (365) days a year, except for reasonable down time for System upgrades, back-up and maintenance. The System includes providing the State 1 CPU, 2 GB of RAM; 50 GB of RAID-5 Operating System/ Application Storage; and 200 GB of

RAID-5 file/ data storage. The Contractor shall provide such additional file/data storage and RAM in excess of those amounts as may be requested by the State for the fee described in Section C.3.b(8) and (9). In the event the software is not accessible, the Contractor shall initiate System resolution pursuant to Section A.3.b below. The network shall support concurrent access to as many users on the State's network as the State determines. Each such user shall have a separate identification number and dedicated password. The State assumes sole responsibility for the security and integrity of its Internet service and wireless connections, its hardware, and all data and information transmitted to, from, or through the System. The State agrees to provide such security as the State deems necessary to prevent any unauthorized use of the System, including without limitation by implementing a user password policy to restrict access to the System. The State acknowledges that it is responsible for damages resulting from breaches of its security policies. The State represents and warrants that it has examined and tested the internal systems that it has developed to support the services outlined in this Contract and, as of the date of this Contract, has no knowledge of any situation or circumstance that will inhibit the State's ability to use the Software, related website and the Host System in accordance with this Contract. The State shall take all appropriate action with its employees and agents whether by instruction, agreement, or otherwise, to ensure the protection, confidentiality and security of the System, including all associated passwords.

The Contractor may change the Host System environment or providers at any time, and the State shall reasonably cooperate with such change (including without limitation with any related changes such as using a new website address for access).

- d. Grant of Licenses. Upon the Contractor's providing the State access to the above System, the Contractor agrees the State shall have a nontransferable and nonexclusive right, revocable in accordance with the terms herein, to use the System solely in connection with the internal operation of the State's business as described in Sections A.2.a and A.2.b above. The State acknowledges that the licenses to use the System granted herein transfers no title or right to the System other than the right to use the System as provided herein, and the State may not sell, transfer, copy, modify, translate, convert to another programming language, decompile or disassemble the System for any purpose. This shall not preclude the State's use of specific items of information directly relating to particular transactions or particular advisory or management situations occurring in the normal conduct of the State's business, so long as the State does not make any general reproduction or dissemination of data furnished by the Contractor, by electronic or other means.
- e. Use of PowerAgent Software. The PowerAgent software and its associated license shall be used only by employees (including temporary employees) and Authorized Consultants (as hereinafter defined) of the State, and by such other third parties as are specifically approved in advance and in writing by the Contractor (hereinafter collectively referred to as "Authorized Users"). When used herein, the term "Authorized Consultants" shall mean those third parties retained by the State (i) to assist the State in integrating the software and/or its associated services into existing operations of the State, and/or (ii) to develop processes around the operations of the State so as to maximize the utility of the Software and/or Services, where such retention is for the benefit of the State and any and all materials generated as a result of such engagement which include any Confidential Information of the Contractor as defined in Section E.5 below will be maintained in confidence by the State in accordance with the provisions of Section E.5 hereof; provided, however, that the term Authorized Consultants shall specifically exclude any direct competitor of the Contractor (which shall be construed to include a provider of transfer agency recordkeeping systems or services). Except as otherwise provided in this subsection, use of the PowerAgent software on processors accessible through the Internet, communications, networks, and devices not on premises owned or controlled by the State (including use by Authorized Users working from remote locations not owned or controlled by the State) shall be permissible to the extent that access is provided via a virtual private network or other secured access method for normal day-to-day business purposes, including database maintenance. Persons that are not Authorized Users of the State are expressly prohibited from using the PowerAgent software.

- f. Use of PAWeb Software. The PAWeb software and its associated license shall be used only by Plan participants and their respective beneficiaries, and Authorized Users as defined in Section A.2.e above . The State shall use its best efforts to ensure that those to whom it grants access to the System ("Users"): (i) solely access and use the System in the manner intended by, and for purposes permitted under, this Contract; (ii) comply with all security and authorization procedures for access and use of the System provided to the State in writing in advance; and (iii) comply with all of the applicable restrictions on the State herein. The State shall be responsible for all access, and use of Users of the System through the State. The State may not operate or access the PAWeb software except on the Host System platform. In no way may the State download or attempt to download the PAWeb software, or access or attempt to access the System source code. The State shall use its best efforts to prevent an Authorized User from sharing such User's password with other Authorized or unauthorized Users.
- g. Application Interface. It is expressly understood and agreed that notwithstanding anything to the contrary contained in this Contract, the State can only "write to" the database created with the Software by utilizing the Contractor's application interface or the Contractor's Web products. Further, it is expressly understood and agreed that the State can only integrate with other applications by utilizing the Contractor's application interface.
- h. Application to Updates or Revisions to Software. This Contract applies to updates or revisions to the original Software provided by the Contractor, unless the Contractor provides additional or new terms along with the update or supplement, in which case such additional or new terms shall apply to such update or supplement, provided that such additional or new terms are specifically agreed to in writing by the State through an amendment to this Contract as provided in Section D.2 below. Provided, however, if the State and the Contractor are unable to agree on such additional or new terms applicable to said update or supplement, the State shall be prohibited from using the update or supplement.
- i. Observation of System Use. The State acknowledges and agrees that the Contractor may conduct periodic reviews of the State's use of the System. The State further acknowledges that the Contractor will investigate all legitimate reports of abuse or misuse of the System by the State or others. The State agrees to cooperate fully with any and all such investigations.

A.3. Maintenance; Problem Resolution; and Consulting Services.

- a. Maintenance. The Contractor shall maintain the System and shall furnish to the State the following support and services in addition to those specified above:
 - (1) Incorporate any improvements, enhancements and new releases of the System developed by the Contractor that are generally made available to other licensees of the System along with explanatory reference documentation. Documentation of the existing System shall be changed as the Contractor deems necessary for purposes of removing errors, providing consistency of interpretation and/or documenting improvements. All such improvements, enhancements and new releases shall be considered part of the System.
 - (2) Provide to the State updates to any portions of the System released at no cost to the Contractor by other software suppliers. Such updates shall be tested by the Contractor prior to furnishing the same to the State.
 - (3) Make changes to the System to address Federal regulations, rules, statutes and court interpretations thereof involving 529 college savings plans at the Contractor's discretion. If the Contractor elects not to make such a change, the State may terminate this Contract (i) if such change to the System is needed in order for the Plan to conform to Federal regulations, rules, statutes and court interpretations thereof involving 529 college savings plans and (ii) if no other commercially reasonable alternative is available to the State that

costs less than 150% of the then current monthly Software Access and License Fees described in Section C.3.b(1) and (2). If the Contractor elects to make any such change, the Contractor shall determine in its reasonable discretion whether such a change to the Software constitutes an update or revision as described in Section A.2.h above, or whether such a change constitutes a subsequent version of the Software as to require the State's payment of additional fees to the Contractor in accordance with the change order procedures prescribed in Section A.4 of this Contract below. If the Contractor determines that any such change constitutes a subsequent version of the Software as to require the State's payment of additional fees, the State may terminate the Contract (i) if the State needs the functionality offered by the subsequent version in order for the Plan to conform to Federal regulations, rules, statutes and court interpretations thereof involving 529 college savings plans, (ii) if such fee will result in a 150% increase from the then current monthly Software Access and License Fees described in Section C.3.b(1) and (2), and (iii) if no other commercially reasonable alternative is available that costs less than 150% of the then current monthly Software Access and License Fees described in Section C.3.b(1) and (2). Any termination by the State pursuant to this subparagraph (3) shall not be deemed a breach of contract by the State. The State shall give the Contractor at least thirty (30) days written notice before the effective termination date. The Contractor shall be entitled to compensation for satisfactory, authorized services completed as of the termination date, but in no event shall the State be liable to the Contractor for compensation for any service which has not been rendered.

- (4) Provide access to the Contractor's online support documentation.
 - (5) Diagnose, verify and correct errors, malfunctions and defects in the System. However, if such System errors or malfunctions are a direct result of either an act or omission by the State or of any act or event beyond the control of the Contractor, the State shall pay the Contractor for its services rendered in analyzing the error or malfunction in accordance with Section A.4 of this Contract. At the State's request, the Contractor shall correct any System error or malfunction caused by the State or by the act or event beyond the control of the Contractor and, upon correction of the error or malfunction, the State shall pay the Contractor for such services in accordance with the change order procedures prescribed in Section A.4 of this Contract below.
- b. Problem Resolution. The Contractor shall provide to the State off-site network problem reporting and resolution each business day from 8:00 a.m., Eastern Time, through 8:00 p.m., Eastern Time. The Contractor shall also provide the capability to accept problem reports during those times when the Contractor's problem resolution staff is not available. When an issue is experienced, the State must have individuals experienced in the operation of the Software to take steps to attempt to recreate the issue as a means of validating and documenting its authenticity. As soon as an issue is recreated and validated, it should be communicated to the Contractor by e-mail. The State shall submit to the Contractor a listing of output and all such other data which the Contractor reasonably may request in order to reproduce operating conditions similar to those present when the error or defect unreasonably degrades System performance.
- c. Consulting. The Contractor shall provide to the State off-site telephone support in the form of consultation, assistance and advice on the use and maintenance of the System. The Contractor and the State shall from time to time designate a telephone number for a Maintenance and Consulting Contact Point. Except for those days on which the New York Stock Exchange is closed, the State shall have the right to call such telephone number for assistance with the use or maintenance of the System from 8:00 a.m., Eastern Time, until 8:00 p.m., Eastern Time, Monday through Friday.
- d. Telephone and Problem Resolution Contacts. The State shall designate from time to time one person who shall be responsible for coordinating requests for services under this Contract. When appropriate, the Contractor shall work with other State personnel to explain the System and solve problems. The Contractor shall provide the State with consulting

contact information. Such information shall include the respective customer support telephone number, telefax number, street address and e-mail address.

A.4. Change Orders.

- a. Scope. Notwithstanding Section D.2 of this Contract, the State may at any time, with written notice to the Contractor, request changes to the System that involve System customization for State specific tasks, development of custom System reports, and modifying System functions and workflow. Any correction of reported System deficiencies and any capabilities required in this Contract are the Contractor's responsibility to resolve based upon the Contractor's prioritization of its business impact as follows:

Category	Description	Resolution Expectations **
Category 1: Critical – System Failure.	This is the most critical of the severity designations. This severity is reserved for those defects that cause the entire application to shut down or become inaccessible to the State and Plan participant users. There is no work around for such an occurrence.	Issue will be immediately escalated and assigned to the best available resources. Efforts will continue on a continual basis until a solution is provided. Updates will be provided throughout the day.
Category 2: Major – This severity is used when the defect is severe, but is not so severe as to completely shut down or lock up the entire application.	This severity refers to a critical function of the application that does not function properly. This type of defect could lead to the failure to do business, the possibility of doing business incorrectly, or exposing the State to significant errors. System issues that result in privacy breaches or material non-compliance with SEC, IRS, FINRA, MSRB, or other governing agency rules also fall into this category.	(i) Immediate, direct impact for which no work-around exists will be given a high priority. Efforts will continue on a continual basis until a solution is provided. Updates will be provided daily. (ii) Changes for next cycle, or problems as to which workarounds exist, will be assigned a high priority but scheduled for delivery before business impact. Workarounds will be utilized during continuation of problem and until delivery of a solution.
Category 3 – Minimal Impact	No production system outage, material non-compliance with applicable laws, rules or regulations or significant financial loss likely.	Issue will be prioritized against other reported issues. Short term workaround will be provided where possible. Detailed investigation and estimated resolution date will be provided within 5 business days. Updates will be provided as needed.
Category 4 – Manageable Operational Impact	Reported issues which have been reproduced and do not prevent daily processing from completing, do not have any material impact on the State's use of the System.	Issues will be logged and tracked via the internal systems and reviewed for prioritization and delivery within a future release.

*** The resolution expectations are the goals that the Contractor will make best efforts to strive for at all times. The State realizes that, despite the Contractor's best efforts, these resolution targets may not be achieved at times for intervening reasons that are out of the Contractor's reasonable control.*

Any correction of reported System deficiencies and any capabilities required in this Contract will be provided without charge to the State, provided such deficiencies were not as a result of the State's errors. If the problem requiring the change is due to System deficiencies or any capabilities required in this Contract not as a result of the State's errors, any investigation necessary to determine the source of the problem shall be the responsibility of the

Contractor. Otherwise, such investigation shall be charged to the State in accordance with subsections b or c of this Section below. If the Contractor intends to bill the State for any service requested by the State under this Section A.4, the Contractor shall provide the State with a proposal. In no event more than five (5) business days after receipt of a written request from the State, the Contractor shall respond with a high level estimate of the cost to complete the State's request. If based upon this estimate, the State requests a detailed written proposal for completing the service, the State represents it has the budget available and authorization to approve the proposal. In the event the State neglects to move forward with implementing the proposed solution, the State agrees to reimburse the Contractor for its time in preparing the proposal, which time and associated cost shall be disclosed in the high level estimate. Said proposal must specify:

- (1) the effect, if any, of implementing the requested service on all other services required under this Contract;
- (2) any specific effort involved in completing the service;
- (3) the expected schedule for completing the service;
- (4) the maximum number of person hours required for the service; and
- (5) the maximum cost for the service, PROVIDED THAT such maximum cost shall not exceed the product of the person hours required multiplied by the appropriate payment rate proposed for the service assuming no changes in the scope of the service. If the State requests changes in the scope of the service, then the change will require an additional proposal as outlined in this Section A.4.a.

The Contractor shall not perform any such service until the State has approved the proposal. If approved, the State will sign the proposal, and it shall constitute a Memorandum of Understanding (MOU) between the Contract Parties pertaining to the specified service and shall be incorporated, hereby, as a part of this Contract.

- b. Performance — Subsequent to State approval of an MOU, the Contractor shall complete the required service in accordance with the MOU. The State will be the sole judge of the acceptable completion of the work requirements outlined in the MOU and, upon such determination, shall provide the Contractor written approval of the work. The State shall have fourteen (14) days from the date of receipt of each deliverable or service (initial and subsequent in the event the State provides a defect notice) to accept its capacity, performance and completeness of the work or deliverable or to notify the Contractor of any defect. If the State does not give the Contractor written notice of acceptance or rejection of the work or deliverable within fourteen (14) business days after completion of the work or receipt of the deliverable, the State shall be deemed to have accepted the work. Any changes to the work that are requested subsequent to this fourteen (14) day period will require an additional proposal as outlined in Section A.4.a.
- c. Remuneration — The State will remunerate the Contractor only for acceptable work which is the State's acceptance of the MOU deliverable as outlined in Section A.4.a above. All acceptable work performed pursuant to an approved MOU, without a formal amendment of this Contract, shall be remunerated in accordance with and further limited by Section C.3.d. below, PROVIDED THAT, the State shall be liable to the Contractor only for the cost of the actual person hours worked to complete the work required by the MOU, not to exceed the maximum cost for the service detailed in the MOU. In no instance shall the State be liable to the Contractor for the cost of any person hours worked in excess of the maximum person hours indicated in or of any amount exceeding the maximum cost specified by the approved MOU authorizing the service. Upon State approval of the work, the Contractor shall invoice the State in accordance with the relevant provisions of this Contract.

- A.5 Training and Operations Manual Services. At the State's request, the Contractor shall provide to the State, at the State's facilities in Nashville, Tennessee, four (4) days of on-site System training for State user and operations staff. The Contractor shall further establish an on-going capability for training new users by providing the State access to the System User's Guide.
- A.6. Business Continuity/Disaster Recovery. The Contractor shall adhere to the following service level agreements ("SLAs") for business continuity and disaster recovery of the PowerAgent and PAWeb applications:
- a. Availability — Except for scheduled maintenance and the State's infrastructure provider outages, the application access will be available 99.99% of the time. The availability excludes any time the service is unavailable due to the State's internet provider being unable to deliver its services.
 - b. Recovery Time Objective (RTO) — The application will be recovered within four (4) hours at the primary data center and within one (1) day at the backup data center.
 - c. Recovery Point Objective (RPO) — A tier 1 (Data backup with no Hot Site) will be supported. No more than fifteen (15) minutes of data will be lost at the primary data center and no more than one (1) day at the backup data center.

The Contractor shall maintain a disaster recovery plan that supports the business continuity and disaster recovery SLAs. Said plan and all updates shall be provided to the State, and shall be in substantially the same form as shall be mutually agreed to by the parties. In the event that any material change to the form of the plan is proposed by the Contractor, the Contractor shall so advise the State in writing. For the purposes of this Paragraph, "material change" shall include, but shall not be limited to, the time required for restoration of services or in the location of the backup site. The Contractor shall provide notification of an incident to both the Director of the Baccalaureate Education System Trust and to the State's Information Systems Operations Group within two (2) hours after the beginning of operation of the Contractor's Emergency Operations Command Post.

- A.7. Off-Site Back-Up. The Contractor shall back-up the State's data nightly to an off-site location as shall be mutually agreed to by the parties. This shall be in addition to the Contractor's own business continuity/disaster recovery processes.
- A.8. MicroSoft SQL Service Standard. The Contractor shall provide and license to the State the MicroSoft SQL Service Standard to enable the State to utilize the System.
- A.9. Implementation of Host Environment. The Contractor and the State shall take all necessary steps to implement the host environment.
- A.10 PAWeb Implementation or Configuration Training. At the State's request, the Contractor shall either:
- (a) Implementation. Take all necessary steps to configure and implement the PAWeb software on behalf of the State, or
 - (b) Configuration Training. Provide to the State, at the State's facilities in Nashville, Tennessee, two (2) days of on-site training to familiarize State staff with the configuration files and settings to enable the State to configure and implement the PAWeb software. Such configuration training shall be subject to the fees in Section C.3 (b)7 and C.4. The Contractor shall further provide to the State access to the PAWeb product documentation to assist the State in the configuration and implementation of the software.
- A.11 IS Security Certification and Accreditation. The State shall receive the results of any security audits that are performed by a third-party on behalf of the Contractor or its sub-contractors that

are pertinent to the PAWeb and PowerAgent hosted applications provided that the Contractor or its sub-contractors may redact any information that may lead to the identity of other customers of the Contractor or its sub-contractors. The State may request that a third-party conduct a security audit of the applications according to the Federal Government program and guidelines (NIST Special Publication 800-37, Guide for the Security Certification and Accreditation of Federal Information Systems). The cost of that effort (if undertaken) will be the responsibility of the State. However, should that effort result in errors or findings, it is the Contractor's responsibility to research and fix such items at the Contractor's discretion, provided that if a significant security flaw is identified, the Contractor shall be responsible for researching and fixing such flaw.

A.12 Restrictions on Use. The State's use of the Software shall be only in accordance with the terms of this Contract and the State specifically agrees NOT to (a) remove, obscure, or deface, from any part of the Software any notice of proprietary rights or any disclaimer, (b) sell, license, sub-license, rent, provide commercial hosting, service bureau or application service provider services, or otherwise transfer the Software or the license, (c) copy the Software in whole or in part, except for as provided in this Contract, (d) create any computer program that is, in whole or in part, a functional equivalent of the Software, without first notifying the Contractor in writing, (e) modify the Software, merge it with other software or documentation or create derivative works based on it in whole or in part.

A.13 Use of the Software. The State is responsible for the supervision, management and control of the use of the Software, including, but not limited to: (i) selection of the Software to achieve the intended results; (ii) determining the appropriate uses of the Software in the State's business; (iii) establishing adequate procedures for testing the Software, which is independent of the Contractor's own testing of the Software; (iv) selecting, procuring, installing, operating, and maintaining computer hardware to access the Software; and (v) ensuring the accuracy of any input data used with the Software. Subitem (iii) shall not relieve the Contractor from its obligations to test the System and any associated updates or subsequent versions of the System prior to furnishing the same to the State.

B. CONTRACT PERIOD:

This Contract shall be effective for the period beginning June 1, 2012, and ending May 31, 2017. The Contractor hereby acknowledges and affirms that the State shall have no obligation for services rendered by the Contractor which were not performed within this specified contract period.

C. PAYMENT TERMS AND CONDITIONS:

C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed two million one hundred fifty-four thousand three hundred ninety-seven dollars and no cents (\$2,154,397). The payment rates in Section C.3 and the Travel Compensation provided in Section C.4 shall constitute the entire compensation due the Contractor for all service and Contractor obligations hereunder regardless of the difficulty, materials or equipment required. The payment rates include, but are not limited to, all applicable taxes, fees, overheads, and all other direct and indirect costs incurred or to be incurred by the Contractor except for the expenses set forth in Section C.5 below.

The Contractor is not entitled to be paid the maximum liability for any period under the Contract or any extensions of the Contract for work not requested by the State. The Contractor may cease providing services and immediately terminate the Contract if the maximum liability for the performance of Services by the Contractor is achieved and additional funds for continued payment of the Contractor's Services is not approved. The maximum liability represents available funds for payment to the Contractor and does not guarantee payment of any such funds to the Contractor under this Contract unless the State requests work and the Contractor performs said work. In which case, the Contractor shall be paid in accordance with the payment rates detailed in section C.3. The State is under no obligation to request work from the Contractor in any

specific dollar amounts or to request any work at all from the Contractor during any period of this Contract.

C.2. Compensation Firm. The payment rates and the maximum liability of the State under this Contract are firm for the duration of the Contract and are not subject to escalation for any reason unless amended.

C.3. Payment Methodology. The Contractor shall be compensated based on the payment rates herein for units of service authorized by the State in a total amount not to exceed the Contract Maximum Liability established in Section C.1. The Contractor's compensation for service items (1) – (4) and service item (5) of Section C.3.b below shall commence once the Training and Operations Manual Services as described in Section A.5 above are completed and the System is available for the State's use in enrolling participants in the Plan. All other compensation shall be payable upon the Contractor's satisfactory completion of the respective service for which the compensation relates.

a. The Contractor's compensation shall be contingent upon the satisfactory completion of units, milestones, or increments of service defined in Section A.

b. The Contractor shall be compensated for said units, milestones, or increments of service based upon the following payment rates:

Service Description	Amount (per compensable increment)
(1) Software Access and License for the PowerAgent Software as described in Section A.2.a above, including the NSCC Fund/SERV and Networking access for active accounts	0 – 25,000 sub-accounts - \$5.00 per sub-account 25,001 – 50,000 sub-accounts - \$4.50 per sub-account 50,001 – 75,000 sub-accounts - \$4.00 per sub-account Over 75,000 sub-accounts - \$3.50 per sub-account <i>OR the following minimum fee, whichever is greater:</i> Contract Year One - \$1,666.67 per month Contract Year Two - \$2,500 per month Contract Years Three – Five - \$3,333.33 per month
(2) Software Access and License for the PAWeb Software as described in Section A.2.b above	\$1,500 per month
(3) Training and Operations Manual Services as described in Section A.5 above	\$1,125 per day
(4) PowerAgent and PAWeb Hosting Fees (a) Production & Disaster Recovery PowerAgent as described in Sections A.2.c and A.6 above (b) Production & Disaster Recovery for PAWeb as described in Sections A.2.c and A.6 above (c) Remote Desktop Access for the first 10 PowerAgent users of the System as described in Section A.2 above (d) Remote Desktop Access for each PowerAgent user of the System over 10 as described in Section A.2 above (e) MicroSoft SQL Server Standard as described in Section	\$500 per month \$500 per month \$500 per month \$50 per user per month \$18 per PowerAgent user per month

(5) Off-Site Back-Up Services as described in Section A.7 above	\$2.00 per GB per month
(6) Implementation of Host Environment as described in Section A.9 above	\$5,000 one-time charge
(7) Implementation of PAWeb as described in Section A.10 above	Implementation: \$250 per man hour Configuration Training: \$1,440 per man day
(8) File/ Data storage in excess of 200 GB (a) +50 GB File/Data Storage - 7500 RPM SATA Storage; RAID-6 as described in Section A.2.c	\$40 per month
(9) Additional RAM in excess of 2 GB as described in Section A.2.c: (a) +1 GB RAM (to 1C, 2C, 4C Servers) (b) +2 GB RAM (to 6C Server)	\$75 Per Month \$100 Per Month

A sub-account is defined as each mutual fund position held by a specific investor.

For example, if the number of active sub-accounts is 50,000, the sub-account Use Fee shall be $(25,000 * \$5.00) + (25,000 * \$4.50)$ for a total of \$237,500. The monthly billing will be \$19,751.67. Average cost per sub account in this example is \$4.75 per account.

Account Definitions:

- An "active" or "open" account is an account position which has shares and is billed at the full per-account rate.
- An "active" or "open" sub-account also represents a single shareholder's zero balance position in a single mutual fund but was active at some time during the taxable year timeframe. After the 5498 reporting is completed an "open account" will become a "closed account." These sub-accounts are required to support the annual tax processing and will continue to be billed as an open account for the tax period.
- c. A "day" for purposes of Section C.3.b above shall be defined as a minimum of eight (8) hours of service. If the Contractor provides fewer than eight hours of service in a standard twenty-four hour day, the Contractor shall bill *pro rata* for only those portions of the day in which service was actually delivered. The Contractor shall not bill more than the daily rate even if the Contractor works more than eight hours in a day.
- d. The Software Access and License fees set forth in Sections C.3.b(1) and C.3.b(2) (except for the minimum fees described in Section C.3.b(1)) for each successive year after the first year of the Contract shall be a sum equal to such fees for the immediately preceding calendar year plus a percentage increase of three percent (3%) or the percentage increase in the Consumer Price Index for All Urban Consumers (CPI-U): U.S. city average, All Items expenditure category, not seasonally adjusted, index base period: 1982-84=100) published by the United States Department of Labor, Bureau of Labor Statistics published for the month of adjustment over the CPI published for the first month of the previous year of the contract term, whichever is higher. For measurement of the CPI increase, the month of adjustment shall be the month of the anniversary of the effective date of this Contract.
- e. The Contractor shall be compensated for change order services requested and performed pursuant to Contract Section A.3, without a formal amendment of this Contract based upon the payment rates detailed in the schedule below and as agreed pursuant to said Section A.3, PROVIDED THAT compensation to the Contractor for such services shall not exceed \$6,500 or seven percent (7%) of the sum of the payment rates detailed in Section C.3.b (1) – (6) above, whichever is greater. If, at any point during the Contract period, the State determines that the cost of such change order services would exceed said maximum amount, the State may amend this Contract to address the need.

Service Description	Amount (per hour subject to the provisions of Contract Section A.4 and the associated MOU)
Change Orders as described in Section A.4 above	\$180 per hour

NOTE: Neither the Contractor nor the Contractor's employees shall be compensated for travel time to their normal place of business in the performance of the services hereunder.

- C.4. Travel Compensation. The Contractor shall not be compensated or reimbursed for travel, meals or lodging incurred in providing the on-site training described in Section A.5. However, if the State requests the Contractor to travel to the State's facilities for any other purpose, the compensation to the Contractor for travel, meals, or lodging shall be subject to amounts and limitations specified in the "State Comprehensive Travel Regulations," as they are amended from time to time.

The Contractor must include (in addition to other invoice requirements of this Contract) a complete itemization of travel compensation requested in accordance with and attaching to the invoice appropriate documentation and receipts as required by the above-referenced "State Comprehensive Travel Regulations."

- C.5. Expenses. The State agrees to reimburse the Contractor for expenses that are incurred by the Contractor on the State's behalf. Such expenses include, but are not limited to, pre-approved reasonable shipping, mailing, and long distance charges. Reimbursable expenses shall be billed separately on a monthly basis and shall be substantiated by supporting documentation reasonably acceptable to the State. The State shall be provided an opportunity to request estimates of out-of-pocket expenses prior to the initiation of any project.
- C.6. Invoice Requirements. On the 15th day of each month or, if the 15th is on a weekend or on a day on which the New York Stock Exchange is closed, the business day prior, the Contractor shall remotely access the application server supporting the Software for the purpose of generating a billing report for the previous calendar month. The Contractor shall invoice the State only for completed increments of service and for the amount stipulated in section C.3, above, and present said invoices with all necessary supporting documentation, to:

Budget Officer
Division of Administrative Services
Tennessee Treasury Department
11th Floor, Andrew Jackson State Office Building
502 Deaderick Street
Nashville, Tennessee 37243-0206

- a. Each invoice shall clearly and accurately detail all of the following required information (calculations must be extended and totaled correctly).
- (1) Invoice Number (assigned by the Contractor)
 - (2) Invoice Date
 - (3) Contract Number (assigned by the State)
 - (4) Customer Account Name: Tennessee Treasury Department, Baccalaureate Education System Trust
 - (5) Customer Account Number (assigned by the Contractor to the above-referenced Customer)
 - (6) Contractor Name
 - (7) Contractor Tennessee Edison Registration ID Number Referenced in Preamble of this Contract
 - (8) Contractor Contact for Invoice Questions (name, phone, and/or fax)
 - (9) Contractor Remittance Address

- (10) Description of Delivered Service
- (11) Complete Itemization of Charges, which shall detail the following:
 - i. Service or Milestone Description (including name & title as applicable) of each service invoiced
 - ii. Number of Completed Units, Increments, Hours, or Days as applicable, of each service invoiced
 - iii. Applicable Payment Rate (as stipulated in Section C.3.) of each service invoiced
 - iv. Amount Due by Service
 - v. Total Amount Due for the invoice period

b. The Contractor understands and agrees that an invoice under this Contract shall:

- (1) include only charges for service described in Contract Section A and in accordance with payment terms and conditions set forth in Contract Section C;
- (2) only be submitted for completed service and shall not include any charge for future work;
- (3) not include sales tax or shipping charges; and
- (4) initiate the timeframe for payment (and any discounts) only when the State is in receipt of the invoice, and the invoice meets the minimum requirements of this section C.6.

C.7. Payment of Invoice. All fees shall be due within forty-five days after receipt of the invoice covering the delivered services. Failure by the State to pay any amounts invoiced under this Contract in full in accordance with this Contract shall bear interest on the remaining amount due at the rate of one and one half percent (1.5%) per month from the date such payment was due. A payment by the State shall not prejudice the State's right to object to or question any payment, invoice, or matter in relation thereto.

C.8. Invoice Reductions. Pending resolution, the Contractor's invoice shall be subject to reduction for amounts included in any invoice or payment theretofore made which are disputed by the State, on the basis of audits conducted in accordance with the terms of this Contract, as not constituting proper remuneration for compensable services. The notice of the dispute must be forwarded to the Contractor in writing, within ten (10) business days of the receipt of that invoice by the State.

C.9. Prerequisite Documentation. The Contractor shall not invoice the State under this Contract until the State has received the following documentation properly completed.

- a. The Contractor shall complete, sign, and present to the State an "Authorization Agreement for Automatic Deposit (ACH Credits) Form" provided by the State. By doing so, the Contractor acknowledges and agrees that, once said form is received by the State, all payments to the Contractor, under this or any other contract the Contractor has with the State of Tennessee shall be made by Automated Clearing House (ACH).
- b. The Contractor shall complete, sign, and present to the State a "Substitute W-9 Form" provided by the State. The taxpayer identification number detailed by said form must agree with the Contractor's Federal Employer Identification Number or Tennessee Edison Registration ID referenced in this Contract.

D. STANDARD TERMS AND CONDITIONS:

D.1. Required Approvals. The State is not bound by this Contract until it is signed by the contract parties and approved by appropriate officials in accordance with applicable Tennessee laws and regulations (depending upon the specifics of this contract, said officials may include, but are not limited to, the Commissioner of Finance and Administration, the Commissioner of Human Resources, and the Comptroller of the Treasury). The State shall notify the Contractor that all

such signatures have been obtained by providing the Contractor with a signed copy of Attachment 1 hereto.

- D.2. Modification and Amendment. This Contract may be modified only by a written amendment signed by all parties hereto and approved by both the officials who approved the base contract and, depending upon the specifics of the contract as amended, any additional officials required by Tennessee laws and regulations (said officials may include, but are not limited to, the Commissioner of Finance and Administration, the Commissioner of Human Resources, and the Comptroller of the Treasury).
- D.3. Termination Due to Plan Termination. The State may terminate this Contract twenty-four (24) months after its effective date in the event the Plan is terminated. Said termination shall not be deemed a breach of contract by the State. The State shall give the Contractor at least thirty (30) days written notice before the effective termination date. The Contractor shall be entitled to compensation for satisfactory, authorized service completed as of the termination date, but in no event shall the State be liable to the Contractor for compensation for any service which has not been rendered.
- D.4. Termination for Cause. In the event of a material breach of the State's obligations set forth in Sections A.2, A.12, E.5, or E.10, the Contractor may terminate this Contract (i) immediately, if such breach is not capable of a cure, or (ii) immediately upon notice of termination from the Contractor if such breach is capable of a cure and the State fails to cure such material breach or diligently pursue steps reasonably designed to effect such a cure, within five (5) business days after receiving notice of such breach from the Contractor. Additionally, in the event of a material breach of the Contractor's obligations set forth in Section E.5, the State may terminate this Contract (i) immediately, if such breach is not capable of a cure, or (ii) immediately upon notice of termination from the State if such breach is capable of a cure and the Contractor fails to cure such material breach or diligently pursue steps reasonably designed to effect such a cure, within five (5) business days after receiving notice of such breach from the State. In the event of any other material breach by a party, the other party may terminate this Contract by giving thirty (30) days' prior written notice thereof, provided, however, that this Contract shall not terminate at the end of said thirty (30) days' notice period if the breaching party has cured the breach of which it has been notified prior to the expiration of said thirty (30) days to the reasonable satisfaction of the non-breaching party.
- D.5. Subcontracting. Except as provided in Sections E.10 and E.16 below, the Contractor shall not assign this Contract or enter into a subcontract for any of the services performed under this Contract without obtaining the prior written approval of the State. If such subcontracts are approved by the State, each shall contain, at a minimum, sections of this Contract below pertaining to "Conflicts of Interest," "Nondiscrimination," and "Records" (as identified by the section headings). Notwithstanding any use of approved subcontractors, the Contractor shall be the prime contractor and shall be responsible for all work performed.
- D.6. Conflicts of Interest. The Contractor warrants that no part of the total Contract Amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Contractor in connection with any work contemplated or performed relative to this Contract.

The Contractor acknowledges, understands, and agrees that this Contract shall be null and void if the Contractor is, or within the past six months has been, an employee of the State of Tennessee or if the Contractor is an entity in which a controlling interest is held by an individual who is, or within the past six months has been, an employee of the State of Tennessee.

- D.7. Nondiscrimination. The Contractor hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor on the grounds of handicap or disability, age, race, color, religion, sex, national origin, or any other

classification protected by Federal, Tennessee State constitutional, or statutory law. The Contractor shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.

- D.8. Prohibition of Illegal Immigrants. The requirements of *Tennessee Code Annotated*, Section 12-4-124, *et seq.*, addressing the use of illegal immigrants in the performance of any Contract to supply goods or services to the state of Tennessee, shall be a material provision of this Contract, a breach of which shall be grounds for monetary and other penalties, up to and including termination of this Contract.
- a. The Contractor hereby attests, certifies, warrants, and assures that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract. The Contractor shall reaffirm this attestation, in writing, by submitting to the State a completed and signed copy of the document at Attachment 2, hereto, semi-annually during the period of this Contract. Such attestations shall be maintained by the Contractor and made available to state officials upon request.
 - b. Prior to the use of any subcontractor in the performance of this Contract, and semi-annually thereafter, during the period of this Contract, the Contractor shall obtain and retain a current, written attestation that the subcontractor shall not knowingly utilize the services of an illegal immigrant to perform work relative to this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant to perform work relative to this Contract. Attestations obtained from such subcontractors shall be maintained by the Contractor and made available to state officials upon request.
 - c. The Contractor shall maintain the names of all personnel used in the performance of this Contract. Said names shall be subject to review and random inspection at any reasonable time upon reasonable notice by the State.
 - d. The Contractor understands and agrees that failure to comply with this section will be subject to the sanctions of *Tennessee Code Annotated*, Section 12-4-124, *et seq.* for acts or omissions occurring after its effective date. This law requires the Commissioner of Finance and Administration to prohibit a contractor from contracting with, or submitting an offer, proposal, or bid to contract with the State of Tennessee to supply goods or services for a period of one year after a contractor is discovered to have knowingly used the services of illegal immigrants during the performance of this Contract.
 - e. For purposes of this Contract, "illegal immigrant" shall be defined as any person who is not either a United States citizen, a Lawful Permanent Resident, or a person whose physical presence in the United States is authorized or allowed by the federal Department of Homeland Security and who, under federal immigration laws and/or regulations, is authorized to be employed in the U.S. or is otherwise authorized to provide services under the Contract.
- D.9. Records. The Contractor shall maintain documentation for all charges under this Contract. The books, records, and documents of the Contractor, insofar as they relate to work performed or money received under this Contract, shall be maintained for a period of three (3) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the State, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.
- D.10. Monitoring. The Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives. The State shall reimburse the Contractor for its

actual documented time for facilitating or assisting in such reviews if such facilitation or assistance is requested by the State. In such event and prior to such undertaking, the Contractor shall provide the State with an estimate of the time it will take the Contractor in facilitating or assisting in such reviews. The Contractor shall not perform any such services until the estimate is approved in writing by the State. In no event shall the associated cost to the State for such services exceed 20% of the approved estimated costs.

- D.11. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the State as requested.
- D.12. Strict Performance. Failure by any party to this Contract to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the parties hereto.
- D.13. Independent Contractor. The parties hereto, in the performance of this Contract, shall not act as employees, partners, joint venturers, or associates of one another. It is expressly acknowledged by the parties hereto that such parties are independent contracting entities and that nothing in this Contract shall be construed to create an employer/employee relationship or to allow either to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.
- The Contractor, being an independent contractor and not an employee of the State, agrees to carry adequate public liability and other appropriate forms of insurance, including adequate public liability and other appropriate forms of insurance on the Contractor's employees, and to pay all taxes the Contractor would otherwise be required to pay by law.
- D.14. State Liability. The State shall have no liability except as specifically provided in this Contract.
- D.15. Force Majeure. The obligations of the parties to this Contract are subject to prevention by causes beyond the parties' control that could not be avoided by the exercise of due care including, but not limited to, natural disasters, riots, wars, epidemics, or any other similar cause.
- D.16. State and Federal Compliance. The Contractor shall comply with all applicable State and Federal laws and regulations in the performance of this Contract.
- D.17. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee in any actions that may be brought against the State arising out of this Contract. In any actions brought against the Contractor hereunder, this Contract shall be governed and construed in accordance with the laws of the State of California. The State agrees that it will be subject to the exclusive jurisdiction of the courts of the State of California in actions brought by the State against the Contractor hereunder. The Contractor agrees that it will be subject to the exclusive jurisdiction of the courts of the State of Tennessee in actions brought by the Contractor against the State hereunder. The Contractor acknowledges and agrees that any rights or claims against the State of Tennessee or its employees hereunder, and any remedies arising therefrom, shall be subject to and limited to those rights and remedies, if any, available under *Tennessee Code Annotated*, Sections 9-8-101 through 9-8-407. Each party waives the right to a jury trial regarding any contract dispute arising out of this Contract.
- D.18. Completeness. This Contract is complete and contains the entire understanding between the parties relating to the subject matter contained herein, including all the terms and conditions of the parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the parties relating hereto, whether written or oral.

- D.19. Severability. If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions hereof shall not be affected thereby and shall remain in full force and effect. To this end, the terms and conditions of this Contract are declared severable.
- D.20. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.

E. SPECIAL TERMS AND CONDITIONS:

- E.1. Conflicting Terms and Conditions. Should any of these special terms and conditions conflict with any other terms and conditions of this Contract, these special terms and conditions shall control.
- E.2. Communications and Contacts. All instructions, notices, consents, demands, or other communications required or contemplated by this Contract shall be in writing and shall be made by certified, first class mail, return receipt requested and postage prepaid, by overnight courier service with an asset tracking system, or by EMAIL or facsimile transmission with recipient confirmation. Any such communications, regardless of method of transmission, shall be addressed to the respective party at the appropriate mailing address, facsimile number, or EMAIL address as set forth below or to that of such other party or address, as may be hereafter specified by written notice.

The State:

LaKesha Page, Director
Tennessee Treasury Department
Baccalaureate Education System Trust
P.O. Box 198786
Nashville, TN 37219-8786
lakesha.page@tn.gov
Telephone # (615) 532-5888
FAX # (615) 401-6816

The Contractor:

Tim Kan, President
Envision Financial Systems, Inc.
18101 Von Karman Avenue, Suite 1420
Irvine, California 92612
tim.kan@enfs.com
Telephone # (714) 247-0030
Fax # (714) 247-0029

A copy of the said notice shall also be given to the Contractor's attorneys as follows:

Timothy S. Johnson, Esquire
Reed Smith, LLP
225 Fifth Avenue
Pittsburgh, PA 15222
tjohnson@reedsmith.com
Telephone # (412) 288-1484
Fax # (412) 288-3063

All instructions, notices, consents, demands, or other communications shall be considered effectively given upon receipt or recipient confirmation as may be required.

- E.3. Subject to Funds Availability. The Contract is subject to the appropriation and availability of State and/or Federal funds. In the event that the funds are not appropriated or are otherwise

unavailable, the State reserves the right to terminate the Contract upon written notice to the Contractor. Said termination shall not be deemed a breach of Contract by the State. Effective the termination date, the Contractor shall cease all work associated with the Contract and disable the State's access to the System. Should such an event occur, the Contractor shall be entitled to compensation for all satisfactory and authorized services completed as of the termination date. Upon such termination, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.

- E.5. Confidentiality of Records. Strict standards of confidentiality of records and information shall be maintained in accordance with applicable state and federal law. All material and information, regardless of form, medium or method of communication, provided by one party to the other party or acquired by one party on behalf of the other party shall be regarded as confidential information in accordance with the provisions of applicable state and federal law, state and federal rules and regulations, departmental policy, and ethical standards. Such confidential information shall not be disclosed, and all necessary steps shall be taken by each party to safeguard the confidentiality of the other party's material or information in conformance with applicable state and federal law, state and federal rules and regulations, departmental policy, and ethical standards. Without limiting the generality of the foregoing, and whether or not expressly marked or designated as proprietary or confidential, it is expressly acknowledged and agreed that (i) the Software, documentation relating to the Software, programs, reports and scripts, data dictionary, presentation materials, training materials, the data structure, system diagram, and file record layouts of the Software, and the Contract terms (including pricing of this Contract under Section C.3.b. but not the total overall aggregate monthly fees actually paid to the Contractor), are and shall be for all purposes hereunder, the Confidential Information of the Contractor, and (ii) all information relating to the State's customers, or State's systems and operations, are and shall be for all purposes hereunder, the Confidential Information of the State.

Each party's obligations under this section do not apply to information in the public domain; entering the public domain but not from a breach by the other party of this Contract; previously possessed by either without written obligations to the other party to protect it; acquired by either party without written restrictions against disclosure from a third party which, to the receiving party's knowledge, is free to disclose the information; independently developed by either party without the use of the information; or, disclosed by either party to others without restrictions against disclosure. Further, a party shall be permitted to disclose Confidential Information if that party is requested pursuant to, or required by, applicable law or regulation or by legal process to disclose any Confidential Information; provided that the party shall notify the other party in writing in advance of such disclosure, and provide the other party with copies of any related information so that it may seek an appropriate protective order. If no such order is obtained within seven (7) business days, the party may, without liability hereunder, disclose that portion of the Confidential Information that the party's legal counsel advises that it is legally required to disclose. Nothing in this paragraph shall permit either party to disclose any information that is confidential under federal or state law or regulations, regardless of whether it has been disclosed or made available to the other party due to intentional or negligent actions or inactions of agents of the Contractor, the State or third parties.

It is expressly understood and agreed the obligations set forth in this section shall survive the termination of this Contract.

- E.6. Remedies for Unauthorized Disclosure. Each party acknowledges that the disclosure by one party (the "Disclosing Party") of the other party's Confidential Information may cause irreparable injury to the other party (the "Non-Disclosing Party"). Accordingly, the Non-Disclosing Party may be entitled to seek injunctive or other appropriate relief upon a disclosure of any Confidential Information. Without limitation of the foregoing, each party shall advise the other party immediately in the event that it learns that any of its Authorized Users who has had access to Confidential Information has violated the terms of this Contract, and will reasonably cooperate with the other party in regaining possession of the Confidential Information. This provision shall not in any way limit such other remedies as may be available to either party at law or in equity.

E.7. Limitation of Liability. The parties agree that the Contractor's liability under this Contract shall be limited to an amount equal to the license fees paid by the State under this Contract during the two (2) years immediately preceding any claim or cause of action brought against the Contractor hereunder, PROVIDED THAT in no event shall this section limit the liability of the Contractor for intentional torts, criminal acts, or fraudulent conduct.

E.8. Title to System.

- a. Title. The Contractor warrants it has complete ownership of the System except for portions of such System licensed from and copyrighted by other software suppliers, and that it has full rights to grant to the State the uses of and the privileges to the System granted herein. Based upon the Contractor's warranty, the State acknowledges that title and full ownership rights to the System licensed under this Contract shall at all times remain with the Contractor. The State agrees that it will not at any time do or cause to be done any act or thing impairing or tending to impair any part of such rights, title and interest. The State agrees that its use of the System shall not create in the State's favor any right, title or interest in the System beyond that of licensee. The State understands and agrees that the System is proprietary information and a trade secret of the Contractor whether or not any portion thereof is or may be validly copyrighted or patented.
- b. Indemnity. The Contractor agrees to indemnify and hold harmless the State and any of its directors, officers, employees and agents from and against any and all claims, costs, damages and judgments of whatever nature arising out of any action pertaining to patent, trademark, or copyright infringement, arising from the Contractor's provision of services hereunder; provided that (i) the claim is not based upon the use of the Software in a manner prohibited under this Contract, in a manner for which the Software was not designed, or in a manner not in accordance with the user documentation for the Software, and (ii) the Contractor is given written notice of any such claim and is given an opportunity to conduct its own defense thereof, together with full information and all reasonable cooperation from the State. The State agrees to allow the Contractor to participate in the defense and settlement of any such claim; provided, however, nothing contained herein shall be deemed to accord to the Contractor, through its attorney(s), the right to represent the State of Tennessee in any legal matter, such rights being governed by Tennessee Code Annotated, Section 8-6-106. Each party shall be responsible for all costs and expenses it may incur in its own defense of any such claim. The State shall have final approval of any settlement on behalf of the State which shall be subject to those statutory approvals and procedures for the compromise and settlement of litigation involving the State. If the State settles any such claim without the Contractor's written consent, then the Contractor shall be relieved of its indemnification obligation for that respective claim.

In addition to the above indemnity, if any such infringement is held to exist (as opposed to a mere claim that an infringement exists) either by a court of law or through arbitration or mediation, the Contractor shall, if reasonably practical and at the Contractor's expense, either:

- (1) procure for the State the right to continue using the System, or
- (2) modify the System so that it becomes non-infringing so long as such modifications do not reduce the functionality of the System, or
- (3) replace the System with a non-infringing counterpart.

If none of these three options are successfully carried out and an infringement still exists so as to reduce the functionality of the System for the State's use, then either party may terminate this Contract on one (1) month's written notice and the Contractor shall refund to the State the unearned portion, if any, of the fees set forth in Section C.3.b. The foregoing

states the entire liability of the Contractor with respect to actual or alleged infringement of any patent, copyright, license or other intellectual property rights with respect to the Software or any components thereof.

- E.9. Insurance Procurement by State. The State agrees to obtain specialty professional liability insurance coverage with liability limits in the amount of three million dollars (\$3,000,000) per occurrence and six million dollars (\$6,000,000) in the aggregate. The insurance policy shall be in the form attached hereto as Exhibit A and be for the duration of this Contract. The policy shall also be written on a claims made basis. The State agrees to name the Contractor, its officers, directors, employees, and agents as additional insureds on the insurance policy for the duration of this Contract. The Contractor shall be given no less than forty-five (45) days' notice of the insurance policy's non-renewal, which said non-renewal would be considered a material breach of the Contract.

The Contractor has reviewed and approved the form of the proposed Insurance policy required under this Section, which is attached hereto as Exhibit A, and the said form policy as it is currently written shall not be changed without the express written consent of the Contractor. The State agrees that if the State (i) fails at any time to maintain the said described Insurance policy or (ii) fails at any time to include the Contractor as a named insured under that policy, then (iii) each and the same shall be a material default under this Contract. The Contractor agrees that it shall give written notice to the State as soon as practical after the Contractor becomes aware of any claim covered by the policy that is asserted or made against the Contractor, but in no event later than thirty (30) days after it becomes aware of such claim.

- E.10. Protection and Security. The State's right to use the System is limited to the license granted and may not be assigned, sub-licensed or otherwise transferred voluntarily or involuntarily, by operation of law or otherwise, without the prior written consent of the Contractor. The State shall not disclose, provide, or otherwise make available, in whole or in part, the System to persons other than the Plan participants and their respective beneficiaries, and Authorized Users as defined in Section A.2.e above. The State agrees that it shall not use the information it obtains from the System hereunder for any purpose that would violate the privacy obligation policy and any other terms and provisions of the Gramm-Leach-Bliley Act (15 U.S.C., Section 6801 et seq.), the federal Fair Credit Reporting Act (U.S.C., Section 1681 et seq.), the Federal Drivers Privacy Protection Act (18 U.S.C., Section 2721 et seq.), or any similar state or local statute, rule, or regulation. The State agrees that if the Contractor determines or reasonable suspects that the State is reselling or brokering the System, or otherwise violating any of the laws or regulations described in these terms and conditions, the Contractor may immediately terminate the delivery of, and the license to use, the System. Notwithstanding the foregoing, the Contractor may assign this Contract and its obligations hereunder to an affiliate or to any successor to its business by merger or consolidation or to any party acquiring substantially all of the assets of the Contractor as a going concern without such consent provided it gives prompt notice of such assignment.
- E.11. Trademarks. The State acknowledges that it shall have no right to use the Contractor's marks without the express written consent of the Contractor. Use of the Contractor's marks by the State is a violation of this Section and shall entitle the Contractor, in addition to any remedies it may have therefore at law, to seek injunctive relief from a court having jurisdiction to grant such relief.
- E.12. Termination of Contract by Contractor. The Contractor shall have the right, upon one hundred twenty (120) days prior written notice to the State, to provide notice termination of the Contract any time if the Contractor no longer makes the Software available for licensing to any new customers and if the Contractor no longer intends to renew existing customers.
- E.13. Effect of Termination. Upon any termination of this Contract, the State shall immediately cease use of all Software licensed to it under this Contract and shall within thirty (30) days deliver to the Contractor or, at the State's option and with the Contractor's consent, destroy all documentation, drawings, blueprints, notes, memoranda, specifications, devices, documents, or any other tangible embodiments of any Software received from the Contractor and have an appropriate

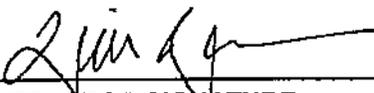
authorized representative certify in writing the compliance with this paragraph. The Contractor retains the right, on five (5) business days' prior written notice, to conduct an audit of the State's compliance with this paragraph, provided that any such audit shall be conducted in a way that does not materially interfere with the State's business operations.

Termination of this Contract shall not relieve either party of its obligations relating to maintaining Confidential Information pursuant to this Contract. Without limiting any of the above provisions as a result of the State's failure to comply with the terms of this Contract, the State shall continue to be obligated for any payments due prior to the date of termination of this Contract. Termination of this Contract shall be in addition to and not in lieu of any equitable remedies available to the parties.

- E.14 Export Controls. The State shall cooperate with the Contractor as reasonably necessary to permit the Contractor to comply with the laws and administrative regulations of the United States relating to the control of exports of commodities and technical data ("Export Laws"). The State shall comply fully with all Export Laws. The State shall not export or re-export directly or indirectly (including via remote access, re-export, divert or transfer) any part of the Software or any other materials or systems the State may have access to related hereto in violation of the Export Laws, included without limitation, to any country for which a validated license is required for such export or re-export under the Export Laws.
- E.15 Negotiated Agreement. The parties hereto expressly acknowledge and agree that this Contract has been reviewed by counsel and negotiated by the parties hereto, each of which is sophisticated and capable of negotiating the provisions hereof. Any principle of law requiring or permitting construction against the draftsman shall not be applicable in the interpretation of this negotiated Contract.
- E.16. Subcontracting. The State hereby acknowledges that the Contractor shall have the right to subcontract services relating to Software support and maintenance to its Indian affiliate, Envision Financial Systems Pvt., which is a direct, wholly-owned subsidiary of the Contractor, and to subcontract the application host provider services to HALOTEQ. The Contractor may subcontract for any of the services to be performed hereunder to other persons only with the prior written consent of the State, which consent will not be unreasonably withheld; provided, however, that the Contractor, without the consent of the State, shall be permitted to change the application host provider. Upon a change in the application host provider, the Contractor shall advise the State in writing of the name of the new application host provider. Notwithstanding any use of subcontractors pursuant to this Section E.16, the Contractor shall be the prime contractor and shall be responsible for all work performed. All contracts with subcontractors shall contain the sections of this Contract above pertaining to "Conflicts of Interest," "Nondiscrimination," and "Records" (as identified by the section headings).

IN WITNESS WHEREOF,

ENVISION FINANCIAL SYSTEMS, INC.:



CONTRACTOR SIGNATURE

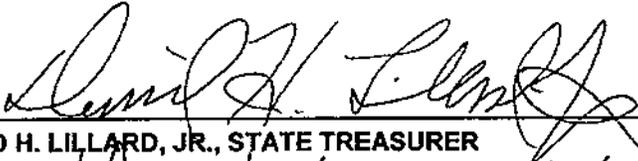
5/15/12

DATE

Tim Kan, President

PRINTED NAME AND TITLE OF CONTRACTOR SIGNATORY (above)

DEPARTMENT OF TREASURY:



DAVID H. LILLARD, JR., STATE TREASURER

May 31, 2012

DATE

Approved for signature by MLK 5/24/2012

ATTESTATION RE STATE OFFICIALS CONTRACT APPROVAL

The State does hereby attest, certify, warrant, and assure that this Contract has been approved by appropriate officials in accordance with applicable Tennessee laws and regulations (depending upon the specifics of this contract, said officials may include, but are not limited to, the Commissioner of Finance and Administration, the Commissioner of Human Resources, and the Comptroller of the Treasury)

STATE OFFICIAL'S SIGNATURE

NOTICE: This attestation MUST be signed by an individual empowered to contractually bind the State.

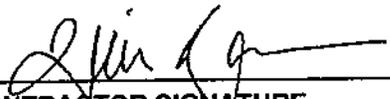
DAVID H. LILLARD, JR., STATE TREASURER

DATE OF ATTESTATION

ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE

SUBJECT CONTRACT NUMBER:	
CONTRACTOR LEGAL ENTITY NAME:	Envision Financial Systems, Inc.
FEDERAL EMPLOYER IDENTIFICATION NUMBER: (or Social Security Number)	33-0636057

The Contractor, identified above, does hereby attest, certify, warrant, and assure that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract.



CONTRACTOR SIGNATURE

NOTICE: This attestation MUST be signed by an individual empowered to contractually bind the Contractor. If said individual is not the chief executive or president, this document shall attach evidence showing the individual's authority to contractually bind the Contractor.

Tim Kan, President

PRINTED NAME AND TITLE OF SIGNATORY

5/15/12

DATE OF ATTESTATION



Starr Surplus Lines Insurance Company

SPECIALTY PROFESSIONAL LIABILITY POLICY

POLICY NUMBER: XXXXX

RENEWAL OF: n/a

NOTICE: EXCEPT TO SUCH EXTENT AS MAY OTHERWISE BE PROVIDED HEREIN, THE COVERAGE OF THIS POLICY IS LIMITED TO LIABILITY FOR ONLY THOSE CLAIMS THAT ARE FIRST MADE AGAINST THE INSURED DURING THE POLICY PERIOD AND REPORTED IN WRITING TO THE INSURER PURSUANT TO THE TERMS HEREIN. THE LIMIT OF LIABILITY AVAILABLE TO PAY JUDGMENTS OR SETTLEMENTS SHALL BE REDUCED BY AMOUNTS INCURRED FOR DEFENSE COSTS. AMOUNTS INCURRED FOR DEFENSE COSTS SHALL BE APPLIED AGAINST THE RETENTION AMOUNT. PLEASE READ THIS POLICY CAREFULLY AND DISCUSS THE COVERAGE HEREUNDER WITH YOUR INSURANCE AGENT OR BROKER.

DECLARATIONS

- ITEM 1: NAMED INSURED: XXXX
 ADDRESS: XXX
 xxx
- ITEM 2: POLICY PERIOD: From: XXX To: xxx
 (12:01 a.m. Standard Time at the address stated in Item 1)
- ITEM 3: LIMITS OF LIABILITY (INCLUSIVE OF DEFENSE COSTS)
 \$XXX each Claim during the Policy Period
 \$XXX all Claims in the aggregate during the Policy Period
- ITEM 4: RETENTION \$XXX each Claim during the Policy Period
- ITEM 5: PENDING OR PRIOR DATE XXX
- ITEM 6: RETROACTIVE DATE XXX
- ITEM 7: PREMIUM \$XXX
- ITEM 8: DISCOVERY PERIOD

- A. One Year: 100% of the premium set forth in Item 7, above
- B. Two to Six Years: premium to be determined

ITEM 9: PROFESSIONAL SERVICES TO BE INSURED Solely in performance of services as XXXXX

Data administration services for the state of Tennessee's 529 Savings Plan for others

ITEM 10: ADDRESS OF INSURER AND ITS AUTHORIZED CLAIMS AGENT FOR NOTICES UNDER THIS POLICY

A. Claims-Related Notices

LVL CLAIMS SERVICES, LLC
111 JOHN STREET
SUITE 1500
NEW YORK, NEW YORK 10038
e-mail: notice@lvlclaims.com

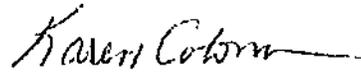
B. All Other Notices To The Insurer:

C. V. STARR & COMPANY
ATTN: FINANCIAL LINES DEPARTMENT
399 PARK AVE. 8TH FLOOR
NEW YORK, NY 10022

In Witness Whereof, the Insurer has caused this policy to be executed and attested. This policy shall not be valid unless countersigned by a duly authorized representative of the Insurer.



President



Asst. Secretary



Authorized Representative



Starr Surplus Lines Insurance Company

Specialty Professional Liability Policy

In consideration of and subject to the payment of the premium and in reliance upon all information and documents contained in or submitted with the **Application**, which shall be deemed to be attached to and part of this policy, and further subject to all terms, conditions and other provisions in this policy, including endorsements hereto, Starr Surplus Lines Insurance Company (the "**Insurer**") and the **Parent Company**, on behalf of all **Insureds**, agree as follows:

1. INSURING AGREEMENT

The **Insurer** shall pay on behalf of the **Insured** all **Loss** arising from a **Claim** first made during the **Policy Period** (or **Discovery Period**, if applicable) against such **Insured** for a **Wrongful Act** by the **Insured** or any entity for whom the **Insured** is legally liable, and duly reported to the **Insurer** in accordance with Section 8 of this policy.

2. DEFINITIONS

- (a) "**Application**" means all signed **Applications**, including any attachments and other materials provided therewith or incorporated therein, submitted in connection with the underwriting of this policy or for any other policy of which this policy is a renewal, replacement or which it succeeds in time.
- (b) "**Claim**" means any:
- (1) written demand for monetary or non-monetary relief or services made against an **Insured**;
 - (2) civil judicial, administrative, arbitral or regulatory proceeding for monetary relief commenced against an **Insured**, including any appeal therefrom, which is commenced by:
 - (i) service of a complaint or similar pleading;
 - (ii) demand for or notice of arbitration; or
 - (iii) receipt or filing of a notice of charges;
 - (3) written request to toll or waive the applicable statute of limitations relating to a potential **Claim** against an **Insured** for a **Wrongful Act**.
- (c) "**Cleanup Costs**" means expenses (including but not limited to legal and professional fees) incurred in testing for, monitoring, cleaning up, removing, containing, treating, neutralizing, detoxifying or assessing the effects of **Pollutants**.
- (d) "**Company**" means:
- (1) the **Named Insured**;
 - (2) any **Subsidiary** of the **Named Insured**; and
 - (3) the **Named Insured** or any **Subsidiary** as a debtor, a debtor-in-possession or equivalent status.
- (e) "**Defense Costs**" means:
- (1) reasonable and necessary fees, costs, charges or expenses resulting from the investigation, defense or appeal of a **Claim**;
 - (2) premium for an appeal, attachment or similar bond, but without any obligation to apply for and obtain such bond;

- (3) any fees, costs, charges or expenses incurred by the **Insured** at the specific request of the **Insurer** to assist the **Insurer** in the investigation, defense or appeal of a **Claim**.

"Defense Costs" does not include (i) amounts incurred prior to the date a **Claim** is first made and reported to the **Insurer**, pursuant to the terms of this policy, and (ii) compensation or benefits of any **Insured Person** or any overhead expenses of the **Company**.

- (f) **"Disciplinary Proceeding"** means any proceeding by a state licensing board, governmental agency or self-regulatory organization with authority to license or regulate the **Professional Services** performed by an **Insured**, including but not limited to an organization with the authority to investigate charges made by a client or former client for alleged misconduct in rendering or failure to render **Professional Services**.
- (g) **"Financial Impairment"** means the **Company** becoming a debtor-in-possession, or the appointment of a receiver, conservator, liquidator, trustee, rehabilitator or similar official to control, supervise, manage or liquidate the **Company**.
- (h) **"Insured (s)"** means the **Company** and any **Insured Person**.
- (i) **"Insured Person(s)"** means any person who is or was a director, officer, partner, member of a management committee or employee (including leased and contract employees) of the **Company**, but solely in the capacity he or she is alleged to have rendered or failed to render **Professional Services**.

- (j) **"Loss"** means:

- (1) damages, settlements or judgments;
- (2) pre-judgment or post-judgment interest;
- (3) court costs and attorney fees awarded in favor of a **Claimant** against the **Insured**; and
- (4) **Defense Costs**.

"Loss" does not include:

- (i) the return or restitution of fees or other compensation paid to the **Insured** for **Professional Services** rendered;
- (ii) taxes, fines, penalties and liquidated damages;
- (iii) any cost of compliance or liability incurred by any **Insured**, other than **Defense Costs**, in connection with a **Claim** to the extent such **Claim** results in a settlement or an award of non monetary relief or services to a **Claimant**, including, but not limited to, the cost of correcting, re-performing or completing any **Professional Services**;
- (iv) matters that may be deemed uninsurable under applicable law; and punitive, exemplary and multiplied damages; provided, however, if such damages are otherwise insurable under applicable law and regulation, coverage will be provided for an award of punitive or exemplary damages made against the **Insured** for or based upon a **Wrongful Act** in the performance of **Professional Services**, in excess of the **Retention** and up to a maximum aggregate sublimit of liability of \$250,000. This sublimit shall be a part of, and not in addition to, the Limit of Liability set forth in Item 3. on the Declarations Page of this policy. The enforceability of the coverage provided by this provision shall be governed by such applicable law that most favors coverage for favorable to the insurability of such damages.

- (k) **"Named Insured"** means the entity named in Item 1 of the Declarations.

- (l) **"Personal Injury"** means injury arising from one or more of the following offenses:

- (1) false arrest, detention or imprisonment;
- (2) malicious prosecution;
- (3) wrongful entry into, or eviction of a person from a room, dwelling, or premises that the person occupies;

- (4) oral or written publication of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services;
- (5) oral or written publication of material that violates a person's right of privacy.
- (m) **"Personal Litigation Expenses"** means any reasonable expenses, including **Loss** of wages, the **Insured** incurs directly as a result of attending arbitration proceedings or trial in the defense of a covered **Claim**.
- (n) **"Policy Period"** means the period from the inception date shown in Item 2 of the Declarations to the earlier of the expiration date shown in Item 2 of the Declarations or the effective date of cancellation of this policy.
- (o) **"Pollutants"** means any substance located anywhere in the world exhibiting any hazardous characteristics as defined by, or identified on, any list of hazardous substances issued by the United States Environmental Protection Agency or any foreign, state, county, municipality, or locality counterpart thereof. Such substances shall include, without limitation, nuclear material or waste, any solid, liquid, gaseous or thermal irritant or contaminant, or smoke, vapor, soot, fumes, acids, alkalis, chemicals or waste materials. **Pollutants** shall also mean any other air emission, odor, wastewater, oil or products containing oil, lead or products containing lead, infectious or medical waste, and any noise.
- (p) **"Pollution"** means the actual, alleged or threatened discharge, dispersal, release, escape, seepage, transportation, emission, treatment, removal or disposal of **Pollutants** into or on real or personal property, water or the atmosphere. **Pollution** also means any **Cleanup Costs**.
- (q) **"Professional Services"** means those services performed by or on behalf of the **Company** and described in Item 9 of the Declarations.
- (r) **"Subsidiary"** means any entity, in which more than 50% of the outstanding securities or voting rights representing the present right to vote for the election of directors in such entity is owned or controlled, directly or indirectly, in any combination, by the **Named Insured** .
- "Subsidiary"** also means any not-for-profit entity, which is under the exclusive control of the **Company**.
- With respect to a **Claim** made against any **Subsidiary** or any **Insured Person** thereof, this policy shall only apply to **Wrongful Acts** committed or allegedly committed after the effective time such entity becomes a **Subsidiary** and prior to the effective time that such entity ceases to be a **Subsidiary**.
- (s) **"Wrongful Act(s)"** means any actual or alleged act, error or omission committed by the **Insured** in the course of rendering any or all of the **Professional Services** for others.

3. COVERAGE EXTENSIONS

INSURED PERSONAL LITIGATION EXPENSES REIMBURSEMENT

Solely in the event the **Insured** is required by the **Insurer** to attend arbitration proceedings or trial in the defense of a covered **Claim**, the **Insurer** will reimburse the **Insured** for the **Insured's** **Personal Litigation Expenses**.

The coverage provided by this provision is subject to the following:

1. The maximum reimbursable amount for **Personal Litigation Expenses** shall not exceed \$250 per day for each **Insured**;
2. **Insurer's** maximum total sublimit of liability for all such reimbursements of **Personal Litigation Expenses** shall not exceed \$5,000 per **Claim** for all **Insured**

- s, which sublimit of liability shall be part of, and not in addition to, the **Limits of Liability** set forth in ITEM 3., **LIMITS OF LIABILITY**, of the **DECLARATIONS**; and
3. The Retention amount set forth in Item 4. of the **DECLARATIONS** shall not apply.

DISCIPLINARY PROCEEDINGS

The **Insurer** shall defend any **Disciplinary Proceedings** against the **Insured**. **Defense Costs** for **Disciplinary Proceedings** will be subject to a sublimit of liability of \$10,000, which sublimit of liability shall be part of, and not in addition to, the Limit of Liability set forth in ITEM 3., **LIMITS OF LIABILITY**, of the policy **Declarations**.

The **Insurer** shall not be obligated to provide a defense for any **Disciplinary Proceedings** once the sublimit of liability of \$10,000 has been exhausted.

The coverage provided by this provision is subject to the following:

1. As a condition precedent to coverage under this provision, upon becoming aware of the **Disciplinary Proceeding**, an **Insured** shall immediately give written notice to the **Insurer** of such **Disciplinary Proceeding**; and
2. This policy will not cover any other part of **Loss**, other than **Defense Costs** as set forth above, arising out of, based upon or attributable to a **Disciplinary Proceeding**. As such, the **Insurer** shall not have any obligation to pay for any judgment, award, settlement or other relief rendered in any **Disciplinary Proceeding**.

ESTATES, HEIRS, OR LEGAL REPRESENTATIVES COVERAGE

This policy shall cover **Loss** arising from any **Claim s** made against the estates, heirs, or legal representatives of any deceased person who was an **Insured Person** at the time the **Wrongful Acts** upon which such **Claim s** are based were committed; provided, however, that this extension shall not afford coverage for any **Claim** for any actual or alleged **Wrongful Act** by or on the part of any such estates, heirs, or legal representatives, but shall apply only to **Claim s** arising out of any actual or alleged **Wrongful Acts** of an **Insured Person**.

This policy shall also cover **Loss** arising from any **Claim s** made against the legal representatives of any incompetent, insolvent or bankrupt person who was an **Insured Person** at the time the **Wrongful Acts** upon which such **Claim s** are based were committed; provided, however, that this extension shall not afford coverage for any **Claim** for any actual or alleged **Wrongful Act** by or on the part of any such legal representatives, but shall apply only to **Claim s** arising out of any actual or alleged **Wrongful Acts** of an **Insured Person**.

EXPRESS DOMESTIC PARTNER AND LAWFUL SPOUSE COVERAGE

This policy shall also cover **Loss** arising from any **Claim s** made against the lawful spouse or domestic partner (whether such status is derived by reason of statutory law, common law or otherwise of any applicable jurisdiction in the world or any formal program established by the **Company**) of an **Insured Person** for all **Claim s** arising solely out of his or her status as the spouse or domestic partner of an **Insured Person**, including a **Claim** that seeks damages recoverable from marital community property, property jointly held by the **Insured Person** and the spouse or domestic partner, or property transferred from the **Insured Person** to the spouse or domestic partner; provided, however, that this extension shall not afford coverage for any **Claim** for any actual or alleged **Wrongful Act** by or on the part of the spouse or domestic partner, but shall apply only to **Claim s** arising out of any actual or alleged **Wrongful Acts** of an **Insured Person**.

The coverage extensions set forth in this Section 3 are subject to all other terms and conditions of this policy.

4. EXCLUSIONS

This policy shall not cover any **Loss** in connection with any **Claim**:

- (a) alleging, arising from, based upon or attributable to any deliberate criminal or deliberate fraudulent act by an **Insured** if a final judgment or adjudication establishes that such criminal or fraudulent act occurred;
- (b) alleging, arising from, based upon or attributable to the gaining in fact of any personal profit or advantage to which the **Insured** is not legally entitled;

In determining the applicability of the exclusions set forth in Section 4 (a) and (b), above, the facts pertaining to, the knowledge possessed by, or any **Wrongful Act** committed by, any **Insured Person** shall not be imputed to any other **Insured Person**; however, the facts pertaining to, the knowledge possessed by, or any **Wrongful Act** committed by, any **Insured Person** shall be imputed to the **Company**;

- (c) for any **Insured's** actual or alleged liability under any contract or agreement, except to the extent such liability would have attached to the **Insured** even in the absence of such contract or agreement;
- (d) alleging, arising from, based upon or attributable to any actual or alleged liability of the **Insured** under any express or implied warranty or guarantee;
- (e) alleging, arising from, based upon or attributable to, as of the Pending or Prior Date set forth in Item 5 of the Declarations, any pending or prior: (i) litigation; or (ii) administrative or regulatory proceeding or investigation of which an **Insured** had notice, including any **Claim** alleging or derived from the same or essentially the same facts, or the same or related **Wrongful Act(s)**, as alleged in such pending or prior litigation or administrative or regulatory proceeding or investigation;
- (f) alleging, arising from, based upon or attributable to the same facts or essentially the same facts alleged, or to the same or related **Wrongful Act(s)** alleged or contained in any **Claim** which has been reported, or in any circumstances of which notice has been given, before the inception date of this policy as set forth in Item 2 of the Declarations, under any policy, whether excess or underlying, of which this policy is a renewal or replacement or which it may succeed in time;
- (g) alleging, arising from, based upon, attributable to or in consequence of the rendering of or failure to render **Professional Services** for:
 - (i) any **Insured**;
 - (ii) any entity or person that has an ownership interest in an **Insured** to the extent of 20% or greater, or which to any extent controls, operates or manages an **Insured**;
 - (iii) any entity that is owned by any **Insured** to the extent of 20% or greater, or which to any extent is controlled, operated or managed by any **Insured**; or
 - (iv) any entity in which any **Insured** is a director, officer, partner or principal shareholder; or
 - (v) any person or entity and that is brought or maintained by any **Insured** against any other **Insured**;
- (h) for bodily injury (except emotional distress or mental anguish when associated with a **Wrongful Act**), sickness, disease or death of any person, **Personal Injury**, or damage to or destruction of any tangible property, including the **Loss** of use thereof;
- (i) alleging, arising from, based upon or attributable to any actual or alleged act or omission of an **Insured Person** serving in any capacity, other than as an **Insured Person**;
- (j) alleging, arising from, based upon or attributable to any **Wrongful Act** committed before the Retroactive Date set forth in Item 6 of the Declarations;

- (k) alleging, arising from, based upon or attributable to **Pollution** in connection with any real property or facility which is or was at any time owned, operated, rented or occupied by the **Insured** or by any entity that wholly or partly owns, operates, manages or otherwise controls the **Insured**, or any entity that is wholly or partly owned, operated, managed or otherwise controlled by the **Insured**;
- (l) any actual or alleged violation of any federal, state, or local statutes, ordinances, or regulations regarding or relating to unsolicited telemarketing, solicitations, emails, faxes, or any other communications of any type or nature, including but not limited to any anti-spam and do-not-call statutes, ordinances, or regulations;
- (m) the failure to procure or maintain, or to advise of the need to procure or maintain, insurance, suretyship or bonds;
- (n) alleging, arising from, based upon or attributable to:
 - (1) exposure to or discharge, release, escape, seepage, migration, dispersal or disposal of mold, fungi, mildew, yeast, bacteria or spores; or
 - (2) any demand, request or order that any **Insured** test for, monitor, clean up, remove or contain, or in any way respond to, or assess the affects of mold, fungi, mildew, yeast, bacteria or spores;
- (o) alleging, arising from, based upon or attributable to nuclear reaction, radiation or contamination, under any circumstances and regardless of cause, within or originating from a nuclear reactor or any facility where nuclear waste or material is processed, stored or disposed;
- (p) alleging, arising out of, based upon or attributable to any obligation pursuant to any worker's compensation, disability benefits, unemployment insurance, retirement benefits, social security benefits or similar law;
- (q) alleging, arising from, based upon or attributable to, or in any way involving the Employee Retirement Income Security Act of 1974, amendments thereto and regulations promulgated or adopted thereunder, or similar provisions of federal, state, provincial, local laws or common law or any of their amendments;
- (r) alleging, arising from, based upon or attributable to any violation of the Securities Act of 1933 as amended, the Securities Exchange Act of 1934 as amended, or any state Blue Sky or securities law or similar state or federal laws, including any regulation or order issued pursuant to any such law;
- (s) alleging, arising from, based upon or attributable to any infringement of any patent, copyright, trademark, service mark, trade dress or trade name;
- (t) alleging, arising from, based upon or attributable to any violation of the Interstate Commerce Act of 1887, The Sherman Antitrust of 1890, The Clayton Act of 1914, The Robinson-Patman Act of 1938, The Celler Kefauver Act of 1950, The Competition Act, the Federal Trade Commission Act of 1914, amendments thereto, rules or regulations thereunder and amendments thereto, or similar provisions of any federal, state, or local statutory law or common law designed to prevent monopoly, preclude price fixing, or otherwise protect competition;
- (u) alleging, arising from, based upon or attributable to, or in any way involving an employment relationship with an **Insured** , including but not limited to disputes involving termination of employment, failure to hire, failure to promote, discrimination or harassment of any kind, or injury, damages or other harm suffered by an employee, including leased or contract employees, of an **Insured**;
- (v) alleging, arising from, based upon or attributable to, or in any way involving discrimination or harassment of any kind, regardless of whether related to employment;
- (w) alleging, arising from, based upon or attributable to, or in any way involving any dispute over fees attributable to **Professional Services**;

- (x) in the event that such coverage would not be in compliance with any United States of America economic or trade sanctions, laws or regulations, including but not limited to the U.S. Treasury Department's Office of Foreign Assets Control, or any similar foreign, federal, state or statutory law or common law.

5. DEFENSE OF CLAIM S AND SETTLEMENTS

The **Insurer** has the right and duty to defend any **Claim** against an **Insured** covered under this policy, even if such **Claim** is false, fraudulent or groundless, provided such **Claim** is made and maintained within the United States of America, its territories or possessions. The **Insurer's** duty to defend any **Claim**, however, shall cease upon the exhaustion of the applicable limit of liability under this policy by payment of **Loss**.

With regard to any **Claim** made or maintained outside the United States of America, its commonwealths, districts, territories or possessions, the **Insurer** shall not have any duty to assume charge of the investigation, defense or settlement of the **Claim**, but rather shall have the right and shall be given the opportunity to associate with the **Insured** in the investigation and defense of any such **Claim**. In such cases, the **Insured** shall investigate and defend as is reasonable and necessary. The **Insurer** shall pay on behalf of the **Insured** any **Loss**, including **Defense Costs**.

The **Insured(s)** shall not admit or assume any liability, incur any **Defense Costs**, enter into any settlement agreement or stipulate to any judgment without the prior written consent of the **Insurer**. Any **Loss** incurred by the **Insured(s)** and/or any settlements or judgments agreed to by the **Insured(s)** without such consent shall not be covered by this policy. However, the **Insurer's** consent is not required for the **Insured** to settle a **Claim** for a **Loss** amount within the applicable Retention.

Each and every **Insured** shall give the **Insurer** full cooperation and such information as it may reasonably require relating to the defense and settlement of any **Claim** and the prosecution of any counter-claim, cross-claim or third-party **Claim**, including without limitation the assertion of an **Insured's** indemnification or contribution rights.

The **Insurer** shall have the right to investigate and conduct negotiations and, with the **Insured's** consent, which shall not be unreasonably withheld, enter into the settlement of any **Claim** that the **Insurer** deems appropriate. In the event the **Insured** refuses to consent to a settlement acceptable to the **Claimant** in accordance with the **Insurer's** recommendation, the **Insurer's** liability for **Loss** on account of such **Claim** shall not exceed: (1) the amount for which the **Insurer** could have settled the **Claim**; plus (2) any **Defense Costs** incurred up to the date the **Insured** refused to settle such **Claim**; plus (3) seventy percent (70%) of covered **Loss**, other than **Defense Costs**, in excess of the amount for which the **Insurer** could have settled the **Claim**. However, in no event shall the **Insurer's** liability exceed the applicable Limit of Liability as set forth in Item 4 of the Declarations.

The **Insurer** shall pay **Defense Costs** excess of the applicable Retention, subject to all other terms and conditions of this policy. In the event and to the extent that the **Insureds** shall not be entitled to payment of such **Loss** under the terms and conditions of this policy, such payments by the **Insurer** shall be repaid to the **Insurer** by the **Insureds**, severally according to their respective interests.

6. LIMITS OF LIABILITY

The aggregate Limit of Liability, as set forth in Item 3 of the Declarations, is the maximum limit of liability of the **Insurer** for all **Loss**, including **Defense Costs**, from all **Claim s** first made during the **Policy Period** (or Discovery Period, if applicable) and reported to the **Insurer** in accordance with the terms of this policy.

Any sublimit(s) of Liability, whether set forth in Item 3 of the Declarations or as otherwise provided under the terms of this policy, shall be part of, and not in addition to, the aggregate Limit of Liability set forth in Item 3 of the Declarations. Each sublimit of Liability is the maximum limit of liability of the **Insurer** for all **Loss**, including **Defense Costs**, from all **Claim s** first made during the **Policy Period**

(or Discovery Period, if applicable) and reported to the **Insurer** in accordance with the terms of this policy.

If the aggregate Limit of Liability as set forth in Item 3 of the Declarations is exhausted by the payment of **Loss**, all obligations of the **Insurer** under this policy will be completely fulfilled and the **Insurer** will have no further obligations under this policy of any kind, and the premium as respects the policy will be fully earned.

Defense Costs are part of, and not in addition to, the aggregate Limit of Liability as set forth in Item 3 of the Declarations and payment by the **Insurer** of **Defense Costs** shall reduce and may exhaust such Aggregate Limit(s) of Liability. **Defense Costs** are subject to the aggregate Policy Limit of Liability set forth in Item 3 of the Declarations.

If a **Discovery Period** is purchased by the **Insured** pursuant to Section 10 of this policy, the Limit of Liability for the **Discovery Period** shall be part of, and not in addition to, the applicable Limits of Liability as set forth in Item 3 of the Declarations.

7. RETENTION CLAUSE

Subject to all other terms and conditions of this policy, the **Insurer** shall only be liable for the amount of **Loss** arising from a **Claim** which is in excess of the applicable Retention as set forth in Item 4 of the Declarations. A single Retention amount shall apply to all **Loss** arising from multiple **Claim s** alleging the same or related **Wrongful Acts**. The Retention shall be borne by the **Insured s** and remain **unInsured**.

If the **Company** is required or permitted to indemnify an **Insured Person** for any **Loss** pursuant to law, contract or the charter, bylaws, operating agreement or similar documents of a **Company** and does not do so for any reason, the **Insurer** shall not require payment of the applicable Retention by the **Insured Person**. However, the **Company** hereby agrees to reimburse the **Insurer** for the full amount of such applicable Retention, unless the **Company** is unable to do so because of **Financial Impairment**.

8. REPORTING OF CIRCUMSTANCES AND CLAIM S

The **Named Insured (s)** shall, as a condition precedent to the obligations of the **Insurer** under this policy, give written notice of a **Claim** made against an **Insured** to the **Insurer** at the address set forth in Item 10 A of the Declarations. If mailed, the date of mailing shall constitute the date that such notice was given and proof of mailing shall be sufficient proof of notice.

Such notice shall be given as soon as practicable after any **Insured Person** becomes aware of the **Claim**, but in no event later than sixty (60) days after the expiration of the **Policy Period** (or **Discovery Period**, if applicable).

Any **Claim** alleging, arising out of, based upon or attributable to the facts alleged in a previously noticed **Claim** or circumstances, or alleging the same or related **Wrongful Act** alleged in the previously noticed **Claim** or circumstances, shall be considered related to the previously noticed **Claim** and shall be deemed to have been made at the time notice of the previously noticed **Claim** or circumstances was provided.

If an **Insured** becomes aware of any circumstances, which may reasonably be expected to give rise to a **Claim** being made against an **Insured**, the **Named Insured** may provide written notice to the **Insurer** at the address set forth in Item 10 A of the Declarations. This written notice shall include the **Wrongful Act** allegations anticipated and the reasons for anticipating a **Claim**, with full particulars as to dates, persons and entities involved. If a **Claim** is subsequently made against such **Insured** and reported to the **Insurer** arising out of, based upon or attributable to the previously noticed circumstances, such **Claim** shall be considered first made at the time notice of such circumstances was provided to the **Insurer**.

9. ALLOCATION

In the event the **Insured (s)** incurs **Loss** that is both covered and not covered by this policy, either because the **Claim** includes both covered and uncovered matters or because the **Claim** includes both **Insured** and uninsured parties, all **Loss** incurred by the **Insured** from such **Claim** will be allocated by the **Insurer** between covered **Loss** and uncovered **Loss** based upon the relative legal and financial exposures of the parties to such matters. In the event of a settlement of such **Claim**, the allocation shall also be based upon the relative benefits to the **Insured s** from such a settlement.

If an allocation of **Loss** cannot be agreed to by the **Insurer** and the **Insured**: (1) the **Insurer** shall pay those amounts which it believes to be fair and equitable until an amount shall be agreed upon or determined pursuant to the provisions of this policy; and (2) there will be no presumption of allocation of **Loss** in any arbitration, suit or other proceeding

10. DISCOVERY CLAUSE

If the **Company** or the **Insurer** refuses to renew this policy, or if this policy is terminated by the **Insurer** for any reason (except for non-payment of premium), or if an **Organizational Change** as described in Section 14, below, takes place, the **Insured (s)** shall have the right to purchase a **Discovery Period** of up to six years following the effective date of such non-renewal, termination or **Organizational Change**.

The **Insured's** right to purchase a **Discovery Period** shall lapse unless written notice of election to purchase such **Discovery Period** and the additional premium for such **Discovery Period** is received by the **Insurer** or its authorized agent within sixty days after such non-renewal, termination or **Organizational Change**. The additional premium for a **Discovery Period** of one year is set forth in Item 8 of the Declarations. The **Insurer** shall determine the additional premium for a **Discovery Period** of more than one year.

During such **Discovery Period**, the **Insured** may provide the **Insurer** with written notice, pursuant to Section 8 of this policy, of **Claims** made against an **Insured** solely with respect to **Wrongful Acts** occurring prior to the effective date of the non-renewal or termination of the policy or the effective date of the **Organizational Change** and otherwise covered by this policy.

The Limit of Liability for the **Discovery Period** shall be part of, and not in addition to, the applicable Limits of Liability set forth in Item 3 of the Declarations.

The **Discovery Period** premium shall be fully earned at the inception of the **Discovery Period**. The **Discovery Period** is non-cancellable.

11. OTHER INSURANCE

The insurance provided by this policy shall apply only as excess over any other valid and collectible insurance whether such other insurance is stated to be primary, contributory, excess, contingent or otherwise, unless such other insurance is written specifically as excess insurance over the applicable Limit of Liability provided by this policy. This policy shall specifically be excess of any other valid and collectible insurance pursuant to which any other **Insurer** has a duty to defend a **Claim** for which this policy may be obligated to pay **Loss**. This policy shall not be subject to the terms and conditions of any other insurance policy.

12. REPRESENTATIONS

It is agreed that the **Insurer** has relied upon the information and documents contained in and furnished with the **Application** in issuing this policy. If any of such information and documents, in whole or in part, are untruthful or inaccurate, then this Policy shall be deemed void as to any and all

Insureds who knew as of the date of the **Application** such untruthful or inaccurate information and documents, regardless of whether it was known that they were being inaccurately or untruthfully disclosed with respect to the **Application**.

13. CANCELLATION AND NON RENEWAL CLAUSE

This policy may be cancelled by the **Named Insured** by sending written prior notice to the **Insurer** as set forth in Item 10 B of the Declarations stating when thereafter the cancellation of the policy shall be effective. The policy terminates at the date and hour specified in such notice. This policy may also be cancelled by the **Named Insured** by surrender of this policy to the **Insurer** as set forth in Item 10 B of the Declarations. The policy terminates as of the date and time of surrender. The **Insurer** shall retain the customary short rate proportion of the premium, unless stated otherwise herein.

This policy shall not be cancelled by or on behalf of the **Insurer** except by reason of non-payment of the premium set forth in Item 7 of the Declarations. The **Insurer** may cancel the policy by delivering to the **Named Insured** or by mailing to the **Named Insured**, by registered mail, or by courier at the **Named Insured's** address set forth in the Declarations, written notice stating when, not less than twenty (20) days thereafter, the cancellation shall be effective. The mailing of such notice as aforesaid shall be sufficient proof of notice. In the event of such cancellation, the policy will be deemed terminated as of the date indicated in the **Insurer's** written notice of cancellation to the **Named Insured**.

Payment or tender of any unearned premium by the **Insurer** shall not be a condition precedent to the effectiveness of cancellation, but such payment shall be made as soon as practicable. If the period of limitation relating to the giving of notice is prohibited or made void by any law controlling the construction thereof, such period shall be deemed to be amended so as to be equal to the minimum period of limitation permitted by such law.

The **Insurer** shall have no obligation to renew this policy. In the event the **Insurer** decides to non-renew this policy, it shall deliver or mail to the **Named Insured**, as identified in Item 1 of the Declarations, written notice of such decision at least sixty (60) days prior to the expiration of the **Policy Period**.

14. ORGANIZATIONAL CHANGES

If during the **Policy Period**:

- (1) the **Named Insured** shall consolidate with, merge into, or sell all or substantially all of its assets to any other person or entity or group of persons or entities acting in concert; or
- (2) any person or entity or group of persons or entities acting in concert shall acquire more than 50% of the **Named Insured**,

(any events described in (1) or (2) are referred to herein as an "Organizational Change") then this policy shall continue in full force and effect as to **Wrongful Acts** occurring prior to the effective time of an Organizational Change. However, there shall be no coverage afforded by this policy for any actual or alleged **Wrongful Act** occurring after the effective time of the Organizational Change. This policy shall be non-cancellable and the entire premium shall be deemed fully earned upon the effective time of the Organizational Change. The **Insured (s)** shall also have the right to purchase a **Discovery Period** described in Section 10, above, in the event of an Organizational Change.

The **Named Insured** shall give the **Insurer** written notice of the **Organizational Change** as soon as practicable, but no later than thirty days after the effective date of the Organizational Change.

15. AUTHORIZATION AND NOTICES

The **Named Insured** shall act on behalf of all **Insureds** with respect to all matters as respects this policy including: (1) giving of notice of **Claim**; (2) giving and receiving of all correspondence and information; (3) giving and receiving notice of cancellation; (4) payment of premiums; (5) receiving of any return premiums; (6) receiving and accepting of any endorsements issued to form a part of this policy; and (7) the exercising of any right to a Discovery Period.

16. VALUATION AND CURRENCY

All amounts stated in this policy are expressed in United States dollars and all amounts payable under this policy are payable in United States dollars. If a judgment rendered or settlement entered into under this policy are stated in a currency other than United States dollars, then payment under this policy shall be made in United States dollars at the rate of exchange published in the *Wall Street Journal* on the date the final judgment is rendered or the settlement payment is established.

17. WORLDWIDE TERRITORY

This policy applies to **Wrongful Acts** taking place and **Claims** made anywhere in the world, to the extent coverage hereunder is not prohibited by applicable law.

18. ASSIGNMENT AND CHANGES TO THE POLICY

This policy and any and all rights hereunder are not assignable without the prior written consent of the **Insurer**.

Notice to any agent or knowledge possessed by any agent or person acting on behalf of the **Insurer**, other than the **Insurer** as identified in Item 10 B of the Declarations, will not result in a waiver or change in any part of this policy or prevent the **Insurer** from asserting any right under the terms and conditions of this policy. The terms and conditions of this policy may only be waived or changed by written endorsement signed by the **Insurer** or its authorized agent.

19. BANKRUPTCY

Bankruptcy or insolvency of any **Insured** shall not relieve the **Insurer** of any of its obligations hereunder.

20. SUBROGATION

In addition to any right of subrogation existing at law, in equity or otherwise, and in the event of any payment by the **Insurer** under this policy, the **Insurer** shall be subrogated to the extent of such payment to all of the **Insured(s)**' rights of recovery. The **Insured(s)** shall execute all papers required (including those documents necessary for the **Insurer** to bring suit or other form of proceeding in their name) and do everything that may be necessary to pursue and secure such rights.

21. ACTION AGAINST THE INSURER

Except as provided in Section 2, above, no action may be taken against the **Insurer** unless, as a condition precedent thereto, there shall have been full compliance with all material terms of this policy and the amount of the **Insured's** obligation has been fully determined either by judgment against the **Insured** after actual trial, or by written agreement of the **Insured**, the **Claimant(s)** and the **Insurer**.

No person or entity shall have any right under this policy to join the **Insurer** as a party to any action against any **Insured** to determine such **Insured's** liability nor shall such **Insured** or legal representatives of such **Insured** implead the **Insurer**.

22. CONFORMITY TO APPLICABLE LAW AND REGULATION

Any terms of this policy, which are in conflict with the terms of any applicable laws construing this policy, including any endorsement to this policy, which is required by any state Department of

Insurance, or equivalent authority ("State Amendatory Endorsement"), are hereby amended to conform to such laws. Nothing herein shall be construed to restrict the terms of any State Amendatory Endorsement.

In the event any portion of this policy shall be declared or deemed invalid or unenforceable under applicable law, such invalidity or unenforceability shall not affect the validity or enforceability of any other portion of this policy.

23. HEADINGS

The descriptions in the headings and any subheading of this policy (including any titles given to any endorsement attached hereto) are inserted solely for convenience and do not constitute any part of this policy's terms or conditions.

Endorsement No.:
This endorsement, effective:
(at 12:01 a.m. Standard Time at the address stated in Item 1 of the Declarations)
Forms a part of Policy No.:
Issued to:
By:

VICARIOUS LIABILITY ENDORSEMENT

It is understood and agreed that:

1. For purposes of this Endorsement, Section 3. COVERAGE EXTENSIONS of the Policy is amended by adding the following:

VICARIOUS LIABILITY COVERAGE

The **Insurer** shall pay on behalf of the Additional Insured all **Loss** arising from a **Claim** first made during the **Policy Period** (or **Discovery Period**, if applicable) against such **Additional Insured** solely arising out of a **Wrongful Act** by an **Insured**, other than an **Additional Insured**, and duly reported to the **Insurer** in accordance with Section 8 of this policy. The **Wrongful Act** must be attributable solely to an **Insured**, other than an **Additional Insured**, and not due to any actual or alleged independent wrongdoing or bad faith of the **Additional Insured**.

2. For purposes of the coverage under this Endorsement only, Section 2. DEFINITIONS is amended as follows:

- a) Definition (h), **Insured(s)**, is amended by adding the following:

Insured(s) shall also mean any **Additional Insured(s)** but solely with respect to the coverage provided under the **VICARIOUS LIABILITY COVERAGE** section of Section 3. **COVERAGE EXTENSIONS**, as set forth in Item 1. of this endorsement.

- b) The following definition is added:

- c) **Additional Insured** means XXXXXXXXXXXXXXXXXXXXX

ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED.



Authorized Representative

Endorsement No.:

This endorsement, effective:

(at 12:01 a.m. Standard Time at the address stated in Item 1 of the Declarations)

Forms a part of Policy No.:

Issued to:

By:

AMENDATORY ENDORSEMENT

It is understood and agreed that Section 4. EXCLUSIONS (a) and (b) are deleted in their entirety and replaced with the following:

- (a) alleging, arising from, based upon or attributable to any deliberate criminal or deliberate fraudulent act by an **Insured** if a final judgment or adjudication establishes that such criminal or fraudulent act occurred;
- (b) alleging, arising from, based upon or attributable to the gaining in fact of any personal profit or advantage to which the **Insured** is not legally entitled;

In determining the applicability of the exclusions set forth in Section 4. EXCLUSIONS (a) and (b), above, the facts pertaining to, the knowledge possessed by, or any **Wrongful Act** committed by, any **Insured Person** shall not be imputed to any other **Insured Person**; however, the facts pertaining to, the knowledge possessed by, or any **Wrongful Act** committed by, any **Insured Person** who is a past or current member of the following Offices shall be imputed to the **Company**;

- the following individuals within the Office of the Treasurer:
 - o Chief of Staff
 - o Policy Advisor to the Treasurer
 - o Staff Assistant to the Treasurer
 - o Deputy Treasurer for Program Services
 - o Assistant Treasurer for Legal, Compliance and Audit Services
 - o Assistant Treasurer for Fiscal Services
 - o Director of College Savings
 - o Director of Accounting
 - o Director of Information Systems
 - o Manager of Infrastructure and Security
 - o IT Project Manager
 - o Chief Investment Officer
 - o General Counsel

ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED.



Authorized Representative

Endorsement No.:

This endorsement, effective:
(at 12:01 a.m. Standard Time at the address stated in Item 1 of the Declarations)
Forms a part of Policy No.:
Issued to:
By:

SPECIFIED PROFESSIONAL SERVICES EXCLUSION

It is understood and agreed that:

1. Clause 4. EXCLUSIONS is amended to add the following exclusion:

This policy shall not cover any **Loss** in connection with any **Claim** arising from or in connection with any **Specified Professional Services** performed by or on behalf of the **Company**.

2. For purposes of the conditions of coverage provided by this endorsement only, **Specified Professional Services** shall mean any services provided for or in any way related to the:
 - a. State of Tennessee BEST Prepaid 529 College Tuition Plan, or
 - b. State of Tennessee 529 College Savings Plan (or related Georgia Path2College 529 Savings Plan)

ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED.



Authorized Representative

Endorsement No.:
This endorsement, effective:
(at 12.01 a.m. Standard Time at the address stated in Item 1 of the Declarations)
Forms a part of Policy No.:
Issued to:
By:

Financial Services Exclusion Endorsement

It is understood and agreed that:

Section 4. EXCLUSIONS, (d) is deleted in its entirety and replaced with the following:

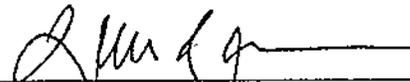
- (d) alleging, arising from, based upon or attributable to any actual or alleged liability of the **Insured** under any express or implied warranty or guarantee; including the guaranteeing of the availability of funds, the future value of real property, or any specified rate of return or interest.

Section 4. EXCLUSIONS, is amended by adding the following:

This policy shall not cover any **Loss** in connection with any **Claim** alleging, arising from, based upon or attributable to:

- (y) the performance of or failure to perform services as an accountant, attorney, lender, real estate agent or broker, insurance agent, escrow agent, closing agent, insurance broker, mortgage banker, mortgage broker, property developer, construction manager, property manager, architect or engineer, investment advisor, or securities broker or dealer;
- (z) any **Insured** notarizing, certifying or acknowledging any signature not signed before such **Insured** at the time of such notarization, certification or acknowledgment;
- (aa) any actual or alleged commingling of funds;
- (bb) the rendering of financial, economic, investment advice or investment management services to any entity;
- (cc) the failure, insolvency, receivership, bankruptcy, liquidation, or financial inability to pay, of any self-funded or partially self-funded benefit plan, savings and loan companies, bank, or insurance companies;
- (dd) any failure to provide goods or products, or perform services within a specified time period;
- (ee) the collection of or return of unearned fees, royalties or other compensation paid to an **Insured** including but not limited to premium, returned premiums, commissions, or brokerage fees;
- (ff) any cost or profit guarantees, cost representations, contract price, or estimates of probable costs or cost estimates being exceeded; or
- (gg) any actuarial act, error, omission or assumption;
- (hh) the failure of securities or other investments to perform as represented by an **Insured**

ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED.



Authorized Representative

