

STATE OF TEXAS §

COUNTY OF TRAVIS §

Division Number: 110	Program Name: Permanent School Fund
Org. Code: 701	Legal/Funding Authority: Texas
Speed Chart: 5A011	Constitution, Article VII
Payee Name: The Bank of New York Mellon	Payee ID: 135160382
ISAS Contract #: 2481	PO #: 33389

Amendment No. 5

**AMENDMENT TO
STANDARD CONTRACT
BETWEEN
TEXAS EDUCATION AGENCY
AND**

The Bank of New York Mellon
NAME OF CONTRACTOR

One Boston Place, Boston, MA 02108
MAILING ADDRESS INCLUDING ZIP CODE

It is mutually understood and agreed by and between the undersigned contracting parties of the above numbered contract to amend said contract ISAS effective 08/01/2014 as follows:

- 1). Appendix 2 is hereby revised as per the attached for Items 8 and 12 - 14.
- 2). Special Provisions A is hereby revised as per the attached to incorporate the Revised Exhibit A (dated 09/25//2014) to the Performance and Risk Analytics EASA Addendum and the Customer Waiver Form for Private iQ®. The Agreements are attached.

Pursuant to Section 2252.901 of the Texas Government Code, Contractor certifies that it is not a former employee of TEA or that Contractor has not been an employee of TEA for twelve (12) months prior to the beginning date of this contract.

Contractor must make full disclosure of intent to employ or subcontract with an individual who is a former employee/retiree of TEA. Within the first twelve months of leaving employment at TEA, a former employee/retiree selected by the Contractor for employment or subcontracting, shall not perform services on a project or fill a position that the former employee/retiree worked on while employed at TEA.

Excluded Parties List System: The Texas Education Agency and the contractor must adhere to the directions provided in the President's Executive Order (EO) 13224, Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism, which may be viewed at <http://www.whitehouse.gov/news/orders>. That Executive Order prohibits any transaction or dealing by United States persons, including but not limited to the making or receiving of any contribution of funds, goods, or services to or for the benefit of those persons listed in the General Services Administration's Excluded Parties List System (EPLS) which may be viewed on the System for Award Management (SAM) site at <http://www.Sam.gov>.

Additional Terms. The parties mutually agree that the original agreement is further amended as follows:

- 3). The following terms and conditions are hereby edited or appended to the end of the General Provisions:
 - Y. **IRS Withholding** is revoked in its entirety.
 - Z. **Compliance with Laws:** Contractor shall comply with all federal, state, and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any court or administrative bodies or tribunals in any matter affecting Contractor's performance.
 - AA. **Buy Texas:** When applicable under this Contract, in accordance with Texas Government Code Section 2155.4441, Contractor shall purchase products and materials produced in the State of Texas when available at a price and time comparable to products and materials produced outside the state.
 - BB. **Collusion:** To the best of our knowledge, the Contractor certifies and represents that Contractor has not colluded with, nor received any assistance from, any person who was paid by TEA to prepare specifications or a solicitation on which a respondent's bid or proposal is based and will not allow any

person who prepared the respective specifications or solicitation to participate financially in any contract award.

CC. **Vendor Performance:** All state agencies must report unsatisfactory vendor performance on purchases over \$25,000. Agencies report satisfactory and exceptional vendor performance to assist in determining best value. In accordance with Texas Government Code, §2155.074 and §2155.75, vendor performance may be used as a factor in future contract awards.

Contractor performance information is located on the CPA web site at:
http://www.window.state.tx.us/procurement/prog/contractor_performance

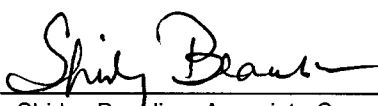
DD. **Insurance:** When applicable, Contractor represents and warrants that it will, within five (5) business days of being requested by TEA, provide TEA with current certificates of insurance for types of insurance coverage that TEA deems relevant to the Contract Project.

All other terms and conditions of the original contract remain the same and are incorporated herein as if specifically written.

It is agreed and accepted by a person authorized to bind Contractor that all terms and conditions of this amendment are effective commencing on the above date.

Typed Name: Lisa Candy
Typed Title: Vice President


Authorized Signature

This section reserved for Agency use. I, an authorized official of Agency, hereby certify that this contract is in compliance with the authorizing program statute and applicable regulations and authorize the services to be performed as written above. AGREED and accepted on behalf of Agency this <u>22nd</u> day of <u>October 2014</u> (month/year) by a person authorized to bind Agency.	
Return three (3) copies with original signature to: Catherine A. Civiletto Deputy Executive Administrator, TPSF Texas Education Agency 400 West 15 th Street, Suite 1100 Austin, TX 78701	 Shirley Beaulieu, Associate Commissioner Finance/ CFO

APPENDIX 2

- A. The definitions of terms in the General Provisions are incorporated herein.
- B. No funds shall be used to pay for food costs (i.e., refreshments, banquets, group meals, etc.) or for travel.
- C. The following fee terms and conditions will apply for a fully bundled custody and securities lending service delivery provided by Contractor to the Texas Permanent School Fund (“TPSF”) as administered by TEA:

- 1. Annual Fee for Scope of Services: \$200,000

Contractor is willing to provide performance guarantees and to participate in penalty/incentive compensation based on an agreed upon set of performance standards. Contractor will put 100% of the flat fee at risk, should it fail to meet the performance standards agreed upon.

- 2. Short Term Investment Fund (STIF) Asset Management Fee: 12 basis points applied to daily balances.
- 3. Global Investment Transaction Charges: The following charges will be passed through to the TPSF at direct cost:

Global out-of-pocket expenses including, but not limited to, postage, courier expense, registration fees, stamp duties, telex charges, internal/external taxes, internal/external legal or consulting. Does not include pass through proxy costs or internal/external legal or consulting expenses with respect to the negotiation and drafting of the Contract. All out-of-pocket expenses will be documented at a detail level that sufficiently describes the services rendered and requested for reimbursement.

- 4. Overdraft Fees: Federal Funds Rate applied against the amount of the overdraft.
- 5. Securities Lending Revenue Split:

On an Annual Basis	Texas Permanent School Fund	Contractor
Until \$12 Million in Gross Revenue has been earned	85%	15%
Cumulative Gross Revenue Earned in excess of \$12 Million	90%	10%

In all years subsequent to the first year of the contract, the anniversary date for the revenue split calculation will be September 1st and the split will be based on the \$12 million gross revenue target.

Contractor is TPSF’s sole securities lending agent and may lend the entire pool of assets.

Collateral investments will be maintained in a separate account managed to the TPSF guidelines.

There are no additional charges for participating in securities lending.

For purposes hereof, net securities lending revenues shall mean (i) all loan premium fees derived from Contractor’s acceptance of non-cash collateral; plus (ii) all income and earnings from the investment and reinvestment of the cash collateral received and held on behalf of the Client minus broker rebate fees paid by the Contractor to the borrower in respect of the loans of the Client’s securities. The Contractor is hereby authorized to charge such compensation against and collect and/or retain such compensation from the revenues derived from the securities lending activities conducted on behalf of the Client pursuant to the Securities Lending Authorization Agreement.

- 6. Class Action Claim Filing: No charge (\$0.00) to file claims including using historical data provided to Contractor by TPSF.
- 7. Proxy Voting Services for TPSF Internally Managed Portfolios: Cost of RiskMetrics (or other TPSF selected provider) custom proxy voting service is paid for by Contractor directly to the vendor on an annual basis. Custom proxy voting services are being billed at \$15,000 per year in addition to regular voting charges.

8. Technology Tools Provided by Contractor. The following shall be provided by Contractor to the Client at no additional cost to the Client:
- o Workbench Client Portal
 - o MPA and MPU - converted to share ware via software license
 - o SLIM - converted to share ware via software license
 - o Compliance Monitoring - maintained by TPSF or maintained by Contractor, client choice
 - o *Private I*[®] – basic module maintained by Contractor's private equity team. There shall be an opportunity to add additional modules (*Private Informant*[®], *Private Front Office*[®], *Private iQ*[®] and *Private Archivist*[®]) based on current market pricing.

Eagle Pace and Eagle STAR are offered as fully-hosted companion investment accounting and database management software solutions at \$455,000 per year. Loading data will be an additional charge based on current market pricing.

9. Business Process Redesign: Contractor agrees to perform a complete best practices review or business process redesign to include an analysis of both TPSF internal processes and procedures as well as those processes and procedures and interfaces utilized by the Contractor service delivery teams assigned to TPSF and other clients of the Contractor. The product of such a review will be made available to the TPSF no later than March 31, 2012 for discussion and implementation, with the understanding that TPSF and Contractor will work together to prioritize the implementation phase.
10. Out-Sourced Performance Measurement Services for the State Board of Education: Contractor agrees to provide daily, monthly and quarterly performance measurement services to the TPSF staff, including the publication of quarterly performance summary books.

In addition, Contractor agrees to transfer all necessary accounting data on a monthly basis to a third party performance measurement advisor, if such a service provider is selected by the State Board of Education ("SBOE") from RFP 701-09-026.

In the event of selection of a third party provider, Contractor is not required to present performance measurement results to the State Board of Education nor are they required to analyze, interpret or consult on such performance measurement results for the benefit of TPSF management.

For the benefit of TPSF, Contractor has agreed to pay to the third party service provider, the cost of out-sourced performance measurement quarterly reporting and consulting not to exceed \$45,000 per year, terminating effective 08/31/2014. In any month in which a third party service provider is not on retainer for the SBOE, \$3,750.00 will be credited back against the fees incurred on the account.

11. *Private Informant*[®] software: Fees assume that data is received from GP 4 times per year.
- \$100 per Limited Partnership ("LP") (one time set up fee)
 - \$480 per LP/per year (1-50 LPs)
 - \$460 per LP/per year (51-100 LPs)
 - \$440 per LP/per year (101-200 LPs)
12. *Private iQ*[®]: \$17,250.00 annually for 5 user IDs. Each additional ID above 5 is priced at \$2,500 each/year.
13. *Private iQ*[®] Custom Benchmark: \$1,000 per benchmark
14. Non-Lagged Performance:
- \$20,000 annually, up to 150 LPs
 - \$30,000 annually for 150+ LPs

Additional Comments:

All custody, accounting, compliance, technology, reporting, securities lending and performance measurement services outlined in the request for proposal dated to close May 1, 2009 and attached to Appendix 1 to the TEA Standard Contract, and specifically agreed to in *Document E Affirmation of Scope of Services Required* of the proposal response dated May 1, 2009, submitted by Contractor and attached to Appendix 1 to the TEA Standard Contract, are covered in Contractor's commitment to service delivery.

Service delivery for a daily processing environment will include daily audited security pricing producing daily audited Net Asset Valuations (NAV). A "soft-close" procedure will be utilized to close the books daily, with a monthly hard-close for accounting, reconciliation and reporting purposes.

In addition, daily security level performance, analytics and attribution analysis will be available on all portfolios. Wilshire Analytics and Factor Based Attribution are available for the fixed income assets. Look through risk exposure by GICS country and sector will also be included.

Contractor guarantees the fee schedule through August 31, 2017 for the scope of services currently defined herein and enumerated and detailed in the documents listed in Special Provisions A, Paragraph H.

A separate Service Level Agreement has been negotiated between the parties to encompass the specifics of service delivery including product deliverables, mutually agreed timelines/deadlines, the use of a quarterly "contract performance report card" and appropriate means of communication between the parties.

SPECIAL PROVISIONS - A

- A. The definitions of terms in the General Provisions are incorporated herein.
- B. All amendments to this Contract will be in a manner as prescribed by the Project Administrator of the Agency and will be made on AMENDMENT TO TEXAS EDUCATION AGENCY CONTRACT form supplied by TEA.
- C. Any amendment to this Contract will become effective upon execution by both parties.
- D. No funds shall be used to pay for food costs (i.e., refreshments, banquets, group meals, etc.) unless requested as a specific line item in the contract fee schedule in Appendix 1 by the Contractor and approved (prior to expenditures occurring) by TEA.
- E. Unless otherwise indicated by TEA, payment under this Contract is only by reimbursement upon satisfactory performance of services. Payment will be made upon submission of properly prepared and certified invoices which detail the services provided during the invoice period and associated costs. Include the contract number, purchase order number, and the Texas Comptroller of Public Accounts Payee Identification Number (PIN) on all invoices/expenditure reports. The information provided on the invoice must coincide with the fee schedule detailed in Appendix 2 of this Contract. Payments will be made, after approval by TEA's Project Administrator, in accordance with the fee schedule detailed in Appendix 2 of this Contract. If a fee schedule is not included in this Contract, payments will be determined by TEA's Project Administrator.
- F. An encumbrance, accounts payable, and an expenditure as with all other contract accounting terms will be as defined by generally accepted accounting principles. All goods must have been received and all services rendered by the ending date of this Contract in order for the Contractor to include these costs as either expenditures or as accounts payable and, thereby, recover monies due. In no manner shall encumbrances be considered or reflected as accounts payable or as expenditures.
- G. The parties have agreed to changes in some of the General Provisions in this Contract. Each of these changes as set forth below shall apply to this Contract notwithstanding anything to the contrary in any other provision in this Contract.
 - a. In Paragraph A, the definition of "Contract" is hereby changed as follows: *Contract* means TEA's Standard Contract, and all of the attachments, appendices, schedules (including but not limited to the General Provisions and the Special Provisions), amendments and extensions of or to the Standard Contract and all documents and agreements incorporated by reference in any appendix or special provision therein;
 - b. Paragraph C **Indemnification** is hereby amended by inserting the following at the end thereof: "caused by Contractor's negligence or willful misconduct."
 - c. Paragraph E **Subcontracting** is hereby amended by inserting the following at the end therefore: "for specific services provided by contractor to TEA, but not services provided on an omnibus basis such as global custodian services."
 - d. Paragraph G **Sanctions for Failure to Perform or Non-Compliance** is hereby amended by inserting the following at the end of the first sentence: "; provided that, TEA has given Contractor notice of such failure and Contractor has failed to cure such failure within a commercially reasonable amount of time."
 - e. Paragraph J **Audit** is hereby amended by inserting the following at the end therefore: "not otherwise determined by Contractor to be protected under privacy or regulatory restrictions."
 - f. Paragraph Q **Proprietary or Confidential Information** is hereby amended by inserting the following at the end of the first sentence: "; provided that, Contractor may disclose any such information pursuant to applicable law, judicial order or regulatory authority without the prior consent of the Agency."
 - g. Paragraph U **Abandonment or Default** is hereby amended by deleting the first sentence thereof in its entirety and substituting therefore the following: "If the contractor defaults on the contract, TEA reserves the right to cancel the contract and either re-solicit or re-award the contract to the next best responsive and responsible respondent if after notice of such default from TEA, the contractor fails to cure such default in a commercially reasonable amount of time."

H. The attached listed documents are of a program nature and are incorporated herein by reference and are therefore made a part of the Contract:

	Document	Page Reference
1.	CUSTODY AGREEMENT by and between Texas Education Agency and The Bank of New York Mellon	12 Through 28
2.	Exhibit A Cross Trading	29 Through 30
3.	Electronic Access Services Agreement by and between Texas Education Agency and The Bank of New York Mellon	31 Through 42
	Exhibit A Transactional Services (Revised effective 09/01/2014)	42 a
	Exhibit C List of Transactional Users and Supervisors with Respect to Transactional Services	42 b
4.	Performance & Risk Analytics EASA Addendum	43 Through 47
5.	Exhibit C Compliance Monitoring Outsourcing Services	48
6.	Exhibit D – Index Services	49
7.	<i>private iQ</i> Sublicense Addendum	50
8.	SECURITIES LENDING AUTHORIZATION AGREEMENT by and between Texas Education Agency and The Bank of New York Mellon (including Exhibits)	51 Through 137
9.	Service Level Agreement by and between Texas Education Agency and The Bank of New York Mellon	TBD
10.	Software License Agreement for MPA and SLIM MPA	
11.	Customer Waiver for Private iQ®	

These documents taken together with all sections of and attachments, appendices, schedules, amendments and extensions of or to TEA's Standard Contract and all documents and agreements incorporated by reference in any appendix or special provision therein comprise the entire agreement between TEA and Contractor.

TEA reserves the right to unbundle the service delivery and contract for any and all services separately should the need arise. In no instance will the negotiated fees be greater than any unbundled fee quoted in Document J included in the proposal response dated May 1, 2009, submitted by Contractor and attached to Appendix 1 to the TEA Standard Contract.



September 25, 2014

Catherine Civileto
Texas Education Agency
400 West 15th Street, 11th Floor
Austin, TX 78701

Dear Catherine:

This letter represents confirmation of a change in the services to which your firm currently subscribes. This change in your subscription requires a revised agreement between our organizations. As a result, we are enclosing a revised Exhibit A (Version Number 3, Version Date 09/25/14) to the Performance & Risk Analytics EASA Addendum (Services Agreement) executed by and between Client and BNY Mellon Performance & Risk Analytics, LLC ("BNY Mellon"), dated December 1, 2009. All other terms and conditions of the Services Agreement shall remain unchanged, and your acceptance of this revised Exhibit A represents your continued agreement and compliance therewith.

You have decided to add Private iQ, Private iQ Custom Benchmarks and Monthly Non Lagged Performance effective September 1, 2014. We have also removed MPA (SLIM) from the Exhibit A which is no longer provided by BNY Mellon Performance and Risk Analytics, LLC but covered in the Software License Agreement effective July 19, 2013. The terms and conditions for this new service or services shall run for one (1) year from the Annual Service Start Date listed on the attached Exhibit A.

Please print three originals of this letter, sign both, and return them to BNY Mellon. Once received, we will provide a fully-executed original for your files. **This letter, the attached revised Exhibit A, and the Services Agreement will represent an up-to-date Agreement between your organization and BNY Mellon.**

We would appreciate your signing and returning this letter within 15 days of receipt. Thank you for your prompt attention to this matter.

Regards,

Tom Heiner

I certify that I am duly authorized to sign this Letter Agreement. I further certify that the company on whose behalf my signature appears agrees to be bound by the terms and conditions as set forth herein.

BNY MELLON PERFORMANCE & RISK ANALYTICS, LLC

BY *Guy M. Holappa*

NAME (PRINT) Guy M. Holappa

TITLE Managing Director

DATE 10/17/14

TEXAS EDUCATION AGENCY

BY *Shirley Beaulieu*

NAME (PRINT) Shirley Beaulieu

TITLE CFO

DATE 10-22-14



Version Date: 09/25/14
Version Number: 3

Exhibit A

Client Name: Texas Education Agency

Client's Affiliates/Subsidiaries: None Indicated

BNY Mellon Affiliate executing Fee Schedule: The Bank of New York Mellon

BNY Mellon agrees to provide the following services to Client pursuant to the current, validly executed Fee Schedule between Client and the BNY Mellon Affiliate referenced above. The Fee Schedule and The Bank of New York Mellon invoice shall contain the fees to be invoiced to Client for Services.

	Service Start Date*
• Daily and Monthly Performance (to Sector Level)	09/01/09
• Flash Performance	09/01/09
• Performance Attribution	09/01/09
• Wilshire Advanced Analytics and Attribution (internally managed portfolios)	09/01/09
• Monthly and Daily Analytics (to Security Level)	09/01/09
• Daily Compliance Monitoring Service <i>(per the terms of the Exhibit C previously attached to the Performance & Risk Analytics EASA Addendum fully executed on December 1, 2009)</i>	09/01/10
• Workbench Client Reporting (with Report Writers)	09/01/09
• Custom Reporting	09/01/09
• Quarterly Board Reporting	09/01/09
• Index Services (S&P Index Data Only) – <i>(per terms of the Exhibit D previously attached to the Performance & Risk Analytics EASA Addendum fully executed on December 1, 2009)</i>	09/01/09
• Private i Software <i>(per the terms of Exhibit I private i Sublicense Addendum previously attached to the Performance & Risk Analytics EASA Addendum effective December 1, 2009)</i>	09/01/09
• Charts	09/01/09
• Private Informant <i>(per the terms of the Customer Waiver for Private Informant previously executed on July 20, 2010)</i>	07/01/10
• Private iQ (per the terms of the attached Customer Waiver for Private iQ)	09/01/14
• Private iQ Custom Benchmarks	09/01/14
• Monthly Non Lagged Performance	09/01/14

*The Service Start Date for the Annual Service will be the date used to calculate service renewal periods.

Services with fees based on a per portfolio fee will be charged to Client based on the actual services received - natural growth/terminations of managers within the Plan will be charged at the per portfolio and composite rates for the provided services.

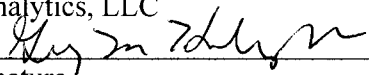
Customer Waiver for Private IQ®

Client: BNY Mellon Performance & Risk Analytics, LLC

Customer: Texas Education Agency

Customer, for good and adequate consideration, intending to be legally bound, hereby acknowledges that it is receiving access to The Burgiss Group, LLC's Private IQ® service (the "Service") as a Customer of Client, pursuant to a contractual arrangement between Customer and Client. Customer acknowledges that all liability for any damages or losses suffered by Customer from or related to its use of the Service lies with Client and hereby waives any and all claims against The Burgiss Group, LLC and its affiliates, employees, agents and equity holders (collectively, "Burgiss") related to its use of the Service, even to the extent that such claims arise due to the fault of Burgiss. Nothing herein shall be deemed to waive any right or remedy Customer may have against Client. This waiver shall be governed by laws of the State of New York without giving effect to the provisions thereof relating to conflicts of laws. This waiver is provided in consideration of Burgiss allowing Customer to access the Service.

Acknowledged: BNY Mellon Performance &
Risk Analytics, LLC

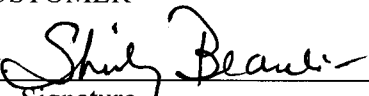
By: 
Signature

Guy M. Halappi
Print Name

Managory Director
Title

10/14/14
Date

CUSTOMER

By: 
Signature

Shirley Beaulieu
Print Name

CFO
Title

10-22-14
Date