

STATE OF TEXAS §
COUNTY OF TRAVIS §

Division Number:	110	Program Name:	Permanent School Fund
Org. Code:	701	Legal/Funding Authority:	Texas
Speed Chart:	1A028	Constitution, Article VII	
Payee Name:	The Bank of New York Mellon	Payee ID:	135160382
ISAS Contract #:	2481	PO #:	30116

Amendment No. 3

**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 effective 09/01/2011 as follows:

Effective April 15, 2011, the State Board of Education (SBOE) approved the first optional renewal of the contract for Global Custody and Securities Lending Services extending the contract term through August 31, 2014, under the same terms, except as described in the paragraphs that follow. The contract is hereby extended in accordance with the SBOE's authorization and approval. All programmatic contracts listed in Special Provisions A, paragraph H. and any services added via amendment are renewed until August 31, 2014, unless terminated earlier in accordance with the contract.

- 1). Appendix 2 is hereby revised as per the attached for Items 7, 9 and 10, effective 09/01/2011.
- 2). Special Provisions A is hereby revised as per the attached to incorporate certain Exhibits to the *Electronic Access Services Agreement* for Transactional Services, effective immediately. Such Exhibits 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 is federally mandated to adhere to the directions provided in the President's Executive Order (EO) 13224, Executive Order on Terrorist Financing – Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism and any subsequent changes made to it via cross-referencing respondents/vendors with the Federal General Services Administration's Excluded Parties List System (EPLS, <http://www.epls.gov>), which is inclusive of the United States Treasury's Office of Foreign Assets Control (OFAC) Specially Designated National (SDN) list. Contractor certifies that Contractor is in compliance with the State of Texas statutes and rules relating to procurement and that Respondent is not listed on the federal government's terrorism watch list as described in Executive Order 13224. Entities ineligible for federal procurement are listed at <http://www.epls.gov>. This clause is applicable to all contract renewals.

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

Lisa Candy
Authorized Signature

Typed Title:

Vice President

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 29th day of August 2011 (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
1701 North Congress Avenue
Austin, Texas 78701-1494

Shirley Beaulieu
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
 - o SLIM
 - 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 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. 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)

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, 2014.

After the term, Contractor reserves the right to amend its fees if the service requirements change in a way that materially affects the responsibilities or costs. TEA reserves the right to decline and enter into negotiations if such fee changes are deemed to be unacceptable to the TPSF.

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	42 a
	Exhibit C Initial 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 i</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

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.

**EXHIBIT A
TRANSACTIONAL SERVICES**

(To be completed only if Workbench Transactional Services are to be used)

Transactional Services include the following:

<u>Services</u>	<u>Services Selected</u> (Check as Appropriate)	<u>"Authorize Own" Capability⁽¹⁾</u> (Initial as Appropriate)
1. Corporate Action Response	<u>X</u>	<u>X</u>
2. Buy/Sell Securities	<u>X</u>	---
3. FX Request from Buy/Sell Securities	---	---
4. Delivery Free	---	---
5. Receive Free	---	---
6. DTC Affirmation	---	N/A
7. Withdraw Cash(2)	<u>X</u>	---
8. Capital Calls (2) for U.S. Limited Partnerships	<u>X</u>	---
9. Deposit Cash	<u>X</u>	---
10. Transfer Cash between Custody Accounts	<u>X</u>	---
11. Mutual Funds	---	---
12. BNYM E-Ideal FX Trading	---	N/A
13. Sending Transaction files in BNYM via the Message Center	---	N/A
14. Benefit Disbursements Update	---	N/A
15. Two-way secure message	---	---
16. Trade Upload	<u>X</u>	<u>X</u>

⁽¹⁾ "Authorize Own" capability permits Client to allow a single Authorized Transactional User to both (1) input a transaction and (2) approve the same transaction. Consistent with the services selected above, the Supervisors shall have the responsibility to designate the services that each Authorized Transactional User is authorized to use, including any applicable "Authorize Own" capability, the accounts to which the Authorized Transactional Users shall have authority to use such services and any limitations on the use of such Services by the Authorized Transactional User.

⁽²⁾ If "Withdraw Cash" and/or "Capital Calls" are selected as a Transactional Service, Client authorizes BNYM to accept and execute every wire transfer instruction from Client to BNYM and to charge Client's account. Client acknowledges that BNYM has established the security procedure contained in the Supplemental Agreement of dual factor authentication through an encrypted system (the "Security Procedure"). The Client acknowledges that the Security Procedure is commercially reasonable method of providing security against unauthorized Payment Orders and that Client has agreed to BNYM's use of the Security Procedure.

Client agrees to be bound by any Payment Order, whether or not authorized by Client, issued in Client's name and accepted by BNYM in good faith in compliance with the Security Procedure. "Payment Order" means an instruction by Client to BNYM to pay, or cause another bank to pay, a fixed amount of money to a beneficiary. It also includes a request for an amendment or cancellation of a Payment Order.

[The following is to be completed by representative of Client only if used to modify the initial designation of Transactional Services on this Exhibit A]

The undersigned hereby represents and warrants to BNYM that he/she has full authority under the trust/custody/services agreement by and between Client and BNYM to make the designations above on behalf of Client and has the requisite authority to bind Client to the terms of this amended designation of Transactional Services.

CLIENT:

Acknowledgement:

THE BANK OF NEW YORK MELLON:

By: _____
Date: _____

By: Asia Candia
Title: VP President
Date: 08/28/11

EXHIBIT C
INITIAL LIST OF AUTHORIZED TRANSACTIONAL USERS AND SUPERVISORS
WITH RESPECT TO TRANSACTIONAL SERVICES

I. Supervisors: Catherine A. Civiletto
Deborah Saunders
Randy Metzger

II. Authorized Transactional Users:

Catherine Civiletto
Holland Timmins
Carlos Veintemillas

William Glenn
Alastair Kirkpatrick

Karim Hirani
Carlos Castro

Deborah Saunders
David Trice
Sharla Smith
Kristina Eckerling
Lourdes Cobos
~~Jesie Torres~~ *resigned*

Randy Metzger
Rosalinda Romero
Miguel Gomez

The following is to be completed by representative of Client if used to modify the initial designation of Supervisors or Authorized Transactional Users on this Exhibit C:

The undersigned hereby represents and warrants to BNYM that he/she has full authority under the trust/custody/services agreement by and between Client and BNYM to make the designations above on behalf of Client and has the requisite authority to bind Client to the terms of this amended designation of Transactional Services.

[CLIENT]

By: Catherine A. Civiletto

Date: 8/25/11

Acknowledgement:
THE BANK OF NEW YORK MELLON

By: Lisa Candy
Title: Vice President

SEP 7 11 59 AM '11

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