

STATE OF TEXAS §

COUNTY OF TRAVIS §

Division/Org Code:	110/701	Program Name:	Texas Permanent School Fund
Speed Chart:		Legal/Funding Authority:	Texas Constitution Article VII
Payee Name:	NEPC, LLC	Contract #:	3318
Payee ID ISAS:	26-1429809	PO #:	32722

TEXAS EDUCATION AGENCY STANDARD CONTRACT

ARTICLE I. PARTIES TO CONTRACT

This agreement is entered into by and between the Texas Education Agency ("TEA"), a Texas State Agency, and NEPC, LLC, 255 State Street, Boston, MA 02109 ("Contractor").

ARTICLE II. PERIOD OF CONTRACT

TEA shall pay Contractor for the reasonable and approved costs incurred by Contractor in connection with the Contract Project during the period beginning 09/01/2015 and ending 08/31/2018, unless extended or terminated as otherwise provided for in this contract. Upon written mutual agreement of both parties, this contract may be extended for two (2) additional three (3) year terms to commence on the first day after the original contract period under the same or different terms subject to appropriation of funds by the Texas Legislature for this project, if applicable.

ARTICLE III. PURPOSES OF CONTRACT

Contractor shall perform all of the functions and duties set described herein and in the appendices to this Contract, which are attached hereto and incorporated by reference.

ARTICLE IV. PAYMENT UNDER CONTRACT

Subject to the availability to TEA of funds for the purpose(s) of this contract, TEA shall pay to Contractor by State of Texas warrant(s) an amount not to exceed \$1,740,000.00 for the performance, satisfactory to the TEA, of Contractor's functions and duties under the original term of this Contract. Payment to Contractor by TEA will be made only in accordance with the relevant appendices to this Contract, which are attached hereto and incorporated herein by reference.

ARTICLE V. GENERAL AND SPECIAL PROVISIONS OF CONTRACT

Attached hereto and incorporated herein by reference are the General Provisions and the Special Provisions indicated below with an "X" beside each:

- Special Provisions A, Program Specific
- Special Provisions B, Historically Underutilized Business Subcontracting Plan

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.


Contractor shall be an independent contractor for matters relating to this Contract. Contractor and its employees are not employees of TEA for any purpose and shall not be entitled to participate in any plan, arrangement, or distribution by TEA pertaining to or in connection with any pension, bonus, or other benefit extended to TEA employees.

ARTICLE VI. ENTIRE CONTRACT

This contract together with the documents including but not limited to Appendices, Attachments, Exhibits, Proposal Responses, mentioned herein and incorporated by reference, contains the entire agreement between the parties relating to the rights granted and the obligations assumed in it. Any oral representations or modifications concerning this contract shall be of no force or effect unless contained in a subsequent amendment executed by both parties.

AGREED and accepted on behalf of Contractor effective beginning on the date of the Contract as specified above and as indicated by signature below of a person authorized to bind Contractor.

Typed name: Michael P Manning 
Typed title: Managing Partner Authorized Signature

This section reserved for TEA use. I, an authorized official of the Texas Education 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>17th</u> day of <u>September 2015</u> (month/year) by a person authorized to bind Agency.	
Return three (3) copies with original signature to: Catherine A. Civileto Deputy Executive Administrator Texas Education Agency 400 West 15 th Street, Suite 1100 Austin, Texas 78701	 Michael Williams, Commissioner of Education

APPENDIX 1

- A. The definition of terms in the General Provisions are incorporated herein.
- B. The attached proposal submitted by NEPC, LLC, entitled Request for Proposal #701-15-023, Investment Counsel for the Texas Permanent School Fund, dated March 19, 2015, of which Documents C, D, E, G, and I are of a program nature, is incorporated herein by reference and is therefore made a part of this contract.
- C. The terms, conditions, and requirements contained in the Request for Proposal entitled "Investment Counsel for the Texas Permanent School Fund", with a closing date of March 19, 2015, and identified as RFP #701-15-023, are incorporated herein by reference, although in the event of conflict the General Provisions to Standard Contract shall control.
- D. If there is a conflict or ambiguity between or among the terms of the documents that constitute this Contract, and if that conflict or ambiguity cannot be resolved by construing the terms so as to harmonize all their terms, then the conflict or ambiguity shall be resolved with the following Contract documents prevailing in the following order of priority:
 - General Provisions of the Standard Contract;
 - The Standard Contract, inclusive of all appendices;
 - Contractor's Affirmed Pricing dated June 12, 2015;
 - Contractor's Proposal to the Texas Education Agency entitled "NEPC's Investment Counsel Proposal for the Texas Permanent School Fund" submitted March 19, 2015; and
 - The Request for Proposal entitled "Investment Counsel for the Texas Permanent School Fund" released February 24, 2015.

APPENDIX 2

A. The definitions of terms in the General Provisions are incorporated herein.

B. Acronyms used throughout:

- SBOE – State Board of Education
- TPSF or Fund – Texas Permanent School Fund
- Client – collectively and interchangeably the SBOE, TEA and TPSF
- CIO – Chief Investment Officer, TPSF
- Contractor – NEPC, LLC.
- TAC – Texas Administrative Code
- Policy - TAC Title 19, Part 2, Chapter 33 Statement of Investment Objectives, Policies, and Guidelines
- IPM – Investment Procedures Manual

C. Description of Services/Activities:

Contractor agrees to provide general investment counsel to assist the Client in its fiduciary responsibility to the TPSF.

Contractor is expected to provide expert advice on the development and management of TPSF's investment related activities. Contractor will work closely with the SBOE, the Chief Investment Officer, TPSF other specialized counsels, TPSF performance advisor, TPSF custodian bank, and TPSF staff to deliver the services listed below:

Services to be provided will include, but are not limited to the following scope:

1. General Investment Counsel

- a. In conjunction with the TPSF staff, conduct spending policy analysis, intergenerational equity analysis, estimate endowment distribution rates, and provide formal recommendations that include all data, assumptions and methodologies supporting the analysis.
- b. When requested, review methodologies utilized by staff to test compliance with Constitutional and other regulatory mandates specific to TPSF.
- c. Evaluate the Statement of Investment Objectives, Policies, and Guidelines, including the tolerance for and management of risk, and recommend amendments.
- d. When requested, provide assistance in the periodic review of the Investment Procedures Manual, and recommend written amendments.
- e. Assist with the preparation of asset allocation studies and provide written recommendations, accordingly.
- f. In conjunction with the TPSF staff, conduct a full review of the asset allocation plan at least every two years.
- g. Provide TPSF staff with the firm's annual capital market projections, including education and analyses on market conditions and all data, assumptions and methodologies that support the projection and analyses.
- h. Perform routine stress testing on the TPSF including tests that measure how the Fund will perform in a variety of market scenarios and extreme market environments and how the Fund will meet liquidity needs under such conditions. Examples include but are not limited to: economic recovery, deflation, inflation, stagflation, extreme market decline and other shock factors.
- i. Provide documented due diligence monitoring/reviewing of existing and future investment managers; conduct on-site visits of existing and potential managers as needed; when requested, provide periodic review of investment manager fees with recommendations for action to be taken to ensure appropriate fee structures.
- j. When requested, provide advice in the planning, oversight, costing and review of asset transitions among investment managers and investment vehicles.
- k. Attend and present at regular SBOE meetings, Committee on Permanent School Fund meetings, legislative hearings, as requested, and other meetings as needed.
- l. Be available for ad-hoc telephone conferences and consultation with SBOE members, Committees, and TPSF staff.
- m. Provide counsel in specialized asset classes, when requested.

2. Search and Recommendation

- a. Perform specialized searches/studies and produce analysis, reports and whitepapers as may be requested by the SBOE or Chief Investment Officer.
- b. Assist with investment manager searches or other providers of investment related services, across all asset classes when requested, based on the Investment Procedures Manual and performance objectives of the TPSF.
 - i. Assist in the screening of available investment manager and investment product universes to identify investment opportunities, consistent with the Policy and the asset allocation plan.
 - ii. Provide appropriate whitepapers, research and analyses to evaluate investment opportunities and to assist in bringing investment recommendations to the SBOE for consideration and selection.
 - iii. Assist in developing procurement minimum qualifications, questionnaires and interview questions, comprehensive agenda for on-site diligence visits, and due diligence checklists for manager and advisor selection.
 - iv. Independently evaluate investment manager proposals and presentations, and work with TPSF staff to prepare recommendations and analyses for presentation to the SBOE.
- c. Work with TPSF staff as necessary in the due diligence process with regard to the selection of investment opportunities. Due diligence best practices generally include the following:
 - i. Review the reasonableness and prudence of each investment opportunity given its risk and expected return, including assessing the impact of the economy and market conditions of the investment type. Evaluate the appropriateness of opportunities within the context and requirements of the Policy and IPM.
 - ii. Review the reasonableness and prudence of investment terms, investment structure, fee structure, and the alignment of the TPSF and manager/partner interests.
 - iii. Evaluate the institutional quality of the organization including, but not limited to: history, ownership, firm financial strength, personnel, investment/management experience, client service, quality assurance, operations and systems, business conduct, conflicts of interest.
 - iv. Analyze and generate reports for past performance, fee structure and track record of each investment opportunity. Evaluate the overall investment strategy focusing on appropriate fit for the TPSF.
 - v. Evaluate the team that will actually be providing services to the TPSF. Review team members for expertise, experience, conflicts of interest and track record for any given strategy. Assess the firm personnel and their track record and conflicts of interest. Evaluate compensation arrangements to ensure appropriate incentives and alignments of interest are in place.
 - vi. Confirm compliance with the Policy.
- d. When requested, assist with interviews of prospective investment managers or other providers of investment related services, across all asset classes including interviews held in Austin, TX as well as on-site due diligence visits to prospective candidate offices or other on-site locations as needed.
- e. When requested, work with TPSF staff and TPSF legal counsel to assist with fee and term negotiation and contract development for selected investment opportunities. TEA acknowledges that Investment Counsel is not providing any legal advice or consultation in providing services in this category. Investment Counsel shall review, evaluate and recommend retention or removal of managers, but shall have no authority to engage or terminate any manager.
- f. Work with TPSF staff as necessary to identify and document investments that are no longer consistent with the Policy and asset allocation plan. Assist in developing exit strategies when investments require termination, partial or full liquidation, and retirement.
- g. Participate in the procurement process and assist in the evaluation of the global master custodian and/or securities lending agent, if requested.

3. Research and Analyses

- a. Provide access to general and firm investment and economic research, including spending policy and intergenerational equity research, analysis and methodologies; and, general and firm capital market assumptions and projections with underlying methodologies. In all matters pertaining to research and analyses, provide TPSF with transparency into underlying assumptions and data sets that support such research and analyses.

- b. Perform research projects/specialized studies and produce reports as may be requested by the SBOE and/or CIO on specific investment matters, including public fund universes, endowment universes, compensation studies, across all asset classes and related to other investment matters.
- c. Provide TPSF staff with direct access to all Investment Counsel research, including having discussions with the lead researcher and firm analysts. Provide whitepapers to TPSF when available. Provide access to all client facing electronic tools that your firm may offer.
- d. Provide education and information on capital market conditions and projections to SBOE and TPSF staff.
- e. Provide whitepapers, educational materials and conduct educational seminars on investment principles, asset classes, investment strategies, investment vehicles, macro or thematic investment trends and other related matters.
- f. Provide research in specific alternative asset classes, when requested.
- g. Prepare other investment related research and reports when requested by SBOE or TPSF staff.

4. Manager Database

- a. Maintain a broad database of investment advisors, managers, and other investment service providers and investment products.
- b. Provide TPSF staff access to the lead researcher and analysts involved in compiling such information to discuss the database and its contents.

D. Fees

- 1. Full service retainer fees are paid quarterly in arrears (fiscal quarters) upon receipt of an itemized invoice according to the following fiscal cycles:

Initial Term

First Fiscal Cycle:	September 1, 2015 – August 31, 2016	\$580,000
Second Fiscal Cycle:	September 1, 2016 – August 31, 2017	\$580,000
Third Fiscal Cycle:	September 1, 2017 – August 31, 2018	\$580,000

Optional Renewals

First Optional Renewal	September 1, 2018 – August 31, 2019	\$585,000
	September 1, 2019 – August 31, 2020	\$585,000
	September 1, 2020 – August 31, 2021	\$585,000
Second Optional Renewal	September 1, 2021 – August 31, 2022	\$590,000
	September 1, 2022 – August 31, 2023	\$590,000
	September 1, 2023 – August 31, 2024	\$590,000

- 2. The retainer fee includes all services described in the scope in Section C above, including all travel for regular scope activities. Specifically, the retainer fee includes, but is not limited to performance by the Contractor to conduct, prepare, present and provide the following deliverables:

- investment policy analyses
- asset allocation studies, liability-based and asset-based
- spending policy analyses
- asset class implementation structure analyses
- global Fund stress testing, scenario, shock, and liquidity analyses
- monthly flash reports
- education opportunities
- absolute return fund-of-fund (hedge fund-of-fund) investment analyses
- real return/real asset investment analyses
- manager searches for traditional assets
- manager searches for real return/real assets
- manager searches for absolute return fund-of-fund (hedge fund-of-fund) assets
- global custodian and securities lender evaluations and searches
- presentations at SBOE and TPSF Committee meetings, including education sessions

- research projects, specialized studies, custom reports
 - economic research, capital markets assumptions and white papers
 - advice on proxy voting services
 - invitation for the Client to attend the annual client conference
3. Specifically, the retainer fee does not include advising and counseling for alternative assets beyond including such assets in the asset allocation modeling and spending analyses. Alternative assets defined herein include: private equity, real estate and direct investments in absolute return/hedge funds. It is understood that for funds-of-funds, analysis is conducted at the fund-of-funds level and will not generally include a direct review of underlying funds.
 4. Advising and counseling on such alternative assets will be negotiated separately in writing and will be approved in advance of any undertaking by the TEA and will be billed separately.
 5. Search Fees Include:
 - Comprehensive manager searches for private equity, real estate and direct hedge funds - \$35,000/each completed search
 - Specialized searches - \$50,000/each completed search
 6. Expanded Advisory Services: Other projects as directed and approved by the Client and Contractor not listed above, shall be considered outside of the general retainer fee and shall be negotiated separately in writing and approved in advance by the TEA and billed separately.
 7. Travel costs for activities outside the normal scope of the contract must be approved in advance by the TEA and reimbursements for this travel will be at State approved rates in accordance with State of Texas travel regulations.

E. Termination

This Contract may be terminated at will by either party upon thirty (30) days written prior notice. Fees and services will be prorated accordingly. Such notice shall be delivered to the Contract administrators noted in the General Terms and Conditions Section PP. **Notices Point of Contact and Escalation.**

GENERAL PROVISIONS

- A. As used in these General Provisions:
- *Contract* means TEA's Standard Contract, and all of TEA's attachments, appendices, schedules (including but not limited to the General Provisions and the Special Provisions), amendments and extensions of or to the Standard Contract;
 - *Agency or TEA* means the Texas Education Agency;
 - *Proposer or Respondent* may be used interchangeably in the competitive solicitation. Proposer and Respondent infer pre RFP award status and Contractor infers to post RFP award status.
 - *Contractor* means the party or parties to this Contract other than TEA, including its or their officers, directors, employees, agents, representatives, consultants and subcontractors, and subcontractors' officers, directors, employees, agents, representatives and consultants;
 - *Project Administrator* means the respective person(s) representing TEA or Contractor, as indicated by the Contract, for the purposes of administering the Contract Project;
 - *Contract Project* means the purpose intended to be achieved through the Contract;
 - *Amendment* means a Contract that is revised in any respect, and includes both the original Contract, and any subsequent amendments or extensions thereto.
 - *Major Contract* means any contract over \$10 million cumulative over the life of the contract.
- B. **Contingency:** The Contract(s), including any amendments, extensions or subsequent contracts are executed by TEA contingent upon the availability of appropriated funds by legislative act. Notwithstanding any other provision in this Contract or any other document, this Contract is void upon the insufficiency (in TEA's discretion) or unavailability of appropriated funds. In addition, this Contract may be terminated by TEA at any time for any reason upon notice to Contractor. Expenditures and/or activities for which Contractor may claim reimbursement shall not be accrued or claimed subsequent to receipt of such notice from TEA.
- C. **Indemnification:** Contractor shall indemnify, hold harmless the State of Texas, its officers, agents and employees, and the Texas Education Agency, its officers, and employees and contractors, from and against all claims, actions, suits, demands, proceedings, costs, arising out of, connected with, or resulting from any acts or omissions of contractor or any agent, employee, subcontractor, or supplier of contractor in the execution or performance of this contract. Contractor shall coordinate its defense with the Texas Attorney General as requested by TEA.
- This paragraph is not intended to and shall not be construed to require contractor to indemnify or hold harmless the State or TEA for any claims or liabilities resulting from the negligent acts or omissions of TEA or its employees.
- D. **Subcontracting:** Contractor shall not assign, transfer or subcontract any of its rights or responsibilities under this Contract without prior formal written amendment to this Contract properly executed by both TEA and Contractor. Any changes to the HUB Subcontracting Plan (HSP) must be approved by the Agency HUB Coordinator before staffing changes are initiated.
- E. **Encumbrances/Obligations:** All encumbrances, accounts payable, and expenditures shall occur on or between the beginning and ending dates of this Contract. All goods must have been received and all services rendered during the Contract period in order for Contractor to recover funds due. In no manner shall encumbrances be considered or reflected as accounts payable or as expenditures.
- F. **Contractor's Proposal:** Contractor's proposal that was furnished to TEA in response to a Request For Proposal is incorporated in this Contract by reference. The provisions of this Contract shall prevail, however, in all cases of conflict arising from the terms of Contractor's proposal whether such proposal is a written part of this Contract or is attached as a separate document.
- G. **Requirements, Terms, Conditions, and Assurances:** The terms, conditions, and assurances, which are stated in the Request for Proposal, in response to which Contractor submitted a proposal, are incorporated herein by reference for all purposes, although the current General Provisions shall prevail in the event of conflict.
- H. **Records Retention:** Contractor shall maintain its records and accounts in a manner which shall assure a full accounting for all funds received and expended by Contractor in connection with the Contract. These records and accounts shall be retained by Contractor and made available for programmatic or financial audit by TEA and by others authorized by law or regulation to make such an audit for a period of not less than five (5) years from the date of completion of the Contract Project or the date of the receipt by TEA of Contractor's final claim for payment or final expenditure report in connection with this Contract, whichever is later. If an audit has been announced, the records shall be retained until such audit has been completed.

- I. **Audit:** Pursuant to Section 2262.154 of the Texas Government Code, Contractor understands and agrees that (1) the state auditor may conduct an audit or investigation of any entity receiving funds from the state directly under the Contract or indirectly through a subcontract under the Contract; (2) acceptance of funds directly under the Contract or indirectly through a subcontract under the Contract acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds; and (3) under the direction of the legislative audit committee, an entity that is the subject of an audit or investigation by the state auditor must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit.

Contractor further agrees that acceptance of funds under this contract acts as acceptance for TEA to conduct an audit or investigation in connection with those funds. Contractor, subcontractors, and any entities receiving funds through this contract shall cooperate fully with TEA in the conduct of the audit or investigations, including providing all records pertaining to this contract that are requested.

- J. **Information Security Requirements:** Access to Confidential TEA Information. Contractor represents and warrants that it will take all necessary and appropriate action within its abilities to safeguard TEA Confidential Information and to protect it from unauthorized disclosure. If Contractor discloses any TEA confidential information to a subcontractor or agent, Contractor will require the subcontractor or agent to comply with the same restrictions and obligations as are imposed on Contractor. Whenever communications with Contractor necessitate the release of Confidential TEA Information, additional TEA Confidential forms will need to be signed by each individual who will require access to or may be exposed to that information. Contractor shall access TEA's systems or Confidential TEA Information only for the purposes for which it is authorized. TEA reserves the right to review the Contractor's security policy to ensure that any data that is on the Contractor's servers is secure. Contractor shall cooperate fully by making resources, personnel, and systems access available to TEA and TEA's authorized representative(s).

Contractor shall ensure that any TEA Confidential Information in the custody of Contractor is properly sanitized or destroyed when the information is no longer required to be retained by TEA or Contractor in accordance with this Contract. Electronic media used for storing any Confidential TEA Information must be sanitized by clearing, purging or destroying in accordance with such standards established by the National Institute of Standards and Technology and the Center for Internet Security. These standards are also required if the Contractor is collecting, maintaining, or analyzing data gathered, collected, or provided under this Contract. Contractor must maintain a record documenting the removal and completion of all sanitization procedures with the following information:

- Date and time of sanitization/destruction;
- Description of the item(s) and serial number(s) if applicable;
- Inventory number(s); and
- Procedures and tools used for sanitization/destruction.

No later than sixty (60) days from contract expiration or termination or as otherwise specified in this Contract, Contractor must complete the sanitization and destruction of the data and provide to Comptroller all sanitization documentation.

Access to Internal TEA Network and Systems

As a condition of gaining remote access to any internal TEA network and systems, Contractor must comply with TEA's policies and procedures. TEA's remote access request procedures will require Contractor to submit TEA Applicable Access Request forms for TEA's review and approval. Remote access technologies provided by Contractor must be approved by TEA's Information Security Officer. TEA, in its sole discretion, may deny network or system access to any individual that does not complete the required forms. Contractor must secure its own connected systems in a manner consistent with TEA's requirements. TEA reserves the right to audit the security measures in effect on Contractor's connected systems without prior warning. TEA also reserves the right to immediately terminate network and system connections not meeting such requirements.

Disclosure of Security Breach

Contractor shall provide notice to TEA's Project Manager and TEA's Information Security Officer as soon as possible following Contractor's discovery or reasonable belief that there has been unauthorized use, exposure, access, disclosure, compromise, modification, or loss of sensitive or confidential Comptroller information ("Security Incident"). Within twenty-four (24) hours of the discovery or reasonable belief of a Security Incident, Contractor shall provide a written report to TEA's Information Security Officer detailing the circumstances of the incident which includes at a minimum:

- (1) Description of the nature of the Security Incident;
- (2) The type of TEA information involved;
- (3) Who may have obtained the information;
- (4) What steps Contractor has taken or will take to investigate the Security Incident;
- (5) What steps Contractor has taken or will take to mitigate any negative effect of the Security Incident; and
- (6) A point of contact for additional information.

Each day thereafter until the investigation is complete, Contractor shall provide TEA's Information Security Officer with a written report regarding the status of the investigation and the following additional information as it becomes available:

- (1) Who is known or suspected to have gained unauthorized access to TEA information;
- (2) Whether there is any knowledge if TEA information has been abused or compromised;
- (3) What additional steps Contractor has taken or will take to investigate the Security Incident;
- (4) What steps Contractor has taken or will take to mitigate any negative effect of the Security Incident; and
- (5) What corrective action Contractor has taken or will take to prevent future similar unauthorized use or disclosure.

Contractor shall confer with TEA's Chief Information Security Officer regarding the proper course of the investigation and risk mitigation. TEA reserves the right to conduct an independent investigation of any Security Incident, and should TEA choose to do so, Contractor shall cooperate fully by making resources, personnel, and systems access available to TEA and TEA's authorized representative(s). Subject to review and approval of TEA's Information Security Officer, Contractor, at its own cost, shall provide notice that satisfies the requirements of applicable law to individuals whose personal, confidential, or privileged data were compromised or likely compromised as a result of the Security Incident. If TEA, in its sole discretion, elects to send its own separate notice, then all costs associated with preparing and providing notice shall be reimbursed to TEA by Contractor. If Contractor does not reimburse such costs within thirty (30) days of TEA's written request, then TEA shall have the right to collect such costs.

- K. Sanctions for Failure to Perform or for Noncompliance:** If Contractor, in TEA's sole determination, fails or refuses for any reason to comply with or perform any of its obligations under this Contract, TEA may impose such sanctions as it may deem appropriate. This includes but is not limited to the withholding of payments to Contractor until Contractor complies; the cancellation, termination, or suspension of this Contract in whole or in part; and the seeking of other remedies as may be provided by this Contract or by law. Any cancellation, termination, or suspension of this Contract, if imposed, shall become effective at the close of business on the day of Contractor's receipt of written notice thereof from TEA.
- L. Contract Cancellation, etc.:** If this Contract is cancelled, terminated, or suspended by TEA prior to its expiration date, the reasonable monetary value of services properly performed by Contractor pursuant to this Contract prior to such cancellation, termination or suspension shall be determined by TEA and paid to Contractor as soon as reasonably possible.
- M. Refunds Due to TEA:** If TEA determines that TEA is due a refund of money paid to Contractor pursuant to this Contract, Contractor shall pay the money due to TEA within thirty (30) days of Contractor's receipt of written notice that such money is due to TEA. If Contractor fails to make timely payment, TEA may obtain such money from Contractor by any means permitted by law, including but not limited to offset, counterclaim, cancellation, termination, suspension, total withholding, and/or disapproval of all or any subsequent applications for said funds.
- N. State of Texas Laws:** In the conduct of the Contract Project, Contractor shall be subject to laws or rules of the State of Texas pertaining to and or governing this Contract and the Contract Project. This Contract constitutes the entire agreement between TEA and Contractor for the accomplishment of the Contract Project. This Contract shall be interpreted according to the laws of the State of Texas except as may be otherwise provided for in this Contract.
- O. HUB Subcontracting Plan:** Pursuant to 34 TAC 201.14 -18 and TGC 2161, Contractors shall maintain business records documenting compliance with the HUB subcontracting plan (HSP) and shall submit a compliance report to the contracting agency monthly, in the format required by the Agency. The compliance report submission shall be required as a condition for payment. If the Contractor subcontracts any part of the contract in a manner that is not consistent with its HUB subcontracting plan, the selected respondent must submit a revised HUB subcontracting plan before subcontracting any of the work under the contract. If the Contractor subcontracts any of the work without prior authorization and without complying with this section, the Contractor is deemed to have breached the contract and is subject to any remedial actions provided by Government Code, Chapter 2161, and other applicable state law
- P. Signature Authority; Final Expression; Superseding Document:** Contractor certifies that the person signing this Contract has been properly delegated this authority. The Contract represents the final and complete expression of the terms of agreement between the parties. The Contract supersedes any previous understandings or negotiations between the parties. Any representations, oral statements, promises or warranties that differ from the Contract shall have no force or effect. The Contract may be modified, amended or extended only by formal written amendment properly executed by both TEA and Contractor.
- Q. Antitrust:** By signing this Contract, Contractor, represents and warrants that neither Contractor nor any firm, corporation, partnership, or institution represented by Contractor, or anyone acting for such firm, corporation or institution has, (1) violated the antitrust laws of the State of Texas under Tex. Bus. & Com. Code, Chapter 15, or the federal antitrust laws; or (2) communicated directly or indirectly the Proposal to any competitor or any other person engaged in such line of business during the procurement process for this Contract.

- R. **Family Code Applicability:** By signing this Contract, Contractor, if other than a state agency, certifies that under Section 231.006, Family Code, that Contractor is not ineligible to receive payment under this Contract and acknowledges that this Contract may be terminated and payment may be withheld if this certification is inaccurate. TEA reserves the right to terminate this Contract if Contractor is found to be ineligible to receive payment. If Contractor is found to be ineligible to receive payment and the Contract is terminated, Contractor is liable to TEA for attorney's fees, the costs necessary to complete the Contract, including the cost of advertising and awarding a second contract, and any other damages or relief provided by law or equity.
- S. **Dispute Resolution:** The dispute resolution process provided for in Chapter 2260 of the Texas Government Code must be used by TEA and Contractor to attempt to resolve all disputes arising under this Contract. The parties may agree to mediation of their dispute at any time. The Agency's participation in mediation or any other dispute resolution process shall not waive any of the Agency's contractual or legal rights and remedies, including but not limited to sovereign immunity.
- T. **Interpretation:** In the case of conflicts arising in the interpretation of wording and/or meaning of various sections, parts, Appendices, General Provisions, Special Provisions, Exhibits, and Attachments or other documents, the TEA Contract and its General Provisions, Appendices and Special Provisions shall take precedence over all other documents which are a part of this Contract.
- U. **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.
- V. **Public Information:** The TEA is subject to the provisions of the Texas Public Information Act. If a request for disclosure of this Contract or any information related to the goods or services provided under the Contract or information provided to the TEA under this Contract constituting a record under the Act is received by the TEA, the information must qualify for an exception provided by the Texas Public Information Act in order to be withheld from public disclosure. Contractor authorizes the TEA to submit any information contained in the Contract, provided under the Contract, or otherwise requested to be disclosed, including information Contractor has labeled as confidential proprietary information, to the Office of the Attorney General for a determination as to whether any such information may be exempt from public disclosure under the Act. If the TEA does not have a good faith belief that information may be subject to an exception to disclosure, the TEA is not obligating itself by this Contract to submit the information to the Attorney General. It shall be the responsibility of the Contractor to make any legal argument to the Attorney General or appropriate court of law regarding the exception of the information in question from disclosure. The Contractor waives any claim against and releases from liability the TEA, its officers, employees, agents, and attorneys with respect to disclosure of information provided under or in this Contract or otherwise created, assembled, maintained, or held by the Contractor and determined by the Attorney General or a court of law to be subject to disclosure under the Texas Public Information Act.

To the extent that this Contract requires the creation or exchange of information that is not excepted from disclosure under the Texas Public Information Act, Contractor agrees to make all such information available to TEA for no additional charge in a format that is accessible by the public. Unless otherwise specified elsewhere in this Contract, the required format for the information will be an electronic flat file that can be (and, upon request from TEA, will be) delivered by Contractor and received by TEA through the parties' normal contact email addresses.

- W. **Gratuities:** By signing this Contract, Contractor represents and warrants that the Contractor has not given, offer to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted response.
- X. **Venue and Jurisdiction:** Subject to and without waiving any of the Agency's rights, including sovereign immunity, this Contract is governed by and construed under and in accordance with the laws of the State of Texas. Venue for any suit concerning this solicitation and any resulting contract or purchase order shall be in a court of competent jurisdiction in Travis County, Texas.
- Y. **Protests:** Any actual or prospective Bidder, Offeror, or Contractor who is aggrieved in connection with the solicitation, evaluation, or award of this or any other contract by the Texas Education Agency may submit a formal protest to the Director of the Agency's Contracts and Purchasing Division. This protest procedure shall be the exclusive method by which anyone may make a challenge to any aspect of the Agency's contracting process. The Agency will not be required to consider the merits of any protest unless the written protest is submitted within ten (10) working days after such aggrieved person knows, or reasonably should have known, of the occurrence of the action which is protested. The protest document must meet with all requirements in applicable law and Agency's rules (Title 19 of the Texas Administrative Code, at § 30.2002) <http://ritter.tea.state.tx.us/rules/tac/index.html>.

If the protest procedure results in a final determination by the Agency that a violation of law has occurred in its contracting process in a case in which a contract has been awarded, then the Agency may declare the contract void at inception. In that event, the party who had been awarded the contract shall have no rights under the contract and no remedies under the law against the Agency.

- Z. **Liability for and Payment of Taxes:** Contractor represents and warrants that it shall pay all taxes or similar amounts resulting from this Contract, including, but not limited to, any federal, State, or local income, sales or excise taxes of Contractor or its employees. TEA shall not be liable for any taxes resulting from this Contract.
- AA. **Severability:** In the event that any provision of this Contract is later determined to be invalid, void, or unenforceable, the invalid provision will be deemed severable and stricken from the Contract as if it had never been incorporated herein. The remaining terms, provisions, covenants, and conditions of this Contract shall remain in full force and effect, and shall in no way be affected, impaired, or invalidated.
- BB. **Assignment of Contract:** This Contract may not be assigned, sold, or transferred without express written consent of the TEA Purchasing, Contracts, and Agency Services (PCAS) Division. An attempted assignment without notice to TEA will constitute a material breach of contract.
- CC. **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.
- DD. **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>.
- EE. **Suspension and Debarment:** Contractor certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal, state or local government entity and that Contractor is in compliance with the State of Texas statutes and rules relating to procurement. If Contractor is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this contract.
- FF. **Collusion:** 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 Contractor'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.
- GG. **Proprietary or Confidential Information:** Contractor will not disclose any information to which it is privy under this Contract without the prior consent of the agency. Contractor will indemnify and hold harmless the State of Texas, its officers and employees, and TEA, its officers and employees for any claims or damages that arise from the disclosure by Contractor or its contractors of information held by the State of Texas.
- HH. **Independent Contractor:** Contractor shall serve as an independent Contractor in providing services under this Contract. Contractor's employees are not and shall not be construed as employees or agents of the State of Texas.
- II. **Contractor Performance:** All state agencies must report unsatisfactory Contractor performance on purchases over \$25,000. Contractor s who are in default or otherwise not in good standing under any other current or prior contract with TEA at the time of selection will not be eligible for award of this contract. A Contractor's past performance will be measured based upon pass/fail criteria, in compliance with applicable provisions of §§2155.074, 2155.075, 2156.007, 2157.003, and 2157.125, Gov't Code. Contractor s may fail this selection criterion for any of the following conditions: A score of less than 90% in the Contractor Performance System, currently under a Corrective Action Plan, having repeated negative Contractor performance reports for the same reason, having purchase orders that have been cancelled in the previous 12 months for non-performance (i.e. late delivery, etc.). TEA may conduct reference checks with other entities regarding past performance. In addition to evaluating performance through the Contractor Performance Tracking System (as authorized by 34 Texas Administrative Code §20.108), TEA may examine other sources of Contractor performance including, but not limited to, notices of termination, cure notices, assessments of liquidated damages, litigation, audit reports, and non-renewals of contracts. Any such investigations shall be at the sole discretion of TEA, and any negative findings, as determined by TEA, may result in non-award to the Contractor. Agencies report satisfactory and exceptional Contractor 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

JJ. **Termination:** This Contract shall terminate upon full performance of all requirements contained in this Contract, unless otherwise extended or renewed as provided in accordance with the Contract terms and conditions.

1. **Termination for Convenience:** TEA may terminate this Contract at any time, in whole or in part, without penalty, by providing fifteen (15) calendar days advance written notice to the other Party. In the event of such a termination, the Contractor shall, unless otherwise mutually agreed upon in writing, cease all work immediately upon the effective date of termination. TEA shall be liable for reimbursing only those expenses incurred by the Contractor that are permitted, properly performed under this Contract and were incurred prior to the effective termination date.
2. **Termination for Cause/Default:** If the Contractor fails to provide the goods or services contracted for according to the provisions of the Contract, or fails to comply with any of the terms or conditions of the Contract, TEA may, upon written notice of default to the Contractor, immediately terminate all or any part of the Contract. Termination is not an exclusive remedy, but will be in addition to any other rights and remedies provided in equity, by law or under the Contract.

TEA may exercise any other right, remedy or privilege which may be available to it under applicable law of the state and any other applicable law or may proceed by appropriate court action to enforce the provisions of the Contract, or to recover damages for the breach of any agreement being derived from the Contract. The exercise of any of the foregoing remedies will not constitute a termination of the Contract unless TEA notifies the Contractor in writing prior to the exercise of such remedy.

The Contractor shall remain liable for all covenants and indemnities under the Contract. The Contractor shall be liable for all costs and expenses, including court costs, incurred by TEA with respect to the enforcement of any of the remedies listed herein.

3. **Termination Due to Changes in Law:** If federal or state laws or regulations or other federal or state requirements are amended or judicially interpreted so that either Party cannot reasonably fulfill this Contract and if the Parties cannot agree to an amendment that would enable substantial continuation of the Contract, the Parties shall be discharged from any further obligations under this Contract.
4. **Rights upon Termination or Expiration of Contract:** In the event that the Contract is terminated for any reason, or upon its expiration, TEA shall retain ownership of all associated work products and documentation obtained from the Contractor under the Contract.
5. **Survival of Terms:** Termination of the Contract for any reason shall not release the Contractor from any liability or obligation set forth in the Contract that is expressly stated to survive any such termination or by its nature would be intended to be applicable following any such termination, including the provisions regarding confidentiality, indemnification, transition, records, audit, property rights, dispute resolution, and invoice and fees verification.
6. **Contract Transition:** In the event a subsequent competitive solicitation is awarded to a New Contractor, the Outgoing Contractor shall hand-over to the New Contractor all "Works" including but not limited to the following: data, materials, database access, intellectual property, source code, training materials, access to websites, asset transfer, and maintenance of service commitments. The purpose of transition planning is to ensure a seamless and continuous service when changing from one contract to another. The Outgoing Contractor will begin shipping, transmitting or providing access to all appropriate materials and data to the New Contractor within 10 days of announcement of award at the New Contractor's expense for data processing and production, packing and shipping. The Outgoing Contractor will be responsible for providing the services identified in the Contract until all records have been completely transferred to the New Contractor. The Outgoing Contractor is responsible for performing due diligence to ensure that all the transition activities are identified and completed during the Contract Transition.

The Outgoing Contractor shall submit to TEA requested reports and data. TEA will not release the final invoice until all materials are returned to TEA or their designee. The TEA Project Manager shall approve the Transition Plan prior to its implementation. The Transition Plan must minimize the impacts on continuity of operations and maintain communication with the TEA Project Manager and the New Contractor.

KK. **Amendments:** 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 and signed by both parties. An Amendment to this Contract will become effective on the date of signature of TEA or the effective date shown on the Amendment document whichever is first.

LL. **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

Workers Compensation: Statutory Limits
Employers Liability: Each Accident \$1,000,000
Disease- Each Employee \$1,000,000
Disease-Policy Limit \$1,000,000

MM. **Force Majeure:** Except as otherwise provided, neither Contractor nor TEA shall be liable to the other for any delay in, or failure of performance, of a requirement contained in this Contract caused by *force majeure*. The existence of such causes of delay or failure shall extend the period of performance until after the causes of delay or failure have been removed provided the non-performing party exercises all reasonable due diligence to perform. *Force majeure* is defined as acts of God, war, fires, explosions, hurricanes, floods, failure of transportation or other causes that are beyond the reasonable control of either party and that by exercise of due foresight such party could not reasonably have been expected to avoid, and which, by the exercise of all reasonable due diligence, such party is unable to overcome. Each party must inform the other in writing with proof of receipt within three (3) business days of the existence of such *force majeure* or otherwise waive this right as a defense.

NN. **Abandonment or Default:** If the Contractor defaults on the Contract, Texas Education Agency reserves the right to cancel without notice and either re-solicit or re-award the Contract to the next best responsive respondent. The defaulting Contractor will not be considered in the re-solicitation and may not be considered in future solicitations for the same type of work, unless the specification or scope of work significantly changed. The period of suspension will be determined by the Agency based on the seriousness of the default.

OO. **Payment:** Payment for services described in this Contract is contingent upon satisfactory completion of the services.

1. Payment for goods or services purchased with State-appropriated funds will be issued by electronic Direct Deposit from the State Treasury. Direct Deposit is the preferred method of payment. Any payment owed by an Agency must be transmitted electronically to the Contractor no later than 30 days after the later of:
 - a. Day on which the Agency received the goods;
 - b. Date the performance of the service under the contract is completed; or
 - c. Day on which the agency received the complete and correct invoice for goods or services.

Invoices must be submitted to:

TEAAccountsPayable@tea.state.tx.us and to PSFInvoices@tea.state.tx.us

Additional information and a Direct Deposit Authorization application may be found at: <https://fm.xcpa.state.tx.us/fm/payment/index.php>.

2. Unless otherwise stated, payment under this Contract will be made upon performance of services based upon submission of an expenditure report/invoice, properly prepared and certified, outlining expenditures by cost category. Include the contract number, purchase order number, and the Texas Comptroller of Public Accounts Texas Identification Number (TIN) on all invoices/expenditure reports.
3. All goods must have been received and all services rendered by the ending date of this Contract in order for Contractor to include these costs as either expenditures or as accounts payable and, thereby, recover funds due.
4. Contractor who is indebted or owes delinquent taxes to the State will have any payments under the Contract applied toward the debt or delinquent taxes owed the State until the amount is paid in full, regardless of when the debt or delinquency was incurred. TEA shall determine whether a payment law prohibits the Comptroller from issuing a warrant or initiating an electronic funds transfer to a person before TEA enters into a written contract with that person.

Contractor may verify their account status by accessing the Comptroller's website at:

https://fm.xcpa.state.tx.us/fm/pubs/purchase/restricted/index.php?section=indebted&page=persons_indebted

PP. **Notices Point of Contact and Escalation:** All notices, reports, and correspondence required by this Contract shall be in writing and delivered to the following representatives of TEA and contractor or their successors in office:

TEA

B. Holland Timmins
Executive Administrator and CIO
Permanent School Fund
Texas Education Agency
1701 N. Congress Avenue
Austin, TX 78701

CONTRACTOR

Michael Manning
Managing Partner
NEPC, LLC
255 State Street
Boston, MA 02109
PH:617-374-1300 FAX:617-374-1313

The Texas Government Code and Family Code sites referenced in this document may be viewed at:
<http://www.statutes.legis.state.tx.us/>

The Texas Administrative Code site referenced in this document may be viewed at:
[http://info.sos.state.tx.us/pls/pub/readtac\\$ext.viewtac](http://info.sos.state.tx.us/pls/pub/readtac$ext.viewtac)

QQ. **U.S. Department of Homeland Security's E-Verify System:** By entering into this Contract, the Contractor certifies and ensures that it utilizes and will continue to utilize, for the term of this Contract, the U.S. Department of Homeland Security's E-Verify system to determine the eligibility of:

1. All persons employed to perform duties within Texas, during the term of the Contract; and
2. All persons (including subcontractors) assigned by the Respondent to perform work pursuant to the Contract, within the United States of America.

The Contractor shall provide, upon request of (agency name), an electronic or hardcopy screenshot of the confirmation or tentative non-confirmation screen containing the E-Verify case verification number for attachment to the Form I-9 for the three most recent hires that match the criteria above, by the Contractor, and Contractor's subcontractors, as proof that this provision is being followed.

If this certification is falsely made, the Contract may be immediately terminated, at the discretion of the state and at no fault to the state, with no prior notification. The Contractor shall also be responsible for the costs of any re-solicitation that the state must undertake to replace the terminated Contract.

SPECIAL PROVISIONS - A

- 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.) 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.
- C. If applicable, Contractor shall make a good faith effort to comply with State of Texas Travel Guidelines. TEA may at its discretion approve requests for reimbursement of travel which exceed the State of Texas Travel Guidelines. Contractor shall maintain receipts in accordance with item L of the General Provisions. Receipts must be made available for programmatic or financial audit by TEA and by others authorized by law or regulation to make such an audit, for a period of not less than five (5) years.
- D. Contractor acknowledges that it is a fiduciary under this Agreement and as a fiduciary, it will discharge each of its duties and exercise each of its powers with the care, skill, prudence, and diligence under the circumstances that a prudent person acting in like capacity and familiar with such matters would use in the conduct of any enterprise of like character with like aims.
- E. Contractor shall discharge its duties hereunder with respect to the Client solely in the interest of the Client. Contractor shall not, knowingly, in any capacity, represent or act on behalf of a party whose interest is adverse to the Client or its participants or beneficiaries in any transaction involving the Client. Contractor shall not receive any consideration for its personal account from any party dealing with the Client in connection with a transaction involving the assets of the Client.
- F. Contractor must comply with provisions stated in Chapter 33 of the Texas Administrative Code: Statement of Investment Objectives, Policies, and Guidelines of Texas Permanent School Fund; including, but not limited to, the requirement that TPSF Service Providers, as defined therein, must comply with the CFA Institute Code of Ethics and Standards of Professional Conduct; and, must comply with provisions stated in the Investment Procedures Manual of the Texas Permanent School Fund.
- G. Contractor must warrant and represent that it has not paid and will not pay, has not given and will not give, any remuneration or thing of value directly or indirectly to members of the SBOE, Committee of Investment Advisors to the SBOE, the TEA Commissioner of Education, the TPSF Chief Investment Officer, or any State of Texas Employee, or any third-party for the benefit of the aforementioned, except as disclosed to TEA, including but not limited to: cash, carried interest (or other form of value), a placement agent fee, a finder's fee, cash solicitation fee, or a fee for consulting, lobbying, or otherwise. In the event such remuneration occurs, disclosure is required to the TEA Commissioner within ten (10) business days of the date Contractor is aware of such remuneration occurring.
- H. Contractor must disclose on a quarterly basis, to the extent allowed under law, any client litigation and regulatory actions against Contractor, and Contractor's key employees, both pending and future.
- I. Contractor must disclose in writing within ten (10) business days any significant changes in firm ownership, leadership, firm structure and personnel assigned to Client's account.
- J. The Client shall provide Contractor with any and all necessary and appropriate information, including account reports and Client documents, as requested by Contractor in order to successfully service the Client.
- K. The Client agrees and understands that, in providing services under this Agreement, Contractor will rely on the information provided by the Client or its agents. Contractor shall not be required to verify or audit any information so obtained, and shall not do so, unless requested to do so under a separate written agreement. All information and recommendations furnished by Contractor to the Client shall be regarded as confidential.
- L. Any interest of the Contractor in reports, memoranda, or other documents prepared by the Contractor in connection with services to be performed under this Agreement shall become the property of and will be transmitted to the Client upon demand. Upon termination of this Agreement, all finished and unfinished documents and other materials pertaining to this Agreement shall be immediately submitted to the Client and shall become the sole and exclusive property of the Client. The Contractor need not retain any documents beyond the term of its retention policy.
- M. Contractor agrees to identify and quantify revenues generated from all business relationships with investment entities who are finalists in a TPSF search process.
- N. Contractor agrees to disclose all potential and actual conflicts of interest and will annually disclose all sources of firm revenue and business relationships and affiliations.

- O. All work and activities conducted by Contractor for the Client shall be strictly confidential, and Contractor shall in no instance discuss the Client's account with the press or any other unaffiliated party, unless expressly authorized by the Client, provided that Contractor reserves the right to identify the Client as a client and to disclose the Client's information to the extent required by law or for regulatory compliance purposes. The Client acknowledges that certain of the services Contractor offers and/or provides to the Client and other clients require the use and anonymous disclosure of client data, including portfolio performance and trading data ("Client Data"), in connection with the pooling of Client Data of clients of InvestorForce to form a performance universe (the "Performance Universe"). The Performance Universe is made available to clients of InvestorForce. The Client agrees that Contractor shall be deemed the owner of any Client Data relating to the Client that is pooled, or prepared by Contractor for pooling, in the Performance Universe.
- P. The following provisions of this Paragraph P are subject to Contractor's compliance with Texas laws and the administrative rules of the State Board of Education (including Chapter 33 of Title 19 of the Texas Administrative Code). If and to the extent that any conduct otherwise permitted in this Paragraph P would violate such laws, then Contractor agrees that neither it nor its agents or representatives will engage in such conduct.

Contractor may act as investment consultant or advisor for others, and nothing in this Agreement shall in any way be deemed to restrict the right of Contractor to perform investment advisory, consulting or other services for any other person or entity, and the performance of such services for others shall not be deemed to violate or give rise to any duty or obligation to the Client. Contractor shall be permitted to give advice and take action with respect to the Client which differs from the advice made or recommended or actions taken with respect to such other accounts and clients even though the investment objectives may be the same or similar.

Nothing in this Agreement shall limit or restrict Contractor or any of its shareholders, officers, affiliates or employees from buying, selling, or trading in any securities for their own account or accounts. The Client acknowledges that Contractor and its shareholders, officers, affiliates and employees, and its other clients, may at any time have, acquire, increase, decrease, or dispose of positions in investments which are at the same time being acquired or disposed of for the account of the Client.

- Q. The parties have agreed to change General Provisions **C. Indemnification** to read as follows:

"Contractor shall hold TEA harmless from and shall indemnify TEA against any and all claims, demands, and causes of action of whatever kind or nature asserted by any third party, provided that the claims, demands and causes of action directly resulted from Contractor's acts or omissions in violation of the standard of care in performance of the Contract project."

This change shall apply to this Contract notwithstanding anything to the contrary in any other provision in this Contract.

- R. The Client acknowledges and agrees that:
- a. Contractor has not made and cannot make any promise, guarantee or other statement or representation regarding the future investment performance of the Client's investments;
 - b. the past performance of the accounts of other clients of Contractor is not necessarily indicative of the future performance of the Client's investments;
 - c. in the performance of its services under this Agreement, Contractor shall be entitled to rely on information furnished by investment managers, it being understood that Contractor shall have no liability for the accuracy or completeness of any information furnished or representation made by the investment managers, provided Contractor conducted due diligence and evaluation of such investment managers with reasonable care; and
 - d. to the extent permitted by applicable law, and except to the extent caused by Contractor's breach of this Contract, Contractor will not be liable for any losses or expenses incurred as a result of any action or omission by an investment manager, custodian or unrelated third party.

SPECIAL PROVISIONS - B
Texas Education Agency
HUB Subcontracting Plan (HSP)

This properly executed form is found in the Proposal Response labeled as Document J



HUB Subcontracting Plan (HSP)

DOCUMENT J

QUICK CHECKLIST

While this HSP Quick Checklist is being provided to merely assist you in readily identifying the sections of the HSP form that you will need to complete, it is very important that you adhere to the instructions in the HSP form and instructions provided by the contracting agency.

- **If you will be awarding all of the subcontracting work you have to offer under the contract to only Texas certified HUB vendors, complete:**
 - Section 1 - Proposer and Requisition Information
 - Section 2 a. - Yes, I will be subcontracting portions of the contract
 - Section 2 b. - List all the portions of work you will subcontract, and indicate the percentage of the contract you expect to award to Texas certified HUB vendors
 - Section 2 c. - Yes
 - Section 4 - Affirmation
 - GFE Method A (Attachment A) - Complete an Attachment A for each of the subcontracting opportunities you listed in Section 2 b.
- **If you will be subcontracting any portion of the contract to Texas certified HUB vendors and Non-HUB vendors, and the aggregate percentage of all the subcontracting work you will be awarding to the Texas certified HUB vendors with which you have a continuous contract in place for five (5) years or less meets or exceeds the HUB Goal the contracting agency identified in the "Agency Special Instructions/Additional Requirements", complete:**
 - Section 1 - Respondent and Requisition Information
 - Section 2 a. - Yes, I will be subcontracting portions of the contract
 - Section 2 b. - List all the portions of work you will subcontract, and indicate the percentage of the contract you expect to award to Texas certified HUB vendors and Non-HUB vendors
 - Section 2 c. - No
 - Section 2 d. - Yes
 - Section 4 - Affirmation
 - GFE Method A (Attachment A) - Complete an Attachment A for each of the subcontracting opportunities you listed in Section 2 b.
- **If you will be subcontracting any portion of the contract to Texas certified HUB vendors and Non-HUB vendors or only to Non-HUB vendors, and the aggregate percentage of all the subcontracting work you will be awarding to the Texas certified HUB vendors with which you have a continuous contract in place for five (5) years or less does not meet or exceed the HUB Goal the contracting agency identified in the "Agency Special Instructions/Additional Requirements", complete:**
 - Section 1 - Respondent and Requisition Information
 - Section 2 a. - Yes, I will be subcontracting portions of the contract
 - Section 2 b. - List all the portions of work you will subcontract, and indicate the percentage of the contract you expect to award to Texas certified HUB vendors and Non-HUB vendors
 - Section 2 c. - No
 - Section 2 d. - No
 - Section 4 - Affirmation
 - GFE Method B (Attachment B) - Complete an Attachment B for each of the subcontracting opportunities you listed in Section 2 b.
- **If you will not be subcontracting any portion of the contract and will be fulfilling the entire contract with your own resources, complete:**
 - Section 1 - Respondent and Requisition Information
 - Section 2 a. - No, I will not be subcontracting any portion of the contract, and I will be fulfilling the entire contract with my own resources
 - Section 3 - Self Performing Justification
 - Section 4 - Affirmation

***Continuous Contract:** Any existing written agreement (including any renewals that are exercised) between a prime contractor and a HUB vendor, where the HUB vendor provides the prime contractor with goods or service under the same contract for a specified period of time. The frequency the HUB vendor is utilized or paid during the term of the contract is not relevant to whether the contract is considered continuous. Two or more contracts that run concurrently or overlap one another for different periods of time are considered by CPA to be individual contracts rather than renewals or extensions to the original contract. In such situations the prime contractor and HUB vendor are entering (have entered) into "new" contracts.



HUB Subcontracting Plan (HSP)

In accordance with Texas Gov't Code §2161.252, the contracting agency has determined that subcontracting opportunities are probable under this contract. Therefore, all respondents, including State of Texas certified Historically Underutilized Businesses (HUBs) must complete and submit this State of Texas HUB Subcontracting Plan (HSP) with their response to the bid requisition (solicitation).

NOTE: Responses that do not include a completed HSP shall be rejected pursuant to Texas Gov't Code §2161.252(b).

The HUB Program promotes equal business opportunities for economically disadvantaged persons to contract with the State of Texas in accordance with the goals specified in the 2009 State of Texas Disparity Study. The statewide HUB goals defined in 34 Texas Administrative Code (TAC) §20.13 are:

- 11.2 percent for heavy construction other than building contracts,
- 21.1 percent for all building construction, including general contractors and operative builders' contracts,
- 32.9 percent for all special trade construction contracts,
- 23.7 percent for professional services contracts,
- 26.0 percent for all other services contracts, and
- 21.1 percent for commodities contracts.

- - Agency Special Instructions/Additional Requirements - -

In accordance with 34 TAC §20.14(d)(1)(D)(iii), a respondent (prime contractor) may demonstrate good faith effort to utilize Texas certified HUBs for its subcontracting opportunities if the total value of the respondent's subcontracts with Texas certified HUBs meets or exceeds the statewide HUB goal or the agency specific HUB goal, whichever is higher. When a respondent uses this method to demonstrate good faith effort, the respondent must identify the HUBs with which it will subcontract. If using existing contracts with Texas certified HUBs to satisfy this requirement, only contracts that have been in place for five years or less shall qualify for meeting the HUB goal. This limitation is designed to encourage vendor rotation as recommended by the 2009 Texas Disparity Study.

SECTION-1: RESPONDENT AND REQUISITION INFORMATION

a. Respondent (Company) Name: NEPC, LLC State of Texas VID#: _____
 Point of Contact: Rhett Humphreys, CFA, Partner Phone #: (678) 433-4417
 Email Address: rhumphreys@nepc.com Fax#: (617) 374-1313

b. Is your Company a State of Texas certified HUB? Yes No

c. Requisition #: RFP 701-15-023 Bid Open Date: 03/19/2015
 (mm/dd/yyyy)

SECTION 2: SUBCONTRACTING INTENTIONS RESPONDENT

After dividing the contract work into reasonable lots or portions to the extent consistent with prudent industry practices, and taking into consideration the scope of work to be performed under the proposed contract, including all potential subcontracting opportunities, the respondent must determine what portions of work, including goods and services, will be subcontracted. Note: In accordance with 34 TAC §20.11., an "Subcontractor" means a person who contracts with a prime contractor to work, to supply commodities, or to contribute toward completing work for a governmental entity.

a. Check the appropriate box (Yes or No) that identifies your subcontracting intentions:

- **Yes**, I will be subcontracting portions of the contract. (If **Yes**, complete Item b, of this SECTION and continue to Item c of this SECTION.)

- **No**, I will not be subcontracting any portion of the contract, and I will be fulfilling the entire contract with my own resources. (If **No**, continue to SECTION 3 and SECTION 4.)

b. List all the portions of work (subcontracting opportunities) you will subcontract. Also, based on the total value of the contract, identify the percentages of the contract you expect to award to Texas certified HUBs, and the percentage of the contract you expect to award to vendors that are not a Texas certified HUB (i.e., Non-HUB).

Item #	Subcontracting Opportunity Description	HUBs		Non-HUBs
		Percentage of the contract expected to be subcontracted to HUBs with which you have a <u>continuous contract*</u> in place for <u>five (5) years or less</u>	Percentage of the contract expected to be subcontracted to HUBs with which you have a <u>continuous contract*</u> in place for <u>more than five (5) years</u>	Percentage of contract expected to be subcontracted to Non-HUBs
1		%	%	%
2		%	%	%
3	<input type="checkbox"/>	%	%	%
4		%	%	%
5		%	%	%
6		%	%	%
7		%	%	%
8		%	%	%
9		%	%	%
10		%	%	%
11		%	%	%
12		%	%	%
13		%	%	%
14		%	%	%
15		%	%	%
Aggregate percentages of the contract expected to be subcontracted:		%	%	%

(Note: If you have more than fifteen subcontracting opportunities, a continuation sheet is available online at <http://window.state.tx.us/procurement/prog/hub/hub-subcontracting-plan/>.)

c. Check the appropriate box (Yes or No) that indicates whether you will be using **only** Texas certified HUBs to perform **all** of the subcontracting opportunities you listed in SECTION 2, Item b.

- **Yes** (If **Yes**, continue to SECTION 4 and complete an "HSP Good Faith Effort - Method A (Attachment A)" for each of the subcontracting opportunities you listed.)

- **No** (If **No**, continue to Item d, of this SECTION.)

d. Check the appropriate box (Yes or No) that indicates whether the aggregate expected percentage of the contract you will subcontract **with Texas certified** HUBs with which you have a **continuous contract*** in place with for five (5) years or less **meets or exceeds** the HUB goal the contracting agency identified on page 1 in the "**Agency Special Instructions/Additional Requirements**".

- **Yes** (If **Yes**, continue to SECTION 4 **and** complete an "HSP Good Faith Effort - Method A (Attachment A)" for **each** of the subcontracting opportunities you listed.)

- **No** (If **No**, continue to SECTION 4 **and** complete an "HSP Good Faith Effort - Method B (Attachment B)" for **each** of the subcontracting opportunities you listed.)

***Continuous Contract:** Any existing written agreement (including any renewals that are exercised) between a prime contractor and a HUB vendor, where the HUB vendor provides the prime contractor with goods or service under the same contract for a specified period of time. The frequency the HUB vendor is utilized or paid during the term of the contract is not relevant to whether the contract is considered continuous. Two or more contracts that run concurrently or overlap one another for different periods of time are considered by CPA to be individual contracts rather than renewals or extensions to the original contract. In such situations the prime contractor and HUB vendor are entering (have entered) into "new" contracts.

SECTION 2: SUBCONTRACTING INTENTIONS RESPONDENT (CONTINUATION SHEET)

a. This page can be used as a continuation sheet to the HSP Form's page 2, Section 2, Item b. Continue listing the portions of work (subcontracting opportunities) you will subcontract. Also, based on the total value of the contract, identify the percentages of the contract you expect to award to Texas certified HUBs, and the percentage of the contract you expect to award to vendors that are not a Texas certified HUB (i.e., Non-HUB).

Item #	Subcontracting Opportunity Description	HUBs		Non-HUBs
		Percentage of the contract expected to be subcontracted to HUBs with which you have a <u>continuous contract*</u> in place for <u>five (5) years or less</u>	Percentage of the contract expected to be subcontracted to HUBs with which you have a <u>continuous contract*</u> in place for <u>more than five (5) years</u>	Percentage of contract expected to be subcontracted to Non-HUBs
16		%	%	%
17		%	%	%
18		%	%	%
19		%	%	%
20		%	%	%
21		%	%	%
22		%	%	%
23		%	%	%
24		%	%	%
25		%	%	%
26		%	%	%
27		%	%	%
28		%	%	%
29		%	%	%
30		%	%	%
31		%	%	%
32		%	%	%
33		%	%	%
34		%	%	%
35		%	%	%
36		%	%	%
37		%	%	%
38		%	%	%
39		%	%	%
40		%	%	%
41		%	%	%
42		%	%	%
43		%	%	%
	Aggregate percentages of the contract expected to be subcontracted:	%	%	%

Continuous Contract: Any existing written agreement (including any renewals that are exercised) between a prime contractor and a HUB vendor, where the HUB vendor provides the prime contractor with goods or service under the same contract for a specified period of time. The frequency the HUB vendor is utilized or paid during the term of the contract is not relevant to whether the contract is considered continuous. Two or more contracts that run concurrently or overlap one another for different periods of time are considered by CPA to be individual contracts rather than renewals or extensions to the original contract. In such situations the prime contractor and HUB vendor are entering (have entered) into "new" contracts.

SECTION 3: SELF PERFORMING JUSTIFICATION (If you responded "No" to SECTION 2, Item a, you must complete this SECTION and continue to SECTION

Check the appropriate box (Yes or No) that indicates whether your response/proposal contains an explanation demonstrating how your company will fulfill the entire contract with its own resources.

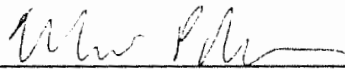
- Yes** (If **Yes**, in the space provided below list the **specific page(s)/section(s)** of your proposal which explains how your company will perform the entire contract with its own equipment, supplies, materials and/or employees.)
- No** (If **No**, in the space provided below **explain how** your company will perform the entire contract with its own equipment, supplies, materials and/or employees.)

Please refer to Tab 5, of NEPC's proposal for a detailed description of how NEPC will perform the entire contract with its own equipment, supplies, materials and employees.

SECTION 4: AFFIRMATION

As evidenced by my signature below, I affirm that I am an authorized representative of the respondent listed in SECTION 1, and that the information and supporting documentation submitted with the HSP is true and correct. Respondent understands and agrees that, if awarded any portion of the requisition:

- The respondent will provide notice as soon as practical to all the subcontractors (HUBs and Non-HUBs) of their selection as a subcontractor for the awarded contract. The notice must specify at a minimum the contracting agency's name and its point of contact for the contract, the contract award number, the subcontracting opportunity they (the subcontractor) will perform, the approximate dollar value of the subcontracting opportunity and the expected percentage of the total contract that the subcontracting opportunity represents. A copy of the notice required by this section must also be provided to the contracting agency's point of contact for the contract no later than ten (10) working days after the contract is awarded.
- The respondent must submit monthly compliance reports (Prime Contractor Progress Assessment Report – PAR) to the contracting agency, verifying its compliance with the HSP, including the use of and expenditures made to its subcontractors (HUBs and Non-HUBs). (The PAR is available at <http://www.window.state.tx.us/procurement/prog/hub/hub-forms/progressassessmentrpt.xls>).
- The respondent must seek approval from the contracting agency prior to making any modifications to its HSP, including the hiring of additional or different subcontractors and the termination of a subcontractor the respondent identified in its HSP. If the HSP is modified without the contracting agency's prior approval, respondent may be subject to any and all enforcement remedies available under the contract or otherwise available by law, up to and including debarment from all state contracting.
- The respondent must, upon request, allow the contracting agency to perform on-site reviews of the company's headquarters and/or work-site where services are being performed and must provide documentation regarding staffing and other resources.

<u></u> Signature	<u>Michael Manning, CFA, CAIA</u> Printed Name	<u>Managing Partner</u> Title	<u>3/17/2015</u> Date (mm/dd/yyyy)
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Reminder:

- If you responded "Yes" to **SECTION 2, Items c or d**, you must complete an "HSP Good Faith Effort - Method A (Attachment A)" **for each** of the subcontracting opportunities you listed in SECTION 2, Item b.
- If you responded "No" **SECTION 2, Items c and d**, you must complete an "HSP Good Faith Effort - Method B (Attachment B)" **for each** of the subcontracting opportunities you listed in SECTION 2, Item b.