

STATE OF TEXAS §

COUNTY OF TRAVIS §

Division Number: 110	Program Name: Permanent School Fund Investments
Org. Code: 701	Legal/Funding Authority: Texas
Speed Chart: 6A012	Constitution, Article VII
Payee Name: Application Experts, LLC	Payee ID: 010718123
ISAS Contract #: 3320	PO #: 34513

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 Application Experts, LLC located at 590 Burbank Street, Unit 225, Broomfield, CO 80020 ("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 initial term beginning 09/01/15 and ending 08/31/17, unless extended or terminated as otherwise provided for in this contract. Upon written mutual agreement of both parties, this contract may be extended for three (3) additional two-year terms to commence on the first day after the original contract period.

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 \$67,200.00 for the performance, satisfactory to the TEA, of Contractor's functions and duties under this Contract for the initial term. 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 Provisions
- Special Provisions B, Historically Underutilized Business Subcontracting Plan

Contractor is certified as a Historically Underutilized Business as defined in V.T.C.A., TX Government Code, §2161.001 (attach Certification.) If not certified, call the Texas Building and Procurement Commission at (512) 463-5872 or write TBPC (HUB), PO Box 13047, Austin, Texas 78711-3047 to learn about the HUB certification.

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: Kevin Kelly


Authorized Signature

Typed title: CEO

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 25th day of September 2015 (month/year) by a person authorized to bind Agency.

Return three (3) copies with original signature to:
Catherine A. Civiletto
Deputy Executive Administrator
Texas Education Agency

400 West 15th Street 11th Floor
Austin, Texas 78701


Shirley Beaujeu, Associate Commissioner
Finance/ CFO

APPENDIX 1

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

B. Description of Services/Activities:

Software subscription to use Alternative Investment Management (AIM) software in accordance with the following tiered fee pricing:

Number of Users	Annual Fee per User
1 - 14	\$2,400.00
15 - 19	\$2,300.00
20 - 24	\$2,200.00
25 - 29	\$2,100.00
30 - 34	\$2,000.00
35 - 39	\$1,900.00
40+	\$1,800.00

Contractor agrees that as the number of authorized users increases and a new pricing tier is implemented, a credit will be issued for all existing licenses for the year in which additional users are added and the pricing tier is maintained. Additional users may be added from time to time and Annual Subscription Fees for additional users will be invoiced pro-rata accordingly.

At the start of this contract, TEA will have the following user profile:

Software	# of Authorized Users at 09/01/2015	Annual Subscription Fee	Total Annual Fee
Alternative Investment Management (AIM) Annual User License	14	\$2,400	\$33,600.00
AIM Administrator License	4	\$0	\$0.00
TOTAL ANNUAL SUBSCRIPTION FEES			\$33,600.00

C. Invoicing Cycles

Annual Subscription Fees will align with the TEA fiscal cycle. As such, they should be submitted annually for the following periods:

First Invoice Cycle – Initial Term	September 1, 2015 – August 31, 2016	Invoice date: 09/01/2015
Second Invoicing Cycle – Initial Term	September 1, 2016 – August 31, 2017	Invoice date: 09/01/2016
First Optional Renewal Cycle	September 1, 2017 – August 31, 2019	Invoice date: 09/01/2017
Second Optional Renewal Cycle	September 1, 2019 – August 31, 2021	Invoice date: 09/01/2019
Third Optional Renewal Cycle	September 1, 2021 – August 31, 2023	Invoice date: 09/01/2021

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 herein.

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;
 - **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. **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.
- G. **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.
- H. **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.

- I. **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.
- J. **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.
- K. **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.
- L. **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.
- M. **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.
- N. **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.
- O. **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.
- P. **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.
- Q. **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.

- R. **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.
- S. **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.
- T. **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.
- U. **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>.
- V. **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.
- W. **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.
- X. **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.
- Y. **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, Contractor performance may be used as a factor in future contract awards.

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

Z. **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.

- i. **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.
- ii. **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.

- iii. **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.
- iv. **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.
- v. **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.
- vi. **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.

AA. **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.

BB. 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.

CC. 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.

DD. 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 Contractor. 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.

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

FF. **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

Jill Montera
Vice President of Customer Success
Application Experts, LLC
590 Burbank Street, Unit 220
Broomfield, CO 80020
Fax: 866-530-6668

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)

GG. **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. The attached Master Customer Agreement and Software Order Form are of a program nature and are incorporated herein by reference and are therefore made a part of this contract:

Master Customer Agreement
Software Order Form

Pages 11 through 19
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These documents, taken together with all sections of the Standard Contract, comprises the entire agreement between the Texas Education Agency ("TEA") and Vendor.

In the event of an irreconcilable conflict between the provisions of the Standard Contract and the Master Customer Agreement, the terms of the Standard Contract will prevail.

- C. 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.
 - 1. Paragraph I **Refunds Due to TEA** is hereby deleted in its entirety.
 - 2. Paragraph Z i **Termination** first sentence, is hereby deleted and replaced with the following: "TEA may terminate this Contract at any time, in whole or in part, without penalty, by providing thirty (30) calendar days advance written notice to the other Party."



MASTER CUSTOMER AGREEMENT

1010 Depot Hill Road
Suite 101
Broomfield, CO 80020

This **MASTER CUSTOMER AGREEMENT** (“**Agreement**”) is made as of September 1, 2015 (the “**Effective Date**”), by and between **APPLICATION EXPERTS, LLC**, a Colorado limited liability company, having a principal place of business located at 1010 Depot Hill Road, Suite 101, Broomfield, CO 80020 (“**Company**”) and the party identified below (the “**Customer**”).

Customer: Texas Education Agency
Address: 1701 North Congress Avenue Austin, TX 78701

State/Country of Formation: Texas

Primary Contact: Catherine A. Civileto

Phone: 512.463.9201

Fax: 512.463.9432

E-Mail: Catherine.civileto@tea.state.tx.us

The terms and conditions of this Agreement, including the Standard Terms and Conditions and the applicable Appendices (which are each attached hereto and incorporated herein by reference) will apply to each business transaction between the parties for the provision of all services and licensing of software by Company. This Agreement may be updated by the parties in writing on a TEA Standard Contract Amendment Form in the future to include additional services and software, and this Agreement along with the TEA Standard Contract will govern all such subsequently added services and software. Any different or additional terms of a related purchase order, confirmation or similar form signed by the parties after the date hereof shall have no force or effect on this Agreement or its subject matter, and pre-printed or standard terms of Customer’s purchase order are specifically excluded.

DEFINITIONS. As used in this Agreement or any Appendix hereto:

- 1.1** “**Documentation**” means the user manuals provided to Customer by Company in either electronic, online help files or hard copy format that describe the features, functionality or operation of the Software.
- 1.2** “**Deliverable**” means a deliverable delivered pursuant to a Statement of Work.
- 1.3** “**Fees**” means, collectively, the Professional Services Fees and Subscription Fees.
- 1.4** “**Intellectual Property Rights**” means all known or hereafter existing worldwide copyrights, trademarks, service marks, trade secrets, patents, patent applications, know-how, moral rights, contract rights, and other proprietary rights.
- 1.5** “**Professional Services**” means those consulting, installation, configuration, customization, analysis, training, professional and other services and assistance to be provided by Company or its subcontractors to Customer as described in any applicable Statement of Work; provided, however, Professional Services does not include those services that fall within the description of “Support Services”.
- 1.6** “**Professional Services Fees**” means the fees for the provision of Professional Services and Deliverables set forth in the applicable Statement of Work.
- 1.7** “**Statement of Work**” means the general engagement plan for any Professional Services to be performed by Company under this Agreement, executed pursuant to and made a part of this Agreement from time to time.
- 1.8** “**Software**” means Company’s proprietary computer software program(s) described in a Software Order Form, and any modified, updated or enhanced versions of such programs that Company may provide to Customer pursuant to the Support Services.
- 1.9** “**Software Order Form**” means an order document executed pursuant to and made a part of this Agreement from time to time that identifies the Software to be provided by Company on a subscription basis under this Agreement
- 1.10** “**Subscription Fees**” means Company’s fees for the license of the Software as listed in the applicable Software Order Form.
- 1.11** “**Support Services**” means those maintenance and support services to be provided by Company to Customer with respect to the Software pursuant to *Appendix B*.
- 1.12** Capitalized terms not specifically outlined in this Section shall have the respective meanings ascribed to them in this Agreement.

2. PROFESSIONAL SERVICES AND SOFTWARE SUBSCRIPTION. Company’s providing of Professional Services shall be subject to the terms contained herein as well as the terms of the applicable Statement of Work and *Appendix A* attached hereto. Company’s providing of a subscription for access and use of the Software shall be subject to the terms contained herein as well as the terms of the applicable Software Order Form and *Appendix B* attached hereto.

3. TERM AND TERMINATION.

3.1 Term. The term of this Agreement will begin on September 1, 2015 and will continue in accordance with Article II of the TEA Standard Contract.

3.2 Termination. Either party may terminate this Agreement, any Statement of Work and/or Software subscription then in-effect, if the other party (a) breaches any material provision of this Agreement and does not cure such breach within fifteen (15) days after receiving written notice thereof; (b) shall formally declare bankruptcy, insolvency, reorganization, liquidation, or receivership; or (c) shall have instigated against it bankruptcy, insolvency, reorganization, liquidation, or receivership proceedings, and shall fail to remove itself from such proceedings within ten (10) days from the date of institution of such proceedings. At any time, either party may terminate one or more particular Statements of Work and/or Software subscription for any reason, or for no reason, by providing thirty (30) days’ written notice to the other party.

3.3 Effects of Termination. Upon termination or expiration of this Agreement for any reason: (a) all Statements of Works under this Agreement will immediately terminate; (b) all licensed rights granted in this Agreement and any Software Order Form will immediately cease to exist; and (c) Customer must promptly discontinue all use of the Software and return to Company or destroy all copies of the Documentation in Customer’s possession, except to the extent that Customer is required to retain any Documentation by any applicable law or regulation, or to the extent Documentation is retained for the limited purpose of internal record archiving or backup recovery. Upon termination or expiration of any Statement of Work for any reason, any amounts owed to Company under that Statement of Work before such termination or expiration will be due and payable as provided in Section 4.2 below, including any amounts due for Professional Services performed and expenses incurred prior to such termination or expiration. If either party terminates a Statement of Work, such termination will have no effect upon any other Statement of Work that may be in effect unless either party terminates such other Statement of Work. In the event Customer terminates a Software subscription pursuant to Section 3.2, Company shall refund to Customer, on a pro rata basis, the unused portion of any Subscription Fee already paid to Company.



3.4 Survival. Sections 3.3, 3.4, 5, 6, 7 and 8, together with any accrued payment obligations, will survive expiration or termination of this Agreement for any reason.

4. FEES AND PAYMENT.

4.1 Fees. Customer will timely pay Company all Professional Services Fees and Subscription Fees as specified in the Statement of Work and/or Software Order Form (as applicable) and in accordance with Appendix 1 of the TEA Standard Contract.

4.2 Payment Terms. Customer will pay Company all amounts due under this Agreement in accordance with the Texas Prompt Pay Act, as described in Appendix 1 Paragraph E. All payments must be made in U.S. dollars.

4.3 Taxes. Company acknowledges that Customer is a tax-exempt entity.

5. CONFIDENTIALITY.

5.1 Protection of Confidential Information. Each party (the “**Disclosing Party**”) may from time to time disclose to the other party (the “**Receiving Party**”) certain information regarding the business of the Disclosing Party and its suppliers, including technical, marketing, financial, employee, planning, and other confidential or proprietary information (“**Confidential Information**”). Any information that the Disclosing Party designates as Confidential Information will be considered Confidential Information of the Disclosing Party. The Software, including without limitation any routines, subroutines, directories, tools, programs, or any other technology included therein, shall be considered Company’s Confidential Information. All Customer data contained within or utilized by the software shall be considered Customer’s Confidential Information.

5.2 Protection of Confidential Information. The Receiving Party will not use any Confidential Information of the Disclosing Party for any purpose not expressly permitted by this Agreement, and will disclose the Confidential Information of the Disclosing Party only to the employees or contractors of the Receiving Party who have a need to know such Confidential Information for purposes of this Agreement and who are under a duty of confidentiality no less restrictive than the Receiving Party’s duty hereunder. The Receiving Party will protect the Disclosing Party’s Confidential Information from unauthorized use, access, or disclosure in the same manner as the Receiving Party protects its own confidential or proprietary information of a similar nature and with no less than reasonable care.

5.3 Exceptions. The Receiving Party’s obligations under Section 5.2 with respect to any Confidential Information of the Disclosing Party will terminate if such information: (a) was already known to the Receiving Party at the time of disclosure by the Disclosing Party; (b) was disclosed to the Receiving Party by a third party who had the right to make such disclosure without any confidentiality restrictions; (c) is, or through no fault of the Receiving Party has become, available to the public; or (d) was independently developed by the Receiving Party without access to, or use of, the Disclosing Party’s Confidential Information. In addition, the Receiving Party will be allowed to disclose Confidential Information of the Disclosing Party to the extent that such disclosure is (i) approved in writing by the Disclosing Party, (ii) necessary for the Receiving Party to enforce its rights under this Agreement in connection with a legal proceeding; or (iii) required by law or by the order of a court or similar judicial or administrative body, provided that the Receiving Party notifies the Disclosing Party of such required disclosure promptly and in writing and cooperates with the Disclosing Party, at the Disclosing Party’s request and expense, in any lawful action to contest or limit the scope of such required disclosure, provided, however, that Customer’s obligation to cooperate shall not require it or its officers and employees to initiate or join any legal proceeding.

5.4 Return of Confidential Information. The Receiving Party will return to the Disclosing Party or destroy all Confidential Information of the Disclosing Party in the Receiving Party’s possession or control and permanently erase all electronic copies of such Confidential Information promptly upon the written request of the Disclosing Party and/or upon the expiration or termination of this Agreement. Upon request from the Disclosing Party, the Receiving Party will certify in writing signed by an officer of the Receiving Party that it has fully complied with its obligations under this Section 5.4, except to the extent that Customer is required to retain any Confidential Information by any applicable law or regulation, or to the extent Confidential Information is retained for the limited purpose of internal record archiving or backup recovery.

5.5 Confidentiality of Agreement. Neither party will disclose any terms of this Agreement to anyone other than its attorneys, accountants, and other professional advisors except (a) as required by law or (b) pursuant to a mutually agreeable press release or (c) in connection with a contemplated transfer of such party’s business permitted by Section 8.3 (provided that any third party to whom the terms of this Agreement is to be disclosed is bound by confidentiality restrictions consistent with this Section 5).

6. INFRINGEMENT CLAIMS. Company will defend at its own expense any action against Customer brought by a third party to the extent that the action is based upon a claim that a Deliverable and/or the Software infringes any U.S. patents or any copyrights or misappropriates any trade secrets of a third party, and Company will pay those costs and damages finally awarded against Customer in any such action that are specifically attributable to such claim or those costs and damages agreed to in a monetary settlement of such action. The foregoing obligations are conditioned on Customer (a) notifying Company promptly in writing of such action, (b) giving



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Company sole control of the defense thereof and any related settlement negotiations, subject to the legal authority of the Attorney General of Texas to participate in the defense of Customer, and (c) cooperating and, at Company's request and expense, assisting in such defense. If any Deliverable and/or the Software becomes, or in Company's opinion is likely to become, the subject of an infringement claim, Company may, at its option and expense, either (i) procure for Customer the right to continue using the Deliverable and/or the Software, (ii) replace or modify the Deliverable and/or the Software so that it becomes non-infringing, or (iii) refund Customer the Professional Services Fees paid for such Deliverable, or the annual Subscription Fee paid for the Software, upon which Customer shall have no further rights in and to the Deliverable or the Software (as the case may be). Notwithstanding the foregoing, Company will have no obligation under this Section 6 or otherwise with respect to any infringement claim based upon (a) any use of the Deliverable and/or the Software not in accordance with this Agreement or for purposes not intended by Company, (b) any use of a Deliverable and/or the Software in combination with other products, equipment, software, or data not intended by Company to be used with the Deliverable and/or the Software (as the case may be), (c) any use of any release of the Software other than the most current release made available to Customer, or (d) any modification of the Deliverable and/or the Software by any person other than Company or its authorized agents or subcontractors. THIS SECTION 6 STATES COMPANY'S ENTIRE LIABILITY AND CUSTOMER'S EXCLUSIVE REMEDY FOR INFRINGEMENT CLAIMS AND ACTIONS.

7. LIMITATION OF LIABILITY. IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, EXEMPLARY, SPECIAL, OR INCIDENTAL DAMAGES, INCLUDING ANY LOST DATA AND LOST PROFITS, ARISING FROM OR RELATING TO THIS AGREEMENT, THE USE OF OR INABILITY TO USE THE DELIVERABLES, ANY SERVICES PROVIDED HEREUNDER OR THE SOFTWARE, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EACH PARTY'S TOTAL CUMULATIVE LIABILITY IN CONNECTION WITH ANY PROFESSIONAL SERVICES PROVIDED UNDER THIS AGREEMENT OR ANY STATEMENT OF WORK, WHETHER IN CONTRACT, TORT OR OTHERWISE, WILL NOT EXCEED THE AMOUNT OF FEES PAID OR PAYABLE TO COMPANY UNDER SUCH STATEMENT OF WORK. COMPANY'S TOTAL CUMULATIVE LIABILITY IN CONNECTION WITH ANY SOFTWARE PROVIDED UNDER THIS AGREEMENT, WHETHER IN CONTRACT, TORT OR OTHERWISE, WILL NOT EXCEED THE MOST RECENT ANNUAL SUBSCRIPTION FEES PAID OR PAYABLE TO COMPANY UNDER THIS AGREEMENT PRECEDING THE EVENTS GIVING RISE TO SUCH LIABILITY. NOTWITHSTANDING THE FOREGOING, THE PARTIES AGREE THAT THE ABOVE LIMITATIONS OF LIABILITY SHALL NOT APPLY TO THE COMPANY'S INDEMNIFICATION OBLIGATIONS UNDER THIS AGREEMENT OR ANY PARTY'S BREACH OF THE OTHER PARTY'S INTELLECTUAL PROPERTY RIGHTS. EACH PARTY ACKNOWLEDGES THAT THE FEES REFLECT THE ALLOCATION OF RISK BETWEEN THE PARTIES AND THAT THEY WOULD NOT ENTER INTO THIS AGREEMENT WITHOUT THESE LIMITATIONS ON LIABILITY.

8. GENERAL.

8.1 Publicity. Company may, subject to Customer's approval of content, not to be unreasonably withheld or delayed, (a) create a general contract announcement press release indicating that the parties have entered into this Agreement, (b) use Customer's business name and logo in written materials identifying Company's customers and in other appropriate promotional materials; (c) identify Customer in applicable case studies; and (d) identify Customer as a reference for prospective customers and the media (provided that Customer shall not be obligated to comment in any way).

8.2 Compliance with Laws. Each party agrees to comply with all applicable laws, including all export and import control laws and regulations, in its use of all Deliverables and the Software, and, in particular, will not export or re-export any Deliverable or the Software without all required government licenses.

8.3 Assignments. Neither party may assign any rights or obligations arising under this Agreement, whether by operation or law or otherwise, without the prior written consent of the other; except that either party may assign this Agreement without consent of the other party to any successor to all or substantially all its business or assets to which this Agreement relates, whether by merger, sale of assets, sale of stock, reorganization or otherwise, provided, however, that any such successor or assignee of Company must be eligible and in good standing under Texas law to receive payment from Customer. Subject to the foregoing limitation, this Agreement shall inure to the benefit of and shall be binding on the successors and assigns of the parties.

8.4 Force Majeure. Except for any payment obligations, neither party shall be liable hereunder by reason of any failure or delay in the performance of its obligations hereunder on account of strikes, shortages, riots, insurrection, fires, flood, storm, explosions, acts of God, war, governmental action, labor conditions, earthquakes, material shortages or any other cause which is beyond the reasonable control of such party.

8.5 Notices. Any notice or other communication required or permitted under this Agreement and intended to have legal effect must be given in writing to the other party at the address set forth above (each party may change its address from time to time upon written notice to the other party of the new address). Notices will be deemed to have been given upon receipt (or when delivery is

refused) and may be (a) delivered personally, (b) sent via certified mail (return receipt requested) (c) sent via fax with confirmation of receipt, or (d) sent by recognized air courier service.

8.6 Governing Law and Venue. This Agreement and all Statements of Work and Software Order Forms will be governed by and interpreted in accordance with the laws of the State of Texas, without reference to its choice of laws rules. The United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement. The parties hereto agree that the dispute resolution process provided in Chapter 2260 of the Texas Government Code must be used by Customer and Company to attempt to resolve all disputes arising under this Agreement.

8.7 Remedies. Except as otherwise expressly provided in this Agreement, the parties' rights and remedies under this Agreement are cumulative. If any legal action is brought by a party to enforce this Agreement, the prevailing party will be entitled to receive its attorneys' fees, court costs, and other collection expenses, in addition to any other relief it may receive, subject, however, to Customer's rights of sovereign immunity and the provisions of Chapter 2260 of the Texas Government Code.

8.8 Waivers. All waivers must be in writing. Any waiver or failure to enforce any provision of this Agreement on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion.

8.9 Severability. If any provision of this Agreement or a Statement of Work or Software Order Form is unenforceable, such provision will be changed and interpreted to accomplish the objectives of such provision to the greatest extent possible under applicable law and the remaining provisions will continue in full force and effect.

8.10 No Agency. Nothing contained herein shall be construed as creating any agency, partnership or other form of joint enterprise between the parties.

8.11 Construction. The headings of Sections of this Agreement and any Statement of Work and Software Order Form are for convenience and are not to be used in interpretation. As used in this Agreement and all Statements of Work and Software Order Forms, the word "including" means "including but not limited to."

8.12 Non-Solicitation of Personnel. Customer shall not, during the term of the Agreement and for one (1) year thereafter, directly or indirectly hire or attempt to hire any Company employee or independent contractor without Company's prior written consent; provided that the foregoing shall not prohibit Customer from issuing advertisements of a general nature not specifically directed at any such employee or independent contractor.

8.13 Entire Agreement. This Agreement, together with any Statement of Work, Software Order Form, or other attachments hereto, constitutes the entire agreement between the parties regarding the subject hereof and supersedes all prior or contemporaneous agreements, understandings, and communication, whether written or oral. This Agreement, any Statement of Work and any Software Order Form shall not be modified except by the mutual written agreement of the parties.

8.14 Counterparts. This Agreement may be executed in separate counterparts, each of which shall be deemed an original and all of which shall be deemed one and the same instrument.



MASTER CUSTOMER AGREEMENT
APPENDIX A

PROFESSIONAL SERVICES

1. SCOPE OF SERVICES.

1.1 Statements of Work. If the parties have executed a Statement of Work for the performance of Professional Services, then subject to the terms and conditions of this Agreement, including without limitation, payment by Customer of the Professional Services Fees in accordance with any payment schedule agreed to by the parties in the Statement of Work, Company will use commercially reasonable efforts to perform the Professional Services in accordance with such Statement of Work. In the event of a conflict between the terms and conditions of this Agreement and those of a Statement of Work, the terms and conditions of the Statement of Work will prevail and control, but only with respect to that specific Statement of Work.

1.2 Estimated Cost and Timeframes of Projects. Customer acknowledges that costs, time frames and dates for completion of the Professional Services as set out in a Statement of Work are estimates only and the ability to meet them is influenced by a range of factors including: (a) the developing nature of the scope of work described in the Statement of Work; (b) the performance of third party contractors involved in the process; and (c) times of response by and level of co-operation of Customer. Obligations as to time are therefore on a "reasonable efforts" basis only and Company shall not be liable for failure to meet time frames or completion dates except to the extent resulting from Company's negligence. In addition, Company shall not be liable for failure to meet time frames or completion dates for Professional Services to the extent any such failure is due to an act or omission of Customer.

1.3 Changes. Any dates or time periods relevant to performance by Company hereunder will be appropriately and equitably extended to account for any delays resulting from changes due to Customer's acts or omissions. If either party proposes in writing a change to the scope or timing of the Professional Services, the other party will reasonably and in good faith consider and discuss with the proposing party the proposed change and a revised estimate of the costs for such change.

1.4 Customer Assistance. Customer shall provide Company with such resources, information and assistance as Company may reasonably request in connection with the performance of the Professional Services. Without limiting the generality of the foregoing, in the event the Services are provided on Customer's premises, Customer shall provide safe and adequate space, power, network connections, CPU time, access to its hardware, software and other equipment, assistance from qualified personnel familiar with Customer's hardware, software and data processing requirements and other resources as reasonably requested by Company. Customer acknowledges and agrees that Company's ability to successfully perform the Professional Services in a timely manner is contingent upon its receipt from Customer of the information, resources and assistance requested.

2. FEES AND EXPENSES. In the event a Statement of Work does not reference any specific pricing, such Professional Services shall be performed at Company's then-current consulting rates on a time and materials basis; that is, Customer shall pay Company for the time spent performing the relevant Professional Services, plus materials, and expenses. Any monetary limit referenced in a Statement of Work shall be an estimate only for the purposes of Customer's budgeting and Company's resource scheduling unless expressly stated to be a definitive limit. Customer will reimburse Company for all reasonable out-of-pocket expenses (including travel and accommodation expenses) incurred by Company in providing the Professional Services. Company shall make reasonable efforts to comply with Appendix 1 G, pertaining to complying with the State of Texas Travel Regulations. All Professional Services Fees shall be considered earned as work is performed.

3. OWNERSHIP AND LICENSE.

3.1 Work Product. Except as provided in Section 3.2, the parties understand and agree that any and all Customer-specific work product (the "**Work Product**") which is produced as a result of the Professional Services performed by Company under this Agreement shall be the property of Customer.

3.2 Company Property. Notwithstanding the foregoing in Section 3.1, as between the parties, Company shall retain all Intellectual Property Rights in any and all tools, routines, programs, code, designs, technology, ideas, know-how, processes, formulas, techniques, improvements, inventions and works of authorship which are made, developed, conceived or reduced to practice by Company or its consultants in connection with this Agreement and which have general applicability apart from the Work Product and any derivative works thereof (collectively, the "**Company Property**"). Company grants Customer a non-exclusive, non-transferable license, without rights to sublicense, to use the Company Property that is incorporated into a Deliverable solely for Customer's own internal business purposes in connection with the use of the Deliverable.

4. WARRANTIES.



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4.1 Limited Warranty. Company warrants to Customer that the Professional Services will be performed in a professional manner consistent with industry standards. Company shall, as its sole obligation and Customer's sole and exclusive remedy for any breach of the warranty set forth in this Section 4.1, re-perform the Professional Services which gave rise to the breach or, at Company's option, refund the fees paid by Customer for the Services which gave rise to the breach; provided that Customer shall notify Company in writing of the breach within thirty (30) days following performance of the defective Professional Services, specifying the breach in reasonable detail.

4.2 Disclaimer. COMPANY EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT, AND ANY IMPLIED WARRANTIES ARISING OUT OF COURSE OF PERFORMANCE OR COURSE OF DEALING.



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APPENDIX B

SOFTWARE SUBSCRIPTION

Company has developed the Software that sits on top of Salesforce.com, Inc.'s ("Salesforce.com") service offering. Pursuant to a Software Order Form, Customer is entering into a paid subscription for access and use of the Software during the Subscription Period (defined below). Company is willing to permit Customer to access the Software pursuant to the terms of this Agreement, including this Appendix.

1. LICENSE GRANT.

1.1 Right to Access and Use the Software. Subject to the terms of this Agreement, including this Appendix, Company hereby grants to Customer, during the Subscription Period, a non-sublicensable, non-transferable, non-exclusive right to access and use the Software through the service provided by Salesforce.com to which Customer must be a subscriber ("Salesforce.com Service"). Customer may use the Software solely for Customer's internal business purposes.

1.2 Salesforce.com Service. Customer's access to the Software is dependent on Customer's being a subscriber to the Salesforce.com Services. The subscriber relationship may exist through Company when Software is deployed using OEM or VAR licenses. Otherwise Customer is solely responsible for entering into and maintaining a subscription to the Salesforce.com Service. Company shall have no responsibility or liability for any issues related to the operation of the Salesforce.com Service.

1.3 Users. Customer's access and use of the Software is strictly limited to the maximum number of authorized users specified on the Software Order Form (each a "User") and access to the Software cannot be shared with anyone other than a User. If Customer wishes to add additional Users during the Subscription Period, Customer must submit a new executed Software Order Form attached to a TEA Standard Contract Amendment Form, which shall be subject to acceptance and cross-execution by Company. Upon Company's approval of the terms of a new Software Order Form, Company shall make the Software available to the additional Users on the terms and conditions set forth in this Agreement and the approved new Software Order Form. With respect to additional Users: (i) the subscription term will be coterminous with the preexisting Subscription Period and (ii) Customer will be responsible for any additional Subscription Fees for the additional Users in full commencing on the start of the month in which the new Software Order Form is approved by Company.

1.4 Restrictions. Customer acknowledges that the Software and the structure, organization, and source code thereof constitute valuable trade secrets of Company. Accordingly, except as expressly permitted in this Agreement or as otherwise authorized by Company in writing, Customer will not, and will not permit any third party to (a) modify, adapt, alter, translate, or create derivative works from the Software; (b) sublicense, lease, rent, loan, sell, distribute, make available or otherwise transfer the Software to any third party, (c) reverse engineer, decompile, disassemble, or otherwise attempt to derive the source code for the Software; or (d) otherwise use or copy the Software except as expressly allowed under this Agreement.

2. SUBSCRIPTION PERIOD AND INVOICING.

2.1 Subscription Period. Unless earlier terminated pursuant to this Agreement, the subscription period shall remain in effect for an initial period as set forth in Article II of the TEA Standard Contract and in the Software Order Form (the "Initial Subscription Period"). Renewals will be in accordance with Article II of the TEA Standard Contract unless either party indicates its intention not to renew the subscription period at least thirty (30) days prior to the end of the then current subscription period. The Initial Subscription Period and all Renewal Subscription Periods shall be referred to collectively as the "Subscription Period".

2.2 Invoicing. Unless otherwise agreed to in the Software Order Form, all Subscription Fees will be billed prior to the commencement of the upcoming year during the Subscription Period. The Subscription Fees shall be as set forth in Appendix 1 of the TEA Standard Contract and on the Software Order Form. For any Renewal Term, Company shall have the right to increase Subscription Fees by providing Customer written notice at least sixty (60) days prior to the commencement of the applicable Renewal Term. Except as expressly otherwise stated in this Agreement, all Subscription Fees are non-refundable.

2.3 Termination. Either party may terminate the Subscription Period pursuant to the Agreement.

3. CUSTOMER'S USE OF THE SOFTWARE.

3.1 Access and Security Guidelines. Each User will utilize the unique identification name and password assigned to the User account (each, a "User ID") to access and use the Software. Customer shall be responsible for ensuring the security and confidentiality of all User IDs. Each User account and User ID may be assigned to and used by only one individual User. Customer will use



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commercially reasonable efforts to prevent unauthorized access to, or use of, the Software, and will notify Company promptly of any such unauthorized use of which Customer becomes aware. Customer will, at all times, comply with all applicable local, state, federal, and foreign laws in using the Software. Customer is responsible for all activities that occur under Customer's User accounts.

3.2 Customer Data. Customer is solely responsible for any and all electronic data and information contained in any database, template or other similar document submitted by Customer in connection with its use of the Software (“**Customer Data**”). Company may take remedial action if Customer Data violates Company’s acceptable use policy, however, Company is under no obligation to review Customer Data for accuracy or potential liability.

4. OWNERSHIP. The Software and Documentation, and all worldwide Intellectual Property Rights therein, are the exclusive property of Company. All rights in and to the Software not expressly granted to Customer in this Agreement are reserved by Company. Customer retains all right, title and interest in and to the Customer Data. Customer will be solely responsible for providing all Customer Data required for the proper operation of the Software. Subject to Section 5 of the Master Customer Agreement, Customer grants to Company all necessary licenses in and to such Customer Data solely as necessary for Company to provide the Software to Customer.

5. SUPPORT SERVICES. During the Subscription Period, Company will provide to Customer maintenance and support for the Software as described in this Section.

5.1 Help Desk Support. Company will provide up to four (4) hours (tracked in fifteen (15) minute increments) of telephone support during each calendar month during the Subscription Period. Telephone support will be provided to Customer’s one (1) designated support contact from 9:00 a.m. to 5:00 p.m. (Mountain Time), Monday through Friday (excluding regular holidays), and will include the following: (a) clarification of functions and features of the Software; (b) clarification of the Documentation; (c) guidance in operation of the Software; (d) assistance in identifying and verifying the causes of suspected errors in the Software; (e) advice on bypassing identified errors in the Software, if reasonably possible; and (f) other services as agreed by Company to be provided as part of Support Services.

5.2 Updates. Company will provide updates, upgrades and enhancements (collectively “**Updates**”) for the Software as and when developed for general release in Company’s sole discretion. Updates shall not include any release, option or future product which Company licenses separately from the Software for an additional fee.

5.3 Additional Services. All Support Services provided hereunder shall be provided at Company’s principal place of business. Should Customer request that Company (a) send personnel to any Customer facility to assist Customer with its use of the Software, whether to resolve an error or otherwise, or (b) perform any additional services outside of the scope of Support Services hereunder, such additional services shall be considered Professional Services to be performed by Company in its reasonable discretion, at Company’s then-current time and material rates.

6. WARRANTY; DISCLAIMER.

6.1 Performance. For a period of sixty (60) days after commencement of the Initial Subscription Period (the “**Software Warranty Period**”), Company warrants that the Software, when used as permitted by Company and in accordance with the Documentation, will operate as described in the Documentation in all material respects. Company does not warrant that Customer’s use of the Software will be error-free or uninterrupted. Company will, at its own expense and as its sole obligation and Customer’s exclusive remedy for any breach of this warranty, correct any reproducible error in the Software reported to Company by Customer in writing during the Software Warranty Period.

6.2 Disclaimer. COMPANY EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT, AND ANY IMPLIED WARRANTIES ARISING OUT OF COURSE OF PERFORMANCE OR COURSE OF DEALING. EXCEPT FOR THE EXPRESS WARRANTIES STATED IN SECTION 6.1, THE SOFTWARE IS PROVIDED “AS IS” WITH ALL FAULTS. WITHOUT LIMITING THE FOREGOING, COMPANY MAKES NO WARRANTY CONCERNING THE SALESFORCE.COM SERVICE.

7. U.S. GOVERNMENT END USERS. If Customer is a branch or agency of the United States Government, the following provision applies. The Software is comprised of “commercial computer software” and “commercial computer software documentation” as such terms are used in 48 C.F.R. 12.212 and are provided to the Government (a) for acquisition by or on behalf of civilian agencies, consistent with the policy set forth in 48 C.F.R. 12.212; or (b) for acquisition by or on behalf of units of the Department of Defense, consistent with the policies set forth in 48 C.F.R. 227.7202-1 and 227.7202-3.



SOFTWARE ORDER FORM - CONFIDENTIAL

This Software Order Form is dated September 1, 2015 and is attached to, and made a part of, that certain Master Customer Agreement between **APPLICATION EXPERTS, LLC** ("Company"), and **TEXAS EDUCATION AGENCY** ("Customer") dated September 1, 2015 (the "Agreement"). Unless explicitly stated otherwise in this Software Order Form, any capitalized terms shall have the meaning given to them in the Agreement.

1. Software

Customer shall be entitled to access and use the Software listed in Table 1 below in accordance with the terms and conditions of the Agreement, including without limitation, the restrictions on the number of authorized Users listed in Table 1.

2. Salesforce.com Service.

Customer's access to the Software is dependent on Customer being a subscriber to the Salesforce.com Services. Customer's Subscription to Salesforce.com is provided to Customer through a direct relationship with Salesforce.com.

3. Initial Subscription Period – License(s)

The Initial Subscription Period shall begin on 1 September, 2015 (the "Subscription Start Date") and shall continue for twenty-four (24) month(s) thereafter. Any additional licenses will be added pro rata in order to coterminous with the original licenses. The Subscription Period shall renew upon written mutual agreement of both parties on an AMENDMENT TO TEXAS EDUCATION AGENCY CONTRACT form supplied by customer and signed by both parties, for three (3) additional two-year terms to commence on the first day after the Initial Subscription Period.

4. Subscription Fees

The Subscription Fees are listed below for the various tiers:

- 1-14 Users: \$2400/license/year
- 15-19 Users: \$2300/license/year
- 20-24 Users: \$2200/license/year
- 25-29 Users: \$2100/license/year
- 30-34 Users: \$2000/license/year
- 35-39 Users: \$1900/license/year
- 40+ Users: \$1800/license/year

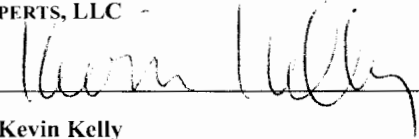
Below is the amount for your upcoming renewal at the current number of licenses active.

TABLE 1


Software License	# of Users	# of Months	Subscription Fee	Total
Full AIM Users Licenses 09/01/2015 to 08/31/2016	14	12	\$2400	\$33,600
AIM Admin Licenses	4	12	\$0	\$0
TOTAL SUBSCRIPTION FEES				\$33,600

5. Accepted and Agreed To:

APPLICATION EXPERTS, LLC

Signed: 
 Printed: Kevin Kelly
 Title: CEO
 Date: 05/21/2015

TEXAS EDUCATION AGENCY

Signed: 
 Printed: Shirley Beaulieu
 Title: Associate Commissioner of Finance!
 Date: 9-25-15 CFO



HUB Subcontracting Plan (HSP)

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 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

➤ **If you will be awarding any portion of the work you have to offer under the contract to another vendor, complete the below and please contact TEA for additional forms.**

- 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
- Section 2 c. - Yes
- Section 4 - Affirmation



SPECIAL PROVISIONS B

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 INFORM

a. Respondent (Company) Name: Application Experts, LLC State of Texas VID #: _____

Point of Contact: Kevin Kelly Phone #: 303-565-5923

E-mail Address: kevin.kelly@app-x.com Fax #: 866-530-6668

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

c. Requisition #: _____ Bid Open Date: _____
(mm/dd/yyyy)

Enter your company's name here: Application Experts, LLC Requisition #: _____

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).

	Subcontracting Opportunity Description	HUBs		Non-HUBs
		Percentage of the contract expected to be subcontracted to HUBs with which you have a continuous contract* in place for five (5) years or less.	Percentage of the contract expected to be subcontracted to HUBs with which you have a continuous contract* in place for more than five (5) years.	Percentage of the contract expected to be subcontracted to non-HUBs.
1		%	%	%
2		%	%	%
3		%	%	%
4		%	%	%
5		%	%	%
6		%	%	%
7		%	%	%
8		%	%	%
9		%	%	%
10		%	%	%
11		%	%	%
12		%	%	%
13		%	%	%
14		%	%	%
15	(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 the aggregate expected percentage of the contract you expect to be subcontracted using only Texas certified HUBs to perform all of the subcontracting opportunities 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.

Enter your company's name here: Application Experts, LLC Requisition #: _____

SECTION 3: SELF PERFORMING JUSTIFICATION (If you responded "No" to SECTION 2, Item a, you must complete this SECTION and continue to SECTION 4)

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.

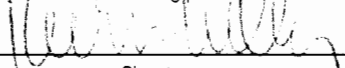
- **Yes** (If **Yes**, in the space provided below **list the specific page(s)/section(s)** of your proposal which explains how your company will perform the entire contract with its own equipment, supplies, materials and/or employees.)
- **No** (If **No**, in the space provided below **explain how**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

All work that we will do in support of our contract with TEA will be performed by full time employees and/or contractors that are paid by Application Experts, LLC.

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.

 _____ Signature	Kevin Kelly _____ Printed Name	CEO _____ Title	09/02/2015 _____ Date (mm/dd/yyyy)
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