

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:	Standard and Poor's Financial Services LLC	Payee ID:	26-3740348
ISAS Contract #:	3480	PO #:	35088

## TEXAS EDUCATION AGENCY STANDARD CONTRACT

This Texas Education Agency Standard Contract, dated as of January 20, 2015, shall be an addendum to the GICS License Agreement (which is attached hereto, incorporated herein by reference and is hereinafter referred to as the "Agreement") between Standard & Poor's Financial Services LLC AND Texas Education Agency dated as of January 20, 2015.

### ARTICLE I. PARTIES TO CONTRACT

This agreement is entered into by and between the Texas Education Agency ("TEA"), a Texas State Agency, and Standard and Poor's Financial Services LLC a Delaware limited liability company, with its principal office located at 55 Water Street, New York, NY 10041 ("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 (as specified in the Contract (as defined in the Special Provisions attached hereto)) during the period beginning January 20, 2015 and ending August 31, 2017, unless extended or terminated as otherwise provided for in this contract. Upon written mutual agreement of both parties, this contract may be extended for one (1) additional two (2) year term to commence on the first day after the original contract period and one (1) additional three (3) year term thereafter.

### 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 \$193,000.00 for the performance of Contractor's functions and duties under 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 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 to the best of its knowledge 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 shall use reasonable efforts, subject to its confidentiality and security requirements, to make full disclosure of intent to employ or subcontract with an individual who is a former employee/retiree of TEA.

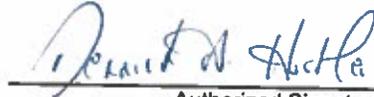
Contractor shall be an independent contractor for matters relating to this Contract. Contractor and its employees are not employees of TEA for any purpose and shall not be entitled to participate in any plan, arrangement, or distribution by TEA pertaining to or in connection with any pension, bonus,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

ARTICLE VI. ENTIRE CONTRACT

This Contract together with the documents including the Appendices, Attachments, Schedules, and Exhibits, 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: Derrick A. Hostler

  
Authorized Signature

Typed title: Managing Director

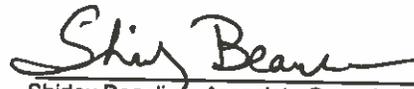
**This section reserved for TEA use.**

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 4<sup>th</sup> day of March 2016 (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 15<sup>th</sup> Street 11<sup>th</sup> Floor  
Austin, Texas 78701

  
Shirley Beaulieu, Associate Commissioner  
Finance/ CFO

**APPENDIX 1**

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

B. Description of Services/Activities:

Contractor grants to TEA a temporary, non-sub licensable, non-transferable, non-exclusive, limited license to permit its Authorized Users (as defined in the Agreement) to access and use the Service (as defined in the Agreement) solely as set forth and permitted in the Agreement.

C. Fees: **Yearly subscription fee** to Contractor payable at the beginning of each year as follows:

The invoicing and payment cycles for the **initial term** of the contract are defined as follows:

	Contract Year for Invoicing	Subscription Fees
First Fiscal Cycle	January 20, 2015 - August 31, 2015	\$23,200.00 annually - prorated for 224 days = \$14,237.81
Second Fiscal Cycle	September 1, 2015 – August 31, 2016	\$23,200.00 annually
Third Fiscal Cycle	September 1, 2016 – August 31, 2017	\$23,896.00 annually

The invoicing and payment cycles for the **first renewal term** are defined as follows:

	Contract Year for Invoicing	Subscription Fees
Fourth Fiscal Cycle	September 1, 2017 – August 31, 2018	\$24,612.88 annually
Fifth Fiscal Cycle	September 1, 2018 – August 31, 2019	\$25,351.27 annually

The invoicing and payment cycles for the **second renewal term** are defined as follows:

	Contract Year for Invoicing	Subscription Fees
Sixth Fiscal Cycle	September 1, 2019 – August 31, 2020	\$26,111.81 annually
Seventh Fiscal Cycle	September 1, 2020 – August 31, 2021	\$26,895.16 annually
Eighth Fiscal Cycle	September 1, 2021 – August 31, 2022	\$27,702.00 annually

D. Payment shall be in accordance with the Texas Prompt Pay Act, Texas Government Code Chapter 2251, which is further defined in the General Terms and Conditions, Paragraph EE.

## GENERAL PROVISIONS

- A. As used in these General Provisions:
- i. *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;
  - ii. *Agency or TEA* means the Texas Education Agency;
  - iii. *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;
  - iv. *Project Administrator* means the respective person(s) representing TEA or Contractor, as indicated by the Contract, for the purposes of administering the Contract Project;
  - v. *Contract Project* means the purpose intended to be achieved through the Contract;
  - vi. *Amendment* means a Contract that is revised in any respect, and includes both the original Contract, and any subsequent amendments or extensions thereto.
  - vii. *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/](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](mailto:TEAAccountsPayable@tea.state.tx.us) and to [PSFInvoices@tea.state.tx.us](mailto:PSFInvoices@tea.state.tx.us)

Additional information and a Direct Deposit Authorization application may be found at <https://fmxcpa.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](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**

Standard & Poor's Financial Services LLC  
55 Water Street  
New York, NY 10041  
Attention: Manager, Contracts Administration  
Fax 212-438-3656

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)

## SPECIAL PROVISIONS - A

- A. The Definitions of terms in the General Provisions are incorporated herein.
- B. All amendments to this Contract will be in a manner as prescribed by the Project Administrator of the Agency and will be made on AMENDMENT TO TEXAS EDUCATION AGENCY CONTRACT form supplied by TEA.
- C. Any amendment to this Contract will become effective upon execution by both parties.
- D. The following documents are of a program nature and are incorporated herein by reference and components of this contract:

GICS License Agreement	Pages 13 - 18
Schedule A	Pages 19 - 20
Exhibit 1 to Schedule A	Page 21

These documents, taken together with all sections of the Standard Contract, comprise 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 GICS License Agreement including Schedule A and Exhibit 1 referenced above, with attachments, the Agreement will prevail.

- E. The parties have agreed to changes in some of the TEA General Provisions in the TEA Standard Contract. Each of these changes as set forth below shall apply to this Contract notwithstanding any to the contrary in any other provision in the TEA Standard Contract.
  - 1. **General Provisions Paragraph A is amended as follows:**
    - A(i) **Definition of Contract** is hereby deleted in its entirety and replaced with the following: "*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, and the GICS License Agreement inclusive of Exhibit A and Exhibit 1 attached thereto."
    - A(iii) **Definition of Contractor** is hereby deleted in its entirety and replaced with the following: "Standard & Poor's Financial Services LLC".
  - 2. **Paragraph B Contingency** is hereby deleted in its entirety and replaced with the following: "The Contract, 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, TEA may terminate this Contract in the event of the insufficiency (in TEA's reasonable discretion) or unavailability of said appropriated funds. TEA shall provide Contractor with at least thirty days prior written notice of its intent to so terminate this Contract."
  - 3. **Paragraph C Indemnification** is hereby deleted in its entirety and replaced with "Intentionally Omitted".
  - 4. **Paragraph D Subcontracting** is hereby deleted in its entirety and replaced with "Intentionally Omitted".
  - 5. **Paragraph E Encumbrances/Obligations** is hereby deleted in its entirety and replaced with "Intentionally Omitted".
  - 6. **Paragraph F Records Retention** is hereby deleted in its entirety and replaced with the following: "Following TEA's reasonable request, Contractor shall use commercially reasonable efforts to provide TEA with copies of invoices that have been issued by Contractor to TEA in connection with the fees charged hereunder."
  - 7. **Paragraph G Sanctions for Failure to Perform or for Noncompliance** is hereby deleted in its entirety and replaced with "Intentionally Omitted".
  - 8. **Paragraph H Contract Cancellation** is hereby deleted in its entirety and replaced with "Intentionally Omitted".
  - 9. **Paragraph I Refunds Due to TEA** is hereby deleted in its entirety and replaced with "Intentionally Omitted".
  - 10. **Paragraph J State of Texas Laws** is deleted and replaced with "Intentionally Omitted".
  - 11. **Paragraph K HUB Subcontracting Plan** is hereby deleted in its entirety and replaced with "Intentionally Omitted."
  - 12. **Paragraph M Antitrust** is hereby deleted in its entirety and replaced with the following: "By signing this Contract, Contractor certifies that to the best of its knowledge, it has not violated the antitrust laws of the State of Texas under Tex. Bus. & Com. Code, Chapter 15, or the federal antitrust laws."
  - 13. **Paragraph N Family Code Applicability** shall not be applicable to Contractor and is included herein solely for TEA's compliance purposes.
  - 14. **Paragraph O Dispute Resolution** is hereby deleted in its entirety and replaced with the following: "To the extent that Chapter 2260, Texas Government Code, is applicable to this Contract and is not preempted by other applicable law,

the dispute resolution process provided for in such Chapter shall be used by TEA and Contractor to attempt to resolve any claim for breach of contract hereunder that cannot be resolved in the ordinary course of business. Notwithstanding the immediately foregoing, TEA hereby acknowledges that Contractor has not waived its right to seek redress in the courts or to any other remedy to which it is legally entitled."

15. **Paragraph P Interpretation** is hereby deleted in its entirety and replaced with "Intentionally Omitted".
  16. **Paragraph Q Public Information** is hereby deleted in its entirety and replaced with the following:
    - i. The provisions of this Paragraph Q shall apply to the extent that Chapter 552, Texas Government Code, is applicable to this Contract and is not preempted by other applicable law. For the purposes of this Paragraph Q, the term "Contract Information" shall refer to, individually and collectively: (a) this Contract or (b) any information related to the goods or services provided under this Contract or (c) information provided to TEA by Contractor under this Contract.
    - ii. Contractor acknowledges that TEA has advised that TEA is subject to the provisions of the Texas Public Information Act (the "Act"). Accordingly, if any Contract Information constitutes a public record under the Act and TEA receives a request, pursuant to the Act, to publicly disclose any Contract Information, then the Contract Information must qualify for an exception under the Act in order to be withheld from public disclosure.
    - iii. Further to Paragraph Q(ii), Contractor authorizes the TEA, in accordance with the applicable provisions of the Act, to submit any Contract Information that is the subject of a public disclosure request to the Office of the Attorney General of the State of Texas (the "OAG") for a determination as to whether such information may be excepted from public disclosure. Notwithstanding the immediately foregoing sentence, if TEA does not have a good faith belief that the Contract Information is subject to an exception to public disclosure under the Act, TEA is not obligating itself by this Paragraph Q(iii) to submit such Information to the OAG. In any event, however, if TEA receives a public disclosure request for Contract Information, TEA, *prior to* any disclosure of the Contract Information, shall notify Contractor, in writing, of any such request so as to afford Contractor reasonable opportunity to submit written arguments to the OAG that the Contract Information qualifies for a public disclosure exception under the Act.
    - iv. Contractor understands that as between it and TEA, it shall be the responsibility of the Contractor to make any legal argument to the OAG or appropriate court of law regarding the exception of the Contract Information from public disclosure
- 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 Contract 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 Contract 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.
17. **Paragraph R Venue and Jurisdiction** is intentionally omitted and replaced with "Intentionally Omitted."
  18. **Paragraph T Assignment of Contract** is hereby deleted in its entirety and replaced with the following: "Contractor shall notify TEA prior to an assignment, sale, or transfer of this Contract. If the assignee, purchaser or transferee does not comply with TEA's statutory requirements to become the payee hereunder, or is otherwise ineligible to become a payee hereunder, TEA shall have the right to terminate this Contract without penalty."
  19. **Paragraph V Suspension and Debarment** is hereby deleted in its entirety and replaced with the following: "Contractor certifies that, to the best of its knowledge, 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 the provision of the Services provided by Contractor hereunder. If Contractor is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this contract."
  20. **Paragraph W Proprietary or Confidential Information** is hereby deleted in its entirety and replaced with "Intentionally Omitted".
  21. **Paragraph Y Contractor Performance** is hereby deleted in its entirety and replaced with the following:

"To the extent applicable, all state agencies must report unsatisfactory Contractor performance on purchases over \$25,000. Contractors 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 a future 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. Contractors may fail these 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/](http://www.window.state.tx.us/procurement/prog/contractor_performance/)

22. **Paragraph Z Termination** is hereby deleted in its entirety and replaced with "Intentionally Omitted".
23. **Paragraph AA Amendments** is hereby deleted in its entirety and replaced with the following: "All Amendments to this Contract will be in a written agreement executed by both parties and will be effective as of the effective date shown on the Amendment document and shall include an AMENDMENT TO TEXAS EDUCATION AGENCY CONTRACT form supplied by TEA and signed by both parties."
24. **Paragraph BB Audit** is hereby deleted in its entirety and replaced with the following: "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. The parties agree that for the purposes of this Contract and the Agreement, the only information that shall be deemed relevant as set forth in section (3) herein, shall be invoices issued in connection with the Services provided to the TEA, and Contractor reserves the right to limit any such audit or investigation accordingly. "
25. **Paragraph CC Force Majeure** is hereby deleted in its entirety and replaced with the following: "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, strikes, 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 shall use reasonable efforts to inform the other in writing (with proof of receipt by the receiving party as of the date received) within three (3) business days of the existence of such *force majeure* that has affected its own performance hereunder."
26. **Paragraph DD Abandonment or Default** is hereby deleted in its entirety and replaced with "Intentionally Omitted".
27. **Paragraph EE Payment** is hereby deleted in its entirety and replaced with the following:
  - i. 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](mailto:TEAAccountsPayable@tea.state.tx.us) and to [PSFInvoices@tea.state.tx.us](mailto: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>.

- ii. Contractor will include the contract number, purchase order number, and the Texas Comptroller of Public Accounts Texas Identification Number (TIN) on all invoices/expenditure reports.
- iii. 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](https://fm.xcpa.state.tx.us/fm/pubs/purchase/restricted/index.php?section=indebted&page=persons_indebted)

## GICS LICENSE AGREEMENT

Licensee (defined below) wishes to receive the Global Industry Classification Standard ("GICS") product(s) (or a portion thereof) and the data contained therein as more particularly described in Schedule A attached hereto and incorporated by this reference (collectively, the "Service"), subject to the Terms and Conditions set forth below. Collectively, the Terms and Conditions, Schedule A and all Exhibits and other attachments hereto are referred to as the "Agreement".

**Electronic Agreement.** Subject to the Opt Out provision below, the parties agree that the electronic copy of this Agreement retained by S&P constitutes the "original", complete and exclusive statement of this Agreement, and that no paper copy of this Agreement (including any paper copy retained by Subscriber) may be claimed to be the document memorializing this Agreement. This provision shall survive any termination of this Agreement.

**Electronic Agreement "Opt Out".**  Check here if any party executing this Agreement does not consent to the electronic copy of this Agreement serving as the "original" pursuant to the Electronic Agreement clause above, and requires that the original Agreement is maintained in paper form. This provision shall survive any termination of this Agreement.

The parties to this Agreement, by their signatures below, acknowledge that they have read and agree to be bound by the terms and conditions of this Agreement.

<u>Texas Education Agency</u>	<u>STANDARD &amp; POOR'S FINANCIAL SERVICES LLC</u>
Company Name (hereinafter "Licensee" or "TEA")	(hereinafter "S&P" or "Contractor")
<u>1701 North Congress Avenue</u>	55 Water Street
<u>Austin, TX 78701</u>	New York, New York 10041
(Company address)	
By: <u></u>	By: <u></u>
Name (print): <u>Shirley Beaulieu</u>	Name (print): <u>Derrick A. Hostler</u>
Facsimile number: <u>512-463-9432</u>	Facsimile number: <u>Managing Director</u>
Phone: <u>512-463-9169</u>	Phone: <u>212-438-1047</u>
Date: <u>3-4-16</u>	Date: <u>2-16-16</u>
Email Address: <u>PSFInvoices@tea.state.tx.us</u>	

## TERMS AND CONDITIONS

### I. LICENSE

Subject to the provisions hereof, including all exhibits, schedules and supplements annexed hereto, S&P hereby grants to Licensee a temporary, non-sublicensable, non-transferable, non-exclusive, limited license to permit its Authorized Users (as that term is defined in Schedule A) to access and use the Service as expressly permitted herein for the term set forth in Section 5.1 herein.

### II. DELIVERY

S&P, or its agent or Distributor (as set forth in Schedule A), will provide Licensee with the Service, including any updates and modifications that from time to time may be made thereto and are provided generally and without any additional charge by S&P to other entities licensed to have access to the Service specified in the relevant Schedule A, and Licensee shall be entitled to access the Service via the delivery method as set forth in Schedule A attached hereto and made a part hereof. Licensee shall hold and cause all of its Authorized Users to hold any passwords/user IDs issued by S&P or by Licensee in connection with access to the Service in strict confidence, and Licensee shall instruct all Authorized Users of their obligations in this regard. Licensee shall promptly advise S&P of any unauthorized disclosure or misuse of the Service or any passwords/user IDs with respect to the Service that come to its attention and shall cooperate with S&P in enforcing the restrictions and limitations set forth herein. S&P shall not be responsible for the procurement, installation or maintenance of any equipment on which the Service is accessed by Licensee nor for any communications connection by which the Service is transmitted, nor shall S&P have any liability for communication delays or interruptions of the Service; nor shall S&P be responsible for the transmission to Licensee of the Service beyond the point of

S&P's or its agent's computer facility; nor shall S&P be liable for any fees payable by Licensee for any communications lines to any person, firm or entity.

### III. USE RESTRICTIONS

- 3.1 The Service may be used solely by the Authorized Users only in the Territories set forth in Schedule A for Licensee's internal business needs for use in the active management and investment of equity assets owned by Licensee or managed by Licensee's specific business unit(s) set forth in Schedule A. Licensee may publish only a de minimus portion of the GICS classification code and GICS definition fields from the Service and information derived from the Service in the types of paper copies or non-manipulative electronic versions of External Publications as defined in Schedule A, and not as a standalone product. Notwithstanding the foregoing, Licensee will not provide or distribute data or information from the Service or portions thereof in any manner, including commercial resale, that substitutes for a direct license from, or otherwise competes with, any distribution by S&P or MSCI Inc. ("MSCI") of the Service in any form or format, or of any derivative works based thereon, including without limitation, providing data for purposes of maintaining a database of GICS classification codes. The determination of what constitutes a "de minimus portion" shall be determined by S&P in its sole reasonable discretion. In all such External Publications Licensee shall refer to the GICS classifications at all times as the "Global Industry Classification Standard (GICS)", "GICS" or the "Global Industry Classification Standard (GICS) by MSCI and Standard and Poor's" (or such other reference as may be required by S&P upon reasonable notice to Licensee). In addition, Licensee also shall include the following notice, or such similar language as may be approved in advance by S&P or required by S&P upon reasonable notice to Licensee, when referring to the GICS or any GICS classification in any such publication:
- The Global Industry Classification Standard ("GICS") was developed by and is the exclusive property and a service mark of MSCI Inc. ("MSCI") and Standard & Poor's Financial Services LLC ("S&P") and is licensed for use by [Licensee]. Neither MSCI, S&P, nor any other party involved in making or compiling the GICS or any GICS classifications makes any express or implied warranties or representations with respect to such standard or classification (or the results to be obtained by the use thereof), and all such parties hereby expressly disclaim all warranties of originality, accuracy, completeness, merchantability and fitness for a particular purpose with respect to any of such standard or classification. Without limiting any of the foregoing, in no event shall MSCI, S&P, any of their affiliates or any third party involved in making or compiling the GICS or any GICS classifications have any liability for any direct, indirect, special, punitive, consequential or any other damages (including lost profits) even if notified of the possibility of such damages.
- 3.2 Except as set forth in Section 3.1 above, Licensee will not use or permit anyone else to use the Service or any portion thereof in connection with writing, creating, managing, trading, marketing or promoting any securities or financial instruments or products, including, without limitation, funds, synthetic or derivative securities (e.g., options, warrants, swaps, and futures), whether listed on an exchange or traded over the counter or on a private-placement basis or otherwise. Additionally, Licensee will not use or permit use of the Service in connection with creating or calculating any indices (custom or otherwise) or to verify or correct data in any other compilation of data or index.
- 3.3 Licensee will not resell or otherwise transfer or make the Service, or any part or component thereof, available to any other person or organization (including, without limitation, Licensee's present and future parents, subsidiaries, affiliates or unauthorized persons within Licensee) directly or indirectly, for any of the foregoing or for any other use, including, without limitation, by loan, rental, service bureau, external time sharing or similar arrangement, except as expressly permitted.
- 3.4 Licensee will not alter, modify or adapt any component of the Service, including, but not limited to, translating, creating derivative works, altering or modifying the Service or any component thereof as provided by S&P. Further, Licensee will not create an alternative GICS classification designation for any security; provided, however, that should Licensee create an industry classification for those securities for which a GICS classification has not been provided to Licensee, Licensee shall clearly and conspicuously note such classification as a Licensee-defined classification that is not supported or sponsored by S&P or MSCI.
- 3.5 Licensee further agrees to reproduce on all copies of the Service and all components thereof authorized by S&P (all of which shall be the property of S&P and MSCI) all copyright, proprietary rights and restrictive legends appearing on the original copy of the Service and all components thereof.
- 3.6 Licensee acknowledges that a breach of its obligations to S&P under this Agreement, other than any payment obligations hereunder, will result in irreparable and continuing damage for which monetary damages may not be sufficient, and agrees that S&P will be entitled to seek, in addition to its other rights and remedies hereunder or at law, injunctive and/or other equitable relief, and such further relief as may be proper from a court of competent jurisdiction. All remedies of S&P set forth in this Agreement are cumulative and in addition to and not in lieu of any other remedy of S&P at law or in equity.
- 3.7 Licensee shall not use the Service or any classifications thereunder in any way other than as expressly provided herein.

#### **IV. FEES**

- 4.1 In consideration of the license granted hereunder, Licensee agrees to pay the charges set forth in Schedule A, and described by invoicing cycles on TEA Standard Contract Appendix 1, pursuant to such terms as are also set forth in Schedule A and this Section 4. All charges are due within thirty (30) days from Licensee's receipt of the relevant invoice and will be paid in accordance with Texas Government Code Chapter 2251, Texas Prompt Pay Act. .
- 4.2 Licensee hereby warrants and represents that it is a non-taxable state agency and is not subject to taxation. TEA shall promptly notify S&P in the event of any change to such tax exempt status and, as between it and S&P, TEA shall be responsible for any applicable taxes that may be imposed on transactions hereunder as a result in such change in status.
- 4.3 In the event that Licensee accesses the Service via a Distributor, S&P may use information obtained by S&P from such Distributor to verify access to and use of the Service by Licensee.

#### **V. TERM/TERMINATION**

- 5.1 The initial term of this Agreement shall be for the period beginning January 20, 2015 and ending August 31, 2017 (the "Initial Term"). Upon written mutual agreement of both parties, this Agreement may be extended for one (1) additional two (2) year term to commence on the first day after the Initial Term and one (1) additional three (3) year term to commence thereafter, unless terminated as provided herein. In the event this Agreement is terminated for any reason: (a) Licensee shall pay all amounts due and owing to S&P as of the effective date of such termination; and (b) except as expressly set forth in Section 5.2 below, Licensee shall not be entitled to any refund or credit of fees paid or payable hereunder.
- 5.2 This Agreement may be terminated as follows:
- (a) By either party, upon expiration of the then-current term, without cause, provided that written notice of such intention is given to the other party at least sixty (60) days prior to the expiration such term;
  - (b) Intentionally Omitted;
  - (c) By S&P at any time ten (10) days following written demand to Licensee, if Licensee shall have failed to pay any amount due hereunder;
  - (d) Except as provided in Section 5.2(c), by S&P upon fifteen (15) days notice to Licensee in the event of any breach by Licensee of any of the terms of this Agreement unless such breach is not curable within fifteen (15) days, in which case S&P may terminate immediately upon notice to Licensee; and
  - (e) In the event S&P is no longer offering the Service to unaffiliated third parties, S&P may terminate this Agreement upon sixty (60) days prior notice to Licensee, in which case S&P will refund Licensee any pro-rata portion of the pre-paid fees for the Service representing the unused portion of such fees.
- 5.3 Upon termination of this Agreement for any reason, Licensee shall cease all use of the Service and Licensee shall purge and destroy any and all complete or partial copies of the Service or any data contained therein, in any form or medium, including magnetic tapes or other electronic systems or machine-readable material containing the Service or portions thereof, that are in Licensee's possession or control, except as may be required for legal or regulatory archival purposes. At S&P's request, Licensee shall certify to S&P in writing that Licensee has fully complied with this requirement. Notwithstanding anything to the contrary, so long as Licensee is not in breach of this Agreement, Licensee shall not be required to expunge the GICS classifications that are contained in Licensee's External Publications authored and published by Licensee prior to any termination of this Agreement.
- 5.4 Licensee shall at all times during the term of this Agreement maintain the most recent eighteen (18) months of full and accurate records with respect to Licensee's access to and usage of the Service. During the term of this Agreement and for a six (6) month period thereafter, S&P shall have the right, during normal business hours and upon reasonable notice to Licensee, to (a) audit and review relevant portions of those records; and (b) audit the manner of Authorized Users' access to the Service, in each case to confirm that fees and any other charges have been accurately determined and that restrictions on use and access have been observed. S&P's failure to conduct an audit pursuant to this Section shall not relieve Licensee from its responsibilities to comply fully with the terms and conditions of this Agreement. In addition, Licensee agrees to permit S&P or its representatives to periodically inspect, at Licensee's location(s) and during reasonable hours and at reasonable intervals, the terminal(s) and/or any network on or by which any portion of the Service are accessed for purposes of establishing compliance with the terms of this Agreement. The costs of any such audit shall be borne by S&P unless such audit reveals a material breach by Licensee, whereby the costs of the audit shall be borne by Licensee.

#### **VI. DISCLAIMERS: LIMITATION OF LIABILITY**

- 6.1 ALTHOUGH S&P SHALL OBTAIN INFORMATION FOR INCLUSION IN THE SERVICE FROM SOURCES THAT S&P CONSIDERS RELIABLE, THE SERVICE IS PROVIDED TO LICENSEE "AS IS" AND NEITHER S&P, MSCI, ANY OF THEIR AFFILIATES, ANY OF THEIR DIRECT OR INDIRECT INFORMATION PROVIDERS NOR ANY OTHER THIRD PARTY INVOLVED IN, OR RELATED TO THE COMPILATION OF OR CREATION OF THE SERVICE OR ANY COMPONENT THEREOF (COLLECTIVELY THE "S&P PARTIES") MAKES ANY REPRESENTATION OR WARRANTY OF ANY KIND TO LICENSEE OR ANY THIRD PARTY, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO THE

SERVICE, THE RESULTS TO BE OBTAINED BY THE USE THEREOF OR ANY OTHER MATTER. FURTHER, THE S&P PARTIES EXPRESSLY DISCLAIM, AND LICENSEE WAIVES, ANY AND ALL IMPLIED WARRANTIES, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF ORIGINALITY, ACCURACY, COMPLETENESS, TIMELINESS, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

- 6.2 LICENSEE ASSUMES THE ENTIRE RISK OF ANY USE LICENSEE MAY MAKE, OR PERMIT OR CAUSE TO BE MADE, OF THE SERVICE. EXCEPT AS PROVIDED IN SECTION 7.1, NONE OF THE S&P PARTIES SHALL IN ANY EVENT HAVE ANY LIABILITY TO LICENSEE OR ANY THIRD PARTY FOR ANY DAMAGES OF ANY KIND ARISING OUT OF, OR IN CONNECTION WITH, THIS AGREEMENT, ANY ERRORS, OMISSIONS OR INTERRUPTIONS OF OR IN CONNECTION WITH THE SERVICE, THE SUBJECT MATTER HEREOF, LICENSEE'S OR ANY THIRD PARTY'S USE OF OR INABILITY TO USE THE SERVICE OR ANY PORTION THEREOF, OR OTHERWISE ARISING OUT OF, OR RELATING TO, THIS AGREEMENT, WHETHER DIRECT, INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL (INCLUDING, WITHOUT LIMITATION, LOSS OF USE, LOSS OF PROFITS OR REVENUES OR OTHER ECONOMIC LOSS OF LICENSEE OR ANY OTHER THIRD PERSON OR ENTITY), WHETHER IN TORT (INCLUDING, WITHOUT LIMITATION, NEGLIGENCE OR STRICT LIABILITY), CONTRACT OR OTHERWISE, AND WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF, OR OTHERWISE MIGHT HAVE ANTICIPATED, THE POSSIBILITY OF SUCH DAMAGES.

## VII. INDEMNIFICATION

- 7.1 **S&P Indemnity.** Subject to Sections 7.2 and 7.4, S&P, at its expense, will indemnify, defend and hold harmless Licensee, its officers, directors, employees and agents (collectively, the "Licensee Indemnified Parties") from and against any claims, losses, damages, liabilities, costs and expenses, including reasonable attorneys' fees and costs, as incurred, arising out of any third party claim or action threatened or brought against any Licensee Indemnified Party as a result of or related to the Service or any use thereof constituting an infringement of any [U.S.] patent, copyright or trademark or constituting the misappropriation of a trade secret of any third party. Without limiting the foregoing, and notwithstanding anything to the contrary in this Agreement, if the Service, or any component or use thereof, becomes, or in S&P's reasonable opinion is likely to become, the subject of any such claim or action of infringement, of any [U.S.] patent, copyright or trademark or of misappropriation of a trade secret of any third party, then S&P shall have the right, in its sole discretion, to: (a) procure for Licensee the right to continue using such Service, or such relevant component thereof, as contemplated hereunder; (b) modify such Service, or such relevant component thereof, to render same non-infringing; (c) replace such Service, or such relevant component thereof, with an equally suitable, functionally equivalent non-infringing Service; or (d) immediately terminate, in S&P's discretion, this Agreement or any individual Service or portion thereof and Licensee will receive a pro-rata refund of any unused prepaid fees.
- 7.2 Notwithstanding anything to the contrary in this Agreement, S&P shall have no liability or obligation to Licensee under Section 7.1 if any such claim or action arises from or in connection with: (a) any negligent act or omission by any Licensee Indemnified Party; (b) Licensee's use of other than the current version of the Service; (c) Licensee's modification of the Service; or (d) Licensee's use of the Service other than as set forth in this Agreement.
- 7.3 **Intentionally Omitted**
- 7.4 **Indemnification Procedures.** The indemnified party shall promptly notify the indemnifying party of any such claim or action (although failure to do so will only relieve the indemnifying party of its obligations hereunder to the extent the indemnifying party was prejudiced thereby). The indemnified party shall reasonably cooperate with the indemnifying party, at the indemnifying party's expense, in the defense of any such claim or action. The indemnifying party shall have full control over the defense and settlement of any such claim or action unless it imposes an affirmative obligation on the indemnified party. The indemnified party shall have the right, at its own expense, to participate in the defense of any such claim or action.

## VIII. PROPRIETARY RIGHTS

Licensee acknowledges that: (a) the Service and all components thereof constitute copyrighted, trade secret, and/or proprietary information of substantial value to S&P and MSCI; (b) Licensee receives no proprietary rights whatsoever in or to the Service; and (c) title and ownership rights in and to the Service and all the rights therein and legal protections with respect thereto remain exclusively with S&P and MSCI. Licensee shall not challenge or contest, or assist any third party in challenging or contesting, the validity of S&P's or MSCI's rights in or to the Service or any component thereof, and shall not assert, or assist any third party in asserting any rights in the Service or any component thereof. Without limitation on the foregoing, Licensee agrees not to remove from the Service, and to reproduce on all permitted copies of the Service, any statutory copyright notice or restrictive legend contained on or included in the Service.

**IX. COMMITTEE ON UNIFORM SECURITY IDENTIFICATION PROCEDURES OF THE AMERICAN BANKERS ASSOCIATION ("CUSIP")**

To the extent the Service includes CUSIP information, Licensee agrees and acknowledges that the CUSIP database and the information contained therein is and shall remain valuable intellectual property owned by, or licensed to, the CUSIP Service Bureau operated by Standard and Poor's Financial Services LLC ("CSB") and the American Bankers Association ("ABA"), and that no proprietary rights are being transferred to Licensee in such materials or in any of the information contained therein. Licensee agrees that misappropriation or misuse of such materials will cause serious damage to CSB and ABA and that in such event money damages may not constitute sufficient compensation to CSB and ABA; consequently, Licensee agrees that in the event of any misappropriation or misuse, CSB and ABA shall have the right to obtain injunctive relief in addition to any other legal or financial remedies to which CSB and ABA may be entitled. Licensee agrees that Licensee shall not publish or distribute in any medium the CUSIP database or any information contained therein or summaries or subsets thereof to any person or entity except in connection with the internal trading and settlement of security transactions. Licensee further agrees that the use of CUSIP numbers and descriptions is not intended to create or maintain, and does not serve the purpose of the creation or maintenance of, a file of CUSIP descriptions or numbers for any other third party recipient of such service and is not intended to create and does not serve in any way as a substitute for the CUSIP MASTER TAPE, PRINT, ELECTRONIC and/or CD-ROM Services. All use by Licensee of the CUSIP database and the information contained therein is expressly subject to the disclaimers and limitations set forth in Section VI above.

**X. BINDING EFFECT; ASSIGNMENT**

This Agreement shall not be assigned or transferred by Licensee without prior written consent of S&P, and any attempt by Licensee to so assign or transfer this Agreement without such written consent shall be null and void. S&P may perform any of its duties hereunder either directly or by or through its distributors or agents. In addition to and notwithstanding the foregoing, if the ownership of Licensee at any time shall pass out of the majority control of its then-current ultimate parent company by sale of stock or assets, merger or otherwise, Licensee shall give S&P written notice as soon as practicable prior to the effective date of any change of control. S&P shall have the right to terminate this Agreement by providing written notice to Licensee within thirty (30) days following the later of the date of such notice or the date such change of control transpired.

This Agreement shall be valid and binding on the parties hereto and their successors and permitted assigns.

**XI. GOVERNING LAW AND JURISDICTION**

Intentionally Omitted.

**XII. NOTICES**

Notices and other communications under this Agreement shall be in writing and, except as otherwise provided herein, may be sent by email or facsimile and, if sent by email or facsimile, will be deemed delivered upon confirmation of such transmission. Notwithstanding the foregoing, notices and communications made under Sections V and VII of this Agreement shall be: (a) in writing; (b) delivered by hand or by registered or certified mail, return receipt requested, or by a nationally recognized carrier, signature required, to the addresses set forth below or such addresses as either party shall specify by a written notice to the other; and (c) deemed given upon receipt. Notices to Licensee shall be sent to the individual designated for such purposes at Licensee's address as set forth on page one of this Agreement.

Notice to S&P:

Standard & Poor's Financial Services LLC  
55 Water Street, 44th Floor  
New York, New York 1004  
Attn: GICS Product Manager  
Fax: 212-438-0100

With a copy to (which shall not constitute notice hereunder):

Standard & Poor's Financial Services LLC  
55 Water Street  
New York, New York 10041  
Attn: Manager, Contract Administration  
Fax: 212-438-3656

**XIII. SURVIVAL**

Any provision of this Agreement that, by its nature, would survive termination of this Agreement shall survive any such termination of this Agreement, including, without limitation, Sections IV and VI through XIV inclusive, and Sections 3.6, 5.3 and 5.4.

**XIV. FORCE MAJEURE**

S&P shall not be responsible for any delay or failure in performance of its obligations under this Agreement resulting from acts beyond the control of S&P, including but not limited to, any act of God, act of governmental authority, act of public enemy, computer or system failure, or due to war, riot, fire, flood, civil commotion, insurrection, labor difficulty (including, without limitation, any strike or other work stoppage or slowdown), or severe or adverse weather conditions.

**XV. MISCELLANEOUS**

This Agreement may be executed in counterparts, which counterparts, taken together, shall constitute one agreement and each party hereto may execute this Agreement by signing such counterpart. This Agreement and the TEA Standard Contract, attached to the Agreement as an Addendum, represent the entire Agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior Agreements (either written or oral). In the event of a conflict between the terms of this Agreement and the TEA Standard Contract, the terms of this Agreement shall govern. No amendment of this Agreement shall be binding upon the parties unless in writing and inclusive of a Standard TEA Contract Amendment form and signed by an authorized representative of S&P and Licensee. No breach, default or threatened breach of this Agreement by either party shall relieve the other party of its obligations or liabilities under this Agreement with respect to the protection of the property or proprietary nature of any property that is the subject of this Agreement. Any forbearance or delay on the part of either party in enforcing any provision of this Agreement or any of its rights hereunder shall not be construed as a waiver of such provision or of a right to enforce same for such occurrence or any future occurrence. Except for S&P, MSCI and Licensee and as expressly provided herein, no other party is intended, or shall be deemed, to be a beneficiary of any provision of this Agreement. In the event any one or more provisions of this Agreement shall for any reason be held invalid, illegal or unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall be unimpaired and shall remain in full force and effect. The heading of the Sections, paragraphs and sub-paragraphs of this Agreement are for general information and reference only and shall not be considered in the interpretation or enforcement of this Agreement. The parties agree that the terms and conditions of this Agreement are the result of negotiations between the parties and that this Agreement shall not be construed in favor of or against any party by reason of the extent to which any party or its professional advisors participated in the preparation of this Agreement. S&P and MSCI may identify Licensee as a licensee of the Service. The relationship of the parties hereto shall be that of independent contractors. Nothing herein shall be construed to constitute or appoint either party as the agent, partner, joint venturer, or representative of the other party for any purpose whatsoever, or to grant to either party any right or authority to assume or create any obligation or responsibility, express or implied, for or on behalf of or in the name of the other, or to bind the other in any way or manner whatsoever.

**SCHEDULE A**

A. **Service:** The electronic product currently known as GICS Direct which includes the data elements set forth in Exhibit 1 hereto (which may be updated from time to time by S&P) that delivers classification of active companies using S&P's and MSCI's proprietary GICS classification system, comprised of one of the following packages. (Check one from each of the following): Packages:

- File with CUSIP information
- File without CUSIP information

1. Frequency of updates:

- Daily
- Monthly

B. **Effective Date:** 01/20/2015

C. **Use Restrictions:**

1. Description of External Publications, which may be distributed only in paper copy or non-manipulable electronic format such as .pdf files (check all that apply):

- Financial research reports
- Other: \_\_\_\_\_
- Client Account reports

2. Territories (check one):

- Worldwide
- Other: Austin, TX

3. "Authorized Users" means those employees of Licensee and those Affiliates set forth below whose primary job responsibilities are within the following Business Unit(s) as set forth below.

- a. Business Unit(s): Texas Education Agency, Austin, TX
- b. Affiliates (if any): None

For purposes of this Agreement, "Affiliate" means an entity that, as of the Effective Date, is either directly or indirectly Controlled by, Controlling or under common Control with the entity named as Licensee. "Control" means more than fifty percent (50%) equity voting interest or the sole power to direct or cause the direction of the management or policies of the entity, whether through the ability to exercise voting power, by contract or otherwise.

If any Affiliates are identified above, they may use the Service on condition that: (a) each such Affiliate agrees to comply with all of the terms and conditions of the Agreement as if it were Licensee; (b) Licensee and the relevant Affiliate shall be jointly and severally liable directly to S&P for any breach of the Agreement by the relevant Affiliate; and (c) a breach of the Agreement by any such Affiliate will be deemed to be a breach by Licensee that may result in, among other things, termination of the Agreement.

D. **Initial Term Fees (annual):** \$23,200.00 U.S.D. pro-rated for the first invoice period of 01/20/2015 through 08/31/2015. Invoice cycles and fees are in accordance with TEA Standard Contract Appendix 1. Invoices shall be sent to the following email addresses:

PSFInvoices@tea.state.tx.us

TEAAccountspayable@tea.state.tx.us

E. **Delivery/Access:** Licensee will access the Service via the following methods:

1. Licensee will access the Service via:



**EXHIBIT 1**  
*Data Elements included in GICS Direct*

<b>Mnemonic</b>	<b>Data Element</b>	<b>Notes</b>
<b>Company File</b>		
GVKEY	Company Identifier	
CONM	Company Name	
GSECTOR	GICS Sector	Example: 10
GGROUP	GICS Industry Group	Example: 1010
GIND	GICS Industry	Example: 101010
GSUBIND	GICS Sub-industry	Example: 10101010
FIC	Country of Incorporation	Not available for all companies
LOC	S&P Country of Domicile	Not available for all companies
COSTAT	Company Status Marker (I inactive or A Active)	
<b>Security File</b>		
GVKEY	Company Identifier	
IID	Issue Identifier	
DSCI	Security Description	
TPCI	Issue Type	
SEDOL	SEDOL	Not available for all securities
CUSIP	CUSIP	Available only in CUSIP version - Not available on all securities
ISIN	ISIN	Not available for all securities
TIC	Ticker symbol	Not available for all securities
EXCHG	Exchange Code	Not available for all securities
SECSTAT	Security Status Marker (I Inactive, or A Active)	
<b>Reference File</b>		
GICTYPE	GICS Type	
GICCD	GICS Code	
GICDESC	GICS Description	Example: "Oil & Gas Drilling"
TPCID	Issue Type Code	
TPCIDESC	Issue Description	
EXCHGCD	Exchange Code	
EXCHGDESC	Exchange Name	
ISOCNTRYCD	Country Code	
ISOCNTRYDESC	Country Name	