

STATE OF MICHIGAN
DEPARTMENT OF TECHNOLOGY, MANAGEMENT AND BUDGET
PROCUREMENT
 P.O. BOX 30026, LANSING, MI 48909
 OR
 530 W. ALLEGAN, LANSING, MI 48933

April 10, 2012

CHANGE NOTICE NO. 5
TO
CONTRACT NO. 071B7200218
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF VENDOR TIAA-CREF Tuition Financing, Inc. 730 Third Avenue New York, NY 10017 dchittenden@tiaa-cref.org		TELEPHONE Doug Chittenden (704) 988-1200
		VENDOR NUMBER/MAIL CODE
		BUYER/CA (517) 241-1916 Jim Wilson
Contract Compliance Inspector: Robin Lott Management/Administration and Investment Services for the Michigan Education Savings Program		
CONTRACT PERIOD: From: March 20, 2007 To: June 30, 2012		
TERMS	N/A	SHIPMENT
		N/A
F.O.B.	N/A	SHIPPED FROM
		N/A
MINIMUM DELIVERY REQUIREMENTS N/A		

NATURE OF CHANGE(S):

Effective immediately this Contract is hereby EXTENDED three (3) months to June 30, 2012.

All other terms, conditions, specifications, and pricing remain unchanged.

AUTHORITY/REASON:

Per agency and vendor agreement, Ad Board approval on April 17, 2012, and DTMB Procurement approval.

TOTAL CONTRACT VALUE REMAINS: \$26,325,000.00

STATE OF MICHIGAN
 DEPARTMENT OF TECHNOLOGY, MANAGEMENT AND BUDGET
 PURCHASING OPERATIONS
 P.O. BOX 30026, LANSING, MI 48909
 OR
 530 W. ALLEGAN, LANSING, MI 48933

May 17, 2010

CHANGE NOTICE NO. 4
TO
CONTRACT NO. 071B7200218
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF VENDOR TIAA-CREF Tuition Financing, Inc. 730 Third Avenue New York, NY 10017 dchittenden@tiaa-cref.org		TELEPHONE Doug Chittenden (704) 988-1200
		VENDOR NUMBER/MAIL CODE
		BUYER/CA (517) 241-1916 Jim Wilson
Contract Compliance Inspector: Robin Lott Management/Administration and Investment Services for the Michigan Education Savings Program		
CONTRACT PERIOD: From: March 20, 2007 To: March 31, 2012		
TERMS	N/A	SHIPMENT N/A
F.O.B.	N/A	SHIPPED FROM N/A
MINIMUM DELIVERY REQUIREMENTS N/A		

NATURE OF CHANGE(S):

Effective immediately this Contract is hereby EXTENDED through March 31, 2012.

The following changes to Article 1, Attachment A are hereby incorporated into this Contract:

- Change the unitary fee structure of 45 basis points for all investment options (except the Principal Plus Interest option) to 35 basis points for all investment options (except the Principal Plus Interest option) to include a marketing budget of \$1.5 million in 2010 and \$1.25 million in 2011.

Additionally, the Funding Agreement (Exhibit B of Contract) is renewed for two years.

All other terms, conditions, specifications, and pricing remain unchanged.

AUTHORITY/REASON:

Per agency request (PRF dated 3/8/2010), Contractor agreement (email dated 2/24/2010), Ad Board approval on 5/4/2010, and DTMB/Purchasing Operations' approval.

CURRENT AUTHORIZED SPEND LIMIT REMAINS: \$26,325,000.00

STATE OF MICHIGAN
 DEPARTMENT OF MANAGEMENT AND BUDGET
 PURCHASING OPERATIONS
 P.O. BOX 30026, LANSING, MI 48909
 OR
 530 W. ALLEGAN, LANSING, MI 48933

March 24, 2010

CHANGE NOTICE NO. 3
TO
CONTRACT NO. 071B7200218
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF VENDOR		TELEPHONE Doug Chittenden (704) 988-1200
TIAA-CREF Tuition Financing, Inc. 730 Third Avenue New York, NY 10017 dchittenden@tiaa-cref.org		VENDOR NUMBER/MAIL CODE
		BUYER/CA (517) 241-1916 Jim Wilson
Contract Compliance Inspector: Robin Lott Management/Administration and Investment Services for the Michigan Education Savings Program		
CONTRACT PERIOD: From: March 20, 2007 To: May 31, 2010		
TERMS	N/A	SHIPMENT N/A
F.O.B.	N/A	SHIPPED FROM N/A
MINIMUM DELIVERY REQUIREMENTS N/A		

NATURE OF CHANGE(S):

Effective immediately this Contract is hereby EXTENDED through May 31, 2010.

All other terms, conditions, specifications, and pricing remain unchanged.

AUTHORITY/REASON:

Per agency request (email dated 3/9/2010) and DMB/Purchasing Operations' approval.

CURRENT AUTHORIZED SPEND LIMIT REMAINS: \$26,325,000.00

STATE OF MICHIGAN
 DEPARTMENT OF MANAGEMENT AND BUDGET
 PURCHASING OPERATIONS
 P.O. BOX 30026, LANSING, MI 48909
 OR
 530 W. ALLEGAN, LANSING, MI 48933

July 7, 2009

CHANGE NOTICE NO. 2
TO
CONTRACT NO. 071B7200218
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF VENDOR TIAA-CREF Tuition Financing, Inc. 730 Third Avenue New York, NY 10017 <div style="text-align: right;">dchittenden@tiaa-cref.org</div>	TELEPHONE Doug Chittenden (704) 988-1200
	VENDOR NUMBER/MAIL CODE
	BUYER/CA (517) 241-1916 Jim Wilson
Contract Compliance Inspector: Robin Lott Management/Administration and Investment Services for the Michigan Education Savings Program	
CONTRACT PERIOD: From: March 20, 2007 To: March 31, 2010	
TERMS <div style="text-align: center;">N/A</div>	SHIPMENT <div style="text-align: center;">N/A</div>
F.O.B. <div style="text-align: center;">N/A</div>	SHIPPED FROM <div style="text-align: center;">N/A</div>
MINIMUM DELIVERY REQUIREMENTS <div style="text-align: center;">N/A</div>	

NATURE OF CHANGE(S):

Section 2.092. a. iii. is hereby replaced in it's entirety with the following language:

“Invoices will be automatically paid monthly from Plan assets. If there are any discrepancies, the State will notify Contractor within 10 business days. The Contractor will resolve discrepancies within 30 business days and credit the next month’s invoice. If a discrepancy cannot be resolved within 30 business days, the Contractor will make a good faith effort to resolve the discrepancy as soon as possible and provide weekly status updates.”

All other terms, conditions, specifications, and pricing remain unchanged.

AUTHORITY/REASON:

Per agency request and DMB/Purchasing Operations’ approval.

TOTAL ESTIMATED CONTRACT VALUE REMAINS: \$26,325,000.00

STATE OF MICHIGAN
 DEPARTMENT OF MANAGEMENT AND BUDGET
 PURCHASING OPERATIONS
 P.O. BOX 30026, LANSING, MI 48909
 OR
 530 W. ALLEGAN, LANSING, MI 48933

August 21, 2007

CHANGE NOTICE NO. 1
TO
CONTRACT NO. 071B7200218
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF VENDOR		TELEPHONE Doug Chittenden (704) 988-1200
TIAA-CREF Tuition Financing, Inc. 730 Third Avenue New York, NY 10017 dchittenden@tiaa-cref.org		VENDOR NUMBER/MAIL CODE
		BUYER/CA (517) 241-1916 Jim Wilson
Contract Compliance Inspector: Robin Lott Management/Administration and Investment Services for the Michigan Education Savings Program		
CONTRACT PERIOD:		From: March 20, 2007 To: March 31, 2010
TERMS	N/A	SHIPMENT N/A
F.O.B.	N/A	SHIPPED FROM N/A
MINIMUM DELIVERY REQUIREMENTS N/A		

NATURE OF CHANGE(S):

Effective immediately, the Program Manager (Key Personnel) has been changed from Bruce Sheinhaus to Pamela McNulty (section 1.201 and Article 1, Attachment A). All other terms, conditions, specifications, and pricing remain unchanged.

Estimated Contract Value: **\$26,325,000.00**

AUTHORITY/REASON:

Per vendor request and DMB/Purchasing Operations.

TOTAL ESTIMATED CONTRACT VALUE REMAINS: \$26,325,000.00

- Coordinated and budgeted for staff of 30 retirement planning counselors who annually responded to over 35,000 participant contacts annually.
- Developed and refined quality control evaluation tools to enhance customer service.

**Participant Services Assistant Officer
Manager-Benefit Payment Information Center**
(March 1990 to January 1992)

Managed 35 registered representatives in one of the company's largest toll-free telephone centers responsible for providing pre and post sales support to 1.2 million participants and over 4000 accounts.

- Proposed, and coordinated the consolidation of other toll free telephone centers within the company.
- Coordinated the National Association of Securities Dealers Series 6 and 63 licensing process for all representatives in the telephone centers. Acted as the division's compliance officer.
- Established procedures, workflows, and policies used during peak and non-peak periods.
- Represented division on the Global Equities Account corporate project team.

Manager-Participant Services Training Unit
(February 1987 to March 1990)

Established, developed, and managed the first Training unit to serve the company's largest toll-free inbound telephone center. Worked with outside consultants to validate the effectiveness of the training programs developed.

Retirement Planning Counselor
(February 1983 to February 1987)

Counseled participants, their representatives, beneficiaries and administrators on all aspects of TIAA-CREF tax deferred annuity plans. Presented retirement and financial planning seminars nationwide. Managed the administration of more than 30 financial education seminars at various sites across the country.

**EDUCATION,
LICENSES, &
PROFESSIONAL
ASSOCIATIONS**

State University of New York at Plattsburgh (1982)
BA in English, Minor in Journalism

University of New Haven
Executive MBA (2006)

National Association of Securities Dealers Series 51, 26, 6 and 63 licenses
Insurance Agent license (Life, Health, Variable Annuities)- CT, NY
Chartered Financial Consultant designation (2001)

American Management Association member (since 1991)
National Association of Female Executives (since 1990)

**STATE OF MICHIGAN
 DEPARTMENT OF MANAGEMENT AND BUDGET
 PURCHASING OPERATIONS
 P.O. BOX 30026, LANSING, MI 48909
 OR
 530 W. ALLEGAN, LANSING, MI 48933**

March 30, 2007

**NOTICE
 TO
 CONTRACT NO. 071B7200218
 between
 THE STATE OF MICHIGAN
 and**

NAME & ADDRESS OF VENDOR TIAA-CREF Tuition Financing, Inc. 730 Third Avenue New York, NY 10017 <div style="text-align: right;">dchittenden@tiaa-cref.org</div>	TELEPHONE Doug Chittenden (704) 988-1200 <hr/> VENDOR NUMBER/MAIL CODE <hr/> BUYER/CA (517) 241-1916 Jim Wilson
Contract Compliance Inspector: Robin Lott Management/Administration and Investment Services for the Michigan Education Savings Program	
CONTRACT PERIOD: From: March 20, 2007 To: March 31, 2010	
TERMS <div style="text-align: center;">N/A</div>	SHIPMENT <div style="text-align: center;">N/A</div>
F.O.B. <div style="text-align: center;">N/A</div>	SHIPPED FROM <div style="text-align: center;">N/A</div>
MINIMUM DELIVERY REQUIREMENTS <div style="text-align: center;">N/A</div>	

The terms and conditions of this Contract are those of ITB #071I6200219, this Contract Agreement and the vendor's quote dated 06/27/06. In the event of any conflicts between the specifications, terms and conditions indicated by the State and those indicated by the vendor, those of the State take precedence.

Estimated Contract Value: \$26,325,000.00

**STATE OF MICHIGAN
 DEPARTMENT OF MANAGEMENT AND BUDGET
 PURCHASING OPERATIONS
 P.O. BOX 30026, LANSING, MI 48909
 OR
 530 W. ALLEGAN, LANSING, MI 48933**

**CONTRACT NO. 071B7200218
 between
 THE STATE OF MICHIGAN
 and**

NAME & ADDRESS OF VENDOR <p style="text-align: center;">TIAA-CREF Tuition Financing, Inc. 730 Third Avenue New York, NY 10017</p> <p style="text-align: right;">dchittenden@tiaa-cref.org</p>	TELEPHONE Doug Chittenden (704) 988-1200 VENDOR NUMBER/MAIL CODE BUYER/CA (517) 241-1916 Jim Wilson
Contract Compliance Inspector: Robin Lott Management/Administration and Investment Services for the Michigan Education Savings Program	
CONTRACT PERIOD: From: March 20, 2007 To: March 31, 2010	
TERMS N/A	SHIPMENT N/A
F.O.B. N/A	SHIPPED FROM N/A
MINIMUM DELIVERY REQUIREMENTS <p style="text-align: center;">N/A</p>	
MISCELLANEOUS INFORMATION: <p>The terms and conditions of this Contract are those of ITB #071I6200219, this Contract Agreement and the vendor's quote dated 06/27/06. In the event of any conflicts between the specifications, terms and conditions indicated by the State and those indicated by the vendor, those of the State take precedence.</p> <p>Estimated Contract Value: \$26,325,000.00</p>	

All terms and conditions of the invitation to bid are made a part hereof.

FOR THE VENDOR: <p style="text-align: center;">TIAA-CREF Tuition Financing, Inc.</p> <p style="text-align: center;">Firm Name</p> <hr/> <p style="text-align: center;">Authorized Agent Signature</p> <hr/> <p style="text-align: center;">Authorized Agent (Print or Type)</p> <hr/> <p style="text-align: center;">Date</p>	FOR THE STATE: <p style="text-align: center;">Signature</p> <p style="text-align: center;">Elise A. Lancaster</p> <hr/> <p style="text-align: center;">Name</p> <p style="text-align: center;">Director, Purchasing Operations</p> <hr/> <p style="text-align: center;">Title</p> <hr/> <p style="text-align: center;">Date</p>
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Table of Contents

Article 1 – Statement of Work (SOW) 6

1.0 Project Identification 6

 1.001 PROJECT REQUEST 6

 1.002 BACKGROUND 6

1.1 Scope of Work and Deliverables 7

 1.101 IN SCOPE 7

 1.102 OUT OF SCOPE 7

 1.103 ENVIRONMENT 7

 1.104 WORK AND DELIVERABLE 7

1.2 Roles and Responsibilities 74

 1.201 CONTRACTOR STAFF, ROLES, AND RESPONSIBILITIES 74

 1.202 STATE STAFF, ROLES, AND RESPONSIBILITIES 74

 1.203 OTHER ROLES AND RESPONSIBILITIES 74

1.3 Project Plan 74

 1.301 PROJECT PLAN MANAGEMENT 74

 1.302 RESERVED 75

1.4 Project Management 77

 1.401 ISSUE MANAGEMENT 77

 1.402 RISK MANAGEMENT 77

 1.403 CHANGE MANAGEMENT 78

1.5 Acceptance 78

 1.501 CRITERIA 29

 1.502 FINAL ACCEPTANCE 29

1.6 Compensation and Payment 78

 1.601 COMPENSATION AND PAYMENT 78

1.7 Additional Terms and Conditions Specific to this SOW 78

 1.701 ADDITIONAL TERMS AND CONDITIONS SPECIFIC TO THIS SOW 29

Article 1, Attachment A 79

Article 1, Attachment B 80

Article 2 – General Terms and Conditions 82

2.010 Contract Structure and Administration 82

 2.011 Definitions 82

 2.012 Attachments and Exhibits 82

 2.013 Statements of Work 82

 2.014 Issuing Office 83

 2.015 Contract Compliance Inspector 83

2.020 Contract Objectives/Scope/Background 83

 2.021 Background 83

 2.022 Purpose 83

 2.023 Objectives and Scope 83

 2.024 Interpretation 84

 2.025 Form, Function and Utility 84

2.030 Legal Effect and Term 84

 2.031 Legal Effect 84

 2.032 Contract Term 84

 2.033 Renewal(s) 84

2.040 Contractor Personnel 84

 2.041 Contractor Personnel 84

 2.042 Contractor Identification 86

 2.043 Cooperation with Third Parties 86

 2.044 Subcontracting by Contractor 86

 2.045 Contractor Responsibility for Personnel 87

2.050 State Standards 87

 2.051 Existing Technology Standards 87

 2.052 PM Methodology Standards 87

 2.053 Adherence to Portal Technology Tools 88

 2.054 Acceptable Use Policy 88



2.060 Deliverables 88

 2.061 Ordering..... 88

 2.062 Reserved 88

 2.063 Reserved 88

 2.064 Equipment to be New and Prohibited Products 88

2.070 Performance 89

 2.071 Performance, In General 89

 2.072 Time of Performance 89

 2.073 RESERVED 89

 2.074 Bankruptcy..... 89

 2.075 Time is of the Essence 89

2.080 Delivery and Acceptance of Deliverables 89

 2.081 Delivery Responsibilities 89

 2.082 Delivery of Deliverables..... 90

 2.083 Testing..... 90

 2.084 Approval of Deliverables, In General..... 90

 2.085 Process For Approval of Written Deliverables 91

 2.086 Process for Approval of Services 91

 2.087 Process for Approval of Physical Deliverables..... 92

 2.088 Final Acceptance 92

2.090 Financial..... 92

 2.091 Pricing..... 92

 2.092 Invoicing and Payment Procedures and Terms 92

 2.093 State Funding Obligation 93

 2.094 RESERVED 93

 2.095 Electronic Payment Availability 93

2.100 Contract Management 94

 2.101 Contract Management Responsibility..... 94

 2.102 Problem and Contract Management Procedures..... 94

 2.104 System Changes 94

 2.105 Reserved 95

 2.106 Change Requests..... 95

2.110 Records and Inspections 96

 2.111 Records and Inspections..... 96

 2.112 Errors..... 97

2.120 State Responsibilities 97

 2.121 State Performance Obligations 97

2.130 Security 97

 2.131 Background Checks 97

2.140 Reserved..... 98

2.150 Confidentiality 98

 2.151 Freedom of Information 98

 2.152 Confidentiality 98

 2.153 Protection of Confidential Information 98

 2.154 Exclusions 98

 2.155 No Implied Rights 99

 2.156 Remedies 99

 2.157 Security Breach Notification 99

 2.158 Survival..... 99

 2.159 Destruction of Confidential Information 99

2.160 Proprietary Rights 99

 2.163 Rights in Data 99

 2.164 Ownership of Materials..... 100

 2.165 Standard Software..... 100

 2.166 Pre-existing Materials for Custom Software Deliverables 100

 2.167 General Skills 100



2.170 Warranties And Representations..... 100

 2.171 Warranties and Representations..... 100

 2.175a DISCLAIMER..... 101

 2.176 Consequences For Breach..... 102

2.180 Insurance 102

 2.181 Liability Insurance..... 102

2.190 Indemnification..... 105

 2.191 Indemnification 105

 2.192 Continuation of Indemnification Obligations..... 106

 2.193 Indemnification Procedures..... 106

2.200 Limits of Liability and Excusable Failure..... 107

 2.201 Limits of Liability 107

 2.202 Excusable Failure 107

 2.203 Disaster Recovery 108

2.210 Termination/Cancellation by the State..... 108

 2.211 Termination for Cause..... 108

 2.212 Termination for Convenience 108

 2.213 Non-Appropriation 108

 2.214 Criminal Conviction..... 109

 2.216 Rights and Obligations Upon Termination 109

 2.217 Reservation of Rights 110

 2.218 Contractor Transition Responsibilities..... 110

 2.219 State Transition Responsibilities 110

2.220 Termination by Contractor 111

 2.221 Termination by Contractor 111

2.230 Stop Work 111

 2.231 Stop Work Orders..... 111

 2.232 Cancellation or Expiration of Stop Work Order 111

 2.233 Allowance of Contractor Costs 111

2.240 Reserved..... 111

2.250 Dispute Resolution..... 112

 2.251 In General..... 112

 2.252 Informal Dispute Resolution 112

 2.253 Injunctive Relief 112

 2.254 Continued Performance 112

2.260 Federal and State Contract Requirements 113

 2.261 Nondiscrimination 113

 2.262 Unfair Labor Practices..... 113

 2.263 Workplace Safety and Discriminatory Harassment..... 113

2.270 Litigation..... 113

 2.271 Disclosure of Litigation 113

 2.272 Governing Law 114

 2.273 Compliance with Laws..... 114

 2.274 Jurisdiction..... 114

2.280 Environmental Provision 114

 2.281 Environmental Provision..... 114

2.290 General 115

 2.291 Amendments 115

 2.292 Assignment..... 115

 2.293 Entire Contract; Order of Precedence..... 115

 2.294 Headings 116

 2.295 Relationship of the Parties (Independent Contractor Relationship)..... 116

 2.296 Notices..... 116

 2.297 Media Releases and Contract Distribution 116

 2.298 Reformation and Severability 117

 2.299 Consents and Approvals 117

 2.300 No Waiver of Default 117

 2.301 Survival..... 117

 2.302 Covenant of Good Faith 117



2.303 Permits 117
2.304 Website Incorporation 117
2.305 Taxes 117
2.306 Prevailing Wage 118
2.307 Call Center Disclosure..... 118
2.308 Future Bidding Preclusion 118
2.310 Reserved..... 118
2.320 Extended Purchasing..... 118
2.321 MiDEAL 118
2.330 Federal Grant Requirements 119
2.331 RESERVED 115

ATTACHMENTS

- Exhibit A – Project Seed Agreements
- Exhibit B – Funding Agreements



Article 1 – Statement of Work (SOW)

1.0 Project Identification

1.001 PROJECT REQUEST

The purpose of this Contract is to provide program Management/Administration and/or Investment services for the Michigan Education Savings Program (MESP).

1. Investment Services and Account Maintenance (Investment Contractor, see section 1.104.A)
2. Program Manager/Administrator (see section 1.104.B).

1.002 BACKGROUND

The Michigan Education Savings Program (MESP) was created under Public Act No. 161 of 2000 of the State of Michigan (PA 161). MESP offers investment and tax incentives to encourage families and others to save for a student to attend any postsecondary educational institution in the nation. This program is established as a “qualified tuition plan” (QTP) under Section 529 of the Internal Revenue Code (IRC Sec. 529). The State Treasurer is responsible for administering the program and is the trustee for MESP funds. MESP is a direct sold program. As of February 28, 2006, MESP had 178,702 accounts and assets of \$1.24 billion (includes matching grant accounts).

Funds deposited into a MESP account for a given beneficiary will be made available when the beneficiary is enrolled in a postsecondary educational institution. These funds may be used to pay the “qualified higher education expenses” of the account beneficiary, which can include tuition, fees, books, supplies and equipment required for attendance, and room and board, up to the amount allowed for room and board in Federal Title IV financial aid programs. (This allowance is established periodically by the U.S. Department of Education.) A 10% federal excise tax will be assessed on withdrawals not used to pay for qualified higher education expenses. Funds may be withdrawn in whole or in part from an account balance upon 60 days notice or a shorter period as authorized in the MESP participation agreement. Savings account earnings are tax deferred (and tax exempt until 2010) to the student or account owner and a state tax exemption will be provided for the earnings in the tax year of a qualified withdrawal.

The maximum amount a beneficiary may have deposited on his/her behalf is \$235,000, which includes amounts deposited in the Michigan Education Trust (MET) program. Beneficiaries may have multiple accounts established on their behalf. Account owners may establish an account for any beneficiary, but only one (1) account for each beneficiary. An account may be opened with a minimum cash deposit of \$25 or payroll deduction of \$15. Amounts in excess of \$235,000 must be withdrawn immediately or transferred to another beneficiary’s account.

Contributions may be made by cash, check, money order, electronic transfer, credit card or any similar method, but shall not be property. A state tax deduction will be allowed for contributions made each year up to \$5,000 for an individual and \$10,000 per married couple.

For families with income of \$80,000 or less and children up to six (6) years of age, the State of Michigan will match \$ one (1) for every \$ three (3) contributed on behalf of each beneficiary enrolled in the MESP. The maximum State match for each account is \$200. The State match is only available in the first year a beneficiary is enrolled.

Quarterly and periodic statements will be made available to account owners as well as other reports required under IRC Sec. 529.



1.1 Scope of Work and Deliverables

1.101 IN SCOPE

The main objective of this Contract is to provide program management/administration and/or investment services for the Michigan Education Savings Program (MESP).

Contractor shall provide services necessary for the development, implementation and management of the MESP including but not limited to: record keeping, investment of assets, marketing and promotion; customer service, managerial, professional, legal, clerical, technical and administrative services. All program components and materials developed by the Program Manager and/or Investment Contractor must be approved by the Contract Compliance Inspector (CCI). Contractor will need to develop, implement and/or maintain a savings program that complies with PA 161 and IRC Sec. 529, provide legal, financial and other resources necessary. The Contractor must be ready to establish and maintain education savings accounts by October 2, 2006.

The Investment Contractor will provide record keeping and investment of assets services. The Program Manager will provide marketing and promotion; customer service, managerial, professional, legal, clerical, technical and administrative services.

Pursuant to PA 161, total program administrative fees cannot exceed one and a half (1.5%) of the average daily net assets of the accounts (Program Manager and Investment Contractor combined).

1.102 OUT OF SCOPE

Program Management/administration or investments services for other State programs are out-of-scope. This Contract is only for MESP services.

1.103 ENVIRONMENT

Information technology (IT) standards are referenced in section 2.051; additionally, the State's desktop suite standard is Microsoft Office (see policy 1310.22 [Desktop Suite Standard] at http://www.michigan.gov/dmb/0,1607,7-150-9131_9347-28166--,00.html).

1.104 WORK AND DELIVERABLE

Contractor shall provide Deliverables/Services and staff, and otherwise do all things necessary for or incidental to the performance of work, as set forth below:

A. Investment Services and Account Maintenance (Investment Contractor)

1. Contractor will provide an overall work plan for attaining the objectives of this project based on the following information:
 - Essential to the ongoing administration of this program is its qualification in accordance with Public Act (PA) 161 of 2000 and IRC Sec. 529.

Contractor Response to this Task:

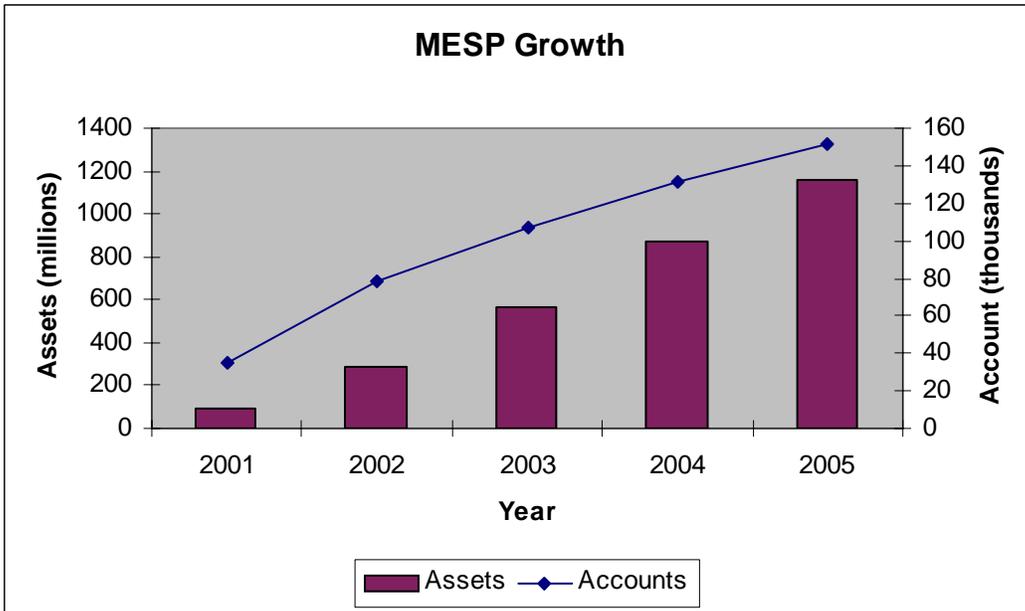
TIAA-CREF Tuition Financing, Inc. (TFI) implemented a work plan in 2000, in partnership with the State of Michigan, that we are confident has exceeded the objectives of Public Act (PA) 161 of 2000. MESP's impact on Michigan's families is exemplified in the following:



- Program assets have grown to \$1.3 billion which reflects a cumulative annual growth rate of 164% (source: FRC, commissioned report 2/07)
- Program accounts have grown to 160,000 which reflects a cumulative annual growth rate of 115% (source: FRC, commissioned report 2/07)
- The vast majority of the accounts have been opened for beneficiaries when they were 7 years old or younger.
- MESP has been well received across the State of Michigan with a market penetration rate (households with persons under 18 years old) of close to 16% in Washtenaw County, 12% in Oakland County, 9% in Ingham and 8% in Grand Traverse and Midland.

MESP’s success can be traced to the program elements defined in PA 161 and the tax incentives that Michigan provides its citizens for saving for college. In addition, TIAA-CREF and TFI have stayed true to the intent of PA 161 and our own mission as a provider of financial services products as follows:

- A Program Manager in TFI, that has drawn upon its expertise in launching and managing 13 state 529 programs as well as the Independent 529 Plan, that is responsible for all facets of the program;
- A diversified set of investment options that are high value and low cost highlighted by an Age-Based Allocation Option and a guaranteed offering (Principal Plus Interest Option) that is backed by TIAA Life Insurance Company, one of only two insurers that currently receives a top rating from all four rating agencies;
- An accessible program with an initial investment of only \$25 thus encouraging and providing the opportunity for all Michigan families to participate in this important savings program. In addition we have worked with the State in incenting lower income families to save through the State Matching Grant Program and OLHSA/SEED; and,
- Superior account service with flexible methods to open and manage a MESP account.



While MESP has had great success in Michigan, the Program has also become one of the most popular and acclaimed 529 programs in the country. Over the past six years MESP has received national recognition from publications that include the following.



- **Money**
 - “Where to Put \$5,000 Now,” MESP and Utah’s 529 program are cited (May 1, 2006)
 - “Build an A+ College Savings Plan,” MESP one of 5 states to receive “recommended nationally” classification (August 2005)
 - “Three Smart Strategies,” MESP one of three programs that “Money recommends” (May 2004)
 - “The 529 Solution,” MESP recommended for residents and national shoppers (May 2001)
- **Morningstar**
 - MESP ranked as one of three “Best Direct-Sold 529 Savings Plans” (March 2005)
 - MESP ranked as one of the “Best 529 Savings Plans” (March 2004)
- **USA Today**
 - “These States Lead the Honor Role,” MESP ranked as one of top 5 (July 8, 2002)
- **Kiplingers**
 - “Answers to Your Money Questions,” MESP cited as one of 4 in “What’s the Best 529 Plan?” (June 2003)
 - “The New Rules of Saving for College,” MESP one of 4 described as “well suited to battle-scarred investors who want no more than moderate risk” (May 2003)

These articles have highlighted MESP’s program design, including state income tax deduction and matching grant as well as the low cost, plus investment and program management provided by TFI.

The exceptional growth of MESP is also the result of a number of other factors. One is certainly TIAA-CREF’s long heritage of serving the “greater good”; those individuals that work at colleges and universities, hospitals and cultural institutions. No other company rivals our commitment to education. A second reason is that we have gone beyond the traditional financial services model by reaching out to Michigan families *At Home, At Work and In the Community*” (additional information is presented in the Program Manager/Administrator Section).

TFI as Investment Contractor and Program Manager brings together a team of professionals and organizations that provides best in class program management and services to Michigan residents through MESP.

MESP – In Compliance

We understand that it is essential that MESP complies with all requirements of PA 161 of 2000 and that the Program is a qualified program within the meaning of IRC Section 529. Although the Internal Revenue Service (“IRS”) and Treasury Department have issued private letter rulings in the past with respect to the qualified status of state tuition savings programs, the IRS and Treasury are not currently supportive of receiving any additional requests for a private letter ruling from qualified state tuition savings programs. Accordingly, TFI obtained a legal opinion of tax counsel regarding the Program’s qualified status under IRC Section 529 during the implementation period before the Program was launched. The legal opinion was based on PA 161 of 2000 and other related Michigan law. In the event that the IRS and Treasury Department again entertain requests for private letter rulings, TFI would assist the State, if desired, in obtaining a private letter ruling. However, we do not recommend seeking a private letter ruling until the Section 529 Proposed Regulations are final.

As of the date of our proposal, proposed federal tax regulations have been issued under IRC Section 529 that provide guidance and requirements for the establishment and maintenance of qualified tuition programs. As a qualified tuition program, MESP, the account owners and the beneficiaries are eligible for favorable federal tax benefits pursuant to IRC Section 529. The proposed tax regulations do not, however, provide guidance on certain aspects of MESP. Final regulations or other administrative guidance or court decisions might be issued that could adversely impact the federal tax consequences or requirements with respect to MESP or contributions to, or withdrawals from, accounts. Congress could also amend Section IRC 529 or other federal law, and the State of Michigan could amend Michigan law in a manner that could materially change or eliminate the federal tax treatment described above. If necessary, TFI will work with the State to modify MESP within the constraints of applicable law in order for MESP to continue to meet the requirements of IRC Section 529.

**Investment Services**

As an industry pioneer and leader TFI continues to devote significant resources in developing, implementing and monitoring investments strategies appropriate for saving for college. Dedicated personnel within TFI work closely with investment professionals responsible for managing over \$380 billion in assets in TIAA-CREF's other product areas to ensure that we offer our state clients a best in class product mix.

TFI has worked closely with the Department of Treasury's Bureau of Investments in developing and monitoring the investment options that are offered by MESP. We understand that the majority of account owners are looking for a straightforward option that will help them achieve their college savings goal. The Age-Based Allocation Option (formerly the Managed Allocation Option) serves as the cornerstone of MESP with over 60% of account owners using this option. In Morningstar's review of MESP (February, 2005) they reported,

"The Michigan plan (MESP) is the cheapest of the plans managed by TIAA-CREF. The firm's mix of funds is solid. Although investment flexibility is limited, we like the plan's many age-based options and the added diversification offered by real estate."

We are pleased that the recommendations made to the CCI and Bureau of Investments for a broader set of investment options was accepted and we can now report that on June 12, 2006 four new investment options were launched. Account owners can now choose from three investment tracks within the Age-Based Allocation Option giving them more flexibility in selecting an investment option that provides the benefits of diversification and automatic reallocation based on the age of the beneficiary. In addition two options were added for those interested in diversification without the automatic reallocation, the 100% Fixed Income Option and the Balanced Option. Of note, the reaction of MESP account owners has been immediate as over 130 accounts have already been opened in the Aggressive Age-Based Allocation Option for children 7 and younger.

Account Maintenance

TFI works with industry leaders, Boston Financial Data Services (BFDS) and State Street Bank and Trust Company (State Street), in order to provide current and future account owners simple and straightforward access to MESP. Just as our Investment Services continues to evolve so does account maintenance functionality. We have worked with the CCI to implement and then enhance the process for the State Matching Grant and SEED Program. We continue to offer account owners more self-service functionality through the MESP website. By the end of June we will enhance our online access to provide Account Owners with the ability to reset their PIN. We will continue to work with the State both in improving the functionality around Account Maintenance as well as in regard to the MESP Statute to ensure the best program is offered to Michigianians.

Proposal Enhancements – Investment Services and Account Maintenance

MESP has always been a program dedicated to serving Michigan's residents. In that spirit the goal of our new work plan is to significantly reduce program management fees, add diversification within options by adding new mutual funds and to provide greater choice by adding new investment options that will enhance the current offering without creating investor confusion by offering too many options. Our recommendation includes an option that would change the way fees are charged for these investment options. Under this option the Age-Based Allocation Options will have the same fee while fixed allocation options will have fees based on the expenses associated with the underlying mutual funds. Decoupling the administrative fee from the investment fee allows for fees to be based on the options/underlying funds that account owners invest in. Investment options that offer funds with active management will have a higher fee then those that use index management. In addition, decoupling these fees will allow the state and TFI to work together in evaluating and selecting outside fund managers for some investment options should the State feel that the program can be improved by doing so. In addition to this pricing structure we are also proposing a structure whereby all investment options under the program carry the same management fee.

Our proposal, as highlighted in the chart below will build on our experience as Investment Contractor with the goal of making MESP the most respected and well run 529 program in the nation.



Comparison of Current MESP Program And Proposed Enhancements to MESP Investment Options	
<p>Current (as of 6/12/06) 7 TIAA-CREF Investment Options</p> <ul style="list-style-type: none"> - Managed Allocation (3) - 100% Equity Option - 100% Fixed Income Option - Balanced Option - Principal Plus Interest <p>Same program management fee (unitary) for all options (currently 60 basis points)</p>	<p>Proposed 10 TIAA-CREF Investment Options</p> <ul style="list-style-type: none"> - current investment option line-up plus - High Equity Option - Money Market Option - Equity Index Option <p>Improved diversification of fixed income allocations within the Age-Based Allocations and the fixed income portion of other options by adding the TIAA-CREF Institutional High-Yield II Fund.</p> <p>Enhanced monitoring of fund performance include Watch list classification and removal of underperforming funds.</p> <p>Fixed program management fee for Age- Based Allocation Options and variable fee for Fixed Allocation Options based on underlying cost of mutual funds or a single program unitary fee.</p>
Account Maintenance	
	Continue to work with CCI in identifying program enhancements that will improve the account owner experience through changes to statute or processes.

- The State must be assured that both federal and state securities law registration, exemptions, etc, are fully understood and if necessary, validation of exemptions are, received prior to October 2, 2006. The Contractor must also ensure to the State that designated personnel will be qualified under state and federal securities laws.

Contractor Response to this Task:

TFI and its affiliated broker-dealer have extensive expertise through our management of 13 state 529 programs and the Independent 529, in, and a comprehensive understanding of, the pertinent securities law issues surrounding state tuition savings programs.

Although the SEC has issued no-action letters with respect to exemptions from registration of qualified state tuition savings programs in the past, the SEC staff has indicated that they will no longer respond to no-action letter requests concerning the status of such programs under the federal securities laws, unless the structure of a program differs significantly from existing programs. Accordingly, TFI obtained a legal opinion of counsel concerning securities law issues in lieu of a no-action letter and obtained a Blue Sky memorandum from counsel about state securities law issues, both prior to Program launch. In the event that the SEC again entertains requests for no-action letter, TFI would assist the State, if desired, in obtaining a no-action letter.

Telephone Consultants and Field Consultants from TFI's affiliated broker-dealer who work on MESP are, at a minimum, Series 6 and Series 63 representatives registered with the National Association of Securities Dealers, and qualified to offer the Program. They also receive extensive training on IRC Section 529 and securities law issues associated with state qualified tuition programs including for MESP, the State Matching Grant, SEED, state income tax deduction and transfers/rollovers to MET. Additionally, each representative must pass a series of in-house exams and live call evaluations before handling telephone calls independently. In keeping with MSRB requirements, supervisory and management associates also have Series 51 licenses (Municipal Fund Securities Limited Principal).



- In accordance with IRC Sec. 529 the State will be “actively involved” on an ongoing basis in the administration of the Program, including the oversight of all decisions regarding the investment of the assets.

Contractor Response to this Task:

Since MESP’s launch we have worked closely with the CCI, Bureau of Investments, Department of the Attorney General and other designees in the management of MESP on many facets of the program and will continue to do so going forward – this includes but is not limited to the following:

- Overall program management – we will meet regularly with the CCI and provide at a minimum monthly and quarterly program management reports (Exhibit 1).
- Marketing – we will work closely with the CCI to execute the best possible marketing program. At a minimum we will prepare and present a marketing plan, conduct an annual marketing review, and obtain approval of marketing and program materials.
- Investments – we will strive to continuously offer the best possible investment options under the MESP program. We will prepare and present an annual investment performance review and asset allocation review and recommendations. Although the annual meeting will serve as the official vehicle for investment review and approval we would anticipate an on-going dialogue with the State regarding investment performance and will provide information and consultation at any point that it is needed.
- Other program management – building on our strong relationships with the CCI we will pro-actively work with and meet with appropriate State personnel on a wide variety program management issues. In addition we will act as a partner in monitoring and supporting legislative issues and monitoring operational issues around the State Matching Grant program and SEED, which may impact the MESP.

We will continue to provide these services and recommend the addition of a formal comprehensive semi-annual review to ensure that that State remains actively involved in the management of MESP.

- Contractor must provide an implementation plan for this transition including a detailed plan to map current account owners’ assets to like funds. Contractor must provide a plan to roll-over existing account owners’ assets over to the Contractor’s investment option. Account owners must have the option to choose or select funds for transition.

Contractor Response to this Task:

As the current Program Manager it will not be necessary to roll-over existing account owner assets to new investment options. Account owners can stay focused on the message of saving for college without the disruption of a transition period which would require producing a new Program Disclosure booklet, new forms and required communications as well as being impacted by transaction costs on their investments in MESP. Account owners can transfer assets to any new options offered by MESP in accordance with IRC Sec. 529.

2. Contractor will provide an investment policy. Provide the firm’s process for analyzing a client’s existing investment policy. Provided is the firm’s method for recommending modifications and monitoring the investment policy and strategy.

Contractor Response to this Task:

TIAA and CREF have long been recognized as premier asset managers with a pragmatic view of the opportunities and challenges endemic to managing money. Through decades of research and experience, TIAA-CREF has developed an investment philosophy based on the following objectives and beliefs:
 Asset allocation specific to the risk and return profile of a given type of investor;
 Diversification, both across and within asset classes, to help account owners reach goals while minimizing risk;
 Cost control to enhance competitive returns;



Recognition of the general efficiency of broad equity and fixed-income markets; and,
A “bottom-up” approach to investing, with a focus on the core values of specific companies and opportunities.

Recommended Investment Policy

TFI’s investment policy for MESP embodies the TIAA-CREF investment philosophy and has been a key component in developing the MESP investment strategy. In designing the proposed investment strategy for MESP, TFI has taken into account several factors that distinguish saving for college from other savings objectives. Of primary importance for many investors in meeting college savings goals is the ability to earn a rate of return that is at least equal to the rate of increase in the costs of higher education while limiting the risk of losing principal. For most college savers, this objective must be met under a variety of market conditions and over investment time frames ranging from a few years to 18 years or more. As a result, an investment vehicle designed to meet the needs of individuals saving for college must provide enough breadth and flexibility to appeal to investors who may vary greatly with respect to level of risk tolerance, investment knowledge, savings objectives, and individual circumstances.

Asset Allocation

To ensure that the MESP investment strategies remain fundamentally sound, TFI conducts an annual asset allocation study to analyze and make recommendations to improve the investment strategy of the program. The evaluation process involves rigorous analysis, modeling and back-testing to evaluate all aspects of the investment strategy including the menu of investment options, asset allocations and the selection of the underlying funds utilized within each investment option. Models utilized during the asset allocation study are updated, reviewed and re-estimated every year to reflect changes in financial markets. The overall modeling process is discussed in further detail in question A.4. of this response.

Each year, program performance and the results of the asset allocation study, supported by the rationale for recommended changes are presented to the CCI and the Bureau of Investments. Based on these conversations, investment policy and strategy changes are adopted and ultimately communicated to prospective and current account owners through a new Program Disclosure Booklet or Disclosure Booklet Supplement.

The overall asset allocation process extensively analyzes historic benchmark information in determining the optimal asset class-mix for equities and fixed income. As part of the investment process, TFI segments the broad equity market according to the nine Morningstar style boxes and selects underlying funds with specific mandates that have the highest probability to achieve the goals of each investment option. The selection of funds chosen to execute the asset allocation strategy for each option is based on the fund’s performance track record and the desire to create a diversified well balanced investment strategy for each investment option.

Our commitment to achieving these objectives is best demonstrated through the program’s evolution and the enhancements implemented through our annual asset allocation study and review process. Working with the State we anticipate that these types of improvements will continue to be implemented in the future. The evolution of MESP through TFI’s investment policy and strategy as illustrated in the following timeline have resulted in better Sharpe ratios (expected return/standard deviation) than most other 529 plans and have also strengthened the program risk/return controls (Exhibit 14).

- **November 2000** (program launch) – three investment options: Managed Allocation Option, 100% Equity Option and Guaranteed Option
- **2002** – Improved diversification of the Managed Allocation Option and 100% Equity Option through the addition of the Institutional Equity Index Fund to represent the broad equities market, which includes mid-cap and small-cap exposure
- **2003** – Introduced the Institutional Real Estate Securities Fund and Institutional Inflation Linked Bond Fund to the Managed Allocation Option to improve diversification and reduce risk through the addition of new asset classes
- **2004** – Restructured the Managed Allocation Option from 10 birth-year bands to 6 age-bands to improve the timeliness that each beneficiary shifts to the appropriate allocation, lengthen the time period within each allocation due to the length of most market cycles and improve the probability of achieving investment goals over the investment time period.



- **2005** – Implemented an index fund approach within the Managed Allocation Option to improve performance consistency and reduce volatility of actively managed funds. Within the 100% Equity Option implemented a blended index and active fund management approach to appeal to investors with a higher risk tolerance and seek excess returns through active fund management.
- **June 2006** – Addition of new investment options. Renamed Managed Allocation Option the Age-Based Allocation Option expanded to 3-tracks for Conservative, Moderate (existing) and Aggressive Age-Based Allocation Options. Addition of the Balanced Option and 100% Fixed Income Option. Renamed the Guaranteed Option the Principal Plus Interest Option.
- **New Recommendations**

- **Addition of the TIAA-CREF Institutional High-Yield II Fund** to the asset allocation mix for the fixed income component to further enhance diversification and improve the risk/return characteristics.
- **Addition of the Equity Index Option, High Equity Option and Money Market Option** to provide investors with more choice and provide a menu of options that covers the complete risk spectrum.
- **Offer two pricing options. Change the current single expense fee structure to a two tier pricing structure** that includes a single fee for all Age-Based Allocation Options and other Index Options and a variable fee for the fixed allocation options. This structure allows MESP to open its fund architecture and provides flexibility to replace underperforming funds with alternate funds or utilize specific investment strategies not available through proprietary funds. Alternatively continue with the current single unitary fee schedule.

TFI Investment Strategy

TFI's investment strategies for MESP described above are executed utilizing TIAA-CREF Institutional Mutual Funds that are comprised of a range of indexed and active funds covering various asset classes and Morningstar style boxes. However, TFI's proposed open architecture structure will enhance the Program's flexibility and allows us to offer the best in class mutual funds from TIAA-CREF and other fund managers.

Indexed Management for the Underlying Equity Investments

TFI continues to recommend an indexed approach for the equity-based funds underlying MESP's Age-Based Allocation Options. The use of TIAA-CREF index fund provides several advantages to the Program, offering account owners:

- **Low costs.** Equity index funds to help keep the cost of MESP as low as possible for all account owners in MESP.
- **Transparency.** By definition, equity index funds attempt to stay very close to their stated benchmarks. This "what you see is what you get" approach to investing provides account owners desiring equity exposure an indication of the type of exposure they are getting.
- **Competitive Returns.** In broad, deep and efficient markets – like the U.S. equity markets – index funds have historically offered consistently competitive returns over longer periods of time¹.

We have generally found that an index-based investment management approach, as recommended above, is well-suited to the particular risk constraints and timeframe of the majority of college savers. Index funds provide investment performance that is consistent with the mandate for each specific fund and does a superior job of replicating the extensive modeling process utilized in constructing the Age-Based Allocation Options.

TFI recommends a combination of active and index mutual funds for the Fixed Allocation Options



We recognize that based on our previous meetings with the Bureau of Investments that there is a preference to use a mix of both indexed and actively managed funds within its fixed allocation options. Based on these conversations, TFI continues to recommend a combination of passively and actively managed equity-based mutual funds within MESP's fixed allocation options. By combining index funds in the large-cap component with active management in the mid, small-cap and international components, the fixed allocation options benefit from the low cost of indexed funds and achieve results that are consistent with the more efficient large-cap market where excess returns are more difficult to achieve. Within the mid-cap, small-cap and international markets, actively managed funds have a higher probability of achieving excess returns and finding profitable investment opportunities due to the lower efficiency within these markets. Our actively managed funds take the following approach:

Our active funds deliver pure exposure to their assigned mandates.

Disciplined, research-based analysis provides the foundation for the value added in all of our active strategies. In all cases, this analysis forms the basis for a partnership between analysts and portfolio managers that is unique in the industry. It takes three complementary forms:

- **Credit Analysis** – employing active management of credit risk through ongoing monitoring of fundamentals and market conditions on a security-by-security basis.
- **Fundamental Analysis** – centering on the construction of detailed, long-term financial forecasts for individual companies by industry experts and enabling us to identify mispriced securities on a relative basis within and across sectors. Past performance is not, and should not be viewed as, a guarantee of future results.
- **Quantitative Analysis** – using constantly evolving stock scoring models to systematically consider quantitative valuation, fundamental, and technical components that contribute to excess return.

We use state-of-the art techniques to construct and manage our portfolios so that we control where and how we take risk in order to achieve desired excess return.

TIAA-CREF Fixed Income Investments

TFI recommends an active ~~fixed fixed~~ income strategy for the Age-Based Allocation Options and the ~~Fixed-fixed Allocation-allocation Options~~ options.

The fixed income funds offered within the MESP investment options utilize the investment process as described:

Investment Strategy – Fixed Income fund managers strive to achieve competitively attractive returns by managing **sector and security/property selection** to cover expenses and hug benchmarks. Tight tracking error management translates into very modest over weights or under weights to generate marginal excess returns. The accounts do not make strategic or tactical interest rate bets of any kind.

3. Contractor will provide the investment options it plans to offer participants. One of the options must be an age-based fund.

Contractor Response to this Task:

Description of Proposed Investment Options

TFI's investment strategy will continue to be centered around the existing Age-Based Allocation Options as the primary investment options to meet the investment goals for a majority of college savers. Furthermore, TFI's proposed change in the program fee structure, as stated in the recommended program enhancements, allows MESP to offer a broader range of complementary fixed allocation options to provide investors with the ability to customize investment strategies that includes indexed and active management.



The straightforward nature of the Age-Based Allocation Options (Conservative, Moderate and Aggressive) has appealed to most investors and has attracted greater than sixty percent of MESP Program assets. In this proposal, we recommend three additional investment options to the recently launched 100% Fixed Income and Balanced Options to bring the Program's fixed allocation options to a total of seven. The investment option menu provides simplicity through the three Age-Based Allocation Options and the seven fixed allocation options provide varying levels of risk/return choices for the sophisticated investor. While the Age-Based Allocation Options will focus on an index approach to fund management the fixed allocation options will offer active management in areas where fund managers can potentially outperform the markets. In order to effectively support these options we are recommending an alternative program fee structure for the investment options.

The Age-Based Options will benefit from the low cost indexed investment strategies and will have the same low cost fee. The fixed allocation options are priced based on a fixed program management fee and a variable component based on the fees associated with the underlying funds. Under this fee schedule option TFI's proposed change in the program fee structure offers flexibility and a broader range of complementary fixed allocation portfolios to provide the ability to customize investment strategies that appeal to a diverse group of Account Owners and prospects with specific investment objectives that includes indexed and active management.

By providing a greater range of investment choices and enhanced flexibility, TFI believes that the proposed set of investment options will broaden MESP's appeal across a wider audience of individual purchasers and investment advisors. The menu is flexible enough to accommodate choice and simple enough to not become overwhelming which is a concern many experts highlight as a factor in people making no decision at all.

The following chart presents an outline of the proposed two tier pricing model and a side by side comparison of the current MESP investment options to the recommended investment options introduced within this response.



<i>Current Program Offering</i>		<i>Recommended Enhancements for Contract</i>		<i>Pricing Option 1</i>	<i>Pricing Option 2</i>		
	Objective		Objective	Total Fees	Program Management Fee	Underlying Fund Expenses	Total Fees
Age-Based Allocation Option	Conservative, Moderate and Aggressive options that as the beneficiary ages, automatically assign a declining percentage of funds allocated to equity and real estate Mutual Funds, and an increasing percentage of funds allocated to fixed income and money market Mutual Funds.		Inclusion of High Yield Fund to enhance returns and diversification for the fixed income allocation of the portfolios.				
		100% Equity Index Option	Long term capital appreciation through low cost domestic and international equity index funds.				
100% Equity Option	Long term capital appreciation through index and actively managed domestic and international equity and real estate.		No changes recommended.				
		High Equity Option	TFI recommends an investment allocation of 72% Equities, 8% Real Estate and 20% Fixed-income.				
Balanced Option	54% equity/6% real estate securities/40% fixed-income. Index and actively managed.		Inclusion of High Yield Fund to enhance returns and diversification for the fixed income allocation of the portfolio.				



100% Fixed-income Option	High quality conventional, high-yield and inflation-linked bonds		Inclusion of High Yield Fund to enhance returns and diversification for the portfolios.				
		Money Market Option	Safety of principle and money market returns that reflect changes in the current interest rate environment.				
Principal Plus Interest Option	Minimum guaranteed returned backed by a triple A rated insurance company.		Consider the offering of a Stable Value option.				

See pricing section as noted in **Article 1, Attachment A**

The program management fee under Option 2 is “capped” under certain asset based options to ensure that current program investors under existing options would not experience an increase in the fee they are paying and to ensure that the investment line-up fee schedule progresses logically with the index based options being the low cost vehicles and options with more active management having higher fees.

MESP Investment Options – Increased Choice

As noted in the chart above, MESP currently offers seven investment options. TFI recommends increasing the number and diversity of choices available to account owners with the addition of three new, complementary investment options, the Equity Index Option, High Equity Option and the Money Market Option. The expanded array of options will give investors the ability to select investments from a well rounded menu of different allocations that suit a variety of risk profiles, designed to provide significant appeal to the broadest possible range of individuals, while at the same time not overwhelming individuals with too many choices. All options are defined in greater detail below.

Age-Based Allocation Option – Conservative, Moderate, Aggressive

The Age-Based Allocation Options consists of three, low cost, age-based tracks, Moderate, Conservative, and Aggressive, that invest primarily in index funds. Each track is composed of six age-based portfolios structured according to the age of the beneficiary. As the beneficiary gets older, assets are automatically moved to age-based portfolios that invest more heavily in fixed-income and cash equivalent investments, in order to attempt to preserve capital as the time for withdrawal approaches. This transition from one age-based portfolio to the next will occur automatically, approximately every three to four years.

Fixed Allocation Options

Current Offering

100% Equity Option: Allocates contributions among a combination of domestic and international equity Mutual Funds. The investment objective of the 100% Equity Option is to exceed a blended return of its benchmarks for each of the Funds held in this Investment Option.

Balanced Option: Allocates contributions among a combination of equity, real estate and fixed income Mutual Funds. The investment objective is to provide meaningful returns over time while limiting the potential risk associated with high allocations to a single asset class or the risk associated with a higher exposure to equities.

100% Fixed Income Option: Allocates contributions among the TIAA-CREF Institutional Bond Fund, the TIAA-CREF Institutional Inflation-Linked Bond Fund and the TIAA-CREF High Yield Fund II. The investment objective is to provide favorable long-term total returns through current income, while preserving capital and providing a degree of protection from inflation.



Principal Plus Interest Option: TFI believes that a conservative option is appropriate for the MESP program and has in the past met this need by offering the Principal Plus Interest Option, which has become a popular alternative for many program investors. Under this option contributions will be allocated to the Funding Agreement issued by TIAA-CREF Life to MESP. The Funding Agreement would guarantee MESP principal and a minimum rate of return set according to the current state non-forfeiture rate with the opportunity for additional returns as may be periodically declared in advance by TIAA-CREF Life Insurance. The investment objective is to seek the highest returns possible consistent with guaranteed preservation of principal plus accumulated interest. (See Exhibit 2 of proposal).

In addition if the state so determines, TFI is prepared to work with the Investment Board to offer a Stable Value Fund investment option.

Complete descriptions for each of these options are provided in the Program Disclosure Booklet (Exhibit 3 of proposal or at www.misaves.com).

Proposed Options

Equity Index Option: The 100% Equity Index Option is designed to provide account owners with U.S. and international equity market exposure through low-cost index funds that provide the opportunity for long-term capital growth. The 100% Equity Option may be associated with a high degree of volatility over short and intermediate-length time frames. Because of its equity market exposure and its recommended concentration within a single asset class, the 100% Equity Option may be considered by moderately aggressive and aggressive account owners. These account owners may have longer investment horizons that can tolerate greater risk and potentially large periodic fluctuations in value in exchange for potentially higher returns over time.

The Equity Index Option is allocated between the TIAA-CREF Institutional Equity Index Fund and the TIAA-CREF Institutional International Equity Index Fund.

High Equity Option: The High Equity Option is designed to provide account owners with broad U.S. equity market exposure, while maintaining a smaller exposure to the fixed-income market and real estate to reduce volatility. This Option is similar to the current Balanced Option, but provides a higher allocation to equities and real estate, with a lower allocation to fixed income to offer a more rounded offering of static portfolio allocations. The allocation between equity (72%), real estate (8%) and fixed-income (20%) investments is designed to provide the opportunity for long-term capital growth, but may also be associated with a high degree of volatility over short and intermediate-length time frames. Because of its equity market exposure, the High Equity Option may be considered by moderately aggressive and aggressive account owners with longer investment horizons who can tolerate greater risk and potentially large periodic fluctuations in value in exchange for potentially higher returns over time.

The High Equity Option would use the following funds: TIAA-CREF Institutional S&P 500 Index Fund, TIAA-CREF Institutional Mid-Cap Growth Fund, TIAA-CREF Institutional Mid-Cap Value Fund, TIAA-CREF Institutional Small-Cap Equity Fund, TIAA-CREF Institutional International Equity Fund, TIAA-CREF Institutional Real Estate Securities Fund, TIAA-CREF Institutional Bond Fund, the Institutional High-Yield II Fund and the TIAA-CREF Institutional Inflation-Linked Bond Fund.

Money Market Option: The Money Market Option is designed to provide account owners with current money market returns that may exceed the rate of return offered by the Principal Plus Interest Option in a rising interest rate environment, while maintaining the goals of preserving capital and providing a degree of protection from inflation. Because of the safety of principal offered by a money market investment, this Option may be considered by account owners who are risk averse or seek stable account values due to near term liquidity needs. The Money Market Option is allocated to the TIAA-CREF Institutional Money Market Fund.

4. Contractor will provide asset/liability modeling capability, and portfolio structure analysis. Provide the manner in which the firm would assist the CCI in recommending changes and monitoring asset mix.



Contractor Response to this Task:

Since 1998 TFI has conducted extensive studies on the economics of college tuition inflation and financial markets. Our asset/liability modeling process utilizes several models that combine empirical results with theoretical models and integrate a number of techniques such as regression analysis, stochastic simulation and mean variance optimization with downside risk protection in order to make superior asset allocation decisions that allows us to achieve satisfactory returns subject to uncertainties, various constraints and liability commitments.

Since the Moderate Age-Based Allocation Option is the core option of the Program, the asset allocation strategy focuses on the Age-Based Allocation Options, reflecting our philosophy of balancing the risk of not meeting college savings goals with the reward of achieving the highest possible investment returns. Our objective is to achieve optimal returns over the expected investment horizon that are at least equal to the rate of increase in the costs of higher education while minimizing the potential shortfall if returns fail to keep pace with tuition inflation.

The models are designed to focus on long-term risk-return performance; we do not attempt to predict short-term market movements or chase performance by making short duration bets. As a result, the percentages allocated to each broad asset class are relatively stable from year to year. Our strategy avoids market timing because:

- transaction costs incurred by moving assets among various asset classes erode incremental return; and
- the bulk of empirical evidence indicates that market timing is ineffective.

As the recent financial market and interest rate environment has exhibited higher volatility and more frequent equity erosion we have incorporated into our long-term models these developments and have concluded that the overall construction of our Age-Based Options remains essentially sound. However, as we continue to refine the risk controls, we modified our asset allocation methodology and strategy to address the heightened risk that has become prominent. Our revised methodology incorporates the following refinements:

- An efficient frontier analysis using the mean-variance optimization model from Ibbotson Associates was conducted to determine the allocation limits within each asset class, as well as composition among asset classes. In addition, a sensitivity analysis was performed to test how the risk and return profile under particular asset allocations react to changes in forecasts of expected return, standard deviation and correlation under various economic scenarios. We target the asset allocations that appear optimal in the largest number of scenarios.
- For the equity component, we reviewed the style orientation and capitalization distribution to ensure the recommended allocations are well balanced across these parameters.

We believe that these ongoing asset allocation strategy enhancements bolster overall portfolio return and reduce overall portfolio volatility. It should be noted, that over the past five years, TFI's asset allocation recommended enhancements for the Age-Based Allocation Option, have yielded higher Sharpe ratios (expected return/standard deviation) than competing 529 plans, offered by firms such as Fidelity, Vanguard, Franklin Templeton and Putnam. Additionally, the risk controls implemented have continually improved during TFI's tenure as MESP program manager, an accomplishment we are proud of. The results of our analysis of Sharpe ratios versus other program managers can be seen in chart that follows (Results of Monte Carlo Simulation TIAA Moderate Age Based Allocation Option vs. "roll-down" method).

There are various approaches utilized throughout the 529 industry on how to structure age-based investment options. TFI has extensively reviewed each methodology and believe the recommended structure is superior in assisting investors to save for college. Some of the unique advantages of TFI's asset allocation strategy are:

Unique Features of TFI's Asset Allocation Strategy

- View 529 savings as assets backing the liability of future college attendance expenses. Therefore, our asset allocation strategy is an asset / liability management process taking into account probability of outperforming tuition inflation and the severity of falling short of tuition inflation in addition to maximizing returns.
- Seek the lowest risk path to maximize your affordability in paying for college for a given amount of investment.
- Consider the shorter accumulation time horizon as well as the shorter payout period of college savings when compared to retirement savings.
- Robust risk control to manage the risk of returns failing to keep up with tuition inflation.
- Not to be overly aggressive in asset allocation. Maximizing returns is not the only objective. Overly aggressive asset allocation can increase the expected return at the price of increasing the uncertainty of achieving a return greater than tuition inflation.
- Rigorous stochastic modeling to determine the optimal asset allocation that satisfies the risk/return objectives.



- Our Age-Based Allocation Options are structured in a way that the equity allocation stays at a constant level as the markets move through their cycle but also reallocate to a more conservative allocation every 3-4 years so that the impact of markets is controlled by avoiding a big portion of the portfolio being rebalanced in one day.

When comparing TFI's Investment strategy for the Age-Based Allocation Option to that of other 529 program managers, there are significant differences in approach. One example of the approach taken by other managers is utilizing birth year or target enrollment portfolios that 'roll-down' investment allocations.

Drawbacks of the 'roll-down' asset allocation approach

- Due to constant allocation changes, the investment allocation is not communicated with account holders and often claimed as proprietary. We believe this goes against the spirit of improved disclosure standards and account owners should have a clear understanding of their investments.
- Maximizing return during accumulation phase without referencing the liability benchmark can result in overly aggressive asset allocation, which increases the risk of falling short of tuition inflation over the expected investment horizon. Asset-liability modeling is a substantial aspect of saving for college and is significantly different than other savings goals like saving for retirement.
- Because it assigns asset allocation by a range of birth years as opposed to each individual beneficiary's age, younger beneficiaries in a particular band consistently get more conservative asset allocation than the older beneficiaries in the same band over the life of the contract. For example, a beneficiary born in 2007 always gets the same allocation as a beneficiary born in 2005, and changes in asset allocation always occurs at the same time for these two beneficiaries even if their ages can be up to three years apart.
- It reduces equity allocation on an ongoing basis. Because of its declining equity mode during the duration of a band, it can work against an investor during market rebound. The volatility arising from market direction is lower if the investment stays at a constant allocation over the duration of a band. The period from 2003 to 2005 is an example of getting hurt from gradually reducing equity allocation. As the markets continued to rebound, the equity allocation for each band was declining. While the portfolio can benefit from declining equity allocation as equity markets decline, this approach in general generates higher volatility than keeping equity allocation constant for a period of time (3-4 years).

The following charts demonstrate a fundamental aspect of our asset allocation methodology versus one of our leading competitors that utilizes a 'roll-down' methodology. Asset-liability modeling is a primary focus for our Age-Based Allocation Option with a significant focus on tuition inflation and minimizing the shortfall risk of not meeting our liability (college tuition) goals. Another key metric is to generate the highest level of return for the lowest level of risk to meet college savings goals. This is best measured by examining the Sharpe ratio, which is a measure of how much return is projected given the projected level of risk. The following charts demonstrate how TFI's asset allocation methodology is more efficient (Sharpe ratio), takes on less risk (standard deviation) and minimizes the shortfall when college savings goals are not met.

5. Contractor will provide a process for evaluating a client's investment performance including determination and/or recommendation of benchmarks.

Contractor Response to this Task:

Investment Performance Evaluation

TFI reviews and evaluates MESP investment performance on an ongoing basis to identify areas where the overall program can be improved. Due to the nature of the investment options offered by the program, investment performance must be examined on various levels to assess the overall asset allocation, as well as the underlying mutual fund performance within each investment option. The evaluation of asset allocation takes place during the annual asset allocation study performed each year, and is detailed in response to question #4. Beyond the broad asset allocation strategy, TFI calculates and reports a blended index to gauge the performance of underlying mutual funds utilized in each investment option. Underlying mutual fund performance is examined on both an individual basis, as well as relative to the overall performance of each investment option.



Selection of Benchmarks

Within our menu of domestic funds using Russell benchmarks, we have selected a variety of specialized and broad benchmarks to help meet the needs of investors. For investors in broadly diversified funds, we typically use the Russell 3000 Index®, an unmanaged index of stocks of the 3,000 largest publicly traded U.S. companies, based on market capitalization. Russell 3000 companies represent about 98% of the total market capitalization of the publicly traded U.S. equity market. For investors desiring exposure to a narrow range of the domestic market in terms of style or capitalization, we use the more specialized Russell Value or Growth indices across the Russell 1000, Russell Midcap and Russell 2000 universes. In addition to the Russell family of benchmarks, TIAA-CREF also uses benchmarks developed by other providers such as Morgan Stanley Capital International, Standard & Poors, and Lehman Brothers for representation of specific financial market segments.

TIAA-CREF bases its selection of benchmarks on the following criteria:

Broad and fair market representation. A benchmark should represent a large proportion of all listed securities in a given market or market segment in order to provide an accurate measure of market performance.

Investability and replicability. Although it may be desirable for a benchmark to represent all listed securities in a given market, in practice it may not be possible to include all securities in a benchmark, since many securities may be illiquid or may not trade on a daily basis. For a benchmark to be useful, investors must be able to replicate the benchmark performance by investing in the constituent securities.

Consistency in rules and methodology. An effective benchmark must incorporate rules and methods that enable it to accurately reflect the particular segment of the market that the benchmark has been designed to track. For example, if a benchmark has been designed to reflect small cap, growth-oriented stocks, the benchmark must incorporate consistently applied methods that allow market characteristics such as investment style (e.g. “growth”) and market capitalization to be accurately defined and measured.

Transparency. Information regarding benchmark index construction and methodology must be clearly specified and readily available.

Proposed Underlying Investment Fund Performance Tests

TFI proposes a series of quarterly performance criteria tests for placing a fund on a watch list to evaluate for improved performance or being removed from MESP. These tests include criteria to evaluate investment performance for 1 year, 3 years and since its implementation in MESP. If a fund fails the required performance tests, it will be placed on a fund watch list and then given three quarters to improve performance, or be replaced within the program investment options, pending board approval. The performance criteria is presented in the following table.



Asset Class	Short-term	Medium-term	Long-term
	(Rolling 12 month periods)	(Rolling 36 month periods)	(>36 months)
Active Domestic Equity	Mgr. Return < Benchmark Return - 3.5% in any quarter	Mgr. Annualized Return < Benchmark Annualized Return -2.0% for 2 consecutive qtrs.	VRR* < 0.98 for 2 consecutive quarters
Passive Domestic Equity	Tracking Error** > 0.35%	Tracking Error** > 0.20%	Mgr. Annualized Return < Benchmark Annualized Return - 0.15% for 2 consecutive quarters
Active International Equity	Mgr. Return < Benchmark Return - 5.0% in any quarter	Mgr. Annualized Return < Benchmark Annualized Return -3.0% for 2 consecutive qtrs.	VRR* < 0.98 for 2 consecutive quarters
Passive International Equity	Mgr. Return < Benchmark Return - 1.0% in any quarter	Mgr. Annualized Return < Benchmark Annualized Return -0.75% for 2 consecutive qtrs.	VRR* < 0.99 for 2 consecutive quarters
Active Fixed-income	Mgr. Return < Benchmark Return - 1.25% in any quarter	Mgr. Annualized Return < Benchmark Annualized Return -0.75% for 2 consecutive qtrs.	VRR* < 0.99 for 2 consecutive quarters
Passive Fixed-income	Mgr. Return < Benchmark Return - 0.35% in any quarter	Mgr. Annualized Return < Benchmark Annualized Return -0.20% for 2 consecutive qtrs.	VRR* < 0.99 for 2 consecutive quarters

* VRR - Value Relative Ratio - is calculated as: 1+ Manager Cumulative Return / 1+ Benchmark Cumulative Return

** Tracking error is a measure of the volatility of the average annual difference between the manager's return and the benchmark's return. The current underlying funds successfully passed these performance criteria for 2005.

- Contractor will provide the performance of public fund clients versus their benchmark, their peer universe for one, three, five and ten years and their quartile rank for each period. Also provide the performance of all your institutional clients with assets greater than \$500 million versus their benchmark, their universe for one, three, five and ten years and their quartile rank for each period.



Contractor Response to this Task:

TFI currently manages eleven state 529 programs and the Independent 529 Plan. Currently, three of these programs have assets that exceed \$500 million, the Michigan Education Savings Program, the Golden State ScholarShare Program and the Connecticut Higher Education Trust. Each of these programs has been uniquely designed in meeting each programs desired investment objective. Due to different underlying mutual funds supporting the investment options of each program, the performance within each option can vary in comparison to similar state programs managed by TFI.

7. Contractor will provide investment and economic research capabilities and how such research is available and/or distributed to clients.

Contractor Response to this Task:

As a full-service, industry leading asset manager, TIAA-CREF has a long standing commitment to bringing clients the benefits of our intellectual capital, including more than 400 professional investment staff. TIAA-CREF provides a wide range of services that allow our clients to take advantage of our services as a premier provider in the financial services community.

TIAA-CREF's investment and economic research capabilities are extensive and reflect our support of fundamental investment analysis through a staff of highly seasoned research professionals who cover all economic sectors and industries globally. In our **Equities** Division, a team of nearly 150 professionals includes an equities research team of 50 analysts. We have plans to grow the equities research team by at least 20% over the next year. In our **Fixed Income and Real Estate** Division (with more than 250 professionals), the portfolio management teams are supported by one of the industry's most experienced credit research teams. Our in-house chief economist provides additional perspectives to our investment professionals on the economic environment, facilitating additional discussion and thought regarding the economy and investment markets.

TIAA-CREF's team of economists continually engages in extensive investment and economic research activities through our **Investment Strategy and Client Solutions** Unit. This research benefits our clients directly through communications initiatives, as well as through the application of this knowledge by our investment professionals.

Dr. Leo Kamp, Chief Economist, whose responsibilities include macroeconomic analysis, also delivers presentations, including economic briefings, to our clients. For example, Dr. Kamp regularly presents the results of his research at meetings of the International Atlantic Economic Association. Dr. Kamp also advises our investment analysts and portfolio managers, and frequently writes articles for TIAA-CREF publications such "View" and other company print publications, and the TIAA-CREF monthly electronic newsletter. On a monthly basis, Dr. Kamp publishes commentaries, which we make available to our clients (see Exhibit 5 of proposal).

Other key members of the Investment Strategy and Client Solutions Unit, such as Dr. Brett Hammond, Dr. Doug Fore, and Dr. Martha Peyton, direct their research efforts primarily towards financial topics, including investment strategy, pension, and educational savings issues. Their extensive work is available to TIAA-CREF clients and the broad academic community. This team remains a resource for our clients, addressing specific questions and needs of our clients.

TIAA-CREF's **Client Portfolio Management Team** is an additional dedicated resource for our clients. The team meets with our institutional clients and their investment personnel to review performance and related investment matters of interest to our clients.

In addition to our investment and economic research, we have formed the **TIAA-CREF Institute** (Institute). The mission of the Institute is to foster objective research, build knowledge, support thought leadership, and enhance understanding of strategic issues to the business of higher education and lifelong financial security. The Institute's initiatives include conferences, web casts, and other forums, including interactions between college and university leadership, higher education thought leaders and influencers, and TIAA-CREF management. Past work has included studies and theory relating to 529 plans.

Most of the research and analyses are published in the Institute's three publications: *Research Dialogue, Trends, and Issues Report*. The Institute also publishes articles in well-known professional journals such as *American Economic Review, Benefits Quarterly, Journal of Financial Planning, Journal of Retirement Planning, Journal of Financial Economics, and the National Tax Journal*.



In addition, TIAA-CREF remains an active part of the academic community and supports and participates in the National Association of College and University Business Officers (NACUBO) survey. NACUBO serves a membership of more than 2,500 colleges, universities, and higher education service providers across the country. NACUBO represents chief administrative and financial officers through a collaboration of knowledge and professional development, advocacy, and community.

The MESP Web site is a tool for both educating prospective and existing account owners about the value of saving for college and the role that MESP can play in it. Research, stories, and other engagement devices are used in order to highlight the many benefits of MESP.

In addition, the account owner E-newsletter is also used as an opportunity to discuss the benefits of MESP as well as to educate and inform account owners about the value of saving for college. Within the E-newsletter, we also take the opportunity to present other education related topics that might be of interest to a family with children.

8. Contractor will provide investment manager research and analysis services as follows:

TIAA-CREF investment process is intensely research-driven with a bottom-up approach to the selection of stocks and securities. Strong analysis is the first step, which for equities can be either fundamental or quantitative, while for fixed income the emphasis is on credit analysis. In addition to conducting interviews with company management, research analysts perform cash-flow analysis and growth projections to assess valuation of companies. Industry assessment as well as assessment of quantitative indicators and risk factors are also crucial in the research and analysis process. Investment opportunities are evaluated relative to others available in the marketplace taking into consideration our diversification and risk targets. Recommendations are thoroughly vetted by a team of seasoned professionals and decisions to buy or sell are made in a timely fashion and the lowest possible cost of execution is sought and obtained.

In summary, key elements of TIAA-CREF’s research and analysis include the following:

- Fundamental, Quantitative and Credit Analysis
- Objective Risk Standards
- Disciplined Evaluation of Risk/Reward Trade-Off
- Comprehensive Vetting by Seasoned Team
- Timely Buy-Sell Decision
- Efficient Trading Execution

a. Number of managers by asset class and style

Name of Fund	Active Managers	Index Managers	Quantitative Managers
Large Cap & Mid Cap Value	2	2	
Large Cap & Mid Cap Growth	2	2	
Large Cap Blend/Broad Domestic Equity		2	
Growth & Income	1		
Small Cap Blend	2		2
REIT	1		2



FIXED INCOME

Name of Fund	# of Portfolio Managers
Inflation-linked (protected) Bond	3
Core Bond	5
High Yield Bond	9
Money Market	3

b. Other information maintained on each

TIAA-CREF Asset Management maintains the following information on all incoming and outgoing analysts and portfolio managers:

Incoming Portfolio Manager/Analyst: Name, Title, Primary Manager, Division, Market Segment and Fund Coverage, Career Start Date, TIAA Start Date, Fund Team Start Date, Professional background/experience, College Name, Masters Degree, Graduate School Name, Doctoral Degree and School, CFA designation (Y/N), Affected mandate(s)/strategy (ies), Location, Press release consideration (Y/N), Relevant Share Classes (Institutional, Retail, Retirement, Life, etc.)

Outgoing portfolio Manager/Analyst: Manager/analyst name, Mandate/strategy/sector, Name of fund/account managed or sector covered, Relevant share classes, if applicable (Institutional, Retail, Retirement), Effective date of removal, Reason for removal (assigned to another mandate/strategy, retirement, voluntary termination, involuntary termination), Other pertinent information regarding removal, Relevant Share Classes (Institutional, Retail, Retirement, Life, etc.)

c. Manner by which information is obtained

A formal process has been established for the distribution of information regarding new investment hires. The process includes:

Asset Management Senior Leadership dispenses information about analyst or portfolio manager new hires, in conjunction with Human Resources, to the Asset Management Investment Analytics team, Asset Management Legal Department and Asset Management Marketing Department via the form stated in question 8.b.

A determination is made, by Asset Management Senior Leadership, regarding broad public distribution of the information. If appropriate, the Public Affairs Department creates a press release. In all cases, Morningstar is notified.

Asset Management Marketing distributes the information through all internal channels

d. How often is information updated

A quarterly report is generated by Investment Analytics that is sent to the Education Savings Department, which then forwards it to Program Managers. If there is a mid-quarter change in investment personnel, Education Services is notified when the change is made public and, in turn, communicates directly with the Program Manager.

e. Type of database used including number of years of usable data on managers and tracking of clients, and whether the database is proprietary or purchased from an affiliated entity, or a non-affiliated vendor

TIAA-CREF makes exclusive use of its proprietary investment management expertise – we currently do not have a database or process that actively tracks external managers who would serve as sub-advisory managers on any of our product offerings.



However, we do actively monitor the money management landscape as we continue to expand our investment management talent. Our Chief Investment Officer’s charter is to steadily increase the size of our investment research and portfolio management teams to meet the growing needs and complexities of our global asset management business. We are pleased with our progress to date and hope to be able to fulfill our goal of a significant team expansion by the end of 2007.

- f. Number of firm personnel devoted to such services by asset class and style

Number of Firm Personnel Devoted to Service Each Asset Class

Equities	Devoted Personnel
Large Cap & Mid Cap Value	66
Large Cap & Mid Cap Growth	66
Large Cap Blend/Broad Domestic Equity	62
Growth & Income	61
Small Cap Blend	62
REITs	8

(Numbers include: Portfolio Management Team, Senior Managers, Analyst, Research Assistants and Traders)

Fixed Income	Portfolio Managers
Inflation-Linked Bond	5
Core Bond	14
High Yield Bond	11
Money Market	5

(Numbers include: Portfolio Management Team, Senior Managers, Traders (incl.) and Credit Research Team (7))

- g. Number of investment consultants in the firm

No consultants with research or investment/portfolio responsibilities are in our employ.

- h. Approach to and due diligence for evaluating managers

While TFI does not currently use external fund managers in the 529 programs it manages, as indicated the structure we are proposing will enable us to work with the State should the utilization of non TIAA-CREF investments be required.

Although outside managers are not part of TFI’s proposal at this time, TIAA-CREF through Open Plan Solutions employs a rigorous process for evaluating managers. TIAA-CREF’s approach to evaluating external fund managers utilizes a combination of an established company wide process to evaluate outside fund managers as well as criteria unique to TIAA-CREF. The process includes the screening of candidates based on both qualitative and quantitative metrics that closely evaluate both overall asset management firm as well as the mutual fund under consideration.



One key component of this process includes eliminating candidates based on compliance and headline risk to seek partners who have a strong brand name that meets the high corporate governance standards set by TIAA-CREF. Furthermore, partner candidates need to demonstrate an investment philosophy and process that shares the same philosophies of asset allocation, diversification and risk management that is core to that of TIAA-CREF and appropriate for MESP.

Once the qualitative screens are completed more quantitative measures are utilized to find the strongest performing managers in the industry in terms of returns, risk profile and fees. Additional measures include 1, 3, 5 and 10-year performance relative to an established benchmark, assets under management and numerous additional quantitative measures as described.

As TFI continue to examine open architecture to provide the best in class mutual funds for MESP, our key focus will be our fiduciary duty to MESP to responsibly manage the assets of the program. TFI will utilize the qualitative evaluation process developed by TIAA-CREF and will ensure that recommendations to MESP are focused in the best interest of the program.

- i. Contractor shall provide a methodology for analysis of manager performance, including establishing benchmarks, and the source and size of the universe (number and size of plans and number of which are public plans).

Contractor Response to this Task:

At TIAA-CREF we monitor and evaluate fund manager performance using a variety of methods including comparing each fund's pre-tax gross returns to its benchmark index for the standard trailing quarter, year to date, one-, three-, five- and ten-year periods. We also monitor manager performance for the current year and for each of the preceding three calendar years. The purpose here is to discourage managers from focusing solely on short-term results.

We also evaluate our managers' performance based on their performance relative to their peer groups as measured by their respective Morningstar and Lipper mutual funds category averages. Managers are encouraged to strive for top quartile rankings among their respective peer groups. It is important to know that less emphasis is placed on star rankings produced by Morningstar as we have learned that they can be more of an indicator of past performance more so than helping plan for future expectations.

In addition to the pure relative returns, we also look at several other characteristics of the portfolios such as the managers' risk adjusted returns, tracking error, beta and information ratio. The purpose of monitoring these metrics is to determine whether managers are adding value to their portfolio at the expense of high volatility (risk) and whether the manager is deviating significantly from the stated benchmark's characteristics.

A small factor in evaluating manager performance is net flows into the funds. We believe that the performance track record of a fund makes it generally more attractive to clients and prospects, and ultimately affects cash flows into and out of the fund to some degree.

Finally, since our managers rely heavily on our analyst staff, which provides them with proprietary research, we monitor the competency of our analysts in several ways, chief of which is their performance in what we call Sector Neutral Portfolios (SNEUPs). These portfolios allow analysts to actually invest in their best ideas, which may or may not be accepted by the portfolio manager. An analyst with a great track record in his or her SNEUP will generally be more credible to portfolio managers. Finally, it is important to note that we view the research analyst position as a career and not a transition into a portfolio management position. We have found that career analysts are a necessary complement to a successful portfolio management structure.

9. Contractor will provide knowledge and experience in specific asset class(es) or strategy including private equity, real estate and alternative investments.

Contractor Response to this Task:

TIAA-CREF is widely recognized in the financial markets for our depth of knowledge and experience across all asset classes. Noteworthy examples include:



Real Estate - TIAA-CREF has been investing in real estate through the General Account for over 50 years and as a separate account for qualified clients since 1995. The TIAA Real Estate Account strategy seeks favorable long-term returns primarily through rental income and appreciation of real estate investments and seeks to invest between 70-95% of assets directly in real estate or real estate-related investments. We invest a small portion of the TIAA Real Estate Account in assets in REITs, government and corporate debt securities, money market instruments and other cash equivalents for liquidity reasons. Our real estate portfolio managers have extensive experience in direct real estate investing. In addition, we continue to be recognized as a leader in the industry, taking advantage of real estate opportunities in the market

Private Equity and Alternatives - The TIAA General Account invests in various alternative investments and private equity strategies to improve diversification and increase returns. Currently, the alternatives asset classes utilized are real estate funds, co-investments (joint ventures), and timber, which, accounted for approximately 2.0% of the portfolio as of March 31, 2006. Over the past several years these investments have proven to be very fruitful for investors and have outperformed all fixed income categories within the General Account. It should be noted that we do not currently offer stand-alone products in these assets classes.

Inflation-Linked Bonds - TIAA-CREF was among the first companies to offer an inflation-linked bond fund in early 1997 and has been a pioneer researcher on inflation-linked bonds. With the U.S. Treasury and Stanford University, TIAA-CREF sponsored a conference in Washington in 1995 on inflation-linked bonds. In addition, TIAA-CREF conducted original research on how to price inflation-linked bonds. This work that was cited by Under Secretary Summers in 1996 when he announced that the Treasury would begin issuing such bonds in early 1997. TIAA-CREF also worked closely with Treasury staff on the design of U.S. Treasury Inflation-Protected Securities (TIPS).

10. Provide and/or list educational programs the firm has developed or made available to clients.

Contractor Response to this Task:

TIAA-CREF has always dedicated resources to serving our client's educational needs, and continues to do so. The TIAA-CREF Institute is wholly devoted to educating and serving our clients. Also, TIAA-CREF has a series of investment publications available in print and through our website that address many investor concerns in addition to regular publications such as our *Advance* and *Participant* magazines and commentaries. Customized educational services are also provided by our Investment Strategy and Client Solutions Unit, Client Portfolio Management Team, and Client Support Unit, who have made special presentations to clients and hosted "Community Seminars" to meet our clients' specific educational needs (please see answer 7).

11. For each proposed investment option the Contractor shall:

- a. Provide the asset allocation you propose to use and the weights that you would recommend (which must add to 100%)

See Contractor response in / DMB Master file for details.

- b. Provide historical investment performance data for funds you are proposing including comparisons to appropriate benchmarks, and various rankings such as MorningStar, Value Line, etc.

See Contractor response from ITB / DMB Master file for details.

- c. Provide your proposed mechanism for independent rating of funds

The performance of each TIAA-CREF fund relative to its benchmark and to the Lipper Average will be reported to the CCI on a quarterly basis. This report includes various sector allocations, top ten holdings, and reasons for over or under-performance in an analysis of market conditions. These quarterly reports would include similar data if non-TIAA-CREF accounts are used in the MESP program.



- d. Provide data on the management team expected to operate the funds, including education and experience

Since TIAA-CREF emphasizes a “team approach”, various professionals within the above portfolio teams will be responsible for each of the funds we have recommended to the MESP. See Exhibit 6 for a listing of the management team that will operate the funds.

- e. Provide historical data of similar funds including money under management, investment strategy, management style (philosophy and goals) and whether there have been any significant changes in the last 3 years.

See Contractor response located in DMB Master file for details.

- f. Provide examples of applicable fees and historical returns for each of the following participants:

- a child born January 1, 1995 making a \$5,000 deposit on the date of birth
- a child born January 1, 1990 making a \$5,000 deposit on the date of birth
- a child born January 1, 1985 making a \$5,000 deposit on the date of birth.

See Contractor response to the ITB in / DMB Master file for details.

First, present the makeup of the product that would be applicable, listing the components of the portfolio and the percentage of the account list in each component. Then, consistent with the information disclosed above:

1. Calculate and disclose the total sales fees (if applicable)
2. Investment fees
3. Administrative fees that would apply to each account for each year under management until June 30, 2006
4. Provide historical returns based on the applicable fund for each participant
5. Provide the net investment gain realized for each participant.

See Contractor response in vendor quote

12. The State is not responsible for and will not provide funding of any type in connection with administration of MESP. All administrative costs for MESP must be paid from the earnings of the program. Total administrative costs paid to the State of Michigan will not exceed \$25,000.00 per year for the Investment Contractor. The State will submit a quarterly invoice to Investment Contractor with detailed person-hours allocated to each task.

Contractor Response to this Task:

TFI understands this requirement and will reimburse the State of Michigan up to \$25,000 for services provided related to administrative costs.

13. PA 161 does not provide a state guaranteed rate of return. Contractor will provide a minimum rate of return guarantee you may be able to provide for any of the investment options you offer.

Contractor Response to this Task:

The rate credited to MESP by TIAA-CREF Life Insurance Company (one of only two Triple A rated companies in the nation) under the Funding Agreement for the Principal Plus Interest is a competitive 3.40% through June 30, 2006 with a minimum rate of 3%.



The minimum rate for the Funding Agreement will be set according to the current state non-forfeiture rate as found in the Insurance Code of 1956, section 500.4072, if approved by the New York State Insurance Department and the Michigan Office of Financial and Insurance Services. This rate will be reset annually as the average five year Constant Maturity Treasury Rate reported by the Federal Reserve for the month that precedes the reset date less 0.0125 rounded to the nearest 0.0005 subject to the constraint that the minimum rate will not be less than 1% nor greater than 3%.

The GFA Form in Exhibit 2 of proposal would, when completed, include language and requirements specific to Michigan. Any guaranteed funding agreement requires regulatory approval by the New York State Insurance Department.

Clarifications were requested from TFI as follow:

Duties of TFI and any successor program manager with respect to then existing account owners invested in the principal plus interest option (the "PPIO Accounts") would be handled as provided in a mutually acceptable agreement between TFI, TIAA-CREF Life Insurance Company, and the successor program manager, and consented to by the State. The agreement would include an annual fee to be paid by TFI to the successor program manager not to exceed 10 basis points of the assets in each PPIO Account up to a maximum of \$10 per PPIO Account per year for recordkeeping, administration and related services provided by the successor program manager for the PPIO Accounts. The fee would be paid in arrears on a on a monthly basis after adjustments have been made for Accounts that have been closed.

14. Contractor shall provide a method for recordkeeping and account maintenance to ensure the following:
- a. separate accounting for each account owner and beneficiary

Each account owner and beneficiary relationship has a unique account number assigned at the time the account is established. This same account number is used for each investment option in that relationship so the total account contributions and earnings are aggregated and reported on our quarterly statements. We provide both self-service functionality on our program websites and transaction specific forms to make managing a 529 plan easy and convenient for an account owner.

Our model for administration for MESP utilizes the systems of Boston Financial Data Services (BFDS) and its sister company DST to support and service processing. BFDS utilizes a highly integrated information system infrastructure, consisting of an account owner and record keeping database (DST's TA2000) and an Automated Work/ Distributor (AWD) process to support both manual and on-line account processing. The core system, TA2000, provides transaction processing for account owners with account maintenance capabilities. The AWD process includes image processing and customer service workstation capabilities.

BFDS, together with DST, service nearly 1.5 million 529 accounts and a total of 24 million shareholder accounts in the mutual fund and 529 markets. A team of approximately 30 seasoned, 529 professionals handle the processing and servicing of the 529 accounts. This dedicated staff allows us to maximize processing efficiencies and provide superior service to our account owners.

- b. contributions do not exceed the maximum allowed under PA 161 and IRC Sec. 529 (including any MET contracts purchased for an account beneficiary)

The maximum amount that a beneficiary may have deposited in his/her behalf is \$235,000. Any contributions that result in the sum of all MESP accounts opened for a beneficiary being in jeopardy of exceeding the maximum contribution limit are reflected on a next day control report and reviewed by BFDS and TFI on a daily basis. If the maximum is exceeded, a telephone call is placed to the account owner to confirm their intent and determine if the excess contribution can be used for an alternate beneficiary in the Program. If not, the portion of the contribution that would cause the total account balance for the MESP Account(s) of that beneficiary to exceed the maximum account balance limit will be rejected and returned.



Since the launch of the program, we have developed a systematic file transfer of data from the state to TFI via secure FTP for aggregation purposes on a daily basis. TFI transmits a daily file containing only those beneficiaries whose account balances are \$180,000 or more. The state is responsible for disallowing purchases of MET contracts for beneficiaries where the purchase will cause the total MESP and MET account balance to exceed the maximum threshold limit.

- c. safe and convenient methods to open an account and make deposits, including electronic transfer debits, payroll deduction, checks or cash

TFI strives to make investing in the program safe and convenient by offering multiple channels for investors. Enrollment and contributions to the Program can be effected via manual forms, telephone purchase once an account is established, or through the program's website.

Online enrollment has proven to be one of the most significant enhancements from an operational perspective for our programs and has been utilized immensely by our account owners. Since this feature was first introduced for MESP over 70,000 accounts have been established online. In 2006, over 60% have been established this way.

DST's Fan-Web (Financial Access Network) (FAN-Web™) provides a state-of-the-art, secure transaction environment. Access is based on password requirements and transaction rules established for the Program. FAN-Web™ provides full encryption to ensure a high level of data security. To access online enrollment, the individual supplies his or her social security number and creates a PIN. The individual then completes a series of simple to follow screens to establish an account. The system has built-in edit checks, based on program rules, which ensure that all required information is gathered. If a required field is not entered, an error message will appear with instructions for correcting/completing the information. And, no applications are rejected because the user provides all the required information.

Manual and online new accounts may be funded through: an Electronic Funds Transfer (EFT); establishment of an Automatic Contribution Plan (where we will debit the customer's bank account on a periodic basis); payroll deduction if the employer has signed up to participate; or through remittance of a check.

Additionally, Account Owners can make subsequent purchases via check and investment coupon, FAN-WEB, or telephone. In addition, they can establish, change or terminate an Automatic Contribution Plan; or add a banking account or update their banking information via manual form, FAN-WEB or telephone.

With respect to payroll deduction, during the first quarter of 2006 over 4,000 employees took advantage of this option.

- d. methods of assessing non-qualified withdrawals

TFI utilizes one withdrawal form on which the customer has the option of selecting either a qualified or a non-qualified withdrawal. IRC 529 no longer requires the program to assess a 10% penalty on non-qualified withdrawals. A federal excise tax of 10% of the earnings portion of any non-qualified withdrawal must be paid by that taxpayer through his or her federal income tax return. All withdrawals will be reflected on the year-end Form 1099-Q.

- e. method of providing Department of Treasury online access to account information [preferably terminal emulation (TN3270) or web-browser based]

The CCI, has on-line access to Vision for inquiries with respect to customer account information. Vision, introduced in 1998, provides complete client account access on a daily basis. Vision provides real-time, reliable information for MESP accounts through a web-browser based site.



- f. compliance with annual certified public accountant audit and periodic audit requirements including computer systems

The TIAA-CREF group of companies uses PricewaterhouseCoopers as our independent auditor. TFI is subject to annual external audit reviews and biannual internal audit reviews. Each internal audit review covers all aspects of 529 Program administration, including the computer systems used to administer MESP.

- g. method of ensuring that qualified withdrawals are made timely either by check directly to a postsecondary educational institution, jointly to a beneficiary and postsecondary educational institution or directly to a account owner upon receipt of appropriate documentation of expenses

Since MESP's inception, TFI has processed qualified withdrawals on behalf of over 6,500 beneficiaries in the aggregate amount of \$75 million. During the first quarter of 2006, 99.3% of all payments were mailed within two days of processing.

At the direction of the Account Owner, distributions may be paid in one of three ways: (1) directly to the Eligible Institution, (2) in the form of a check payable to both the Beneficiary and the Eligible Institution, or (3) in the form of a check payable to the Beneficiary or Account Owner. It is the responsibility of the Account Owner to substantiate any expense claimed on federal and state tax returns as a Qualified Higher Education Expense in the event of audit. We strive to process financial transactions received in good order on the day of receipt. Checks are mailed within two days of processing. We have the ability to send the payment via check or electronic funds transfer.

- h. method of allowing transfer of accounts to immediate family members of the beneficiary as defined in IRC Sec. 529

An account owner would submit a Change of Account Owner Form which can be downloaded from the MESP website or requested from the Customer Contact Center. A transfer of funds between MESP Accounts or between a MESP Account and an account in another qualified tuition program is a non-taxable event and will not be subject to the Additional Excise Tax if the beneficiary of the account to which funds are transferred is a "member of the family" of the Beneficiary being replaced, or if the account to which funds are transferred has the same beneficiary and there has not been a transfer to any qualified tuition program for the benefit of that Beneficiary within the previous 12 months.

- i. method for providing on-line inquiry to allow Treasury the ability to validate a claimed income tax deduction

As stated in response to (e.), the CCI has access to view contributions and withdrawal (both qualified and non-qualified) information on-line through Vision.

- j. provide examples of clear and concise customer account statements, which include any account fee disclosures.

See Contractor response to ITB in DMB Master file.



15. Contractor will provide for the distribution and monitoring of qualified withdrawals in accordance with PA 161 and IRC Sec. 529.

Contractor Response to this Task:

Details provided in answers to questions 14 (d) and (g).

16. Contractor will collect state matching grant funds for new accounts that qualify to receive state matching grant funds. Matching grant funds must be tracked separately from account owner deposits.

Contractor Response to this Task:

TFI has worked with the CCI in the establishment of over 25,000 State Matching Grant Accounts (as of 5/31/06). Since MESP's launch in 2000 we have worked with the CCI to improve the process by which these accounts are funded. In addition to MESP we also manage the matching grant program for Minnesota's 529 program.

As required by the State, funds are tracked separately through the use of a unique Program fund. This fund provides the methodology to implement restrictions and processes that only apply to the State Matching Grant and any independent contributions made to the Match Account approved by the State Treasurer.

17. Contractor will address account ownership, account contributors and successors of accounts as it relates to multiple accounts.

Contractor Response to this Task:

An individual Account Owner may designate a Contingent Account Owner to become the owner of his/her Account in the event of death. The Account Owner may also change ownership of all or a portion of his/her Account, without incurring a State or federal tax liability, including the Additional Excise Tax, to another individual or entity that is eligible to be an Account Owner in MESP.

18. Contractor will provide the payment options (such as monthly contributions by coupon, automatic clearinghouse (ACH), payroll deduction, Web-based, etc.) available for program participants to make initial and subsequent contributions.

Contractor Response to this Task:

Details provided in question 14(c) above.

19. Contractor will provide payment posting process for participant accounts. And indicate when earnings will begin to accumulate.

Contractor Response to this Task:

We strive to process all contributions received in good order on the day of receipt. If processing is delayed, the account owner will receive the trade date when the funds were received in good order. Earnings begin to accumulate the following business day and are reflected in the Trust Unit Value of each investment option.

The Quarterly Report provides information on the accuracy and timeliness of processing checks. In 2005 we achieved an Accuracy measure of 100% and Timeliness measure of 100% for the processing of checks.



20. Contractor will provide the procedures to prevent excess contributions to beneficiary accounts allowed by MESP in compliance with PA 161 and IRC Sec. 529.
- Provide how and when you will determine if participants have made excess contributions.
 - Provide how you will notify the participant.
 - Provide how you propose to coordinate this compliance with the MET program.

Contractor Response to this Task:

The same procedures will be followed as outlined in our response to question 14(b).

21. Contractor will provide how it will handle inactive accounts, i.e., account opened with \$100 but no other contributions made during six months.

Contractor Response to this Task:

Since MESP was launched we have not provided any special handling for “inactive accounts.” As saving for college is a long-term goal account owners often go for an extended period without contributing to their account(s). In addition, a beneficiary that has “reached” the maximum account balance limit can no longer have contributions made into one of their accounts.

Accounts owners though, regardless of their MESP balance, receive quarterly statements that encourage saving for college. In addition, direct mail campaigns have been targeted at account owners that have not contributed to their account over a certain period. While we have been very encouraged by the annual recontribution rate for MESP, where in 2005 63% of all account owners that had an account in 2004 contributed, we know that for certain account owner segments that rate is much lower. In our on-going analysis of the State Matching Grant program we see that a large percentage of Account Owners that have a match account do not contribute to MESP after their first anniversary in the program. Based on our experience as Program Manager we believe that many of these Account Owners would derive greater benefit from the ownership of a MET contract as it provides a more tangible, emotional and college specific benefit than MESP. We propose working with the CCI to implement a program for transferring these accounts.

If the state so desires we will work with them to develop special procedures for the handling of inactive accounts.

22. Contractor will not allow account owners to open multiple accounts for the same beneficiary.

Contractor Response to this Task:

Our processing system, DST TA2000, will not allow multiple accounts for the same account owner beneficiary relationship. As provided in our response to question 14.a. each account owner and beneficiary relationship has a unique account number assigned at the time the account is established. This same account number is used for each investment option in that relationship so the total account contributions and earnings are aggregated and reported on our quarterly statements. They system will reject a new account number if we already have the owner and beneficiary social security numbers in the system.

23. Contractor will maintain account data to ensure that the current accumulated contributions and accumulated earnings for each participant are available on a daily basis. Describe how accumulated earnings will be determined.



Contractor Response to this Task:

Each account owner beneficiary relationship is assigned a unique account number and all investment options within that relationship are aggregated together for contribution and earnings calculations. Earnings are reflected within each investment option's variable Trust Unit Value. Account owners can access their account values via statement, telephone and the MESP website.

24. Contractor will maintain and administer the match program for saving for Education, Entrepreneurship, and Down-payment Policy and Practice Initiative (SEED) participants and any other approved organization. Contractor will need to track and provide data for participants related to specific account owners; additionally, Contractor will need to accept matching funds from other organizations. Detailed specifications will be determined with the CCI after Contract execution.

Contractor Response to this Task:

We are proud to have helped OLHSA reach its goal of 500 new beneficiaries, all of whom are eligible for the State Matching Grant and are currently Head Start participants. TFI's broker-dealer affiliate, TIAA-CREF Individual & Institutional Services, LLC, will continue to provide registered representatives for presentations on MESP to Project SEED participants. TFI will also continue to honor its obligations pursuant to the agreements signed December 21, 2004, (See attached Exhibit A) by TFI, the Oakland-Livingston Human Services Agency (a section 501(c)(3) organization approved by the Department of Treasury), the Michigan Department of Treasury and Washington University at St. Louis. MESP will report the number of hours and costs incurred to the Department of Treasury on a quarterly basis starting at the end of the first quarter after the effective date of the Contract. We request the State to inform TFI about any necessary amendments to those agreements based on applicable law.

Match funds for the SEED Program will be maintained and tracked using a similar process to the one described in response to Question 16.

Recognizing the opportunity for the "greater good".

Above and beyond its commitment to the State Matching Grant program, TFI provides additional administrative services to the OLHSA/Washington University SEED collaboration. TFI currently deposits funds received from SEED into both the State Matching Grant account and the account owner's MESP account. Its contributions are coded by TFI, so BFDS can note the source. TFI has absorbed the programming and other implementation costs (e.g. account information reconciliation and reports) which have run into many programming hours that were not charged to the Program.

TFI provides additional educational support, such as the original round of 12 presentations in 2005 and additional follow-up seminars in 2006. These presentations provide account owner support and help increase their level of financial literacy.

TFI also provides data quarterly to OLHSA and Washington University pursuant to its agreements with the participating SEED agencies and the State of Michigan. We are proud of the role we played in helping OLHSA achieve its goal of 500 participants.

"As the project has progressed there have been new questions and problems to address. Throughout you and your colleagues have worked diligently and with great enthusiasm to address our program needs while fulfilling your management and financial oversight responsibilities. However, never once has someone said no, but rather you have been determined to find the way it may work," Don Jones, Director for Resource Development, OLHSA

TFI will continue to adhere to its agreement with the Oakland-Livingston Human Services Agency and Washington University, and the Letter of Understanding with the Michigan Department of Treasury, which confirms that agreement, both dated December 21, 2004, with regard to the CFED-sponsored SEED Policy and Practice Initiative.

The agreement describes the rights and obligations of the parties to protect the privacy of the beneficiaries and their account-owner benefactors, the informed consent form signed by participating account owners, and the specific program records to be provided.



Clarifications were requested from TFI as follow:

TFI's Response:

The State will not incur additional costs as a result of the SEED Program as currently constituted. TFI believes all set-up costs have been incurred and absorbed, and does not foresee additional costs for the SEED Program above and beyond the normal program costs.

And

It is our belief that the current procedures for the SEED Program as implemented by the CCI, TFI and other interested parties have identified all requirements for this initiative. Our response to 1.104.A.24 is not a request to change the existing agreements entered into regarding SEED. We are simply requesting that the State advise TFI of any changes that need to be made to the agreements and/or procedures.

25. Contractor will have or maintain a Michigan based office or site for the receipt of contributions, and written communication. Contractor will accommodate this as follows:

Contractor Response to this Task:

TFI maintains a Michigan based P.O. Box for the receipt of program forms, contributions and written communications. In addition a toll-free phone number has been provided for access to customer service representatives. Both channels offer a set of controls to ensure that an Account Owner's participation in MESP is secure and that all transactions and correspondence can be tracked.

In Michigan, we have established an office in Southfield to handle the management of MESP and the coordination of all work with the CCI. In addition, we currently have field consultants in TIAA-CREF offices located in Southfield, Ann Arbor and East Lansing. MESP information can be picked up at each office and an appointment can be scheduled with a consultant to receive information on the program. With respect to the receipt of contributions via hand delivery, we would offer this service on an exception basis with the agreement that it would not be communicated or advertised as a normal course of business. We currently have administrative assistants in each of our field offices that can accept checks and applications for MESP that will then be forwarded to BFDS for processing upon receipt in good order.

26. Bi-weekly confirmation statements must not be issued to State of Michigan employees on payroll deduction.

Contractor Response to this Task:

Bi-weekly confirmation statements are not issued for the State of Michigan employees who are participating on payroll deduction.

27. Contractor has provided a complete copy of the firm's most recent Form ADV (Parts I and II and accompanying schedules).

Contractor Response to this Task:

See Contractor response located in DMB Master file.



28. Systems Capabilities

a. Other Contractors

TFI will be responsible for working with the State and other Contractors (e.g. Program Manager/Administrator) to assist in problem resolutions including but not limited to, establishing new communications channels, downtime, testing, etc. At minimum, a daily interface will be required between the Investment Contractor and Program Manager for daily account balances. The Program Manager will be responsible for communicating account balances to account holders (see section 1.104.B.1).

Contractor Response to this Task:

TFI's response contemplates the management of both roles, Investment Contractor and Program Manager as highlighted in PA 161 of 2000. This model allows for the integrated and coordinated management of all functions.

Clarifications were requested from TFI as follow:

TFI's Response:

TFI has worked with and would continue to work with State Departments and outside contractors as directed by the CCI. To date we have worked with Plante Moran on the MESP annual audit, Publicom for public relations and CFED and Washington University of St. Louis on the SEED Program. We have also worked with the Department of Information Technology on the automation of the state payroll process (third-party vendor payment process).

- b. At this time the State feels that all data interfaces have been identified in the existing Contract. If additional interfaces are required in the future, then provide TFI's method for providing for data interfacing. Assume the interface contains data that exists on your system pertaining to MESP.

Contractor Response to this Task:

Each interface is different and would be need to be scoped out as such. Depending on the size of the files and frequency of the data exchanges a variety of methods could be used to exchange the data. In today's environment the most likely method that would be established to transmit data between TFI and MESP would be through the user of File Transfer Protocol (FTP). Data exchanged through this method is typically encrypted (we use a product called PGP) and exchanged across secure servers.

- c. Contractor will provide for data recovery of the MESP, which must include two (2) scenarios, system recovery and disaster recovery.

Contractor Response to this Task:

Please see Exhibit 9 for Data Recovery from Contractor's response located in DMB master Contract file..

- d. Provide TFI's hardware configuration for the MESP.

Contractor Response to this Task:

BFDS' principal operating systems, TA2000 and AWD, were developed by their parent company, DST Systems. BFDS is a remote user of TA2000 and AWD, which are run from DST's Data Centers in Kansas City.


Computer Hardware Configuration for BFDS' Winchester Data Center
IBM 2064 – 1C7

1450 MIPS, seven physical processors

IBM 2064 – 1C9

1770 MIPS, nine physical processors

IBM 2064 – 111

2050 MIPS, 11 physical processors

IBM 2064 – 112

2175 MIPS, 12 physical processors

IBM 2064 – 112

2175 MIPS, 12 physical processors

IBM 2064 – 113

2290 MIPS, 13 physical processors

AMH GS2038E

518 MIPS, 3 physical processors

AMH GS2048E

676 MIPS, four physical processors

AMH GS2058E

818 MIPS, five physical processors

Peripherals
Magnetic Tape

12 Virtual Tape Servers

Disk Storage

DST currently utilizes 79.2 terabytes of DASD in supporting the TA2000 environment. This is composed of various models from the following vendors: EMC, STK, IBM, HDS and Amdahl.

BFDS' AWD Data Center Computer Hardware Configuration

In order to support all of their clients using the AWD product, DST uses a variety of AS/400s as well as a number of different types of storage devices. The hardware specifics are listed below.

IBM iSeries 570 - PS1 (S1008B2D)

18,000 CPW, 5.2TB DASD, 48GB Main Memory, six Processors

IBM iSeries 570 - PS2 (S1049169)

24,000 CPW, 2.7TB DASD, 64GB Main Memory, eight Processors

IBM iSeries 570 - WS1 (S102008M)

18,000 CPW, 4.9TB DASD, 48GB Main Memory, six Processors

IBM iSeries 570 - WS2 (S104XHHM)

18,000 CPW, 9.5TB DASD, 48GB Main Memory, eight Processors



Peripherals

The numbers and types of tape, disk storage, controllers, and other peripheral devices available at the AWD Data Center are:

Magnetic Tape

IBM LTO 3584, six drives each

Disk Storage

The AWD Data Center currently utilizes 22.3 terabytes of DASD on the iSeries in supporting the AWD database environment, and in addition, 40 terabytes of EMC DASD in support of AWD images.

Optical Storage

The AWD Data Center currently has the capacity to support 26.6 TB of optical storage. These 26.6 terabytes are composed of IBM and Cygnet optical jukeboxes.

AWD Peripheral Servers

A sampling of some of the peripheral servers follows.

AWD/Fax

Compaq DL 380 Rack

3.6 GHz processor, 2 GB memory, 36 GB SCSI hard drives, CD-ROM drive, mouse, keyboard, network card/cable, Microsoft Windows Server, RightFax Software, Brooktrout 4 Channel card.

EnCorr (Correspondence Feature)

Compaq Proliant ML370 Rack

3.6 GHz processor, 2 GB memory, 36 GB SCSI hard drives, CD-ROM drive, mouse, keyboard, network card/cable, Microsoft Windows Server, Microsoft SQL Server.

AWD/Report Import Processor

Compaq Proliant ML370 Rack

3.6 GHz processor, 2 GB memory, 36 GB SCSI hard drives, CD-ROM drive, mouse, keyboard, network card/cable, Microsoft Windows Server, DB2 Universal Database v7 or higher.

- e. TFI will provide software configuration for the MESP.

Contractor Response to this Task:

TFI utilizes the following DST software to administer MESP.

TA2000

DST combines proven technology and contemporary design to deliver shareholder and retirement plan recordkeeping solutions and services. This recordkeeping system was introduced in 1969, with TA2000 being released in 1990 after a major reengineering project. Highlights of this platform include:

- Integrated technology environment and seamless support for shareholder and participant accounting, distribution, e-commerce, voice response, and output media
- World-class data management and recovery facilities to ensure system availability and security
- Flexible service models and implementations to meet client' specific business needs

**TA2000 Desktop**

The graphical user interface to TA2000, the TA2000 Desktop, provides a user-friendly environment with intelligent workstation functionality to simplify processing and improve accuracy.

The TA2000 Desktop supports new account establishment, redemptions, exchanges, transfers, purchases, and account and customer maintenance (e.g., maintenances include updates to names, tax IDs, systematic agreements, bank instructions, beneficiary information, addresses, and e-mail addresses). In addition, HTML/Internet/Intranet access and all frequently consulted inquiry functions (account master, history, bank instructions, systematic agreements, order detail, financial institution/branch and rep detail, etc.) are included in the TA2000 Desktop.

Automated Work Distributor (AWD)

AWD is DST's business process management solution and was introduced in 1989. AWD was designed and engineered by DST to accomplish two principal objectives: create a processing environment totally free of paper and provide an end-to-end tracking and audit system for all inbound work items.

AWD is a graphical, image-enabled intelligent work management application that electronically routes work associated with documents, phone calls, faxes, and other sources through an organization. Through the administrative functions, workflows are defined based on the priorities of the various types of work in order to maximize work management. This means complete control over the step-by-step process. AWD also provides the ability to make changes to the workflow easily and dynamically in a real-time environment.

TA2000 Desktop and AWD Integration

The TA2000 Desktop provides complete integration between the core system, TA2000 and the workflow system, AWD. The TA2000 Desktop is designed from the operator's point of entry for both products as well as other products. By combining AWD and TA2000 into a single user interface, BFDS has eliminated redundancies common to imaged-enabled processing environments, reduced errors, simplified the user's desktop, reduced learning time and provided greater consistency regarding how work is labeled, organized and routed.

As associates use the TA2000 Desktop to perform inquiries or account updates, data is automatically transferred between the Desktop and AWD, eliminating the need for re-keying, or indexing of information. Through the use of administrative tools, BFDS can completely control the behavior of the Desktop's work delivery and creation as well what information is stored for each type of work. The TA2000 Desktop will automatically update AWD with information needed for future processing or retrieval.

f. Data and System Security

1. TFI must provide the physical and logical system access controls and security necessary to ensure secure access for the functions described in this Contract. Physical and logical access controls for all facilities, equipment, and applicable systems must be addressed. The following national/international security standards and publications must be adhered to, including, but not limited to:

Contractor Response to this Task:

TFI utilizes BFDS and its systems provider DST to provide recordkeeping services for the MESP program. The following responses are based on the data and systems security policies and procedures for BFDS and DST.



- a) "National Standards: An Introduction to Computer Security", National Institute of Standards and Technology, Computer Resource Security Center (see <http://csrc.nist.gov/cc/index.html>)

Boston Financial's security policies and controls are targeted to meet the standards of the NIST Security framework.

- b) Interagency Guidelines Establishing Standards for Safeguarding Customer Information; Final Rule (12 CFR Part 30, et al)

Boston Financial's security policies and controls are targeted at being in compliance with the Interagency Guidelines and other measures relating to Incident Response.

- c) The Department of Health and Human Services and the Department of Social Security Administration (Section 45d(1)(6) of the Social Security Act and Privacy Act U.S.C. 552)

Boston Financial's security policies and controls are targeted at being in compliance with this and other privacy and confidentiality measures.

- d) Social Security Number Privacy Act 454 of 2004 at <http://www.legislature.mi.gov/mileg.asp?page=print&objName=mcl-act-454-of-2004>.

Boston Financial's security policies and controls are targeted at being in compliance with this and other privacy and confidentiality measures.

The following security control requirements must be addressed:

1) Management Controls

- a) Risk Assessment of operational and technological risks, including threat identification
- b) System Life Cycle Management
- c) System Security Certification
- d) System Security Accreditation and Assurance
- e) System Security Plans.

2) Operational Controls

- a) User Administration, e.g., User Account Management, Password Management, etc.
- b) Separation of Duties
- c) Personnel Security
- d) Security Awareness, Training, and Education
- e) Contingency Planning, i.e., Business Continuity and Disaster Recovery Plans
- f) Security Incident Handling
- g) Physical & Environmental Security
- h) Configuration Management
- i) Media Protection, e.g., Media Labeling, Media Storage, Media Transport, Media Sanitization, etc.
- j) System Security, e.g., Malicious Code Protection, Intrusion Detection Tools and Techniques, Spam and Spyware Protection, Security Alerts and advisories, etc.
- k) Data Security, e.g., Data Input Restrictions, Data Processing Error Handling, Data Output Error handling, etc.



3) Technical Controls

- a) Identification and Authentication Methods
- b) Logical Access Controls, i.e., a technical means of controlling access
- c) System and Communication Protection, e.g., Security Function Isolation, Denial of Service Protection, Transmission Integrity and Confidentiality, Intrusion Detection etc.
- d) Change Control
- e) Cryptographic Technologies
- f) Audit Trails.

Contractor Response to this Task:

TFI utilizes BFDS and its systems provider DST to provide recordkeeping services for the MESP program. The following responses are based on the data and systems security policies and procedures for BFDS and DST.

1. Management Controls

- a) Risk Assessment. Boston Financial maintains an Information Security Program with dedicated individuals to carry out numerous ongoing tasks including, but not limited to Risk Assessment processes, Security Assessment and Remediation processes, and Vulnerability and Threat Monitoring and Management. These processes are coupled with ongoing reporting to highest level of management on a quarterly basis.
- b) System Life Cycle. Boston Financial's Information Security Department maintains and reviews policies and controls related to secure System Lifecycle Management, such that security processes exist and are followed from to planning, development, testing, production implementation, and end of life/use processes.
- c) System Security Certification. Boston Financial's Information Security Department maintains policies and processes related to secure system configuration. This includes programs both in place and in planning phases to maintain secure configuration baselines of key systems such as desktops, servers, routers, firewalls, switches, etc.
- d) System Security Accreditation. Boston Financial maintains policies and processes both in place and in progress to ensure proper compliance with established secure configurations and baselines. These include ongoing assessments and persistent scanning for both vulnerabilities and secure configuration compliance. This monitoring process is coupled with an ongoing remediation process, which is reported to highest level of management on a quarterly basis.
- e) System Security Plans. Boston Financial maintains an Information Security Program with dedicated individuals tasked with maintaining and enforcing policies and processes to ensure system security throughout the enterprise such that they protect our customers' data, data privacy and confidentiality, and data integrity and availability. This program's framework strives to model itself along the lines of industry accepted standards such as ISO 17799 and others, along with meeting internal and the clients' requirements for adherence to legal and compliance regulation measures relevant to our industry.

2. Operational Controls

- a) User Administration

System Sign-on Security

System users must have a valid access ID and password before they can enter or "sign-on" to any application. There are two types of sign on IDs: Top Secret IDs and application IDs. The Top Secret software package is used to restrict sign-on privileges to TSO, batch, and several production and test online applications. When a Top Secret accessor ID is authorized for TSO and batch, Top Secret restricts user access to files, programs, and other resources. When a Top Secret accessor ID is authorized for an online application, Top Secret restricts user access to CICS transactions but access to files and other resources is controlled by application security. DST's Data Security Department administers Top Secret.



TA2000 On-line Password Security

For both TSO and TA2000, each person who is authorized to have access to the system is assigned a user ID. A request form for new users must be completed and approved by the manager before the account will be setup. These IDs have specific passwords that are required to be input before access to the system is granted. Passwords are assigned by the user and must be changed every 30 days. Modifications to a user ID after creation require a request to Data Security that has been approved by management.

TA2000 and TSO have a history file of the last six user passwords, which prevents the user from using any of these previous passwords again for six months. All passwords are required to contain at least one alpha and one numeric character, must be a minimum of seven characters, and cannot be too similar to the previous six passwords. Once a user has changed his/her password, the user cannot change it again for at least seven days. If a user needs a password reset for TA2000 or TSO, a designated team lead or manager within the business unit can be granted authority to reset the ID. Otherwise, the user will need to call the Boston Financial Service Center, who will validate the user via a unique set of credentials and Boston Financial's Data Security Team will reset the ID.

Front-end applications require user passwords be different from user IDs. These applications include, but are not limited to, the TA2000 Desktop, Same-Day Cash Management (SDCM), High Speed Data Entry (HSDE), AWD/Contact, Broker/Dealer Vision and FAN Mail. Access to the Z-series mainframe requires user passwords be different than their corresponding user ID. In addition, the following password rules are standard across the TA2000 front-end applications:

- An initial password will be built, which will be an algorithm of first seven characters of the last name (or complete last name if shorter).
- Operators will then select their own password and be forced to change an initial password.
- The last seven passwords (six plus current) are saved and cannot be reused.
- After a new password is entered it cannot be altered for seven days.
- All passwords must be alphanumeric, composed of at least one alpha character and one numeric character.
- The length of passwords must be at least seven characters, with blanks being invalid.
- The new password must be entered twice.
- A new ID will be disabled if not used within seven business days from the start date. The ID start date will default to the date the ID was generated and can be manually changed by the operator establishing the ID if necessary.
- A reset ID will be disabled if not used within two business days from being reset.
- A new ID cannot be used until the start date.
- Passwords must expire at least every 30 days and the operator will be forced to change his/her password before entry into TA2000.
- A session will time out after a client-defined length of time inactive.
- An associate will be locked out after attempting to logon three times with an invalid password.
- Passwords are suppressed upon input.
- Passwords are reset using an online function. An authorized individual determines which associates will be granted the authority to reset a password. Having the authority to reset a password is a discreet security function. In other words, those with reset access need not have full access to all other security functions.

Shareholder Voice (Automated Telephone System) PIN Security

The shareholder will be prompted to establish a PIN upon entry into Voice the first time. If accessing Voice through SSN, the shareholder will be prompted to verify ownership by entering an account number linked to that SSN. The shareholder will then be allowed to establish a four- to eight-digit numeric PIN number. On subsequent entries into Voice, the shareholder will only need to enter the PIN number. If the shareholder is accessing the feature through fund/account, the fund company has the choice of setting up the shareholder Voice feature to either default the PIN to the last four digits of the shareholder's SSN or to have the shareholder establish a PIN by entering the SSN followed by a four-to-eight digit PIN.



On subsequent entries into Voice, the shareholder will only need to enter the PIN number. Callers can change their PIN at any time. The shareholder information is retained in an encrypted secure file within the DST server complex.

Clients can choose to share PINs between the shareholder Voice feature and the shareholder Internet feature (FAN Web).

Shareholder Internet Security

FAN Web allows clients to define the following shareholder PIN composition features: PIN length from four to eight characters; the number of numerics required; the number of alpha characters required; and the number of special characters required.

Once validated with the PIN files on TA2000, the shareholder is provided with the balances, historical information, and, at the fund's discretion, the ability to initiate selected transactions. The shareholder information is retained in an encrypted secure file within the DST server complex until the session has not been used for a client-defined time ranging from 1 to 60 minutes.

Automated Work Distributor Password Security

AWD passwords have the following characteristics:

- Enforced password change after a pre-set number of days
- Encrypted passwords
- Minimum pre-set password length
- Client-defined number of failed logon attempts before becoming disabled

Boston Financial's Access Control Policy

Boston Financial's access control policy outlines the requirements for authorizing and authenticating individuals prior to granting them access to information resources. Access control is determined by the business requirements and security classification of the information processed on Boston Financial systems. Users of Boston Financial's information resources are responsible for protecting and managing the confidentiality of their passwords and all actions performed under their User ID's. User access rights are reviewed periodically to ensure appropriate access is in place.

All network connections to and from external sources must be evaluated through a risk assessment process and authorized by management - only Information Security approves all external connections.

Authentication and Control

- User IDs must not be utilized by anyone except the individual to whom the ID has been issued.
- All users with access to the Firm's information resources must use a User ID that has been specifically assigned to them.
- Users are responsible for all activity performed with their personal User IDs.
- Anyone granted an ID, must not exploit system security to damage systems or information, to obtain resources beyond those they have been authorized to obtain, to take resources away from other users, or to gain access to other systems for which proper authorization has not been granted.
- User ID's created for Contractors, consultants, temporary employees and vendors must be for a limited period of time, not to exceed the term of their contract.
- All unsuccessful attempts to access systems or information must be logged.
- Access to all operating systems, business applications and information resources must, at a minimum, be controlled by using passwords and unique User IDs.
- User IDs and passwords contain a classification of Confidential. Therefore, the appropriate classification guidelines should be followed.

***Password Controls***

- Password change mechanisms must not pre-fill the User ID.
- Where technically possible, there must be a mechanism in place for the user to change his/her password on demand
- Password resets must prompt for immediate password change by the end user.
- Passwords must be different than the User ID
- Where technically feasible, passwords require a combination of alpha, numeric, upper and lower case or special characters.
- Passwords must not be displayed and must be encrypted and stored securely.
- An individual's password must not be stored in a file (e.g. scripts)
- Scripts or code containing user ID and passwords used by processes for application or data transmission (e.g. file transfer) must be secured via encryption or access control lists

Identification Verification Prior to Password Reset

Prior to a password being reset, the access control authority, whether it is the Business Manager, Data Security, or Service Center, verifies the identity and access level of the user requesting the reset.

Removing/Changing System Privileges

Boston Financial's Compliance Department is responsible for assigning, updating, and terminating user access to the transfer agent processing applications to ensure the safeguarding of fund assets and securities.

A user request form is completed and authorized within the Boston Financial Client Service Team to request new user access or update existing user access to the transfer agent processing applications. The request is sent to the Compliance Department where a review is performed for proper authorization and to ensure that the requested access is commensurate with the user's job responsibilities.

When associates transfer to other positions within the company, their new manager completes a new user profile for the associate. The new profile details the level of access that the associate is now authorized to have. Once the manager completes and approves the new profile, it is forwarded to Data Security. At that time, the old user profile is deleted and the new user profile is entered into the system.

On a daily basis, Human Resources provides a terminated associate list to Data Security and the Information Technology (IT) Department. Once the information is received, Data Security immediately deletes the terminated associate from the system and the IT department deletes the terminated associate from the Desktop and email profiles.

b) Separation of Duties

BFDS' internal controls are constantly being reviewed and updated. Controlling risk through strict segregation of duties is a high priority within all operations. Separation of duties is achieved throughout the organization by separating authorization functions, transaction processing functions, and reconciliation functions from each other. Reporting lines within the organization clearly depict this separation and our automated systems are designed to maintain this separation of duties. The internal controls are also designed to ensure that all transactions are executed in accordance with management's general or specific authorization; access to assets is permitted only in accordance with management's authorization; adequate asset accountability is maintained through reconciliations and timely resolution of exceptions; all transactions are recorded as necessary to maintain the accountability for assets; and system access is further limited by functionality levels to ensure proper segregation of duties

The adequacy of internal controls is monitored and assessed through numerous internal and external audits including:



- Corporate Audit – Annual Audit Plan
- Federal Securities Law and Mapping Matrix
- SAS 70 Examinations - On an annual basis, PriceWaterhouseCoopers performs a Type 2 SAS 70 audit of operations and systems
- Compliance Program Review - PricewaterhouseCoopers performs an independent annual assessment of Boston Financial's compliance program, which includes AML policies and procedures
- Audit Committee – Quarterly meetings
- Monthly management meetings

This multi-pronged approach to risk management results in ongoing oversight and improvement in internal control.

c) Personnel Security

Boston Financial has physical and user security controls in place to ensure customer confidentiality. Highlights of our procedures include:

- A background check (including credit, social security number, criminal, education and employment) is performed on all prospective associates prior to employment at Boston Financial.
- All associates are fingerprinted on or before the first day of employment. The fingerprint is forwarded to the Federal Bureau of Investigation to verify there is no record of criminal activity.
- Associates are subject to signing a confidentiality agreement.
- Boston Financial maintains a Code of Ethics and Professional Standards Policy outlining the importance of safeguarding client information.
- Locked recycle bins are maintained for the disposal of all client and investor information. An external vendor has been engaged to securely transport and shred this information.
- Access to the various Boston Financial systems is protected through strong passwords. In addition, a time-out feature exists within the system that automatically signs off the user after an extended period of inactivity.
- Boston Financial maintains Information Security Policies to ensure client and shareholder information is adequately protected.
- Confidential investor information is not reflected on paper statements.

d) Security Awareness, Training, and Education

All associates participate in an annual mandatory security awareness tutorial. Additionally, our Information Security website provides ongoing training, awareness, and education. The Information Security Department designed the website to educate Boston Financial associates on securing our information and technology resources. The website outlines our policies and procedures, provides education and awareness bulletins, and associates have the opportunity to post questions.

e) Contingency Planning, i.e., Business Continuity and Disaster Recovery Plans

DST and Boston Financial maintain an active readiness for full business recovery. Our corporate business recovery plan provides a detailed and tested recovery plan that addresses local operations, risks and conditions and has designated alternative crisis centers as well as back-up sites in the event of a major disaster. Please refer to Exhibit 9 below for an overview of our business continuity and disaster recovery plans.



f) Security Incident Handling

Boston Financial's Information Security Department has developed an Incident Handling and Response plan, in-line with industry best practices, and which has received approval from senior management. Depending on the nature and scope of the incident, key individuals, business groups and points of contact will coalesce to ensure the proper functioning of this program at each phase: Preparation, Detection, Containment, Eradication, Recovery, and Follow-Up. BFDS Information Security also maintains Intrusion Detection/Prevention systems (along with other detection and logging systems) to assist in monitoring for possible security incidents.

g) Physical & Environmental Security

Card key access is required to enter Boston Financial facilities. Boston Financial's data center is located on a locked floor of its Braintree, MA facility. Only associates who require access to the data center to perform their duties are permitted. Senior Management of the Infrastructure Team as well as Information Security authorizes access to the data center. Each Boston Financial location has security guards stationed at the front entrances, as well as performing foot patrols. Visitors must sign in at the Security Desk and be escorted by a Boston Financial employee while on the premises. Visitors are restricted from secure areas.

DST System's mainframe and servers are housed at our Winchester data center. The data center is a 160,000 square foot building with 70,000 square feet of raised flooring. The building is on 22 acres of land surrounded by a chain link fence with barbed wire, and approximately 12 miles from downtown Kansas City, MO. There is one gate entrance onto the property, which is monitored by security at the gatehouse. In order to gain access to the perimeter, a guest must show appropriate documentation for the visit. All perimeter entrances are controlled by card key and entrance to critical areas required passing through a biometric reader. Employees use their card access badge to enter through the gate to the parking area. Visitors and non-authorized individuals must stop at the gate and inform security the purpose of their visit. This building also houses technical and administrative offices.

The AWD data center is 14,000 square foot with raised flooring in an eight-story building (seven floors above ground level, data center 1st floor below ground level). A security officer is stationed in the lobby next to the data center elevator. Employees, if authorized, use their card to access the elevator to the data center, and on the first floor access a proximity card reader to gain entrance into the data center. This data center is built as a box within a box; there are no windows.

DST System's recovery center is a 106,000 square foot building with 80,000 square feet of raised flooring. A chain link-gated fence surrounds the perimeter. All associates must use their card key to gain entrance. All visitors must be pre-approved for entry and speak to a guard inside the building to gain entrance.

h) Configuration Management

Boston Financial has configuration policies in place. Please refer to responses in 1.b and 1.c.

i) Media Protection, e.g., Media Labeling, Media Storage, Media Transport, Media Sanitization, etc.

Information Sensitivity Policy

Boston Financial's information sensitivity policy defines the standard requirements for classifying and labeling information in order to establish appropriate levels of protection equivalent to the information's value to Boston Financial and its clients.

The requirements apply to all information contained with Boston Financial or shared client information residing at DST and includes, but is not limited to: electronic information, information on paper and information shared orally or visually (such as telephone and video conferencing).

Information Classification

Boston Financial classifies information in one of the following three categories:



- Public: Information that has been determined by Boston Financial and its customers to be available for public distribution. Public information is not sensitive in context or content and requires no special protection.
- Internal Use Only: Information that is deemed sensitive due to financial or legal ramifications and which is for use only by authorized Boston Financial employees or to fulfill Customer Agreements.
- Confidential: Information that is proprietary or time-sensitive information so that unauthorized disclosure may cause financial or legal ramifications or a potential for fraud. Examples include: potential acquisition targets, new business, telephone directories, personnel information, etc.

Confidential and Internal Use Only

Confidential or Internal Use Only information must not be released to customers, their agents (i.e. public accountants, consultants, etc.) or their regulators, except under the following conditions:

- Unless prohibited by law or regulation, Boston Financial information will not be released to 3rd parties unless a confidentiality agreement has been signed and uses language pre-approved prior to its release by Boston Financial's Legal Department.
- In accordance with our Privacy Policy and that of DST, an authorized person at the client must approve all requests for client information before it can be released. Boston Financial Officers must approve the dissemination of client information.
- Information to be distributed in response to a subpoena must be reviewed and approved for distribution prior to its release by Boston Financial's Legal Department.



Hardcopy Distribution of Information

Hardcopy (printed)	Confidential	Internal Use Only	Public
Labeling	Each page of document must be labeled Confidential	Each page of the document must be labeled For Internal Use Only	No special requirements
Duplication	Information owner determines permissions	Duplication for business purposes only	No special requirements
Disposal*	Must be destroyed (e.g. shred or equivalent means of disposal)	Must be destroyed (e.g. shred or equivalent means of disposal)	No special requirements
Storage	Locked up when not in use	Master copy secured against destruction	Master copy secured against destruction

Softcopy Information

Electronic (Stored)	Confidential	Internal Use Only	Public
External labeling	Identify owner and mark Confidential	Labeling at discretion of owner	No special requirements
Fixed Access Controlled Media (hard drives)	No special requirements	No special requirements	No special requirements
Fixed Media that is NOT access controlled (laptops)	Encrypted	No special requirements	No special requirements
Portable media (CD's, tapes, etc.)	Encrypted	No special requirements	No special requirements
Disposal of electronic media (diskettes, tapes, hard drives) *	Purge or expunge beyond the ability to recover	Purge or expunge	No special requirements



Deletion of Electronic Information *	Delete by fully writing over information (need utility from IT)	Delete files through normal delete command, option or facility	No special requirements
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**Note: Personnel must not destroy or dispose of potentially important records or information without the specific approval of management. Unauthorized destruction or disposal of Boston Financial’s records will subject personnel to disciplinary action, including termination and possible prosecution.*

Transmitted Information

Electronic (Stored)	Confidential	Internal Use Only	Public
Mail	Internal: Confirmation of receipt required. Encryption optional External: Confirmation of receipt required. Encryption is required for mail transmitted outside of Boston Financial.	No special requirements	No special requirements
Facsimile (FAX)	Attended FAX for receipt	Information owner defines requirements	No special requirements
Interoffice Mail	CONFIDENTIAL marking must appear on envelope; Clearly addressed and sealed.	No special requirements	No special requirements
Local Area Network (LAN)	Confirmation of successful transmission is required; Encryption optional	No special requirements; Encryption optional	No special requirements
Voice Mail (Phone Mail, Audix)	Sender must confirm message was received	No special requirements	No special requirements
Wide Area Network (WAN)	Confirmation of successful transmission is required; Encryption optional	No special requirements; Encryption optional	No special requirements
Wireless or Cellular Phone	Do NOT transmit	No special requirements	No special requirements

For the storage of shareholder records, all original source documents are maintained in a client specific archive box immediately after the items are scanned. The imaging and workflow distribution system, AWD, provides a box and page number which is sprayed onto the source document for retrieval purposes. The original source documents are retained in-house for ten days before being sent to our off-site storage provider. Source documents are returned back to the requestor within 24 to 48 hours.

AWD can store both images and index information for work items to permanent offline storage. A functional component of AWD is AWD/Archive, which allows clients to define, by work and source type, where AWD information and/or images should be stored. Available storage mediums include DASD, optical, and tape. DST has secured a no-action letter from the SEC stating that AWD is compliant with regulations governing the destruction of original documents.



j) System Security, e.g., Malicious Code Protection, Intrusion Detection Tools and Techniques, Spam and Spyware Protection, Security Alerts and advisories, etc.

Boston Financial maintains and monitors a number of systems and processes to address the issue of vulnerability management. These include, but are not limited to spam filters used with the email messaging systems, centrally managed virus and malicious code protection for all desktops, laptops and servers (Mcafee/EPO) where systems are regularly scanned and updated; centralized patch management for desktops and servers, use of BlueCoat proxy filter for Internet browsing (including scanning and filtering of content that might contain malicious code, an Intrusion Detection/Prevention system which monitors all critical ingress and egress points to the network, regular notification of security alerts through monitoring of key sites such as CERT and SANS, etc.

k) Data Security, e.g., Data Input Restrictions, Data Processing Error Handling, Data Output Error handling, etc.

All users of TA2000 must have a valid access ID and password before they can enter or “sign-on.” After an authorized user has signed on to a production application, security determines which functions the user may perform as well as the specific records the user can access. Examples of fund level security include setting up a new account and processing a purchase transaction. In addition to fund level security, individual access may be limited to accounts with a specific dealer, dealer/branch, dealer/representative, or a specific tax identification number. Within each of these security levels, one may elect to warn or prevent operators using the TA2000 Desktop from certain processing situations that may arise. The situations include:

- Processing as-of transactions
- Processing transactions that would close a house account
- Processing a financial transaction on an account identified as a Timer account
- Processing a redemption using a special payee

All security violations are reported. Reports are also available showing user IDs, the name of the users, the department of the user, and the rights associated with that user's unique ID.

AWD security is managed within AWD by the access privileges granted to each user. AWD requires a sign-on ID and password.

The on-line AWD Administration Functions permit managers to secure each representative access to work item sources. A service representative can have “view only,” “lookup,” or “get work,” access in the system. Business area, work type, and queue identify the work. Managers assign business area, work type, and queue privileges to their associates to accomplish the dual goals of work assignment and security.

Boston Financial’s Compliance Department is responsible for assigning, updating, and terminating user access to the transfer agent processing applications to ensure the safeguarding of fund assets and securities.

A user request form is completed and authorized within the Boston Financial Client Service Team to request new user access or update existing user access to the transfer agent processing applications. The request is sent to the Compliance Department where a review is performed for proper authorization and to ensure that the requested access is commensurate with the user’s job responsibilities.

When associates transfer to other positions within the company, their new manager completes a new user profile for the associate. The new profile details the level of access that the associate is now authorized to have. Once the manager completes and approves the new profile, it is forwarded to Data Security. At that time, the old user profile is deleted and the new user profile is entered into the system.

On a daily basis, Human Resources provides a terminated associate list to Data Security and the Information Technology (IT) Department. Once the information is received, Data Security immediately deletes the terminated associate from the system and the IT department deletes the terminated associate from the Desktop and email profiles.



3) Technical Controls

- a) Identification and Authentication Methods; and
- b) Logical Access Controls, i.e., a technical means of controlling access
- c) System and Communication Protection, e.g., Security Function Isolation, Denial of Service Protection, Transmission Integrity and Confidentiality, Intrusion Detection etc.

Data obtained by DST and Boston Financial is confidential and proprietary to the customer. DST's policy states that such data will be used as permitted by the customer. To maintain confidentiality, DST and Boston Financial will not disclose customer confidential information, to any other person, firm or corporation without the consent of the customer.

DST's standards for file access require that each file be prefixed with assigned system identification. Within each file, records are also segregated by key values such as management company and fund/account. Boston Financial has physical and user security controls in place to ensure customer confidentiality.

In addition, management-level security is established for batch processing through Top Secret. Every time a job is submitted, a subroutine executes to validate the input parameters and selection criteria against the management company and Top Secret rules to ensure the access is authorized, before processing continues.

Confidentiality

All users of TA2000 must have a valid access ID and password before they can enter or "sign-on". After an authorized user has signed on to a production application, security determines which functions the user may perform as well as the specific records the user can access. Examples of fund level security include setting up a new account and processing a purchase transaction. In addition to fund level security, individual access may be limited to accounts with a specific dealer, dealer/branch, dealer/representative, or a specific tax identification number. All security violations are reported. Reports are also available showing user IDs, the name of the users, the department of the user, and the rights associated with that user's unique ID.

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Multi-Level Security System

TA2000 relies on a multi-level security system to provide protection to client data contained on the mainframe. By using this approach, the system can be tailored to meet or exceed our client's requirements in the data security area.

Within each level of security, there are different methods used to ensure the integrity of the data. A brief overview of the levels of data security are given below:

Files and Data Access

Management level security is established for batch processing through Top Secret. Every time a job is submitted, a sub-routine executes to validate the input parameters and selection criteria against the management company and Top Secret rules to ensure the security is authorized, before processing continues.

Network Access Security

DST's computer system can only be entered through dedicated terminals, dial-up terminals, or JES remotes. Unless a terminal or JES remote is defined in one of the legal pathways, that terminal cannot communicate with the mainframe. This would prevent an unauthorized terminal from accessing any client data.



Dedicated terminals must be specifically defined to DST's network. A DST-written program, VIPS (Virtual Interactive Product Switch), presents an initial menu screen of authorized applications on all dedicated terminals. DST's Data Security Department is responsible for administering VIPS and controlling the applications that may appear on any given terminal. Each application access has to be granted by the "owner" of that data prior to allowing access by a user.

A dial-up session may be established in two ways: through CompuServe or Security Dynamics SecurID™. The CompuServe system provides access to the networks of many companies including DST. Each CompuServe user has a unique sign-on and password that limits usage of the network.

SecurID uses "smart card" technology. A credit card-sized card that displays an LCD readout is issued to the dial-up user. This card generates a unique number every 60 seconds, which is synchronized with the front-end hardware of the SecurID system. A valid user must be in possession of this card and the corresponding PIN number in order to access the system. SecurID authority is tightly controlled and is limited to DST emergency personnel and is specifically not available to clients.

JES Remote

Many clients submit batch jobs via JES remote work stations (RJE) and nodes (NJE). This link may be accomplished through dedicated or dial-up communication lines. Both access methods are restricted by JES passwords, and dedicated lines are additionally protected by line passwords. Additionally, RJE's and NJE's must be defined to Top Secret, DST's system access control software. Top Secret also restricts the files and programs that these batch jobs may access.

Sign-on Security

System users must have a valid access ID and password before they can enter or "sign-on" to any application on the Virtual Interactive Product Switch (VIPS) menu. There are two types of sign-on IDs: Top Secret IDs and application IDs. The Top Secret software package is used to restrict sign-on to on-line applications, TSO and batch processing. When a Top Secret sign-on ID is authorized for TSO and batch processing, Top Secret restricts user access to approved files, programs, and other resources. When a Top Secret sign-on ID is authorized for an on-line application, it restricts user access to CICS transactions.

TA2000 validates sign-on IDs and passwords within the application. Designated application users create new sign-on IDs. After an authorized user has signed on to a production or test on-line application, application security determines which functions the user may perform as well as the specific records the user can access.

AWD Security

Security is managed at a number of levels in AWD:

- Physically secured on a single server in a secure computer center
- At the network level through the network manager security
- Within AWD by the access privileges granted to each user
- Host access controlled by RACF, DCE, or TopSecret, for example

Users are assigned a sign-on and password with these security features:

- Automatic log-off after a pre-set time
- Enforced password change after a pre-set number of days
- Encrypted passwords
- Minimum pre-set password length
- Log-on restricted to working hours

Please refer to the response in Question 2a – Operational Controls for more information on system sign-on security and our access control policy.



d) Change Control

Change Control Process -- Client Specific

For change control requests that are client-specific, Boston Financial's Technical Group serves as the point of contact between DST and the client and coordinates additional resources as needed. The Boston Financial Service Center uses Remedy (software tool) as its principal problem and change management tool. Below, we have provided an overview of the process.

Overview

The client contacts their Boston Financial Customer Technical Interface (CTI) representative regarding the change request. The technical representative then submits a request into Remedy, Boston Financial's principal change management tool, on behalf of the client. Once received into Remedy, the Boston Financial Technical group submits the appropriate internal change control. To ensure consistent, on-going communication regarding requested changes, weekly change control meetings are conducted with DST and Boston Financial. In return, your technical representative will provide you updates regarding your request.

Timeframes

Standard Change Control: Proposed changes are communicated at the change control meeting two weeks prior to implementation (i.e., if Saturday is the 15th, changes are to be presented on the 6th.). Your technical representative will ensure that the appropriate lead-time is provided.

Emergency Change Control: Emergency change control procedures are in place for those requests that do not meet the standard timeframe, but still require implementation. A Boston Financial Infrastructure manager approves the emergency request and oversees its implementation. The request is tracked via Remedy.

Notification Prior to Implementation

Standard Change Control: The technical representative contacts the affected client(s) and if any open issues exist, the technical representative will work with your Client Service Team to resolve them. Open issues are reviewed at the following meeting.

Emergency Change Control: Since an emergency change request requires management approval prior to implementation, appropriate authorization and notification will have been completed already. If the request is not approved, the Boston Financial Technical Group notifies all affected technical and business contacts.

Notification During Project Execution

During a project's execution phase, three different scenarios can occur: completion, abnormal termination, or delay. Regardless of the scenario, the Boston Financial Technical Group oversees the communication and provides updates to the client and technical team as follows:

Project Delay: If a project is delayed more than 30 minutes, the Boston Financial Technical Group notifies the client and the technical team. If a project is delayed more than 60 minutes, Infrastructure management is also notified.

Project Termination: Once it has been determined that a project cannot be completed, the Boston Financial Technical Group immediately notifies the client and the technical team and updates the Remedy Change Control request form.

End of Project Completion: Once a project completes, the Boston Financial Technical Group notifies the client and the technical team. It also updates the Remedy Change Control request to indicate a completed status.



Platform-Wide

DST maintains a well-organized "change control" process. All changes to the hardware or software environments at DST are required to go through the change control process. Significant changes are entered into the change control process months before targeted implementation dates. Numerous change control meetings take place weekly at DST's data center; representatives from all technical departments attend. Change control meetings are segmented into hardware/software and network-related. The initial change control meeting is held on Monday to review the changes that were scheduled to be implemented the previous weekend, to determine if they were successful or not, and if any other action is required. Changes scheduled for the upcoming weekend are reviewed at the Monday meeting. All scheduled changes are documented in the form of minutes, which are circulated each Thursday.

All scheduled changes to the features governed by these two groups are presented to DST's internal and external clients to ensure that they are aware of the planned changes, and to give the client an opportunity to express any concerns associated with the change. Changes, such as new versions of software products, are communicated well in advance of implementation dates, and often include "test windows" to provide clients with the opportunity to exercise the software prior to putting it into production.

When DST has hardware changes to make, such as upgrading a CPU, adding DASD, tape drives, or front-end processors, the work is scheduled during the monthly preventive maintenance window so as not to impact clients. Typically, these changes are either requested by a client requiring additional resources, or are made by DST for the benefit of the business (for example, adding additional CPU capacity or relocating equipment in the service center). In any case, no changes will be made that have any possible effect on a client without advance notification to the client.

DST does not arbitrarily make changes to its clients' technical environment. Significant changes to the systems software environment, such as a new release of z/OS, JES/2, DB/2, etc., are communicated to the client well in advance of any planned testing or implementation. When this communication takes place, the clients' feedback is not only encouraged, it is considered a necessity.

e) Cryptographic Technologies

Boston Financial's Information Security Department maintains policies and processes that dictate encryption of sensitive NPI (Non Public Information) when and where appropriate within the day-to-day processes. To this end, where appropriate they use cryptographic protocols for data in transit, including SSL, PGP, TLS, SFTP, Secure FTP, Secure NDM, etc. They also are working to put in place centralized encryption of all confidential, NPI on portable devices such as laptops, PDAs etc.

f) Audit Trails

Maintenance History

TA2000 provides maintenance history for maintenance information that is specific to an account such as distribution option changes. This can be viewed online. The Maintenance History File retains the 25 most recent maintenance records less than one calendar year old; if all maintenance history records are older than one year, only the most recent record is maintained, regardless of age. Account level maintenance history records are purged monthly.

TA2000 also provides maintenance history for customer-related information that can be shared across accounts such as email address. This can also be viewed online. Customer maintenance history is kept indefinitely or until the customer is no longer associated with any account and the customer has been purged.

Financial History

The Shareholder History provides details about each transaction processed to the shareholder account including trade date, confirmation date, transaction code, transaction description, dollars, shares, discount category, and a running share balance. Additional information for the history transaction such as letter of intent number, fiduciary redemption type and state tax residence code is available. Fees and withholding, if applicable, will be displayed as separate transactions. Since numerous history transactions may exist for an individual account, a search by trade or confirmation date can be performed to isolate transactions quickly.

All financial transaction history records carry the Operator ID (or actual program names for systematically created transactions or transmissions), Date, and Time of posting.



TA2000 Shareholder Master and Subfiles

TA2000 maintains an online audit trail of all changes to the shareowner master account information, customer information, and certain subfiles. The subfiles include:

- Bank Information
- Systematic Agreement Information [redemption, purchase, exchange]
- Special Mailing addresses (Dividend, Additional, Interested Party, Seasonal, and Alternate Mailing)

Data stored with each subfile and Customer maintenance history record include Operator Identification Number, Date, and Time. Shareowner master account information includes only the "before" image of the field, a batch number, and date of change.

AWD

AWD can also be used to create an audit trail of work. When account changes are processed using the TA2000 Desktop, an AWD work object can be systematically created to log the event. Within AWD, a complete audit trail or history of each work item is kept. The AWD history allows associates to see the work item's indexing information, any associated source object (such as a scanned document), any manually or system generated comments, and any line-of-business data that were stored within AWD. This information, when combined with the data stored on TA2000 about an account change, provides processors or service representatives a complete picture of the actual changes to the account.

User Security

Several TA2000 operator security audit reports are available daily or on-request that detail the access that each user has on the system, as well as any changes that have been made to user access. Unauthorized access attempts are also tracked as a part of the CICS online access logs. Within the application all transactions are logged to an independent log server. Application level logs are summarized on a daily basis and reviewed in detail when necessary.

Clarifications were requested from TFI as follow:

TFI's Response:

In the course of normal business operations TFI personnel use applications provided by BFDS and DST. These applications are accessed by TFI's dedicated phone consultants and other TFI employees that provide MESP related services. In order to access these applications employees are assigned a unique ID which has associated with it certain permissions and rights based on their experience and job function. Passwords associated with these IDs must be updated every 90 days. On a quarterly basis (more frequently when required), all IDs are reviewed and access modified to reflect changes in workflow and employee transfers or terminations.

TFI policy and procedures are approved and monitored by the Information Security Awareness area.

In addition to these electronic safeguards, procedural safeguards are also in place in accordance with federal and industry standards. Additionally:

1. We made an experienced risk management officer an integral part of our executive management team, with responsibilities for assessing risk across all TFI-CREF's operations and developing action plans to minimize or eliminate our exposure.
2. We have set policies and procedures intended to prevent unauthorized people from gaining access to systems containing client records or processing transactions, such as automatically locking down computer desktops when users leave their work areas and tightening security at offices.
3. We have conducted training programs to help TFI-CREF employees understand and abide by privacy laws and other federal and state regulations designed to protect our clients. We conduct due diligence on vendors that have access to sensitive customer data and require by contract that such vendors do background checks on any personnel that could have access to such data.



2. Contractor must ensure confidentiality of participant records. Address Internet controls, if applicable, and efforts to protect participants from any mass marketing.
 - a. Contractor must provide security protecting the account owner's personal and financial information from unauthorized use and theft. Account owner information is of high sensitivity and high security level. The Contractor's solution will be subject to review by the Department of Information Technology's Office of Enterprise Security. Security protecting personal and financial information includes, but is not limited to; SSN, transmission, software, hard copy & Internet-based reporting. The Contractor must develop a "security threat matrix" explaining what safeguards will be put in place to mitigate security threats that arise when an organization handles transactions. This matrix will include the following components 1) targeted system, 2) results expected, 3) security threat, 4) mitigation strategy, 5) probability of occurrence and 6) identify any residual threat remaining. The security threat matrix will be developed after Contract implementation. Provide security technology that Contractor uses to ensure data security.

Contractor Response to this Task:

Data security and protection of Account Owner personal and financial information is a critical part of managing MESP. TFI complies with a number of federal and state privacy laws in its role as program manager of MESP. For example, TFI complies with Gramm-Leach-Bliley and provides required notices (i.e., Notice of TIAA-CREF Privacy Policy) to all MESP Account Owners and prospective customers about the way the information that they provide to MESP is collected, used, safeguarded, and shared with other entities. One such Gramm-Leach-Bliley mandated notice appears in the MESP Disclosure Booklet and within the Disclosure and Privacy Statement on the MESP Web site, and the other is an annual mailing to MESP Account Owners. TFI also complies with federal and state laws concerning use of Social Security Numbers and limits use of SSNs to a few necessary situations that involve verification of the customer's identity and confirmation of their investment or changes in their investment choices. TFI does not transmit files over the Internet containing Social Security Numbers and would not request a MESP customer to transmit it over the Internet unless a secure, encrypted environment is provided.

Our responsibilities with respect to using and safeguarding Account Owner information are defined in the MESP Disclosure and Privacy Statement that can be found online at (<http://www.misaves.com/legal.html>). This Disclosure and Privacy Statement includes the Notice of TIAA-CREF Privacy Policy, which describes how TFI and its affiliated broker-dealer, TIAA-CREF Individual & Institutional Services, LLC use, share and safeguard personal and financial information of MESP Account Owners. (Specific details about the use and sharing of such information are set forth in the paragraph below.) It also describes the different categories of personal and financial information that are collected online at the MESP Web site and it explains how the more sensitive information (i.e., that is collected through the online enrollment and FAN WEB™ process) is collected in encrypted pages on the MESP Web site. Many MESP Account Owners use the on-line functionality available at the MESP website to open and manage accounts. As described earlier in this response, FAN-Web™ provides a state-of-the-art, secure transaction environment. Access is based on password requirements, and transaction rules established for MESP FAN-Web™ provide full encryption to ensure a high level of data security. For example, to access online enrollment, the individual must supply his or her Social Security Number and also create a Personal Identification Number (PIN) that must be used with the Social Security Number to gain access. The individual then completes a series of simple screens to establish an account. The system has built-in edit checks, based on program rules, which ensure that all required information is gathered. If a required field is not entered, an error message will appear with instructions for correcting/completing the information.

FAN-Web™ utilizes 128-bit full encryption, using Netscape Secure Socket Layer (SSL), from the user's Web browser to the transaction Web Service across the Internet. This is the standard method of safeguarding sensitive personal and financial information as it is being transmitted over the Internet. If a user's browser does not support SSL, then they will be unable to access Fan Web Services. DST Fan Web™ services require a secure browser for access to inquiry or financial transactions. The following browsers support SSL: Netscape Navigator, Microsoft Internet Explorer, Oracle Power Booster and America Online.

The Notice of TIAA-CREF Privacy Policy within the Disclosure and Privacy Statement states that personal and financial information that is provided to TFI and its affiliated broker-dealer in connection with an Account Owner's participation in MESP is subject to strict limitations regarding its use, including restrictions on sharing it with third parties.



As reflected in the Notice of TIAA-CREF Privacy Policy, this information is only used to effect the Account Owner's investment in MESP and to provide services related to MESP, unless the Account Owner affirmatively, expressly opts to receive information about other financial products and services offered by the TIAA-CREF group of companies. In that event, the Account Owner's information would be shared with these affiliates of TFI for the purpose of providing the Account Owner with marketing materials about these other products or services. TFI also gives Account Owner information to service providers for MESP, who use the information to process transactions in MESP, mail out MESP documents and materials, and provide enhanced benefits related to MESP. Information about a beneficiary in MESP is not shared with any affiliate of TFI or Services (except its affiliated broker-dealer for purposes of servicing MESP) or third party and is only provided to service providers of MESP for the purpose of effectuating the Account Owner's investment in MESP. Certain information about a beneficiary would also be provided to an eligible educational institution that receives a direct distribution of a payment of qualified higher education expenses for a beneficiary in order to verify the beneficiary's identity. In some instances, disclosure of personal and financial information to certain third parties, such as the Internal Revenue Service, state tax authorities, or other federal or state government agencies, may be necessary but such disclosures will be related to the Account Owner's investment in MESP and/or required by law.

In addition to safeguarding disclosure of personal and financial information about MESP Account Owners to affiliates of TFI and Services and third parties, we limit access to such information to those employees who need to know it in order to provide MESP related services. Personal information is protected by physical, electronic and procedural safeguards in accordance with federal and industry standards. Some of these safeguards are: strict personnel policies; procedures for access and use of electronic data; secure access techniques and automated telephone system authentication procedures. Additionally:

- We made an experienced risk management officer an integral part of our executive management team, with responsibilities for assessing risk across all of TIAA-CREF's operations and developing action plans to minimize or eliminate our exposure.
- We have set policies and procedures intended to prevent unauthorized people from gaining access to systems containing client records or processing transactions, such as automatically locking down computer desktops when users leave their work areas and tightening security at offices.
- We have conducted training programs to help TIAA-CREF employees understand and abide by privacy laws and other federal and state regulations designed to protect our clients. We conduct due diligence on vendors that have access to sensitive customer data and require by contract that such vendors do background checks on any personnel that could have access to such data.

3. Contractor must provide a copy of the most recent SAS70 or similar internal control report.

Contractor Response to this Task:

TFI outsources the recordkeeping and systems support functions in managing our 529 business to BFDS and State Street. We have instituted a rigorous review of our subcontractor's internal control procedures to ensure that controls are in place and are adhered to.

TFI receives and reviews SAS-70 reports from BFDS (and for DST Systems, Inc. for services that they provide to BFDS) for Transfer Agency services and State Street for custodial services. TFI conducts quarterly visits (at minimum) with our subcontractors to discuss general operational/systems issues that need to be addressed and also to review the SAS-70 results, as appropriate.

Copies of most recent SAS-70 reports for TIAA-CREF, BFDS, State Street and DST (Exhibit 10 in DMB contract file).

Additionally, TIAA-CREF's internal audit group completes reviews of TIAA-CREF companies and subsidiaries processes and procedures based on risk assessment parameters. The last Internal Audit report is dated March 2004. Sarbanes-Oxley testing was performed in 2004 and 2005 on a number of Tuition related processes including Expenses, Guaranteed Funding Activity, Cash Reconciliation, Account Owner Activity and Investments in Mutual Funds.



B. Program Manager/Administrator

1. Contractor has provided an overall work plan for attaining the objectives of this project based on the following information:
 - Essential to the development of this program is its qualification in accordance with Public Act (PA) 161 and IRC Sec. 529. The program should be validated either by a ruling from the IRS or by an independent unqualified legal opinion stating the MESP complies with the IRS rules and regulations for QTPs

Contractor Response to this Task:

Refer to Contractor response in DMB file for details.

- The State must be assured that both federal and state securities law registration, exemptions, etc, are fully understood and if necessary, validation of exemptions are received prior to October 2, 2006. The Contractor must also ensure to the State that designated personnel will be qualified under state and federal securities laws

Contractor Response to this Task:

TIAA-CREF has complied with all applicable 529 federal and state securities laws and registration requirements for MESP. For additional information see our response for Q1.A. See DMB contact file for details.

- In accordance with IRC Sec. 529 the State will be “actively involved” on an ongoing basis in the administration of the Program, including the oversight of all decisions regarding the investment of the assets

Contractor Response to this Task:

Since MESP’s launch we have worked closely with the CCI, Bureau of Investments, Department of the Attorney General and other designees in the management of MESP on many facets of the program and will continue to do so going forward – this includes but is not limited to the following:

- Overall program management – we will meet regularly with the CCI and provide at a minimum monthly and quarterly program management reports (Exhibit 1).
- Marketing – we will work closely with the CCI to execute the best possible marketing program. At a minimum we will prepare and present a marketing plan, conduct an annual marketing review, and obtain approval of marketing and program materials.
- Investments – we will strive to continuously offer the best possible investment options under the MESP program. We will prepare and present an annual investment performance review and asset allocation review and recommendations. Although the annual meeting will serve as the official vehicle for investment review and approval we would anticipate an on-going dialogue with the State regarding investment performance and will provide information and consultation at any point that it is needed.
- Other program management – building on our strong relationships with the CCI we will pro-actively work with and meet with appropriate State personnel on a wide variety program management issues. In addition we will act as a partner in monitoring and supporting legislative issues and monitoring operational issues around the State Matching Grant program and SEED, which may impact the MESP.

We will continue to provide these services and recommend the addition of a formal comprehensive semi-annual review to ensure that that State remains actively involved in the management of MESP.

- Current MESP assets may be transitioned, upon successful completion of the transition period, Contractor must provide an implementation plan for this transition.



Contractor Response to this Task:

As the current Program Manager it will not be necessary to roll-over existing account owner assets to new investment options. Account owners can stay focused on the message of saving for college without the disruption of a transition ~~period~~ which period, which would require producing a new Program Disclosure booklet, new forms and required communications as well as being impacted by transaction costs on their investments in MESP. Account owners can transfer assets to any of the new options offered by MESP in accordance with IRC Sec. 529.

2. Customer Service

- a. Provide a concise statement on what TFI considers to be effective customer service to include how you would implement, track, and measure effectiveness.

Contractor Response to this Task:

Customer service is to reliably and consistently meet or exceed expectations with each customer interaction. We accomplish our objective by staffing our telephone centers with knowledgeable staff, utilizing the latest technology, undergoing extensive training, and implementation of qualitative and quantitative metrics to measure our effectiveness.

We believe superior service begins with great people.

To prepare our associates to provide support to MESP they go through an extensive month long training curriculum dedicated to MESP and other 529 programs. After successful completion of the course they are closely mentored and monitored by senior associates. Associates receive refresher training on a regular basis; participate in call simulations and other exercises to ensure they are prepared to service MESP customers.

We utilize the latest technology to ensure that MESP calls are directed to the appropriate representative within a timely fashion. Implementation of our smart call routing system directs callers to the next available associate in one of our two telephone centers. We also use our telephone system to produce daily, weekly, and quarterly reports that are used to measure the productivity of our associates on an individual basis, as well as a tool that is used to produce reports ~~that measure that~~ measure the overall performance of the telephone centers.

To protect MESP customers and to ensure the highest quality of our calls, we record all calls into the phone centers. We randomly listen to live and recorded calls to measure the effectiveness of our associates and to gauge the quality of the customer experience. We have also contracted with National Quality Review (NQR), a third party service provider that offers a unique perspective to its clients on service quality performance. NQR's partners and staff specialize in performance measurement, quality assessment, training, survey design, and statistical reporting. The NQR transaction and telephone service review process is designed to produce results that can be relied on as a base for continuous improvement. Internal and external audits of our calls enhance our ability to provide MESP customers with superior sales and service experience.

All complaints or suggestions received in regard to the Program are captured and documented in our service concerns database, which is used for trend identification and analysis. This information is used to reduce errors, improve training, and to continually improve customer service. It is our policy to respond to 95% or more of written customer concerns within 7 business days. It is our goal to answer 95% or more emails within 3 business days of receipt.

While significant interaction with prospects and account owners takes place through our phone centers Michigianians also have the opportunity to learn about MESP through the work of Michigan based field consultants. Like our phone center consultants these individuals are registered representatives and have diverse backgrounds. Field consultants provide the opportunity for individuals to meet with them either in group settings (community events and employer workshops) or one-on-one at one of the TIAA-CREF offices. In addition TIAA-CREF also has 25 employees that serve the higher education market in Michigan who are also able to provide information on MESP.

- b. Contractor must provide a toll free phone number and customer service representatives available to participants during normal business and off peak hours.



Contractor Response to this Task:

Since its initial launch, MESP has been assigned a dedicated toll-free number(s). Existing and prospective customers have a single point of contact to address any questions or concerns. In 2005 we received close to 55,000 calls through this number.

Our Customer Contact Centers are located in Charlotte, North Carolina and Denver, Colorado. Having the Customer Contact Centers located in different time zones facilitates our ability to expand our hours of operation, so that we can service customers with varied schedules. The toll-free number is supported by representatives between the hours of 8:00 a.m. to 10:00 p.m. ET, Monday through Friday. In addition, having separate Contact Centers in different areas of the country serves to strengthen and support our business continuity policy.

TFI also makes use of multiple toll-free numbers to track the number of contacts from stimuli placed in various marketing media. We have done this to gauge the effectiveness of the marketing initiatives for MESP. Placing a specific toll-free number in a specific advertisement facilitates our ability to track the efficiency of the advertisement. Measuring the performance of a specific marketing stimulus enhances our ability to optimize the performance of future marketing initiatives. All toll-free numbers assigned to the marketing initiatives are directed to the same representatives.

Customers who prefer self-service can elect to use our automated telephone system to obtain their account balances, trust unit prices, process other service related items, and request enrollment materials. The automated telephone system is conveniently available 24 hours a day, each day of the week.

TFI will offer the State the services of our Customer Contact Center during the periods when MET is closed and MESP remains open (5 p.m. until 10 p.m.). Phone consultants would respond to MET sales inquiries through the use of an approved script to insure that information is provided in a consistent fashion. An analysis would need to be conducted to determine the need for a technology interface and a method to capture data.

- c. Contractor will communicate frequently to the CCI customer concerns and comments.

Contractor Response to this Task:

Customer concerns and comments that are part of the course of normal business are provided in summary form by type as well as in detail by individual in the Quarterly Report that is provided to the CCI. These issues are also reviewed by our Quality Assurance team on a monthly basis. In the case of non-routine concerns and comments these are communicated to the CCI upon receipt.

- d. Program Manager will have or maintain a Michigan based office or site for the receipt of contributions, written communication and provision of on-site/in-person customer service. Provide your organization's efforts to accommodate this.

Contractor Response to this Task:

TFI maintains a Michigan based P.O. Box for the receipt of program forms, contributions and written communications. In addition a toll-free phone number has been provided for access to customer service representatives. Both of these channels offer a set of controls to ensure that an Account Owner's participation in MESP is secure and that all transactions and correspondence can be tracked.

In Michigan, we have established an office in Southfield to handle the management of MESP and the coordination of all work with the CCI. In addition, we currently have MESP consultants in both the TIAA-CREF office located in Southfield, Ann Arbor and East Lansing. MESP information can be picked up at each office and an appointment can be scheduled with a MESP consultant to receive information on the program. With respect to the receipt of contributions via hand delivery, we would offer this service on an exception basis with the agreement that it would not be communicated or advertised as a normal course of business. We currently have administrative assistants in each of our field offices that can accept checks and applications for MESP that will then be forwarded to BFDS for processing upon receipt in good order.



- e. Provide TFI's participant enrollment process to include web-based options.

Contractor Response to this Task:

Online enrollment has proven to be one of the most significant enhancements from an operational perspective for the program and has been welcomed by the account owners. Using DST's FAN-Web™ product application, investors can enroll in MESP online by entering their social security numbers and a PIN. In 2005, Account Owners established over 16,000 MESP accounts online representing just under 60% of new accounts.

Online accounts may be funded through: an Electronic Funds Transfer (EFT); establishment of an Automatic Contribution Plan (where we will debit the customer's bank account on a periodic basis); or through remittance of a check accompanied by a stub that is printed during the online process. In the case of the submission of a check, the account is established, but no correspondence is mailed until the account is funded.

3. Marketing

- a. Provide TFI's marketing plan for the MESP. Identify resources applied to each component of the plan, evaluation of effort over the term of Contract, and explain any assumptions. Marketing materials must be broad enough to encompass MET and other postsecondary education finance options offered by the State. Current programs include Merit Award, Michigan Higher Education Assistance Authority, and Michigan Higher Education Student Loan Authority. Marketing materials at a minimum should include but not be limited to the following:
1. MESP logo
 2. Program brochures
 3. Print advertising and press releases
 4. Radio and TV advertising
 5. MESP program agreement for potential participants which must include but not be limited to:
 - a) name, address and social security number or employer identification number of the account owner
 - b) a designated beneficiary
 - c) name, address and social security number of the designated beneficiary
 - d) any other information that the CCI or Contractor considers necessary.

Contractor Response to this Task:

See Contractor response located in DMB contract file for details.

- b. The CCI must approve the marketing plan/materials before the plan is implemented.

Contractor Response to this Task:

We will submit our marketing plans and materials to the CCI for approval.

- c. MET brochure must be included in MESP enrollment kits; furthermore, brochures will be provided by the CCI.



Contractor Response to this Task:

We consider the inclusion of the MET brochure in the MESP enrollment kit to be an important element in our marketing integration of the MET and MESP programs. Since the inception of MESP we have mailed close to 225,000 enrollment kits.

Our legal department has completed their review of the MET materials currently in use and we are prepared to engage in joint marketing efforts upon mutually acceptable terms, including the addition of substantially similar language to the management contract as was added in October 2005 pursuant to Change Notice #7; and agreement on adding language to the MET materials that would contain a comprehensive, standardized disclosure statement in the spirit of the CSPN Voluntary Guidelines and which would accurately describe the limited role of TFI and Services with respect to the MET. Thereafter, offering documents for MET and MESP would need to be revised from time to time, presumably at least annually, to reflect changes in either program and to ensure compliance with all applicable law. With respect to on-going review of MET materials, we will complete our diligence reviews within twenty-one (21) days for amended or otherwise revised offering materials and within fourteen (14) days for new marketing materials of their being provided to us. The timeframes identified above may be subject to change pending unanticipated factors. The costs of conducting due diligence and obtaining any opinions of counsel Services deems necessary with respect to MET, reviewing MET materials and any production costs would need to be part of the ongoing costs for the joint marketing of MET and MESP included in any contract with the State. In our reasonable opinion, if we determine that the MET materials do not meet appropriate legal standards based on our on-going due diligence review, then Services would not be required to continue participating in the dissemination of the MET materials. We would communicate the basis for the opinion to the CCI and make counsel available to Treasury's counsel to discuss that opinion.

Clarifications from TFI as follow pertaining to pursuant to Change Notice #7

1. If requested by The Michigan Department of Treasury (the "State Treasurer"), TFI's affiliate, TIAA-CREF Individual & Institutional Services, LLC ("Services") shall disseminate joint marketing materials for MESP and MET including, but not limited to, program brochures, print advertising, and press releases (collectively, the "MET Materials"), for the Michigan Education Trust ("MET"). Notwithstanding the foregoing, Services' obligation under this paragraph shall be conditioned upon the following:

- a. Services shall be permitted to conduct such reasonable diligence with respect to the substantive and financial information set forth in MET Materials as it deems necessary or appropriate and is consistent with due diligence efforts recognized as appropriate for public offerings of securities. With respect to such MET Materials already in use as of the date TFI is reappointed as program manager (the "Start Date"), Services shall have ninety (90) days to perform such diligence. With respect to MET Materials produced subsequent to the Start Date, Services shall have twenty-one (21) days to review amended or otherwise revised offering materials (such materials will need to be revised from time to time, presumably at least annually) and fourteen (14) days to review for new marketing materials after they have been provided to us; provided, that, such timeframes identified in this paragraph may be subject to change pending unanticipated factors;
- b. Either the State Treasurer or TFI shall cause an opinion of legal counsel experienced in securities law matters and acceptable to TFI and Services to be delivered to TFI and Services with respect to any MET Materials, including any amendments or updates thereto, to be disseminated by Services to the effect that such MET Materials contain no misstatements of material facts and do not omit material facts necessary to make the statements made, in light of the circumstances under which they were made, not misleading;
- c. Services may in its reasonable discretion determine as a result of either (i) the due diligence review, or (ii) the MET Materials not meeting appropriate legal standards based on the due diligence review, not to disseminate the MET Materials;
- d. The cost of conducting due diligence and obtaining 10b-5 opinions of counsel with respect to MET, reviewing MET materials and any related costs will be part of the ongoing costs for joint marketing of MET and MESP;
- e. All MET Materials will contain the following disclosure:

Asset management, program administration and distribution of MET contracts are provided solely by the Michigan Department of Treasury. MET is neither managed nor distributed by TIAA-CREF Tuition Financing, Inc., TIAA-CREF Individual & Institutional Services, LLC, or any of its affiliates; and



- f. All MET Materials and MESP materials that are to be disseminated by Services will be reviewed by TFI and Services business or legal personnel to ensure compliance with Municipal Securities Rulemaking Board, National Association of Securities Dealers, Inc., and federal securities laws requirements applicable to qualified tuition plans.

2. Covenants of the State

- a. The information set forth in the MET Materials, as of the date the MET Materials are provided to Services for dissemination, shall be true, accurate and complete and not contain any untrue statement of material fact or omit to state a material fact required to be stated therein or necessary to make the statements made therein not misleading in light of the circumstances in which they are made.
- b. The State shall inform TFI and Services promptly upon determining that any information contained in the MET Materials that are in use by Services have become misleading, or are required to be updated.
- c. The content and use of the MET Materials as contemplated herein is, and shall for the term of this Contract continue to be, consistent with every law, rule, and regulation of any regulatory agency or self-regulatory agency whose regulatory regime applies to MET or MESP and Services as a registered broker-dealer.

Clarifications were requested from TFI as follow

1. Contractor must provide all proposed terms for including MET brochures in MESP enrollment kits and MESP employer kits/comparable communication to employers (sections 1.104.B.3.c and h)?

TFI's Response:

The TFI response to Sections 1.104.B3(c) and (h) was intended to include all proposed terms presently known for including MET brochures (defined as Take Ones and flyers as opposed to the full enrollment booklet) in MESP enrollment kits and MESP employers kits/communications to employers.

TFI used the phrase "mutually acceptable terms, including..." in its response to account for the possibility of changes in law or to the MET program (or its materials) occurring between the time we submitted our response and when we may be asked to include MET brochures in MESP enrollment kits.

However, at this time, there are no terms required by TFI beyond what is included in our original response. To further clarify our response, a proposed outline of the steps required in connection with including MET brochures in MESP enrollment kits is provided below.

Current Review Status

- Completed due diligence on MET materials currently in use.
- Drafted comprehensive standardized disclosure statement in the spirit of CPSN CSPN Voluntary Guidelines and which would accurately describe the limited role of TFI and Services with respect to the MET. The language is as follows:

*** Suggested Standard Disclosure

Note: This needs to be reviewed by the State of Michigan for accuracy.



**Supplement dated _____, 2006 to
[program materials other than Contract booklet]
for the Michigan Education Trust (the "MET")**

The information about your MET contract ("Contract") provided in this document is supplemented by the following general information:

Subject to the limitations described below, MET will guarantee payment of tuition and mandatory fees without further charge for the educational benefits you have purchased. MET guarantees in-state tuition at public, four-year colleges and universities in Michigan or in-district tuition at public, community colleges in Michigan. Students have nine years from the expected year of high school graduation to completely use their MET benefits. MET stops paying benefits once the credit hours purchased are reached.

Your Contract is a "Plan __" Contract. MET's guarantee is limited by the assets from Plan __. While your Contract is also made on behalf of the State of Michigan, the legislature would need to take discretionary action to appropriate funds in order to provide any State subsidy to the MET program and there is no assurance that the legislature would take such action.

A nationally recognized actuary will conduct an annual actuarial review and future Contract prices will be adjusted to ensure MET's actuarial soundness. If: (1) the assets pledged to your Contract and future Contract payments from other Contracts are determined by the actuary to be insufficient to maintain MET's actuarial soundness; (2) MET's Board of Directors determines that there are insufficient numbers of new Contracts to ensure the actuarial soundness of Plan __; and (3) the legislature does not appropriate sufficient money to MET, these assets will be returned to you and other Contract owners on a pro rata basis. If Plan __ is liquidated, the amount that will be returned to you is uncertain and could be less than the Prepaid Tuition Amount.¹

¹ "Prepaid Tuition Amount" means the lump sum paid less the processing fee or the accumulated amount of all monthly dollar amounts specified by MET for a monthly purchase contract less processing fees.

Further information on the guarantee is found in Section __ of your Contract.

*** Suggested Disclosure with respect to limited role of TFI and Services:

Asset management, program administration and distribution of MET contracts are provided solely by the Michigan Department of Treasury. MET is neither managed nor distributed by TFI-CREF Tuition Financing, Inc., TFI-CREF Individual & Institutional Services, LLC, or any of their respective affiliates.

Upon Approval of the Contract, which would include substantially similar terms to those added to the existing management contract in October 2005 by Change Order #7, to TFI by the State Administrative Board TFI will provide:

- Any necessary disclosure language about TFI's and Services' limited role with respect to the MET for inclusion in MESP materials

MET will provide:

- Review and approve language requested by TFI for inclusion in MET brochures
- Review and approve any TFI-requested disclosure language about MET for-inclusion in MESP.

Commitment by TFI for the review of MET materials

Regarding TFI diligence review of MET materials, we will complete our diligence reviews:

- Within 14days for new marketing materials,
- within 21 days for amended or otherwise revised offering materials, and
- annually after the MET Board approves the price schedule.



- c. Contractor will implement a pilot joint marketing campaign with MET for either tax season, back-to-school, holiday season, or mutually agreed upon time to include, but not be limited to, joint advertising (radio, TV and/or print) and public relations events.

Contractor Response to this Task:

We will work with the CCI to implement a pilot marketing campaign covering both MESP and MET that would include mass media such as online advertising, direct mail and email as well as field marketing activities and public relations events. We recommend conducting this pilot during the January and College Savings Month campaigns, starting January 2007. We believe these are the most relevant times to promote the programs jointly as January is one of the most active times for new account sign-up and College Savings Month generates high attentiveness to savings messages.

As previously mentioned, the Michigan 529 College Savings Challenge will involve families, prospects and account owners, with school-aged children (K-5) and the schools that they attend. This sweepstakes will reward the winning family with a college savings award and their associated school with school supplies, books, technology or sporting goods. We believe this will be an effective lead generation tactic for both MESP and MET.

In an effort to communicate both programs in a meaningful way while clearly distinguishing between the two, we recommend focusing on the unique attributes of each to promote usage of a particular program and key messaging that conveys how the programs can be used in tandem; tuition solution through MET and room and board and other expenses through MESP.

Prospects: MET, and MESP inquirer/non-buyers including subscribers to their respective websites, MET and MESP Account Owners; and influencers such as Certified Financial Planners would all be targeted during this effort. All URLs promoted during this pilot would lead consumers to a joint MESP/MET landing page that communicates the features and benefits of both programs. Additionally, enrollment materials would include a cover letter that introduces both of Michigan's 529s to the inquirer.

Since this campaign will be our first major joint marketing effort, it will be important to measure its success in terms of inquiries and conversions generated for each program. To do that, we recommend using both the 2004 and 2005 MET and MESP results as benchmarks to measure this joint campaign's performance. Working with the CCI we will determine methods to track this campaign's inquiries and conversions, e.g., unique phone numbers, unique URLs, Web beacons, etc.

- d. Web site development, maintenance and administration should include but not be limited to:
1. specific MESP information (i.e. enrollment information, investment/fund performance, etc.)
 2. new account processing or ability to request program agreement and materials
 3. customer service information to include business hours (time zone), toll free phone number, regional office and representative
 4. historical and current company profile, i.e., years in business, assets under management and if appropriate biography of MESP fund manager
 5. secured access by client and CCI or designee to specific file or reporting data (see section 1.104.B.4.f for data security requirements). Access rights will be defined by the CCI.
 6. ability to capture number of hits to MESP portion of web site
 7. direct link to MET and Treasury related web sites. Link to MET must be on MESP web site homepage
 8. compliance with industry standards for web site requirements.



Contractor Response to this Task:

In the last five years the Internet has continued to evolve into a powerful tool for communication. It has become a very effective place to promote MESP and allow prospects and account owners an easier way to do business with us. Since MESP's launch over 230,000 PDFs of enrollment material have been downloaded and 55,000 enrollment kits have been requested. With more than 60% of all new accounts being opened online, the MESP website has become the largest point of sale for the program.

While site performance had been extremely positive, in early 2005 TFI embarked on a comprehensive analysis of our 529 program websites to ensure they were best in class, they were educating visitors as best as possible and easing them along the purchase decision path. This analysis included several usability studies, benchmarking reports and multiple rounds of user testing. The findings led to our decision to re-design the website so that it more effectively communicates the benefits of MESP and builds and maintains a relationship with the site's key audiences, thus encouraging return visits, conversions, additional contributions, referrals and overall satisfaction. Should the state choose, we would be glad to sponsor a similar analysis of the newly re-designed MET website as it may assist you in evaluating any new or desired changes. In addition, should you deem it appropriate, we would be happy to sponsor a strategic analysis of the benefits of increased integration between the MESP and MET websites, up to and including the launch of a single website for both programs.

The guiding principles for the redesign were to:

- Engage new visitors (including prospective customers and secondary audiences) by providing thorough, clear and complete information in ways that are compelling and easy-to-navigate
- Encourage repeat visits while prospective customers are still evaluating savings options
- Build credibility for and trust in MESP
- Reflect best practices found in effective financial services websites, including:

- Comparisons of product information
- Easy to understand benefits
- An information structure that presents increasing amount of detail as visitors explore a product
- Easy-to-use and complete calculators
- An easy enrollment process

- Collect prospect information
- Provide content and activities for secondary audiences that reinforce the value of the product
- Optimize for search engines

The new website launched in January 2006 and initial feedback has been extremely positive. As we progress through the years, we will continue to keep up with industry best practices to deliver a dynamic, interactive learning place that provides visitors with sufficient information to properly plan for college and a reason to visit frequently.

With respect to the specific questions our responses follow.

- (1) Specific MESP Information. Prospective MESP account owners can get complete information on the program and are guided through the enrollment process which includes on-line enrollment, the ability to download and send in the enrollment package and the opportunity to request an enrollment kit. The Program Disclosure Booklet and other material are available in PDF format for easy retrieval. In addition, information is provided on the investment options and underlying mutual funds with performance updated on a monthly basis.
- (2) As outlined in the previous answer above enrollment information is available on the website. On-line enrollment is offered and in 2005, 63% of people that opened a MESP account took advantage of the functionality.
- (3) Customer contact information and hours are posted in the "Contact Us" section of our web site.
- (4) Our redesigned web site, discussed above, has information about the Program Manager.
- (5) The CCI has on-line access to Vision for inquiries with respect to customer account information.
- (6) This information is currently captured. Information is provided in weekly and quarterly reports to the CCI.
- (7) As a result of the redesign, we have taken steps to cross-promote MESP and MET in the following ways:



- a. Links to MET are provided in the right navigation bar on each page of the MESP website. In addition links to other Treasury programs are included in the Parent Resource section
- b. MET and Michigan Education Trust are key word searchable
- c. Include MET references and links in the “education” pages using the easy to remember setwithmet.com URL
- d. Leverage new site features to better promote MET

➤ MET is active link from the comparison chart

- e. Parent Resources

➤ Prominent listing and active link as part of Michigan State Resources section of overall Resources section

- f. Frequently Asked Questions (FAQ)

➤ *Does the State of Michigan offer any other education savings programs?* The Michigan Education Trust (MET) offers three prepaid tuition contracts to encourage families to save for college. MET contracts may be used for tuition and mandatory fees. For more information visit the [MET website](#) or call toll free at 1-800-MET-4-KID.

(8) The web site will comply with industry standards for legal and regulatory compliance and security.

Clarifications were requested from TFI as follow:

- 3. Would TFI agree to have Treasury registered as domain owner of the MESP website (section 1.104.B.3.e)?

TFI's Response:

While our reading of Procedure 1410.25 suggests that it does not appear to apply because the MESP websites do not reside on DIT-managed DNS servers, we would agree to have Treasury registered as the domain owner of the URLs for the MESP websites: www.misaves.com, www.misaves.com and www.mesp529.com. It is our expectation that these domains will continue to reside on a TFI-CREF server so that all updates and maintenance to these URLs will be done by TFI-CREF or its designee. Accordingly, any registration of Treasury as the domain owner of the URLs for the MESP websites listed above would not be deemed to include a transfer of ownership of aspects of these websites owned or licensed by TFI-CREF, including without limitation, certain creative content, calculators, tools and software (including those owned by third party vendors).

TFI has experience working with the Department of Information Technology (DIT), which recruited TFI to participate in its project to create an electronic third-party vendor payment system. TFI brought BFDS into the project. On July 6, 2006, we received the first FTP list of state employee participants.

- f. Contractor will provide a direct mail campaign.

Contractor Response to this Task:

Direct mail is an important part of our media mix. It is used effectively for account owner communications as well as highly targeted prospecting audiences. As a result of the growth of the Internet, we have found that Michigan families are spending more and more time online. For that reason, our recent analysis has found that online advertising is a more effective means of driving new accounts than is direct mail in many instances. Therefore, we recommend shifting our marketing spend to an even greater degree to online advertising and search engine marketing, complemented by direct mail to highly responsive targets where return on investment is more efficient.

One of the greatest values direct mail provides is the ability to test a variety of elements to measure effectiveness and efficiency. These measurable elements include audience segments, creative messaging and calls to action, direct mail formats such as white mail vs. self-mailers, and list performance, to name a few. To date, we have found that straightforward white mail is more effective than highly promotional mailings. From a list perspective, we have found that lists from Donnelly tend to perform better than other vendor lists. A test at year-end to assess the effectiveness of a second follow-up touch was inconclusive. We look forward to testing this again in the coming months.



- g. A MET representative must be invited to participate in all outreach presentations/ meetings, including employer outreach meetings.

Contractor Response to this Task:

We currently invite a MET representative to participate in virtually all of the outreach presentations and meetings that we conduct, including outreach meetings with employers. In addition MET is invited to participate in many of our community outreach efforts as well as in work with our partners. TFI's Program Manager or designee will continue to be responsible for coordinating outreach presentations on a regular basis with the CCI. We would also offer to cross-train MET and MESP representatives on both programs to ensure that the proper communication is done for each program.

In addition, if a MET representative is not available TFI will provide MET information to those that attend the events, including webinar events. Finally, to more closely promote MET and MESP meetings, we would list all MET meetings and events in the MESP website Events Calendar. This online calendar has proven to be an effective way to generate awareness and meeting attendance.

- h. MET brochures must be included in all MESP employer kits or comparable communication to employers. Brochures will be provided by the CCI

Contractor Response to this Task:

The MET brochure will be included in the MESP enrollment kit as set forth in our response to question 3(c).

- i. Identify if TFI's marketing materials will be submitted to the NASD and/or the MSRB when review is not required; furthermore, provide the lead-time needed to build into the project plan for approval of marketing materials.

Contractor Response to this Task:

TFI oversees the development of marketing material prepared by its affiliated broker-dealer distributor. Marketing materials are developed to comply with NASD Rule 2210 and MSRB G-21. The broker-dealer would file any required material with the NASD that address the underlying investments within the MESP and on occasions, the broker-dealer may also choose to file materials with the NASD. Because of the limited filing requirements, there would be no significant negative impacts on the proposed approval time for marketing materials for the MESP.

4. Systems Capabilities

a. Other Contractors

The Program Manager will be responsible for working with the State and other Contractors (e.g. Investment Contractor) to assist in problem resolutions including but not limited to, establishing new communications channels, downtime, testing, etc. At minimum, a daily interface will be required between the Investment Contractor and Program Manager for daily account balances. The Program Manager will be responsible for communicating account balances to account holders (see section 1.104.B.1).

Contractor Response to this Task:

TFI's response to this contract contemplates providing all services related to the management of MESP. Therefore this coordination is included as part of our normal business process.



- b. At this time the State feels that all data interfaces have been identified in the existing Contract. If additional interfaces are required in the future, then provide TFI's method for providing for data interfacing. Assume the interface contains data that exists on your system pertaining to MESP.

Contractor Response to this Task:

Each interface is different and would be need to be scoped out as such. Depending on the size of the files and frequency of the data exchanges a variety of methods could be used to exchange the data. In today's environment the most likely method that would be established to transmit data between TFI and MESP would be through the user of File Transfer Protocol (FTP). Data exchanged through this method is typically encrypted (we use a product called PGP) and exchanged across secure servers.

- c. Contractor must provide a data recovery of the MESP. Include two (2) scenarios, system recovery and disaster recovery.

Contractor Response to this Task:

TFI's response is to provide all services required for management of MESP.

- d. Provide TFI's hardware configuration for the MESP

Contractor Response to this Task:

TFI's response is to provide all services required for management of MESP.

- e. Provide TFI's software configuration for the MESP

Contractor Response to this Task:

TFI's response is to provide all services required for management of MESP.

- f. Data and System Security

1. The Contractor must provide the physical and logical system access controls and security necessary to ensure secure access for the functions described in this contract. Physical and logical access controls for all facilities, equipment, and applicable systems must be addressed. The following national/international security standards and publications including, but not limited to, must be adhered to:
 - a) "National Standards: An Introduction to Computer Security", National Institute of Standards and Technology, Computer Resource Security Center (see <http://csrc.nist.gov/cc/index.html>)
 - b) Interagency Guidelines Establishing Standards for Safeguarding Customer Information; Final Rule (12 CFR Part 30, et al)
 - c) The Department of Health and Human Services and the Department of Social Security Administration (Section 45d(1)(6) of the Social Security Act and Privacy Act U.S.C. 552)
 - d) Social Security Number Privacy Act 454 of 2004 at <http://www.legislature.mi.gov/mileg.asp?page=print&objName=mcl-act-454-of-2004>.



The following security control requirements must be addressed:

1) Management Controls

- a) Risk Assessment of operational and technological risks, including threat identification
- b) System Life Cycle Management
- c) System Security Certification
- d) System Security Accreditation and Assurance
- e) System Security Plans.

2) Operational Controls

- a) User Administration, e.g., User Account Management, Password Management, etc.
- b) Separation of Duties
- c) Personnel Security
- d) Security Awareness, Training, and Education
- e) Contingency Planning, i.e., Business Continuity and Disaster Recovery Plans
- f) Security Incident Handling
- g) Physical & Environmental Security
- h) Configuration Management
- i) Media Protection, e.g., Media Labeling, Media Storage, Media Transport, Media Sanitization, etc.
- j) System Security, e.g., Malicious Code Protection, Intrusion Detection Tools and Techniques, Spam and Spyware Protection, Security Alerts and advisories, etc.
- k) Data Security, e.g., Data Input Restrictions, Data Processing Error Handling, Data Output Error handling, etc.

3) Technical Controls

- a) Identification and Authentication Methods
- b) Logical Access Controls, i.e., a technical means of controlling access
- c) System and Communication Protection, e.g., Security Function Isolation, Denial of Service Protection, Transmission Integrity and Confidentiality, Intrusion Detection etc.
- d) Change Control
- e) Cryptographic Technologies
- f) Audit Trails.

Contractor Response to this Task:

TFI's response is to provide all services required for management of MESP. See section 1.104.A.28.f.1.

- 2. Provided is how TFI's will ensure confidentiality of participant records. Address Internet controls and efforts to protect participants from any mass marketing.
 - a. Contractor must provide security protecting the account owner's personal and financial information from unauthorized use and theft. Account owner information is of high sensitivity and high security level. The Contractor's solution will be subject to review by the Department of Information Technology's Office of Enterprise Security. Security protecting personal and financial information includes, but is not limited to; SSN, transmission, software, hard copy & Internet-based reporting. The Contractor must develop a "security threat matrix" explaining what safeguards will be put in place to mitigate security threats that arise when an organization handles transactions.



This matrix will include the following components 1) targeted system, 2) results expected, 3) security threat, 4) mitigation strategy, 5) probability of occurrence and 6) identify any residual threat remaining. The security threat matrix will be developed after Contract implementation. Provide security technology that TFI will use to ensure data security.

Contractor Response to this Task:

TFI's response is to provide all services required for management of MESP. See section 1.104.A.28.f.2.

3. TFI provided their most recent SAS70 report.

Contractor Response to this Task:

Please refer to Exhibit 10 of proposal for the requested SAS-70 reports.

TFI outsources all of the recordkeeping and systems support functions in managing our 529 business to BFDS and State Street. We have instituted a rigorous review of our subcontractor's internal control procedures to ensure that controls are in place and are adhered to.

TFI receives and reviews SAS-70 reports from BFDS (and for DST Systems, Inc. for services that they provide to BFDS) for Transfer Agency services and State Street for custodial services. TFI conducts quarterly visits (at minimum) with our subcontractors to discuss general operational/systems issues that need to be addressed and also to review the SAS-70 results, as appropriate.

Additionally, TIAA-CREF's internal audit group completes reviews of TIAA-CREF companies and subsidiaries processes and procedures based on risk assessment parameters. The last Internal Audit report is dated March 2004. Sarbanes-Oxley testing was performed in 2004 and 2005 on a number of Tuition related processes including Expenses, Guaranteed Funding Activity, Cash Reconciliation, Account Owner Activity and Investments in Mutual Funds.

4. State is not responsible for and will not provide funding of any type in connection with administration of MESP. All administrative costs for MESP must be paid from the earnings of the program. Total administrative costs paid to the State of Michigan will not exceed \$100,000.00 per year for the Program Manager. The State will submit a quarterly invoice to Program Manager with detailed person-hours allocated to each task

Contractor Response to this Task:

TFI understands this requirement and will reimburse the State of Michigan up to \$100,000 for services provided related to administrative costs.



1.2 Roles and Responsibilities

1.201 CONTRACTOR STAFF, ROLES, AND RESPONSIBILITIES

Contractor must provide a project manager to act as a central point of contact for all contractual activities. Identify Contractor staff who will be involved, identify by name the individuals, and describe in detail their roles and responsibilities. Descriptions of roles should be functional and not just by title. Include an organization chart in Article 1, Attachment B.

Contractor Response to Task:

Please refer to Article 1, Attachment B, for the organization chart and biographies of key TFI staff whose activities will contribute to fulfilling our obligations under this Contract.

The MESP project manager for all contractual activities will remain Bruce Sheinhaus.

1.202 STATE STAFF, ROLES, AND RESPONSIBILITIES

CCI (see section 2.015) will provide overall project management for the State on a day-to-day basis.

1.203 RESERVED

1.3 Project Plan

1.301 PROJECT PLAN MANAGEMENT

1. The Contractor will carry out this project under the direction and control of the CCI.
2. Although there will be continuous liaison with the Contractor team, the CCI will meet monthly at minimum, or as requested by the CCI, with the Contractor's project manager for the purpose of reviewing progress and providing necessary guidance to the Contractor in solving problems which arise.
3. The Contractor will submit brief written monthly summaries of progress which outline the work accomplished during the reporting period; work to be accomplished during the subsequent reporting period; problems, real or anticipated, which should be brought to the attention of the client agency's project director; and notification of any significant deviation from previously agreed-upon work plans. A copy of this report will be forwarded to the named buyer in Purchasing Operations.
4. Within five (5) working days of the award of the Contract, the Contractor will submit to the CCI for final approval a work plan. This final implementation plan must be in agreement with the Contractor and accepted by the State for Contract, and must include the following:
 - a. The Contractor's project organizational structure.
 - b. The Contractor's staffing table with names and title of personnel assigned to the project. This must be in agreement with staffing of accepted proposal. Necessary substitutions due to change of employment status and other unforeseen circumstances may only be made with prior approval of the State.
 - c. The project breakdown showing sub-projects, activities and tasks, and resources required and allocated to each.



Contractor Response to Task:

TFI will comply with this requirement. We anticipate that this plan will closely follow the way that we are currently working with the CCI in the management of MESP.

1.302 REPORTS

1. TFI will provide at a minimum the following reports:

a. Develop a method for reporting requirements of PA 161 and IRC Sec. 529 to include:

- 1) Quarterly and annual statements to account owners
- 2) 1099-G information to the Internal Revenue Service and account owners.

Contractor Response to Task:

Since MESP's launch TFI has provided the required account owner statements/reports and will continue to do so under the new contract term. The forms can be found in Exhibit 7. (Sample located in the DMB contract folder/proposal).

(1) *Quarterly account statements* are sent to all account owners within seven business days after the quarter end and final sign off by TFI. *Fourth quarter account statements* follow the same guidelines as the quarterly statements, but include activity for the entire year and serve as the "annual statement" for the account owner. *Quarterly and annual statements* include: contributions, earnings and value calculation totals; prior and current year contribution totals; and transaction activity details for the period as described.

(2) Tax Reporting, IRS Form 1099-Q. Form 1099-Qs are generated in accordance with the Proposed Regulations under Section 529 and IRS guidelines, and MCL 390.1481.

b. Quarterly reports to the State Treasurer and the MET Board of the investment performance. The report should include but not be limited to:

- 1) Names and identification numbers of account owners, designated beneficiaries and distributees of accounts
- 2) The total amount contributed to all accounts during the year
- 3) All distributions from all accounts and whether or not each distribution was a qualified withdrawal
- 4) Account management fee adjustment
- 5) Presentation of performance results calculated according to criteria set by Association for Investment Management and Research "AIMR" with comparison to appropriate benchmarks, and rankings by rating agencies (such as MorningStar or Value Line)
- 6) Any other information that the State Treasurer may require regarding the taxation of amounts contributed to or withdrawn from accounts.

Contractor Response to Task:

Since MESP's launch TFI has provided the CCI with a Quarterly Report. This report has been modified over time to meet the needs of the CCI. It does not include Names and Identification Numbers of Account Owners due to privacy issues. TFI will provide that data in a secure fashion if requested. In addition we have had discussions with the Bureau of Investments with respect to AIMR Compliance and its applicability for mutual funds and MESP investment options. We will continue to provide benchmark comparisons and peer rankings where appropriate and other data as requested by the Bureau.



- c. Provide samples of your system reporting capabilities.

Contractor Response to Task:

TFI's MESP First Quarter 2006 Report and a sample weekly/monthly summary report is included as Exhibit 1 of vendors proposal. (Sample located in the DMB contract folder).

- d. The Contractor will be required to provide audited financial statements on an annual basis in accordance with the requirements of the Michigan Department of Auditor General for inclusion in the State of Michigan Comprehensive Annual Financial Report (SOMCAFR).

Contractor Response to Task:

TFI has complied with and will continue to comply with this requirement.

- e. Reports as required by the CCI as agreed or approved by the CCI.

Contractor Response to Task:

TFI has supported the CCI with respect to data and reporting. We will continue to do so in the future.

- 2. The Program Manager will provide at a minimum the following reports:

- a. Quarterly detailed report of marketing expenditures

Contractor Response to Task:

This will be included in the Quarterly Program Report.

- b. Monthly call center reports to include the number of calls, the average length of time customers are on hold, number of complaints, timely resolution, and number of dropped calls.

Contractor Response to Task:

TFI provides the CCI with a weekly report that includes number of calls, average length of time customers are on hold and number of dropped calls (Exhibit 1 of proposal). Complaints and resolution have been provided in the MESP Quarterly Report. Where appropriate complaints are communicated to the CCI when received. We will work with the CCI and develop a new procedure for reporting complaints if so required.

- c. Monthly marketing reports.

Contractor Response to Task:

TFI will provide this report.



- d. Provide samples of your system reporting capabilities.

Contractor Response to Task:

Please refer to Exhibit 1, cited in the answer to item 2b above. (Located in DMB contract file/proposal)

- e. Reports as required by the CCI as agreed or approved by the CCI.

Contractor Response to Task:

We will work with the CCI in the identification of additional data as required.

1.4 Project Management

1.401 ISSUE MANAGEMENT

Below Contractor has provided how Contract issues will be addressed when they arise and how appropriate parties will be apprised of progress.

Contractor Response to Task:

We will continue to work closely with the CCI and provide notification when issues arise. We will keep the Inspector apprised of all progress until the matter is resolved.

1.402 RISK MANAGEMENT

Risk management generally involves (1) identification of the risk, (2) assigning a level of priority based on the probability of occurrence and impact to the project, (3) definition of mitigation strategies, and (4) monitoring of risk and mitigation strategy. Risk assessment review should be conducted on a regular basis. Provided below is the Contractor's risk management process.

Contractor Response to Task:

Headed by Executive Vice President Erwin Martens, the Risk Management area protects TIAA-CREF's function and reputation by managing day-to-day and overall risk to its operations, investment, finance and business continuity. Risk Management functions independently of the business areas and reports directly to the Chairman.

Working closely with our business areas and in partnership with corporate areas like Law & Compliance, IT and HR Corporate Services, Risk Management's primary role is developing and implementing strategies that enable the company to achieve its objectives on behalf of our clients. Risk Management has developed world class systems to monitor portfolio holdings, portfolio risk and to aggregate these across the firm.

Organization

To fulfill its crucial role, Risk Management structured in six complementary organizations: **Quantitative Risk, Credit Risk, Market Risk, Product & Client Services Risk, Operational Risk and Business Continuity**. This group is staffed with professionals with many years of experience.

**1.403 CHANGE MANAGEMENT**

If a proposed contract change is approved by the CCI, the CCI will submit a Contract Change Request to the Department of Treasury, Purchasing Division, and it will be forwarded to the Department of Management and Budget, Purchasing Operations Buyer, who will make recommendations to the Director of Purchasing Operations regarding ultimate approval/disapproval of change request. If the DMB Purchasing Operations Director agrees with the proposed modification, and all required approvals are obtained (including State Administrative Board), the Purchasing Operations Buyer will issue an addendum to the Contract, via a Contract Change Notice. **Vendors who provide products or services prior to the issuance of a Contract Change Notice by the DMB Office of Purchasing Operations, risk non-payment for the out-of-scope/pricing products and/or services.**

1.5 *Reserved*

1.6 *Compensation and Payment*

1.601 COMPENSATION AND PAYMENT

This is a firm, fixed price Contract. Pricing will be based on basis points of the total assets. Payment/invoicing for this Contract will occur monthly (see section 2.092).

1.7 *Reserved*



Article 1, Attachment A

Pricing

A unitary fee structure of 45 basis points for all Investment Options. (Both components – Investment Contractor and Program Manager)

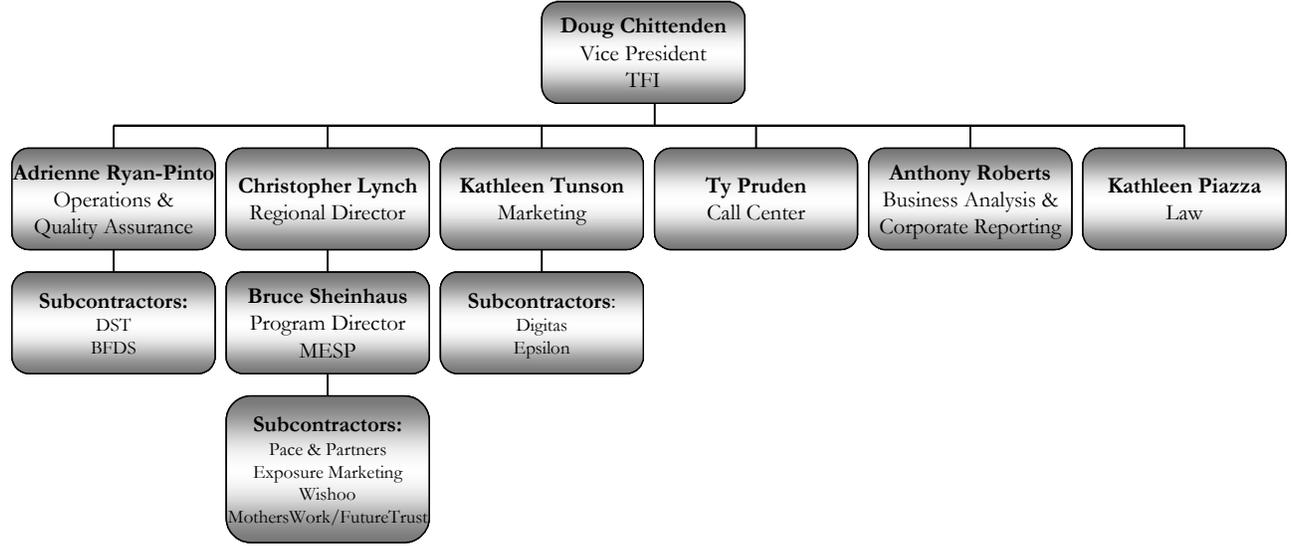
Effective Date: 4/01/07

(Also see 1.601 COMPENSATION AND PAYMENT)



Article 1, Attachment B
Organizational Chart, including Key Personnel

TUITION FINANCING, INC.
MICHIGAN EDUCATION SAVINGS PROGRAM (MESP)





Subcontractors

(a) Contractor shall require each Subcontractor whose subcontract will exceed \$25,000 to disclose to the Vendor, in writing, whether, as of the time of the submission of Vendor’s response to this request, the Subcontractor or its principals is debarred, suspended, or proposed for debarment by the State. The Vendor shall then inform the State of the Subcontractor’s status in its response and provide reasons for Vendor’s decision to use Subcontractor, if Vendor so decides.

(b) Indicate below **ALL** work to be subcontracted under any resulting Contract (use additional attachment if necessary; estimates are acceptable):

Description of Work to be sub-contracted	Percent (%) of total contract value to be sub-contracted	Sub-contractor’s name and principal place of business (City and State)
SEC-registered transfer agent, affiliated with DST, providing services to the mutual fund industry	Variable	Boston Financial Data Services, Quincy MA
E-mail; coordinates account owner and inquirer e-mail distribution; banner and on-line advertising tracking; primary agency, handles creative development, reporting, and analysis for all initiatives	Variable	Epsilon Interactive, New York, NY
Primary public relations agency	Variable	Pace and Partners, Lansing MI
Print production	Variable	Creative Source, Inc. f/k/a Precision Marketing Concepts, New York, NY
Fulfillment	Variable	Rapid Solutions Group, Mt. Prospect, IL
Cash transactions management and reporting	Variable	State Street Investment Services, Boston, MA
Contest and special event management	Variable	Exposure Marketing, Inc., Auburn Hills, MI
Creative work for TV and radio spots	Variable	The Sloan Group, New York, NY



Article 2 – General Terms and Conditions

2.010 Contract Structure and Administration

2.011 Definitions

Capitalized terms used in this Contract (including its Exhibits) shall have the meanings given below, unless the context requires otherwise:

- (a) "Days" means calendar days unless otherwise specified.
- (b) "24x7x365" means 24 hours a day, seven days a week, and 365 days a year (including the 366th day in a leap year).
- (c) "Additional Service" means any Services/Deliverables within the scope of the Contract, but not specifically provided under any Statement of Work, that once added will result in the need to provide the Contractor with additional consideration. "Additional Service" does not include New Work.
- (d) Reserved
- (e) "Audit Period" has the meaning given in **Section 2.111**.
- (f) "Business Day," whether capitalized or not, shall mean any day other than a Saturday, Sunday or State-recognized legal holiday (as identified in the Collective Bargaining Agreement for State employees) from 8:00am EST through 5:00pm EST unless otherwise stated.
- (g) "Incident" means any interruption in Services.
- (h) "Business Critical" means any function identified in any Statement of Work as Business Critical.
- (i) "Deliverable" means physical goods and/or commodities as required or identified by a Statement of Work
- (j) "Key Personnel" means any Personnel designated in **Article 1, Section 1.201 and/or Attachment B**, as Key Personnel.
- (k) "New Work" means any Services/Deliverables outside the scope of the Contract and not specifically provided under any Statement of Work, that once added will result in the need to provide the Contractor with additional consideration. "New Work" does not include Additional Service.
- (l) "Services" means any function performed for the benefit of the State.
- (m) "State Location" means any physical location where the State performs work. State Location may include state-owned, leased, or rented space.
- (n) "Subcontractor" means a company Contractor delegates performance of a portion of the Services to, but does not include independent Contractors engaged by Contractor solely in a staff augmentation role.
- (o) "Work in Process" means a Deliverable that has been partially prepared, but has not been presented to the State for Approval.

2.012 Attachments and Exhibits

All Attachments and/or Exhibits attached to any, and all Statement(s) of Work, attached to, or referencing this Contract, are incorporated in their entirety into, and form part of, this Contract.

2.013 Statements of Work

- (a) The parties agree that the Services/Deliverables to be rendered by Contractor pursuant to this Contract (and any future amendments of it) will be defined and described in detail in Statements of Work or Purchase Orders (PO) executed under this Contract. Contractor shall not be obliged or authorized to commence any work to implement a Statement of Work until authorized via a PO issued against this Contract, or an amendment to this Contract (see 2.106). Contractor shall perform in accordance with this Contract, including the Statements of Work/Purchase Orders executed under it.
- (b) Unless otherwise agreed by the parties, each Statement of Work (as defined in Article 1) will include, or incorporate by reference to the appropriate Contract Article 1 Attachment containing, the following information:
 - a description of the Services to be performed by Contractor under the Statement of Work;
 - a project schedule (including the commencement and completion dates for all tasks, subtasks (for all projects of sufficient duration and complexity to warrant sub task breakdown), and Deliverables;
 - a list of the Deliverables to be provided, if any, including any particular specifications and acceptance criteria for such Deliverables, and the dates on which the Deliverables are scheduled to be completed and delivered to the State;



- all Deliverable price schedules and other charges associated with the Statement of Work, the overall fixed price for such Statement of Work and any other appropriate pricing and payment terms;
 - a specification of Contractor's and the State's respective performance responsibilities with respect to the performance or completion of all tasks, subtasks and Deliverables;
 - a listing of any Key Personnel of Contractor and/or its Subcontractors for that Statement of Work and any future Statements of Work;
 - any other information or provisions the parties agree to include.
- (c) Reserved.
- (d) The initial Statements of Work, as of the Effective Date, are attached to this Contract.

2.014 Issuing Office

This Contract is issued by the Department of Management and Budget, Purchasing Operations and Department of Treasury (collectively, including all other relevant State of Michigan departments and agencies, the "State"). Purchasing Operations is the sole point of contact in the State with regard to all procurement and contractual matters relating to the Contract. Purchasing Operations **is the only State office authorized to change, modify, amend, alter or clarify the prices, specifications, terms and conditions of this Contract.** The Contractor Administrator within the Purchasing Operations for this Contract is:

Jim Wilson
Purchasing Operations
Department of Management and Budget
Mason Bldg, 2nd Floor
PO Box 30026
Lansing, MI 48909
Email WilsonJ4@michigan.gov
Phone (517) 241-1916

2.015 Contract Compliance Inspector

Upon receipt at Purchasing Operations of the properly executed Contract, it is anticipated that the Director of DMB Purchasing Operations, in consultation with Department of Treasury, will direct that the person named below, or any other person so designated, be authorized to monitor and coordinate the activities for the Contract on a day-to-day basis during its term. However, monitoring of this Contract implies **no authority to change, modify, clarify, amend, or otherwise alter the prices, terms, conditions and specifications of such Contract as that authority is retained by the Office of Purchasing Operations.** The CCI for this Contract is:

Robin Lott
Department of Treasury
Michigan Education Trust
430 West Allegan
Lansing, MI 48922.

2.020 Contract Objectives/Scope/Background

2.021 Background

See section 1.002.

2.022 Purpose

See section 1.001.

2.023 Objectives and Scope

See sections 1.101 and 1.104.

**2.024 Interpretation**

Sections 2.021 through 2.023 are intended to provide background and context for this Contract and are not intended to expand the scope of the obligations under this Contract or to alter the plain meaning of the terms and conditions of this Contract. However, to the extent the terms and conditions of this Contract are unclear or otherwise ambiguous, such terms and conditions are to be interpreted and construed in light of the provisions of this Section.

2.025 Form, Function and Utility

If the Contract is for use of more than one State agency and if the Deliverable/Service does not meet the form, function, and utility required by that State agency, that agency may, subject to State purchasing policies, procure the Deliverable/Service from another source.

2.030 Legal Effect and Term**2.031 Legal Effect**

Except as otherwise agreed in writing by the parties, the State assumes no liability for costs incurred by Contractor or payment under this Contract, until Contractor is notified in writing that this Contract (or Change Order) has been approved by the State Administrative Board (if required), approved and signed by all the parties, and a Purchase Order against the Contract has been issued.

2.032 Contract Term

This Contract is for a period of three (3) years. The Contract term is from March 20, 2007 through March 31, 2010. All outstanding Purchase Orders shall also expire upon the termination (cancellation for any of the reasons listed in 2.210) of the Contract, unless otherwise extended pursuant to the Contract. Absent an early termination for any reason, Purchase Orders issued but not expired, by the end of the Contract's stated term, will remain in effect for the balance of the fiscal year for which they were issued.

2.033 Renewal(s)

This Contract may be renewed in writing by mutual agreement of the parties not less than 30 days before its expiration. The Contract may be renewed for up to two (2) additional one (1) year periods. Successful completion of negotiations surrounding the terms of the extension, will be a pre-requisite for the exercise of any option year.

2.040 Contractor Personnel**2.041 Contractor Personnel**

(a) Personnel Qualifications. All persons assigned by Contractor to the performance of Services under this Contract shall be employees of Contractor or its majority-owned (directly or indirectly, at any tier) subsidiaries (or a State-approved Subcontractor) and shall be fully qualified to perform the work assigned to them. Contractor shall include a similar provision in any subcontract entered into with a Subcontractor. For the purposes of this Contract, independent Contractors engaged by Contractor solely in a staff augmentation role shall be treated by the State as if they were employees of Contractor for this Contract only; however, the State understands that the relationship between Contractor and Subcontractor is an independent Contractor relationship.



(b) Key Personnel

(i) In discharging its obligations under this Contract, Contractor shall provide the named Key Personnel on the terms indicated. **Article 1, Attachment B** provides an organization chart showing the roles of certain Key Personnel, if any.

(ii) Key Personnel shall be dedicated as defined in **Article 1, Attachment B** to the Project for its duration in the applicable Statement of Work with respect to other individuals designated as Key Personnel for that Statement of Work.

(iii) The State will have the right to recommend and approve in writing the initial assignment, as well as any proposed reassignment or replacement, of any Key Personnel. Before assigning an individual to any Key Personnel position, Contractor will notify the State of the proposed assignment, will introduce the individual to the appropriate State representatives, and will provide the State with a resume and any other information about the individual reasonably requested by the State. The State reserves the right to interview the individual before granting written approval. In the event the State finds a proposed individual unacceptable, the State will provide a written explanation including reasonable detail outlining the reasons for the rejection. Additionally, the State's request shall be based on legitimate, good-faith reasons. Proposed alternative for the individual denied, shall be fully qualified for the position.

(iv) Contractor shall not remove any Key Personnel from their assigned roles or the Contract without the prior written consent of the State. If the Contractor does remove Key Personnel without the prior written consent of the State, it shall be considered an unauthorized removal ("Unauthorized Removal"). It shall not be considered an Unauthorized Removal if Key Personnel must be replaced for reasons beyond the reasonable control of Contractor, including illness, disability, leave of absence, personal emergency circumstances, resignation or for cause termination of the Key Personnel's employment. It shall not be considered an Unauthorized Removal if Key Personnel must be replaced because of promotions or other job movements allowed by Contractor personnel policies or Collective Bargaining Agreement(s) as long as the State receives prior written notice before shadowing occurs and Contractor provides thirty (30) days of shadowing unless parties agree to a different time period. The Contractor with the State shall review any Key Personnel replacements, and appropriate transition planning will be established. Any Unauthorized Removal may be considered by the State to be a material breach of the Contract, in respect of which the State may elect to exercise its rights under **Section 2.210**.

(v) It is acknowledged that an Unauthorized Removal will interfere with the timely and proper completion of the Contract, to the loss and damage of the State, and that it would be impracticable and extremely difficult to fix the actual damage sustained by the State as a result of any Unauthorized Removal. Therefore, Contractor and the State agree that in the case of any Unauthorized Removal in respect of which the State does not elect to exercise its rights under **Section 2.210**, the State may assess liquidated damages against Contractor as specified below.

For the Unauthorized Removal of any Key Personnel designated in the applicable Statement of Work, the liquidated damages amount shall be \$25,000.00 per individual provided Contractor identifies a replacement approved by the State pursuant to **Section 2.041** and assigns the replacement to the Project to shadow the Key Personnel s/he is replacing for a period of at least 30 days prior to such Key Personnel's removal.

If Contractor fails to assign a replacement to shadow the removed Key Personnel for at least 30 days, in addition to the \$25,000.00 liquidated damages for an Unauthorized Removal, Contractor shall pay the amount of \$833.33 per day for each day of the thirty (30) day shadow period that the replacement Key Personnel does not shadow the removed Key Personnel, up to \$25,000.00 maximum per individual. The total liquidated damages that may be assessed per Unauthorized Removal and failure to provide 30 days of shadowing shall not exceed \$50,000.00 per individual.

(c) Re-assignment of non-Key Personnel. Prior to re-deploying to other projects, at the completion of their assigned tasks on the Project, teams of its non-Key Personnel who are performing Services on-site at State facilities or who are otherwise dedicated primarily to the Project, Contractor will give the State at least 10 Business Days notice of the proposed re-deployment to give the State an opportunity to object to the re-deployment if the State reasonably believes such team's Contract responsibilities are not likely to be completed and approved by the State prior to the proposed date of re-deployment.



(d) Re-assignment of Personnel at the State's Request. The State reserves the right to require the removal from the Project of Contractor personnel found, in the judgment of the State, to be unacceptable. The State's request shall be written with reasonable detail outlining the reasons for the removal request. Additionally, the State's request shall be based on legitimate, good-faith reasons. Replacement personnel for the removed person shall be fully qualified for the position. If the State exercises this right, and the Contractor cannot immediately replace the removed personnel, the State agrees to an equitable adjustment in schedule or other terms that may be affected by the State's required removal. If any such incident with removed personnel results in delay not reasonable/anticipatable under the circumstances and which is attributable to the State, the applicable SLAs for the affected Service will not be counted in **Section 2.076** for a time as agreed to by the parties.

(e) Staffing Levels.

(i) All staff requirements not specified in the applicable Statement of Work or State-approved project plan as State personnel will be supplied by Contractor. This includes secretarial, clerical and Contract administration support staff necessary for Contractor to perform its obligations hereunder.

(ii) Contractor shall provide sufficient personnel resources for the completion of Contract tasks indicated in Contractor's project plan approved by the State. If the level of personnel resources is insufficient to complete any Contractor Contract tasks in accordance with the Contract time schedule as demonstrated by Contractor's failure to meet mutually agreed to time schedules, Contractor shall promptly add additional qualified personnel resources to the performance of the affected tasks, at no additional charge to the State, in an amount sufficient to complete performance of Contractor's tasks in accordance with the Contract time schedule.

(f) Personnel Turnover. The Parties agree that it is in their best interests to keep the turnover rate of employees of Contractor and its Subcontractors who are performing the Services to a reasonable minimum. Accordingly, if the State determines that the turnover rate of such employees is excessive and so notifies Contractor, Contractor will meet with the State to discuss the reasons for the turnover rate and otherwise use commercially reasonable efforts to minimize such turnover rate. If requested to do so by the State, Contractor will submit to the State its proposals for reducing the turnover rate to an acceptable level. In any event, notwithstanding the turnover of personnel, Contractor remains obligated to perform the Services without degradation and in accordance with the State-approved Contract schedule.

(g) Location. All staff assigned by Contractor to work on the Contract will perform their duties either primarily at Contractor's offices and facilities or at State facilities. Without limiting the generality of the foregoing, Key Personnel will, at a minimum, spend at least the amount of time on-site at State facilities as indicated in the applicable Statement of Work. Subject to availability, selected Contractor personnel may be assigned office space to be shared with State personnel.

2.042 Contractor Identification

Contractor employees shall be clearly identifiable while on State property by wearing a State-issued badge, as required. Contractor employees are required to clearly identify themselves and the company they work for whenever making contact with State personnel by telephone or other means.

2.043 Cooperation with Third Parties

Contractor agrees to cause its personnel and the personnel of any Subcontractors to cooperate with the State and its agents and other Contractors including the State's Quality Assurance personnel, and, as reasonably requested by the State, to provide to the State's agents and other Contractors with reasonable access to Contractor's Project personnel, systems and facilities to the extent they relate to activities specifically associated with this Contract and will not interfere or jeopardize the safety or operation of the systems or facilities and provided Contractor receives reasonable prior written notice of such request. The State acknowledges that Contractor's time schedule for the Contract is very specific and agrees not to unnecessarily or unreasonably interfere with, delay or otherwise impeded Contractor's performance under this Contract with such requests for access.

2.044 Subcontracting by Contractor

(a) Contractor shall have full responsibility for the successful performance and completion of all of the Services and Deliverables. The State will consider Contractor to be the sole point of contact with regard to all contractual matters under this Contract, including payment of any and all charges for Services and Deliverables.



(b) Contractor shall not delegate any duties under this Contract to a Subcontractor unless the Department of Management and Budget, Office of Purchasing Operations has given written consent to such delegation. The State shall have the right of prior written approval of all Subcontractors and to require Contractor to replace any Subcontractors found, in the reasonable judgment of the State, to be unacceptable. The State's request shall be written with reasonable detail outlining the reasons for the removal request. Additionally, the State's request shall be based on legitimate, good-faith reasons. Replacement Subcontractor(s) for the removed Subcontractor shall be fully qualified for the position. If the State exercises this right, and the Contractor cannot immediately replace the removed Subcontractor, the State will agree to an equitable adjustment in schedule or other terms that may be affected by the State's required removal. If any such incident with a removed Subcontractor results in delay not reasonable anticipatable under the circumstances and which is attributable to the State, the applicable SLAs for the affected Work will not be counted in **Section 2.076** for a time agreed upon by the parties.

(c) In any subcontracts entered into by Contractor for the performance of the Services, Contractor shall require the Subcontractor, to the extent of the Services to be performed by the Subcontractor, to be bound to Contractor by the terms of this Contract and to assume toward Contractor all of the obligations and responsibilities that Contractor, by this Contract, assumes toward the State. The State reserves the right to receive copies of and review all subcontracts, although Contractor may delete or mask any proprietary information, including pricing, contained in such contracts before providing them to the State. The management of any Subcontractor will be the responsibility of Contractor, and Contractor shall remain responsible for the performance of its Subcontractors to the same extent as if Contractor had not subcontracted such performance. Contractor shall make all payments to Subcontractors or suppliers of Contractor. Except as otherwise agreed in writing by the State and Contractor, the State will not be obligated to direct payments for the Services other than to Contractor. The State's written approval of any Subcontractor engaged by Contractor to perform any obligation under this Contract shall not relieve Contractor of any obligations or performance required under this Contract. Attached as **Exhibit E** is a list of the Subcontractors, if any, approved by the State as of the execution of this Contract, together with a copy of the applicable subcontract.

(d) Except where specifically approved in writing by the State on a case-by-case basis, Contractor shall flow down the obligations in **Sections 2.040, 2.110, 2.150, 2.160, 2.171(c), 2.172(b), 2.180, 2.260, 2.297** in all of its agreements with any Subcontractors.

(e) The Contractor shall select subcontractors (including suppliers) on a competitive basis to the maximum practical extent consistent with the objectives and requirements of the Contract.

2.045 Contractor Responsibility for Personnel

Contractor shall be responsible for all acts and omissions of its employees, as well as the acts and omissions of any other personnel furnished by Contractor to perform the Services.

2.050 State Standards

2.051 Existing Technology Standards

The Contractor will adhere to all existing standards as described within the comprehensive listing of the State's existing technology standards at <http://www.michigan.gov/dit>

2.052 PM Methodology Standards

The State has adopted a standard documented Project Management Methodology (PMM) for use on all Information Technology (IT) based projects. See the State's PMM website at <http://www.michigan.gov/projectmanagement>.

The Contractor shall use the State's PPM to manage this Contract. If the Contractor requires training on the PMM, those costs shall be the responsibility of the Contractor, unless otherwise stated.

**2.053 Adherence to Portal Technology Tools**

The State has adopted the following tools for its Portal Technology development efforts:

- Vignette Content Management and personalization Tool
- Inktomi Search Engine
- E-Pay Payment Processing Module
- Websphere Commerce Suite for e-Store applications

Unless otherwise stated, Contractor must use the Portal Technology Tools to implement web content management and deployment efforts. Tools used for web-based application development must work in conjunction with Vignette and Inktomi. The interaction with Vignette and Inktomi must be coordinated with DIT, Enterprise Application Services Office, e-Michigan Web Development team.

Contractors that are compelled to use alternate tools must have received an exception from DIT, Enterprise Application Services Office, e-Michigan Web Development team, before this Contract is effective.

2.054 Acceptable Use Policy

To the extent that Contractor has access to the State computer system, Contractor must comply with the State's Acceptable Use Policy, see <http://www.michigan.gov/ditservice/0,1607,7-179-25781-73760--,00.html>. All Contractor employees must be required, in writing, to agree to the State's Acceptable Use Policy before accessing the State system. The State reserves the right to terminate Contractor's access to the State system if a violation occurs.

2.060 Deliverables**2.061 Ordering**

(a) Any Services/Deliverables to be furnished under this Contract shall be ordered by issuance of written Purchase Orders by the State after approval by the Contract Administrator or his/her designee. All orders are subject to the terms and conditions of this Contract. In the event of conflict between an order and this Contract, the Contract shall take precedence as stated in **Section 2.293**. In no event shall any additional terms and conditions contained on a Purchase Order be applicable, unless specifically contained in that Blanket Purchase Order's accompanying Statement of Work.

2.062 Reserved**2.063 Reserved****2.064 Equipment to be New and Prohibited Products****(a) Equipment to be New**

If applicable, all equipment provided under this Contract by Contractor shall be new where Contractor has knowledge regarding whether the equipment is new or assembled from new or serviceable used parts that are like new in performance or has the option of selecting one or the other. Equipment that is assembled from new or serviceable used parts that are like new in performance is acceptable where Contractor does not have knowledge or the ability to select one or other, unless specifically agreed otherwise in writing by the State.

(b) Prohibited Products

The State will not accept salvage, distressed, outdated or discontinued merchandise. Shipping of such merchandise to any State agency, as a result of an order placed against the Contract, shall be considered default by the Contractor of the terms and conditions of the Contract and may result in cancellation of the Contract by the State. The brand and product number offered for all items shall remain consistent for the term of the Contract, unless Purchasing Operations has approved a change order pursuant to **Section 2.106**.

2.070 Performance**2.071 Performance, In General**

The State engages Contractor to execute the Contract and perform the Services/provide the Deliverables, and Contractor undertakes to execute and complete the Contract in its entirety in accordance with the terms and conditions of this Contract and with the participation of State representatives as specified in this Contract.

2.072 Time of Performance

(a) Contractor shall use commercially reasonable efforts to provide the resources necessary to complete all Services and Deliverables in accordance with the time schedules contained in the Statements of Work and other Exhibits governing the work, and with professional quality.

(b) Without limiting the generality of **Section 2.072(a)**, Contractor shall notify the State in a timely manner upon becoming aware of any circumstances that may reasonably be expected to jeopardize the timely and successful completion of any Deliverables/Services on the scheduled due dates in the latest State-approved delivery schedule and, in such event, shall inform the State of the projected actual delivery date.

(c) If Contractor believes that a delay in performance by the State has caused or will cause Contractor to be unable to perform its obligations in accordance with specified Contract time periods, Contractor shall notify the State in a timely manner and shall use commercially reasonable efforts to perform its obligations in accordance with such Contract time periods notwithstanding the State's failure. Contractor will not be in default for a delay in performance to the extent such delay is caused by the State.

2.073 RESERVED**2.074 Bankruptcy**

If Contractor shall file for protection under the bankruptcy laws, or if an involuntary petition shall be filed against Contractor and not removed within 30 days, or if the Contractor becomes insolvent, be adjudicated bankrupt, or if it should make a general assignment for the benefit of creditors, or if a receiver shall be appointed due to its insolvency, and Contractor and/or its affiliates are unable to provide reasonable assurances that Contractor and/or its affiliates can deliver the services provided herein, the State may, without prejudice to any other right or remedy, terminate this Contract, in whole or in part, and, at its option, may take possession of the "Work in Process" and finish such Works in Process by whatever appropriate method the State may deem expedient. Contractor will fix appropriate notices or labels on the Work in Process to indicate ownership by the State. To the extent reasonably possible, materials and Work in Process shall be stored separately from other stock and marked conspicuously with labels indicating ownership by the State.

To secure the State's progress payments before the delivery of any services or materials required for the execution of Contractor's obligations hereunder, and any work which Contractor may subcontract in the support of the performance of its obligations hereunder, title shall vest in the State to the extent the State has made progress payments hereunder.

2.075 Time is of the Essence

The Contractor agrees that time is of the essence in the performance of the Contractor's obligations under this Contract.

2.076 RESERVED2.080 Delivery and Acceptance of Deliverables**2.081 Delivery Responsibilities**

Unless otherwise specified by the State within an individual order, the following shall be applicable to all orders issued under this Contract.



- (a) Shipment responsibilities - Services performed/Deliverables provided under this Contract shall be delivered "F.O.B. Destination, within Government Premises." The Contractor shall have complete responsibility for providing all Services/Deliverables to all site(s) unless otherwise stated. Actual delivery dates will be specified on the individual purchase order.
- (b) Delivery locations - Services will be performed/Deliverables will be provided at every State of Michigan location within Michigan unless otherwise stated in the SOW. Specific locations will be provided by the State or upon issuance of individual purchase orders.
- (c) Damage Disputes - At the time of delivery to State Locations, the State shall examine all packages. The quantity of packages delivered shall be recorded and any obvious visible or suspected damage shall be noted at time of delivery using the shipper's delivery document(s) and appropriate procedures to record such.

Where there is no obvious or suspected damage, all deliveries to a State Location must be opened by the State and the contents inspected for possible internal damage not visible externally within 14 days of receipt. Any damage must be reported to the Contractor within five (5) days of inspection. If this inspection does not occur and damages not reported within 30 days of receipt, the cure for such damaged deliveries shall transfer to the delivery signing party.

2.082 Delivery of Deliverables

Where applicable, the Statements of Work/POs contain lists of the Deliverables to be prepared and delivered by Contractor including, for each Deliverable, the scheduled delivery date and a designation of whether the Deliverable is a document ("Written Deliverable"), a good ("Physical Deliverable") or a Service. All Deliverables shall be completed and delivered for State review and written approval and, where applicable, installed in accordance with the State-approved delivery schedule and any other applicable terms and conditions of the Contract.

2.083 Testing

- (a) Prior to delivering any of the above-mentioned Statement of Work Physical Deliverables or Services to the State, Contractor will first perform all required quality assurance activities to verify that the Physical Deliverable or Service is complete and in conformance with its specifications listed in the applicable Statement of Work or Purchase Order. Before delivering a Physical Deliverable or Service to the State, Contractor shall certify to the State that (1) it has performed such quality assurance activities, (2) it has performed any applicable testing, (3) it has corrected all material deficiencies discovered during such quality assurance activities and testing, (4) the Deliverable or Service is in a suitable state of readiness for the State's review and approval, and (5) the Deliverable/Service has all Critical Security patches/updates applied.
- (b) If a Deliverable includes installation at a State Location, then Contractor shall (1) perform any applicable testing, (2) correct all material deficiencies discovered during such quality assurance activities and testing, and (3) inform the State that the Deliverable is in a suitable state of readiness for the State's review and approval. To the extent that testing occurs at State Locations, the State shall be entitled to observe or otherwise participate in testing.

2.084 Approval of Deliverables, In General

- (a) All Deliverables (Physical Deliverables and Written Deliverables) and Services require formal written approval by the State, in accordance with the following procedures. Formal approval by the State requires that the Deliverable be confirmed in writing by the State to meet its specifications, which will include the successful completion of Testing as applicable in **Section 2.083**, to be led by the State with the support and assistance of Contractor. The parties acknowledge that the approval process set forth herein will be facilitated by ongoing consultation between the parties, visibility of interim and intermediate Deliverables and collaboration on key decisions.
- (b) The State's obligation to comply with any State Review Period is conditioned on the timely delivery of Deliverables/Services being reviewed.



(c) Prior to commencement of its review or testing of a Deliverable/Service, the State may inspect the Deliverable/Service to confirm that all components of the Deliverable/Service have been delivered without material deficiencies. If the State determines that the Deliverable/Service has material deficiencies, the State may refuse delivery of the Deliverable/Service without performing any further inspection or testing of the Deliverable/Service. Otherwise, the review period will be deemed to have started on the day the State receives the Deliverable or the Service begins, and the State and Contractor agree that the Deliverable/Service is ready for use and, where applicable, certification by Contractor in accordance with **Section 2.083(a)**.

(d) The State will approve in writing a Deliverable/Service upon confirming that it conforms to and, performs in accordance with, its specifications without material deficiency. The State may, but shall not be required to, conditionally approve in writing a Deliverable/Service that contains material deficiencies if the State elects to permit Contractor to rectify them post-approval. In any case, Contractor will be responsible for working diligently to correct within a reasonable time at Contractor's expense all deficiencies in the Deliverable/Service that remain outstanding at the time of State approval.

(e) If, after three (3) opportunities (the original and two repeat efforts), Contractor is unable to correct all deficiencies preventing Final Acceptance of a Deliverable/Service, the State may: (i) demand that Contractor cure the failure and give Contractor additional time to cure the failure at the sole expense of Contractor; or (ii) keep the Contract in force and do, either itself or through other parties, whatever Contractor has failed to do, in which event Contractor shall bear any excess expenditure incurred by the State in so doing beyond the Contract price for such Deliverable/Service and will pay the State an additional sum equal to ten percent (10%) of such excess expenditure to cover the State's general expenses provided the State can furnish proof of such general expenses; or (iii) terminate the particular Statement of Work for default, either in whole or in part by notice to Contractor provided Contractor is unable to cure such breach. Notwithstanding the foregoing, the State shall not use, as a basis for exercising its termination rights under this Section, deficiencies discovered in a repeat State Review Period that could reasonably have been discovered during a prior State Review Period.

(f) The State, at any time and in its reasonable discretion, may halt the testing or approval process if such process reveals deficiencies in or problems with a Deliverable/Service in a sufficient quantity or of a sufficient severity as to make the continuation of such process unproductive or unworkable. In such case, the State may stop using the Service or return the applicable Deliverable to Contractor for correction and re-delivery prior to resuming the testing or approval process.

2.085 Process For Approval of Written Deliverables

The State Review Period for Written Deliverables will be the number of days set forth in the applicable Statement of Work following delivery of the final version of the Deliverable (failing which the State Review Period, by default, shall be five (5) Business Days for Written Deliverables of 100 pages or less and 10 Business Days for Written Deliverables of more than 100 pages). The duration of the State Review Periods will be doubled if the State has not had an opportunity to review an interim draft of the Written Deliverable prior to its submission to the State. The State agrees to notify Contractor in writing by the end of the State Review Period either stating that the Deliverable is approved in the form delivered by Contractor or describing any deficiencies that must be corrected prior to approval of the Deliverable (or at the State's election, subsequent to approval of the Deliverable). If the State delivers to Contractor a notice of deficiencies, Contractor will correct the described deficiencies and within 30 Business Days resubmit the Deliverable in a form that shows all revisions made to the original version delivered to the State. Contractor's correction efforts will be made at no additional charge. Upon receipt of a corrected Deliverable from Contractor, the State will have a reasonable additional period of time, not to exceed the length of the original State Review Period, to review the corrected Deliverable to confirm that the identified deficiencies have been corrected.

2.086 Process for Approval of Services

The State Review Period for approval of Services is governed by the applicable Statement of Work (failing which the State Review Period, by default, shall be 30 Business Days for Services). The State agrees to notify Contractor in writing by the end of the State Review Period either stating that the Service is approved in the form delivered by Contractor or describing any deficiencies that must be corrected prior to approval of the Services (or at the State's election, subsequent to approval of the Service).



If the State delivers to Contractor a notice of deficiencies, Contractor will correct the described deficiencies and within 30 Business Days resubmit the Service in a form that shows all revisions made to the original version delivered to the State. Contractor's correction efforts will be made at no additional charge. Upon implementation of a corrected Service from Contractor, the State will have a reasonable additional period of time, not to exceed the length of the original State Review Period, to review the corrected Service for conformity and that the identified deficiencies have been corrected.

2.087 Process for Approval of Physical Deliverables

The State Review Period for approval of Physical Deliverables is governed by the applicable Statement of Work (failing which the State Review Period, by default, shall be 30 continuous Business Days for a Physical Deliverable). The State agrees to notify Contractor in writing by the end of the State Review Period either stating that the Deliverable is approved in the form delivered by Contractor or describing any deficiencies that must be corrected prior to approval of the Deliverable (or at the State's election, subsequent to approval of the Deliverable). If the State delivers to Contractor a notice of deficiencies, Contractor will correct the described deficiencies and within 30 Business Days resubmit the Deliverable in a form that shows all revisions made to the original version delivered to the State. Contractor's correction efforts will be made at no additional charge. Upon receipt of a corrected Deliverable from Contractor, the State will have a reasonable additional period of time, not to exceed the length of the original State Review Period, to review the corrected Deliverable to confirm that the identified deficiencies have been corrected.

2.088 Final Acceptance

Unless otherwise stated in the Statement of Work or Purchase Order, "Final Acceptance" of each Deliverable shall occur when each Deliverable/Service has been approved by the State following the State Review Periods identified in **Sections 2.080-2.087**. Payment will be made for Deliverables installed and accepted. Upon acceptance of a Service, the State will pay for all Services provided during the State Review Period that conformed to the acceptance criteria.

2.090 Financial

2.091 Pricing

(a) Fixed Prices for Services/Deliverables

Each Statement of Work/PO issued under this Contract shall specify (or indicate by reference to the appropriate Contract Exhibit) the firm, fixed prices for all Services/Deliverables, and the associated payment milestones and payment amounts. The State may make progress payments to the Contractor when requested as work progresses, but not more frequently than monthly, in amounts approved by the Contract Administrator, after negotiation. Contractor must show verification of measurable progress at the time of requesting progress payments.

(b) Adjustments for Reductions in Scope of Services/Deliverables

If the scope of the Services/Deliverables under any Statement of Work issued under this Contract is subsequently reduced by the State, the parties shall negotiate an equitable reduction in Contractor's charges under such Statement of Work commensurate with the reduction in scope.

(c) Services/Deliverables Covered

For all Services/Deliverables to be provided by Contractor (and its Subcontractors, if any) under this Contract, the State shall not be obligated to pay any amounts in addition to the charges specified in this Contract.

(d) Reserved

2.092 Invoicing and Payment Procedures and Terms

(a) Invoicing and Payment – In General

(i) Each Statement of Work issued under this Contract shall list (or indicate by reference to the appropriate Contract Exhibit) the prices for all Services/Deliverables, equipment and commodities to be provided, and the associated payment milestones and payment amounts.



(ii) Each Contractor invoice will show details as to charges by Service/Deliverable component and location at a level of detail reasonably necessary to satisfy the State's accounting and charge-back requirements. Prompt payment by the State is contingent on the Contractor's invoices showing the amount owed by the State minus any holdback amount to be retained by the State in accordance with **Section 2.094**.

(iii) Correct invoices will be due and payable by the State, in accordance with the State's standard payment procedure as specified in 1984 Public Act No. 279, MCL 17.51 et seq., within 45 days after receipt, provided the State determines that the invoice was properly rendered.

(b) Taxes (See Section 2.305 and Article 3, Section 3.022-3.024 for additional)

The State is exempt from Federal Excise Tax, State and Local Sales Taxes, and Use Tax with respect to the sale to and use by it of tangible personal property. Such taxes shall not be included in Contract prices as long as the State maintains such exemptions. Copies of all tax exemption certificates shall be supplied to Contractor, if requested.

(c) Out-of-Pocket Expenses

Contractor acknowledges that the out-of-pocket expenses that Contractor expects to incur in performing the Services/ providing the Deliverables (such as, but not limited to, travel and lodging, document reproduction and shipping, and long distance telephone) are included in Contractor's fixed price for each Statement of Work. Accordingly, Contractor's out-of-pocket expenses are not separately reimbursable by the State unless, on a case-by-case basis for unusual expenses, the State has agreed in advance and in writing to reimburse Contractor for such an expense at the State's current travel reimbursement rates. See http://www.mi.gov/dmb/0,1607,7-150-9141_13132---,00.html for current rates.

(d) Pro-ration

To the extent there are any Services that are to be paid for on a monthly basis, the cost of such Services shall be pro-rated for any partial month.

(e) Antitrust Assignment

The Contractor assigns to the State any claim for overcharges resulting from antitrust violations to the extent that those violations concern materials or services supplied by third parties to the Contractor, toward fulfillment of this Contract.

(f) Final Payment

The making of final payment by the State to Contractor does not constitute a waiver by either party of any rights or other claims as to the other party's continuing obligations under the Contract, nor will it constitute a waiver of any claims by one party against the other arising from unsettled claims or failure by a party to comply with this Contract, including claims for Services and Deliverables not reasonably known until after acceptance to be defective or substandard. Contractor's acceptance of final payment by the State under this Contract shall constitute a waiver of all claims by Contractor against the State for payment under this Contract, other than those claims previously filed in writing on a timely basis and still unsettled.

2.093 State Funding Obligation

The State's obligation under this Contract is payable only and solely from funds appropriated for the purpose of this Contract. Contractor acknowledges and agrees that all funds for payments after the end of the current fiscal year are subject to the availability of a legislative appropriation for the purpose of this Contract. Events of non-appropriation are addressed further in **Section 2.210** of this Contract.

2.094 RESERVED

2.095 Electronic Payment Availability

Electronic transfer of funds is available to State Contractors. Contractor is required to register with the State electronically at <http://www.cpexpress.state.mi.us>. Public Act 533 of 2004, requires all payments be transitioned over to EFT by October, 2005.



2.100 Contract Management

2.101 Contract Management Responsibility

(a) Contractor shall have overall responsibility for managing and successfully performing and completing the Services/Deliverables, subject to the overall direction and supervision of the State and with the participation and support of the State as specified in this Contract. Contractor's duties will include monitoring and reporting the State's performance of its participation and support responsibilities (as well as Contractor's own responsibilities) and providing timely notice to the State in Contractor's reasonable opinion if the State's failure to perform its responsibilities in accordance with **Article 1, Attachment C** (Project Plan) is likely to delay the timely achievement of any Contract tasks.

(b) The Services/Deliverables will be provided by the Contractor either directly or through its affiliates, subsidiaries, subcontractors or resellers. Regardless of the entity providing the Service/Deliverable, the Contractor will act as a single point of contact coordinating these entities to meet the State's need for Services/Deliverables. Nothing in this Contract, however, shall be construed to authorize or require any party to violate any applicable law or regulation in its performance of this Contract.

2.102 Problem and Contract Management Procedures

Problem Management and Contract Management procedures will be governed by the Contract and the applicable Statements of Work.

2.103 Reports and Meetings

(a) Reports.

Within 30 days after the Effective Date, the parties shall determine an appropriate set of periodic reports to be issued by Contractor to the State. Such reports may include:

- (i) separately address Contractor's performance in each area of the Services;
- (ii) for each area of the Services, assess the degree to which Contractor has attained or failed to attain the pertinent objectives in that area, including on-time completion and delivery of Deliverables;
- (iii) explain the reasons for any failure to achieve on-time completion and delivery of Deliverables and include a plan for corrective action where appropriate;
- (iv) describe any circumstances that Contractor anticipates will impair or prevent on-time completion and delivery of Deliverables in upcoming reporting periods;
- (v) include plans for corrective action or risk mitigation where appropriate and describe the status of ongoing problem resolution efforts;
- (vi) provide reports setting forth a comparison of actual hours spent by Contractor (including its augmented personnel and Subcontractors) in performing the Project versus hours budgeted by Contractor.
- (vii) set forth a record of the material personnel changes that pertain to the Services and describe planned changes during the upcoming month that may affect the Services.
- (viii) include such documentation and other information may be mutually agreed to verify compliance with, and meeting the objectives of, this Contract.
- (ix) set forth an updated schedule that provides information on the status of upcoming Deliverables, expected dates of delivery (or redelivery) of such Deliverables and estimates on timing for completion of the Project.

(b) Meetings.

Within 30 days after the Effective Date, the parties shall determine an appropriate set of meetings to be held between representatives of the State and Contractor. Contractor shall prepare and circulate an agenda sufficiently in advance of each such meeting to give participants an opportunity to prepare for the meeting. Contractor shall incorporate into such agenda items that the State desires to discuss. At the State's request, Contractor shall prepare and circulate minutes promptly after a meeting.

2.104 System Changes

Contractor is not responsible for and not authorized to make changes to any State systems without written authorization from the State. Any changes Contractor makes to State systems with the State's approval shall be done in accordance with applicable State procedures, including security, access and configuration management procedures.



2.105 Reserved

2.106 Change Requests

The State reserves the right to request from time to time, any changes to the requirements and specifications of the Contract and the work to be performed by the Contractor under the Contract. During the course of ordinary business, it may become necessary for the State to discontinue certain business practices or create Additional Services/Deliverables. At a minimum, to the extent applicable, the State would like the Contractor to provide a detailed outline of all work to be done, including tasks necessary to accomplish the services/deliverables, timeframes, listing of key personnel assigned, estimated hours for each individual per task, and a complete and detailed cost justification.

If the State requests or directs the Contractor to perform any Services/Deliverables that are outside the scope of the Contractor's responsibilities under the Contract ("New Work"), the Contractor must notify the State promptly, and before commencing performance of the requested activities, that it believes the requested activities are New Work. If the Contractor fails to notify the State before commencing performance of the requested activities, any such activities performed before notice is given by the Contractor shall be conclusively considered to be in-scope Services/Deliverables, not New Work.

If the State requests or directs the Contractor to perform any services or provide deliverables that are consistent with and similar to the Services/Deliverables being provided by the Contractor under the Contract, but which the Contractor reasonably and in good faith believes are not included within the Statements of Work, then before performing such services or providing such deliverables, the Contractor shall notify the State in writing that it considers the services or deliverables to be an Additional Service/Deliverable for which the Contractor should receive additional compensation. If the Contractor does not so notify the State, the Contractor shall have no right to claim thereafter that it is entitled to additional compensation for performing that service or providing that deliverable. If the Contractor does so notify the State, then such a service or deliverable shall be governed by the Change Request procedure in this Section.

In the event prices or service levels are not acceptable to the State, the Additional Services or New Work shall be subject to competitive bidding based upon the specifications.

(a) Change Requests

(i) State Requests

If the State should require Contractor to perform New Work, Additional Services or make changes to the Services that would affect the Contract completion schedule or the amount of compensation due Contractor (a "Change"), the State shall submit a written request for Contractor to furnish a proposal for carrying out the requested Change (a "Change Request").

(ii) Contractor Recommendations

Contractor shall be entitled to propose a Change to the State, on its own initiative, should it be of the opinion that this would benefit the Contract.

(iii) Upon receipt of a Change Request or on its own initiative, Contractor shall examine the implications of the requested Change on the technical specifications, Contract schedule and price of the Deliverables and Services and shall submit to the State without undue delay a written proposal for carrying out the Change. Contractor's proposal will include any associated changes in the technical specifications, Contract schedule and price and method of pricing of the Services. If the Change is to be performed on a time and materials basis, the Amendment Labor Rates shall apply to the provision of such Services. If Contractor provides a written proposal and should Contractor be of the opinion that a requested Change is not to be recommended, it shall communicate its opinion to the State but shall nevertheless carry out the Change as specified in the written proposal if the State directs it to do so.

(iv) By giving Contractor written notice within a reasonable time, the State shall be entitled to accept a Contractor proposal for Change, to reject it or to reach another agreement with Contractor. Should the parties agree on carrying out a Change, a written Contract Change Notice shall be prepared and issued under this Contract, describing the Change and its effects on the Services and any affected components of this Contract (a "Contract Change Notice").

(v) No proposed Change shall be performed until the proposed Change has been specified in a duly executed Contract Change Notice issued by the Department of Management and Budget, Office of Purchasing Operations.



(vi) If the State requests or directs Contractor to perform any activities that Contractor believes constitute a Change, Contractor must notify the State that it believes the requested activities are a Change prior to commencing the performance of the requested activities. If Contractor fails to so notify the State prior to commencing performance of the requested activities, such activities shall be considered to be performed gratuitously by Contractor, and Contractor shall not have any right thereafter to assert any claim for additional compensation or time for the performance of such activities. If Contractor commences performance of gratuitous services outside the scope of this Contract and subsequently elects to stop performing such out-of-scope services, Contractor must, at the request of the State, back out or reverse any changes resulting from such performance that would adversely affect the Contract.

2.107 Management Tools

Contractor will use an automated tool for planning, monitoring and tracking the Contract's progress. In addition, Contractor shall use automated project management tools as reasonably necessary to perform the Services, which tools shall include the capability to produce through the end of the Contract: (i) staffing tables with names of personnel assigned to Contract tasks, (ii) project plans showing tasks, subtasks, Deliverables and the resources required and allocated to each (including detailed plans for all Services to be performed within the next 60 days, updated semi-monthly) and (iii) graphs showing critical events, dependencies and decision points during the course of the Contract. Any tool(s) used by Contractor for such purposes must produce information of a type and in a manner and format that will support reporting in compliance with the State's standard to the extent such information is described with reasonable detail in the Statements of Work and to the extent the related work is of sufficient project complexity and duration to warrant such reporting.

2.110 Records and Inspections

2.111 Records and Inspections

(a) **Inspection of Work Performed.** The State's authorized representatives shall at all reasonable times and with ten (10) days prior written request, have the right to enter Contractor's premises, or any other places, where the Services are being performed, and shall have access, upon reasonable request, to interim drafts of Deliverables or work-in-progress. Upon ten (10) Days prior written notice and at all reasonable times, the State's representatives shall be allowed to inspect, monitor, or otherwise evaluate the work being performed and to the extent that such access will not reasonably interfere or jeopardize the safety or operation of the systems or facilities. Contractor must provide all reasonable facilities and assistance for the State's representatives.

(b) **Examination of Records.** Contractor agrees that the State, including its duly authorized representatives, until the expiration of seven (7) years following the creation of the material (collectively, the "Audit Period"), shall, upon 20 days prior written notice, have access to and the right to examine and copy any of Contractor's books, records, documents and papers pertinent to establishing Contractor's compliance with the Contract and with applicable laws and rules, including the State's procurement rules, regulations and procedures, and actual performance of the Contract for the purpose of conducting an audit, examination, excerpt and/or transcription but the State shall not have access to any information deemed confidential to Contractor to the extent such access would require such confidential information to become publicly available. This provision also applies to the books, records, accounts, documents and papers, in print or electronic form, of any parent, affiliated or subsidiary organization of Contractor, or any Subcontractor of Contractor performing services in connection with the Contract.

(c) **Retention of Records.** Contractor shall maintain at least until the end of the Audit Period all pertinent financial and accounting records (including time sheets and payroll records, and information pertaining to the Contract and to the Services, equipment, and commodities provided under the Contract) pertaining to the Contract in accordance with generally accepted accounting principles and other procedures specified in this Section. Financial and accounting records shall be made available, upon request, to the State at any time during the Audit Period. If an audit, litigation, or other action involving Contractor's records is initiated before the end of the Audit Period, the records must be retained until all issues arising out of the audit, litigation, or other action are resolved or until the end of the Audit Period, whichever is later.

(d) **Audit Resolution.** If necessary, the Contractor and the State shall meet to review each audit report promptly after issuance. The Contractor will respond to each audit report in writing within 30 days from receipt of such report, unless a shorter response time is specified in such report. The Contractor and the State shall develop, agree upon and monitor an action plan to promptly address and resolve any deficiencies, concerns, and/or recommendations in such audit report.



2.112 Errors

(a) If the audit demonstrates any errors in the statements provided to the State, then the amount in error shall be reflected as a credit or debit on the next invoice and in subsequent invoices until the amount is paid or refunded in full. However, a credit or debit may not be carried for more than four (4) quarterly statements. If a balance remains after four (4) quarterly statements, then the remaining amount will be due as a payment or refund within 45 days of the last quarterly statement that the balance appeared on or termination of the contract, whichever is earlier.

(b) In addition to other available remedies, the difference between the payment received and the correct payment amount is greater than ten percent (10%), then the Contractor shall pay all of the reasonable costs of the audit.

2.120 State Responsibilities

2.121 State Performance Obligations

(a) **Equipment and Other Resources.** To facilitate Contractor's performance of the Services/Deliverables, the State shall provide to Contractor such equipment and resources as identified in the Statements of Work or other Contract Exhibits as items to be provided by the State.

(b) **Facilities.** The State shall designate space as long as it is available and as provided in the Statement of Work, to house Contractor's personnel whom the parties agree will perform the Services/Deliverables at State facilities (collectively, the "State Facilities"). Contractor shall have reasonable access to, and unless agreed otherwise by the parties in writing shall observe and comply with all rules and regulations relating to, each of the State Facilities (including hours of operation) used by Contractor in the course of providing the Services. Contractor agrees that it will not, without the prior written consent of the State, use any State Facilities or access any State information systems provided for Contractor's use, or to which Contractor otherwise gains access in the course of performing the Services, for any purpose other than providing the Services to the State.

(c) **Return.** Contractor shall be responsible for returning to the State any State-furnished equipment, facilities and other resources when no longer required for the Contract in the same condition as when provided by the State, reasonable wear and tear excepted.

(d) Except as otherwise provided in **Section 2.220**, the State's failure to perform its responsibilities as set forth in this Contract shall not be deemed to be grounds for termination by Contractor. However, Contractor will not be liable for any default or delay in the performance of its obligations under this Contract to the extent such default or delay is caused by nonperformance of the State's obligations under this Contract, provided Contractor provides the State with reasonable written notice of such nonperformance and Contractor uses commercially reasonable efforts to perform notwithstanding the State's failure to perform. In addition, if the State's nonperformance of its responsibilities under this Contract materially increases the time required for Contractor's performance or Contractor's cost of performance, Contractor shall be entitled to seek an equitable extension via the Change Request process described in **Section 2.106**.

2.130 Security

2.131 Background Checks

The Contractor shall authorize the investigation of its personnel proposed to have access to State facilities and systems on a case by case basis. The scope of the background check is at the discretion of the State and the results will be used to determine Contractor personnel eligibility for working within State facilities and systems. Such investigations will include Michigan State Police Background checks (ICHAT) and may include the National Crime Information Center (NCIC) Finger Prints. Proposed Contractor personnel may be required to complete and submit an RI-8 Fingerprint Card for the NCIC Finger Print Check. Any request for background checks will be initiated by the State and will be reasonably related to the type of work requested.

All Contractor personnel will also be expected to comply with the State's security and acceptable use policies for State IT equipment and resources. See <http://www.michigan.gov/ditservice/0,1607,7-179-25781-73760--,00.html>. Furthermore, Contractor personnel will be expected to agree to the State's security and acceptable use policies before the Contractor personnel will be accepted as a resource to perform work for the State. It is expected the Contractor will present these documents to the prospective employee before the Contractor presents the individual to the State as a proposed resource. Contractor staff will be expected to comply with all Physical Security procedures in place within the facilities where they are working.



2.140 *Reserved*

2.150 *Confidentiality*

2.151 Freedom of Information

All information in any proposal submitted to the State by Contractor and this Contract is subject to the provisions of the Michigan Freedom of Information Act, 1976 Public Act No. 442, as amended, MCL 15.231, et seq (the "FOIA").

2.152 Confidentiality

Contractor and the State each acknowledge that the other possesses and will continue to possess confidential information that has been developed or received by it. As used in this Section, "Confidential Information" of Contractor shall mean all non-public proprietary information of Contractor (other than Confidential Information of the State as defined below) which is marked confidential, restricted, proprietary or with a similar designation. "Confidential Information" of the State shall mean any information which is retained in confidence by the State (or otherwise required to be held in confidence by the State pursuant to applicable federal, state and local laws and regulations) or which, in the case of tangible materials provided to Contractor by the State pursuant to its performance under this Contract, is marked as confidential, proprietary or with a similar designation by the State. In the case of information of either Contractor or the State "Confidential Information" shall exclude any information (including this Contract) that is publicly available pursuant to the Michigan FOIA.

2.153 Protection of Confidential Information

The State and Contractor will each use at least the same degree of care to prevent disclosing to third parties the Confidential Information of the other as it employs to avoid unauthorized disclosure, publication or dissemination of its own confidential information of like character, but in no event less than reasonable care. Neither Contractor nor the State will (i) make any use of the Confidential Information of the other except as contemplated by this Contract, (ii) acquire any right in or assert any lien against the Confidential Information of the other, or (iii) if requested to do so, refuse for any reason to promptly return the other party's Confidential Information to the other party. Each party will limit disclosure of the other party's Confidential Information to employees and Subcontractors who must have access in order to fulfill the purposes of this Contract. Disclosure to, and use by, a Subcontractor is permissible where (A) use of a Subcontractor is authorized under this Contract, (B) such disclosure is necessary or otherwise naturally occurs in connection with work that is within such Subcontractor's scope of responsibility, and (C) Contractor obligates the Subcontractor in a written Contract to maintain the State's Confidential Information in confidence. At the State's request, any employee of Contractor and of any Subcontractor having access or continued access to the State's Confidential Information may be required to execute an acknowledgment that the employee has been advised of Contractor's and the Subcontractor's obligations under this Section and of the employee's obligation to Contractor or Subcontractor, as the case may be, to protect such Confidential Information from unauthorized use or disclosure.

2.154 Exclusions

Notwithstanding the foregoing, the provisions of this Section will not apply to any particular information which the State or Contractor can demonstrate (i) was, at the time of disclosure to it, in the public domain; (ii) after disclosure to it, is published or otherwise becomes part of the public domain through no fault of the receiving party; (iii) was in the possession of the receiving party at the time of disclosure to it without an obligation of confidentiality; (iv) was received after disclosure to it from a third party who had a lawful right to disclose such information to it without any obligation to restrict its further disclosure; or (v) was independently developed by the receiving party without reference to Confidential Information of the furnishing party. Further, the provisions of this Section will not apply to any particular Confidential Information to the extent the receiving party is required by law to disclose such Confidential Information, provided that the receiving party (i) promptly provides the furnishing party with notice of the legal request, and (ii) assists the furnishing party in resisting or limiting the scope of such disclosure as reasonably requested by the furnishing party.

**2.155 No Implied Rights**

Nothing contained in this Section shall be construed as obligating a party to disclose any particular Confidential Information to the other party, or as granting to or conferring on a party, expressly or impliedly, any right or license to the Confidential Information of the other party.

2.156 Remedies

Each party acknowledges that, if it breaches (or attempts or threatens to breach) its obligations under this Section, the other party may be irreparably harmed. Accordingly, if a court of competent jurisdiction should find that a party has breached (or attempted or threatened to breach) any such obligations, the non-breaching party shall be entitled to seek an injunction preventing such breach (or attempted or threatened breach).

2.157 Security Breach Notification

In the event of a breach of this Section, Contractor shall take (i) prompt corrective action to cure any such deficiencies and (ii) any action pertaining to such unauthorized disclosure required by applicable federal and state laws and regulations. Contractor and the State will cooperate to mitigate, to the extent practicable, the effects of any breach, intrusion, or unauthorized use or disclosure. Contractor shall report to the State in writing any use or disclosure of Confidential Information, whether suspected or actual, other than as provided for by the Contract within ten (10) days of becoming aware of such use or disclosure or such shorter time period as is reasonable under the circumstances.

2.158 Survival

The parties' respective obligations under this Section shall survive the termination or expiration of this Contract for any reason.

2.159 Destruction of Confidential Information

Promptly upon termination or cancellation of the Contract for any reason, Contractor shall certify to the State that Contractor has destroyed all State Confidential Information.

2.160 Proprietary Rights**2.161 RESERVED****2.162 RESERVED****2.163 Rights in Data**

(a) The State will be and remain the owner of all data made available by the State to Contractor or its agents, Subcontractors or representatives pursuant to the Contract. Contractor will not use the State's data for any purpose other than providing the Services, nor will any part of the State's data be disclosed, sold, assigned, leased or otherwise disposed of to the general public or to specific third parties or commercially exploited by or on behalf of Contractor, nor will any employee of Contractor other than those on a strictly need to know basis have access to the State's data. Contractor will not possess or assert any lien or other right against the State's data. Without limiting the generality of this Section, Contractor shall only use personally identifiable information as strictly necessary to provide the Services and shall disclose such information only to its employees who have a strict need to know such information. Contractor shall comply at all times with all laws and regulations applicable to such personally identifiable information.

(b) The State is and shall remain the owner of all State-specific data pursuant to the Contract. The State may use the data provided by the Contractor for any purpose. The State will not possess or assert any lien or other right against the Contractor's data. Without limiting the generality of this Section, the State shall only use personally identifiable information as strictly necessary to utilize the Services and shall disclose such information only to its employees who have a strict need to know such information, except as provided by law. The State shall comply at all times with all laws and regulations applicable to such personally identifiable information. Other material developed and provided to the State shall remain the State's sole and exclusive property.

**2.164 Ownership of Materials**

State and Contractor will continue to own their respective proprietary technologies developed before entering into the Contract. Any hardware bought through the Contractor by the State, and paid for by the State, will be owned by the State. Any software licensed through the Contractor and sold to the State, will be licensed directly to the State.

2.165 Standard Software

If applicable and necessary, all Standard Software used in performing the Services shall be provided to the State under a separate license agreement between the State and the owner (or authorized licensor) of such software.

2.166 Pre-existing Materials for Custom Software Deliverables

Neither Contractor nor any of its Subcontractors shall incorporate any preexisting materials (including Standard Software) into Custom Software Deliverables or use any pre-existing materials to produce Custom Software Deliverables if such pre-existing materials will be needed by the State in order to use the Custom Software Deliverables unless (i) such pre-existing materials and their owners are identified to the State in writing and (ii) such pre-existing materials are either readily commercially available products for which Contractor or its Subcontractor, as the case may be, has obtained a license (in form and substance approved by the State) in the name of the State, or are materials that Contractor or its Subcontractor, as the case may be, has the right to license to the State and has licensed to the State on terms and conditions approved by the State prior to using such pre-existing materials to perform the Services.

2.167 General Skills

Notwithstanding anything to the contrary in this Section, each party, its Subcontractors and their personnel shall be free to use and employ its and their general skills, know-how and expertise, and to use, disclose and employ any generalized ideas, concepts, know-how, methods, techniques or skills gained or learned during the course of performing the Services, so long as it or they acquire and apply the foregoing without disclosure of any confidential or proprietary information of the other party.

2.170 Warranties And Representations**2.171 Warranties and Representations**

The Contractor represents and warrants:

(a) It is capable in all respects of fulfilling and shall fulfill all of its obligations under this Contract. The performance of all obligations under this Contract shall be provided in a timely, professional, and workman-like manner and shall meet the performance and operational standards required under this Contract.

(b) The Contract Appendices, Attachments and Exhibits identify the equipment and software and services necessary for the Deliverable(s) to perform and Services to operate in compliance with the Contract's requirements and other standards of performance.

(c) It is the lawful owner or licensee of any Deliverable licensed or sold to the State by Contractor or developed by Contractor under this Contract, and Contractor has all of the rights necessary to convey to the State the ownership rights or licensed use, as applicable, of any and all Deliverables. None of the Deliverables provided by Contractor to the State under this Contract, nor their use by the State, will infringe the patent, copyright, trade secret, or other proprietary rights of any third party.

(d) If, under this Contract, Contractor procures any equipment, software or other Deliverable for the State (including equipment, software and other Deliverables manufactured, re-marketed or otherwise sold by Contractor under Contractor's name), then in addition to Contractor's other responsibilities with respect to such items in this Contract, Contractor shall assign or otherwise transfer to the State or its designees, or afford the State the benefits of, any manufacturer's warranty for the Deliverable.



- (e) The contract signatory has the power and authority, including any necessary corporate authorizations, necessary to enter into this Contract, on behalf of Contractor.
- (f) It is qualified and registered to transact business in all locations where required.
- (g) Neither the Contractor nor any Affiliates, nor any employee of either, has, shall have, or shall acquire, any contractual, financial, business, or other interest, direct or indirect, that would conflict in any manner or degree with Contractor's performance of its duties and responsibilities to the State under this Contract or otherwise create an appearance of impropriety with respect to the award or performance of this Agreement. Contractor shall notify the State within two (2) days of any such interest that may be incompatible with the interests of the State.
- (h) Neither Contractor nor any Affiliates, nor any employee of either has accepted or shall accept anything of value based on an understanding that the actions of the Contractor or Affiliates or employee on behalf of the State would be influenced. Contractor shall not attempt to influence any State employee by the direct or indirect offer of anything of value.
- (i) Neither Contractor nor any Affiliates, nor any employee of either has paid or agreed to pay any person, other than bona fide employees and consultants working solely for Contractor or such Affiliate, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this Contract.
- (j) The prices proposed by Contractor were arrived at independently, without consultation, communication, or agreement with any other Contractor for the purpose of restricting competition; the prices quoted were not knowingly disclosed by Contractor to any other Contractor; and no attempt was made by Contractor to induce any other person to submit or not submit a proposal for the purpose of restricting competition.
- (k) All financial statements, reports, and other information furnished by Contractor to the State as part of its response to the RFP or otherwise in connection with the award of this Contract fairly and accurately represent the business, properties, financial condition, and results of operations of Contractor as of the respective dates, or for the respective periods, covered by such financial statements, reports, other information. Since the respective dates or periods covered by such financial statements, reports, or other information, there have been no material adverse change in the business, properties, financial condition, or results of operations of Contractor.
- (m) All written information furnished to the State by or behalf of Contractor in connection with this Contract, including its bid, is true, accurate, and complete, and contains no untrue statement of material fact or omits any material fact necessary to make such information not misleading.
- (n) It is not in material default or breach of any other contract or agreement that it may have with the State or any of its departments, commissions, boards, or agencies. Contractor further represents and warrants that it has not been a party to any contract with the State or any of its departments that was terminated by the State or such department within the previous five (5) years for the reason that Contractor failed to perform or otherwise breached an obligation of such contract.

2.172 RESERVED**2.173 RESERVED****2.174 RESERVED****2.175a DISCLAIMER**

THE FOREGOING EXPRESS WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES AND EACH PARTY EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, BY OPERATION OF LAW OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.



2.176 Consequences For Breach

In addition to any remedies available in law, if the Contractor breaches any of the warranties contained in this section, such breach may be considered as a default in the performance of a material obligation of this Contract.

2.180 Insurance

2.181 Liability Insurance

(a) Liability Insurance

The Contractor is required to provide proof of the minimum levels of insurance coverage as indicated below. The purpose of this coverage shall be to protect the State from claims which may arise out of or result from the Contractor's performance of services under the terms of this Contract, whether such services are performed by the Contractor, or by any subcontractor, or by anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable.

The Contractor waives all rights against the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees and agents for recovery of damages to the extent these damages are covered by the insurance policies the Contractor is required to maintain pursuant to this Contract.

All insurance coverages provided relative to this Contract/Purchase Order are PRIMARY and NON-CONTRIBUTING to any comparable liability insurance (including self-insurances) carried by the State.

The insurance shall be written for not less than any minimum coverage specified in this Contract or required by law, whichever is greater.

The insurers selected by Contractor shall have an A.M. Best rating of A or better, or as otherwise approved in writing by the State, or if such ratings are no longer available, with a comparable rating from a recognized insurance rating agency. All policies of insurance required in this Contract shall be issued by companies that have been approved to do business in the State.

See http://www.mi.gov/cis/0,1607,7-154-10555_22535---,00.html.

Where specific limits are shown, they are the minimum acceptable limits. If Contractor's policy contains higher limits, the State shall be entitled to coverage to the extent of such higher limits.

Before the Contract is signed by both parties or before the purchase order is issued by the State, the Contractor must furnish to the Director of Purchasing Operations, certificate(s) of insurance verifying insurance coverage ("Certificates"). The Certificate must be on the standard "accord" form or equivalent. **THE CONTRACT OR PURCHASE ORDER NO. MUST BE SHOWN ON THE CERTIFICATE OF INSURANCE TO ASSURE CORRECT FILING.** All Certificate(s) are to be prepared and submitted by the Insurance Provider. All Certificate(s) shall contain a provision indicating that coverages afforded under the policies WILL NOT BE CANCELLED, MATERIALLY CHANGED, OR NOT RENEWED without THIRTY (30) days prior written notice, except for ten (10) days for non-payment of premium, having been given to the Director of Purchasing Operations, Department of Management and Budget. The notice must include the Contract or Purchase Order number affected and be mailed to: Director, Purchasing Operations, Department of Management and Budget, P.O. Box 30026, Lansing, Michigan 48909. Failure to provide evidence of coverage, may, at the State's sole option, result in this Contract's termination.

The Contractor is required to pay for and provide the type and amount of insurance checked below:

1. Commercial General Liability with the following minimum coverage:

\$2,000,000 General Aggregate Limit other than Products/Completed Operations

\$2,000,000 Products/Completed Operations Aggregate Limit

\$1,000,000 Personal & Advertising Injury Limit

\$1,000,000 Each Occurrence Limit

\$500,000 Fire Damage Limit (any one fire)



The Contractor must list the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees and agents as ADDITIONAL INSUREDS on the Commercial General Liability certificate. The Contractor also agrees to provide evidence that insurance policies contain a waiver of subrogation by the insurance company.

2. If a motor vehicle is used to provide services or products under this Contract, the Contractor must have vehicle liability insurance on any auto including owned, hired and non-owned vehicles used in Contractor's business for bodily injury and property damage as required by law.

The Contractor must list the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees and agents as ADDITIONAL INSUREDS on the vehicle liability certificate. The Contractor also agrees to provide evidence that insurance policies contain a waiver of subrogation by the insurance company.

3. Workers' compensation coverage must be provided in accordance with applicable laws governing the employees and employers work activities in the state of the Contractor's domicile. If the applicable coverage is provided by a self-insurer, proof must be provided of approved self-insured authority by the jurisdiction of domicile. For employees working outside of the state of qualification, Contractor must provide appropriate certificates of insurance proving mandated coverage levels for the jurisdictions where the employees' activities occur.

Any certificates of insurance received must also provide a list of states where the coverage is applicable.

The Contractor also agrees to provide evidence that insurance policies contain a waiver of subrogation by the insurance company. This provision shall not be applicable where prohibited or limited by the laws of the jurisdiction in which the work is to be performed.

4. Employers liability insurance with the following minimum limits:

\$100,000 each accident
 \$100,000 each employee by disease
 \$500,000 aggregate disease

5. Employee Fidelity, including Computer Crimes, insurance naming the State as a loss payee, providing coverage for direct loss to the State and any legal liability of the State arising out of or related to fraudulent or dishonest acts committed by the employees of Contractor or its Subcontractors, acting alone or in collusion with others, in a minimum amount of one million dollars (\$1,000,000.00)

6. Umbrella or Excess Liability Insurance in a minimum amount of ten million dollars (\$10,000,000.00), which shall apply, at a minimum, to the insurance required in Subsection 1 (Commercial General Liability) above.

7. Professional Liability (Errors and Omissions) Insurance with the following minimum coverage: three million dollars (\$3,000,000.00) each occurrence and three million dollars (\$3,000,000.00) annual aggregate with \$5,000,000.00 deductible.

8. Fire and Personal Property Insurance covering against any loss or damage to the office space used by Contractor for any reason under this Contract, and the equipment, software and other contents of such office space, including without limitation, those contents used by Contractor to provide the Services to the State, up to the replacement value thereof, where such office space and its contents are under the care, custody and control of Contractor. Such policy shall cover all risks of direct physical loss or damage, including without limitation, flood and earthquake coverage and coverage for computer hardware and software. The State shall be endorsed on the policy as a loss payee as its interests appear.

(b) Subcontractors

Except where the State has approved in writing a Contractor subcontract with other insurance provisions, Contractor shall require all of its Subcontractors under this Contract to purchase and maintain the insurance coverage as described in this Section for the Contractor in connection with the performance of work by those Subcontractors. Alternatively, Contractor may include any Subcontractors under Contractor's insurance on the coverage required in this



Section. Subcontractor(s) shall fully comply with the insurance coverage required in this Section. Failure of Subcontractor(s) to comply with insurance requirements does not limit Contractor's liability or responsibility.



(c) Certificates of Insurance and Other Requirements

Contractor shall furnish to the Office of Purchasing Operations certificate(s) of insurance verifying insurance coverage or providing satisfactory evidence of self-insurance as required in this Section (the "Certificates"). Before the Contract is signed, and not less than 20 days before the insurance expiration date every year thereafter, the Contractor shall provide evidence that the State and its agents, officers and employees are listed as additional insureds under each commercial general liability and commercial automobile liability policy. In the event the State approves the representation of the State by the insurer's attorney, the attorney may be required to be designated as a Special Assistant Attorney General by the Attorney General of the State of Michigan.

Contractor shall maintain all required insurance coverage throughout the term of the Contract and any extensions thereto and, in the case of claims-made Commercial General Liability policies, shall secure tail coverage for at least three (3) years following the expiration or termination for any reason of this Contract. The minimum limits of coverage specified above are not intended, and shall not be construed, to limit any liability or indemnity of Contractor under this Contract to any indemnified party or other persons. Contractor shall be responsible for all deductibles with regard to such insurance. If Contractor fails to pay any premium for required insurance as specified in this Contract, or if any insurer cancels or significantly reduces any required insurance as specified in this Contract without the State's written consent, at the State's election (but without any obligation to do so) after the State has given Contractor at least thirty (30) days written notice, the State may pay such premium or procure similar insurance coverage from another company or companies; and at the State's election, the State may deduct the entire cost (or part thereof) from any payment due Contractor, or Contractor shall pay the entire cost (or any part thereof) upon demand by the State.

2.190 Indemnification

2.191 Indemnification

(a) General Indemnification

To the extent permitted by law, the Contractor shall indemnify, defend and hold harmless the State from liability, including all claims and losses, and all related costs and expenses (including reasonable attorneys' fees and costs of investigation, litigation, settlement, judgments, interest and penalties), accruing or resulting to any person, firm or corporation that may be injured or damaged by the Contractor in the performance of this Contract and that are attributable to the negligence or tortious acts of the Contractor or any of its subcontractors, or by anyone else for whose acts any of them may be liable.

(b) Code Indemnification

To the extent permitted by law, the Contractor shall indemnify, defend and hold harmless the State from any claim, loss, or expense arising from Contractor's breach of the No Surreptitious Code Warranty.

(c) Employee Indemnification

In any and all claims against the State of Michigan, its departments, divisions, agencies, sections, commissions, officers, employees and agents, by any employee of the Contractor or any of its subcontractors, the indemnification obligation under the Contract shall not be limited in any way by the amount or type of damages, compensation or benefits payable by or for the Contractor or any of its subcontractors under worker's disability compensation acts, disability benefit acts or other employee benefit acts. This indemnification clause is intended to be comprehensive. Any overlap in provisions, or the fact that greater specificity is provided as to some categories of risk, is not intended to limit the scope of indemnification under any other provisions.

(d) Patent/Copyright Infringement Indemnification

To the extent permitted by law, the Contractor shall indemnify, defend and hold harmless the State from and against all losses, liabilities, damages (including taxes), and all related costs and expenses (including reasonable attorneys' fees and costs of investigation, litigation, settlement, judgments, interest and penalties) incurred in connection with any action or proceeding threatened or brought against the State to the extent that such action or proceeding is based on a claim that any piece of equipment, software, commodity or service supplied by the Contractor or its subcontractors, or the operation of such equipment, software, commodity or service, or the use or reproduction of any documentation provided with such equipment, software, commodity or service infringes any United States patent, copyright, trademark or trade secret of any person or entity, which is enforceable under the laws of the United States.



In addition, should the equipment, software, commodity, or service, or its operation, become or in the State's or Contractor's opinion be likely to become the subject of a claim of infringement, the Contractor shall at the Contractor's sole expense (i) procure for the State the right to continue using the equipment, software, commodity or service or, if such option is not reasonably available to the Contractor, (ii) replace or modify to the State's satisfaction the same with equipment, software, commodity or service of equivalent function and performance so that it becomes non-infringing, or, if such option is not reasonably available to Contractor, (iii) accept its return by the State with appropriate credits to the State against the Contractor's charges and reimburse the State for any losses or costs incurred as a consequence of the State ceasing its use and returning it.

Notwithstanding the foregoing, the Contractor shall have no obligation to indemnify or defend the State for, or to pay any costs, damages or attorneys' fees related to, any claim based upon (i) equipment developed based on written specifications of the State; or (ii) use of the equipment in a configuration other than implemented or approved in writing by the Contractor, including, but not limited to, any modification of the equipment by the State; or (iii) the combination, operation, or use of the equipment with equipment or software not supplied by the Contractor under this Contract.

2.192 Continuation of Indemnification Obligations

The Contractor's duty to indemnify pursuant to this Section continues in full force and effect, notwithstanding the expiration or early cancellation of the Contract, with respect to any claims based on facts or conditions that occurred prior to expiration or cancellation.

2.193 Indemnification Procedures

The procedures set forth below shall apply to all indemnity obligations under this Contract.

(a) After receipt by the State of notice of the action or proceeding involving a claim in respect of which it will seek indemnification, the State shall promptly notify Contractor of such claim in writing and take or assist Contractor in taking, as the case may be, any reasonable action to avoid the imposition of a default judgment against Contractor. No failure to notify Contractor shall relieve Contractor of its indemnification obligations except to the extent that Contractor can demonstrate damages attributable to such failure. Within ten (10) days following receipt of written notice from the State relating to any claim, Contractor shall notify the State in writing whether Contractor agrees to assume control of the defense and settlement of that claim (a "Notice of Election"). After notifying Contractor of a claim and prior to the State receiving Contractor's Notice of Election, the State shall be entitled to defend against the claim, at Contractor's expense, and Contractor will be responsible for any reasonable costs incurred by the State in defending against the claim during such period.

(b) If Contractor delivers a Notice of Election relating to any claim: (i) the State shall be entitled to participate in the defense of such claim and to employ counsel at its own expense to assist in the handling of such claim and to monitor and advise the State about the status and progress of the defense; (ii) Contractor shall, at the request of the State, demonstrate to the reasonable satisfaction of the State, Contractor's financial ability to carry out its defense and indemnity obligations under this Contract; (iii) Contractor shall periodically advise the State about the status and progress of the defense and shall obtain the prior written approval of the State before entering into any settlement of such claim or ceasing to defend against such claim and (iv) to the extent that any principles of Michigan governmental or public law may be involved or challenged, the State shall have the right, at its own expense, to control the defense of that portion of such claim involving the principles of Michigan governmental or public law. Notwithstanding the foregoing, the State may retain control of the defense and settlement of a claim by written notice to Contractor given within ten (10) days after the State's receipt of Contractor's information requested by the State pursuant to clause (ii) of this paragraph if the State determines that Contractor has failed to demonstrate to the reasonable satisfaction of the State Contractor's financial ability to carry out its defense and indemnity obligations under this Section. Any litigation activity on behalf of the State of Michigan, or any of its subdivisions pursuant to this Section, must be coordinated with the Department of Attorney General. In the event the insurer's attorney represents the State pursuant to this Section, the insurer's attorney may be required to be designated as a Special Assistant Attorney General by the Attorney General of the State of Michigan.

(c) If Contractor does not deliver a Notice of Election relating to any claim of which it is notified by the State as provided above, the State shall have the right to defend the claim in such manner as it may deem appropriate, at the cost and expense of Contractor. If it is determined that the claim was one against which Contractor was required to indemnify the State, upon request of the State, Contractor shall promptly reimburse the State for all such reasonable costs and expenses.



2.200 Limits of Liability and Excusable Failure

2.201 Limits of Liability

The Contractor's liability for damages to the State shall be limited to two (2) times the value of the Contract. The foregoing limitation of liability shall not apply to claims for infringement of United States patent, copyright, trademarks or trade secrets; to claims for personal injury or damage to property caused by the gross negligence or willful misconduct of the Contractor; to claims covered by other specific provisions of this Contract calling for liquidated damages; or to court costs or attorney's fees awarded by a court in addition to damages after litigation based on this Contract.

Neither the Contractor nor the State shall be liable to each other, regardless of the form of action, for consequential, incidental, indirect, or special damages. This limitation of liability shall not apply to claims for infringement of United States patent, copyright, trademark or trade secrets; to claims for personal injury or damage to property caused by the gross negligence or willful misconduct of the Contractor; to claims covered by other specific provisions of this Contract calling for liquidated damages; or to court costs or attorney's fees awarded by a court in addition to damages after litigation based on this Contract.

2.202 Excusable Failure

Neither party will be liable for any default, damage or delay in the performance of its obligations under the Contract to the extent such default, damage or delay is caused by government regulations or requirements (executive, legislative, judicial, military or otherwise), power failure, electrical surges or current fluctuations, lightning, earthquake, war, water or other forces of nature or acts of God, delays or failures of transportation, equipment shortages, suppliers' failures, or acts or omissions of common carriers, fire; riots, civil disorders; strikes or other labor disputes, embargoes; injunctions (provided the injunction was not issued as a result of any fault or negligence of the party seeking to have its default or delay excused); or any other cause beyond the reasonable control of such party; provided the non-performing party and its Subcontractors are without fault in causing such default or delay, and such default or delay could not have been prevented by reasonable precautions and cannot reasonably be circumvented by the non-performing party through the use of alternate sources, workaround plans or other means, including disaster recovery plans.

In such event, the non-performing party will be excused from any further performance or observance of the obligation(s) so affected for as long as such circumstances prevail and such party continues to use its commercially reasonable efforts to recommence performance or observance whenever and to whatever extent possible without delay and provided further that such party promptly notifies the other party in writing of the inception of the excusable failure occurrence, and also of its abatement or cessation.

If any of the above-enumerated circumstances substantially prevent, hinder, or delay Contractor's performance of the Services/provision of Deliverables for more than ten (10) Business Days, and the State determines that performance is not likely to be resumed within a period of time that is satisfactory to the State in its reasonable discretion, then at the State's option: (a) the State may procure the affected Services/Deliverables from an alternate source, and the State shall not be liable for payment for the unperformed Services/ Deliverables not provided under the Contract for so long as the delay in performance shall continue; (b) the State may terminate any portion of the Contract so affected and the charges payable there under shall be equitably adjusted to reflect those Services/Deliverables terminated; or (c) the State may terminate the affected Statement of Work without liability to Contractor as of a date specified by the State in a written notice of termination to Contractor, except to the extent that the State shall pay for Services/Deliverables provided through the date of termination.

Contractor will not have the right to any additional payments from the State as a result of any Excusable Failure occurrence or to payments for Services not rendered/Deliverables not provided as a result of the Excusable Failure condition. Defaults or delays in performance by Contractor which are caused by acts or omissions of its Subcontractors will not relieve Contractor of its obligations under the Contract except to the extent that a Subcontractor is itself subject to an Excusable Failure condition described above and Contractor cannot reasonably circumvent the effect of the Subcontractor's default or delay in performance through the use of alternate sources, workaround plans or other means.



2.203 Disaster Recovery

Contractor and the State recognize that the State provides essential services in times of natural or man-made disasters. Therefore, except as so mandated by Federal disaster response requirements, Contractor personnel dedicated to providing Services/Deliverables under this Contract will provide the State with priority service for repair and work around in the event of a natural or manmade disaster.

2.210 Termination/Cancellation by the State

The State may terminate this Contract without further liability or penalty to the State, its departments, divisions, agencies, offices, commissions, officers, agents and employees for any of the following reasons:

2.211 Termination for Cause

(a) In the event that Contractor breaches any of its material duties or obligations under this Contract (including a Chronic Failure to meet any particular SLA as defined in **Section 2.076**), which are either not capable of or subject to being cured, or are not cured within the time period specified in the written notice of breach provided by the State (such time period not to be less than 30 days), or pose a serious and imminent threat to the health and safety of any person, or the imminent loss, damage or destruction of any real or tangible personal property, the State may, having provided written notice of termination to Contractor, terminate this Contract in whole or in part, for cause, as of the date specified in the notice of termination.

(b) In the event that this Contract is terminated for cause, in addition to any legal remedies otherwise available to the State by law or equity, Contractor shall be responsible for all costs incurred by the State in terminating this Contract, including but not limited to, State administrative costs, reasonable attorneys' fees and court costs, and any reasonable additional costs the State may incur to procure the Services/Deliverables required by this Contract from other sources. Re-procurement costs shall not be considered by the parties to be consequential, indirect or incidental damages, and shall not be excluded by any other terms otherwise included in this Contract, provided such costs are not in excess of fifty percent (50%) more than the prices for such Service/Deliverables provided under this Contract.

(c) In the event the State chooses to partially terminate this Contract for cause, charges payable under this Contract will be equitably adjusted to reflect those Services/Deliverables that are terminated and the State shall pay for all Services/Deliverables for which Final Acceptance has been granted provided up to the termination date. Services and related provisions of this Contract that are terminated for cause shall cease on the effective date of the termination.

(d) In the event this Contract is terminated for cause pursuant to this Section, and it is determined, for any reason, that Contractor was not in breach of contract pursuant to the provisions of this section, that termination for cause shall be deemed to have been a termination for convenience, effective as of the same date, and the rights and obligations of the parties shall be limited to that otherwise provided in this Contract for a termination for convenience.

2.212 Termination for Convenience

The State may terminate this Contract for its convenience, in whole or part, if the State determines that such a termination is in the State's best interest. Reasons for such termination shall be left to the sole discretion of the State and may include, but not necessarily be limited to (a) the State no longer needs the Services or products specified in the Contract, (b) relocation of office, program changes, changes in laws, rules, or regulations make implementation of the Services no longer practical or feasible, (c) unacceptable prices for Additional Services or New Work requested by the State, or (d) falsification or misrepresentation, by inclusion or non-inclusion, of information material to a response to any RFP issued by the State. The State may terminate this Contract for its convenience, in whole or in part, by giving Contractor written notice at least thirty (30) days prior to the date of termination. If the State chooses to terminate this Contract in part, the charges payable under this Contract shall be equitably adjusted to reflect those Services/Deliverables that are terminated. Services and related provisions of this Contract that are terminated for cause shall cease on the effective date of the termination.

2.213 Non-Appropriation

(a) Contractor acknowledges that, if this Contract extends for several fiscal years, continuation of this Contract is subject to appropriation or availability of funds for this Contract. If funds to enable the State to effect continued payment under this Contract are not appropriated or otherwise made available, the State shall have the right to terminate this Contract and all affected Statements of Work, in whole or in part, at the end of the last period for which funds have been appropriated or otherwise made available by giving written notice of termination to Contractor.



The State shall give Contractor at least 30 days advance written notice of termination for non-appropriation or unavailability (or such time as is available if the State receives notice of the final decision less than 30 days before the funding cutoff).

(b) If funding for the Contract is reduced by law, or funds to pay Contractor for the agreed-to level of the Services or production of Deliverables to be provided by Contractor are not appropriated or otherwise made available, the State may, upon 30 days written notice to Contractor, reduce the level of the Services or the change the production of Deliverables in such manner and for such periods of time as the State may elect. The charges payable under this Contract will be equitably adjusted to reflect any equipment, services or commodities not provided by reason of such reduction.

(c) In the event the State terminates this Contract, eliminates certain Deliverables, or reduces the level of Services to be provided by Contractor pursuant to this Section, the State shall pay Contractor for all Work-in-Process performed through the effective date of the termination or reduction in level, as the case may be and as determined by the State, to the extent funds are available. For the avoidance of doubt, this Section will not preclude Contractor from reducing or stopping Services/Deliverables and/or raising against the State in a court of competent jurisdiction, any claim for a shortfall in payment for Services performed or Deliverables finally accepted before the effective date of termination.

2.214 Criminal Conviction

The State may terminate this Contract immediately and without further liability or penalty in the event Contractor, an officer of Contractor, or an owner of a 25% or greater share of Contractor is convicted of a criminal offense incident to the application for, or performance of, a State, public or private Contract or subcontract; convicted of a criminal offense, including any of the following: embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, attempting to influence a public employee to breach the ethical conduct standards for State of Michigan employees; convicted under State or federal antitrust statutes; or convicted of any other criminal offense which in the sole discretion of the State reflects upon Contractor's business integrity.

2.215 Approvals Rescinded

The State may terminate this Contract without further liability or penalty in the event any final administrative or judicial decision or adjudication disapproves a previously approved request for purchase of personal services pursuant to Constitution 1963, Article 11, § 5, and Civil Service Rule 7-1. Termination may be in whole or in part and may be immediate as of the date of the written notice to Contractor or may be effective as of the date stated in such written notice.

2.216 Rights and Obligations Upon Termination

(a) If this Contract is terminated by the State for any reason, Contractor shall (a) stop all work as specified in the notice of termination, (b) take any action that may be necessary, or that the State may direct, for preservation and protection of Deliverables or other property derived or resulting from this Contract that may be in Contractor's possession, (c) return all materials and property provided directly or indirectly to Contractor by any entity, agent or employee of the State, (d) in the event that the Contractor maintains title in Deliverables that is intended to be transferred to the State at the termination of the Contract, Contractor will transfer title in, and deliver to, the State, unless otherwise directed, all Deliverables intended to be transferred to the State at the termination of the Contract and which are resulting from the Contract (which shall be provided to the State on an "As-Is" basis except to the extent the amounts paid by the State in respect of such items included compensation to Contractor for the provision of warranty services in respect of such materials), and (e) take any action to mitigate and limit any potential damages, or requests for Contractor adjustment or termination settlement costs, to the maximum practical extent, including terminating or limiting as otherwise applicable those subcontracts and outstanding orders for material and supplies resulting from the terminated Contract.

(b) In the event the State terminates this Contract prior to its expiration for its own convenience, the State shall pay Contractor for all charges due for Services provided prior to the date of termination and, if applicable, as a separate item of payment pursuant to this Contract, for Work In Process, on a percentage of completion basis at the level of completion determined by the State. All completed or partially completed Deliverables prepared by Contractor pursuant to this Contract shall, at the option of the State, become the State's property, and Contractor shall be entitled to receive equitable fair compensation for such Deliverables. Regardless of the basis for the termination, the State shall not be obligated to pay, or otherwise compensate, Contractor for any lost expected future profits, costs or expenses incurred with respect to Services not actually performed for the State.



(c) Upon a good faith termination, the State shall have the right to assume, at its option, any and all subcontracts and agreements for services and deliverables provided under this Contract, and may further pursue completion of the Services/Deliverables under this Contract by replacement contract or otherwise as the State may in its sole judgment deem expedient.

2.217 Reservation of Rights

Any termination of this Contract or any Statement of Work issued under it by a party shall be with full reservation of, and without prejudice to, any rights or remedies otherwise available to such party with respect to any claims arising prior to or as a result of such termination.

2.218 Contractor Transition Responsibilities

In the event this contract is terminated, for convenience or cause, dissolved, voided, rescinded, nullified, expires or is otherwise rendered unenforceable, the Contractor agrees to comply with direction provided by the State to assist in the orderly transition of equipment, services, software, leases, etc. to the State or a third party designated by the State. In the event of termination or the expiration of this Contract, the Contractor agrees to make all reasonable efforts to effect an orderly transition of services within a reasonable period of time that in no event will exceed 90 days. These efforts shall include, but are not limited to, the following:

(a) **Personnel** - The Contractor shall work with the State, or a specified third party, to develop a transition plan setting forth the specific tasks and schedule to be accomplished by the parties, to effect an orderly transition. The Contractor shall allow as many personnel as practicable to remain on the job to help the State, or a specified third party, maintain the continuity and consistency of the services required by this Contract. In addition, during or following the transition period, in the event the State requires the Services of the Contractor's subcontractors or vendors, as necessary to meet its needs, Contractor agrees to reasonably, and with good-faith, work with the State to use the Services of Contractor's subcontractors or vendors. Contractor will notify all of Contractor's subcontractors of procedures to be followed during transition.

(b) **Information** - The Contractor agrees to provide reasonable detailed specifications for all Services/Deliverables needed by the State, or specified third party, to properly provide the Services/Deliverables required under this Contract. The Contractor will provide the State with asset management data generated from the inception of this Contract through the date on which this Contractor is terminated in a comma-delineated format unless otherwise requested by the State. The Contractor will deliver to the State any remaining owed reports and documentation still in Contractor's possession subject to appropriate payment by the State.

(d) **Software** - The Contractor shall reasonably assist the State in the acquisition of any Contractor software required to perform the Services/use the Deliverables under this Contract. This shall include any documentation being used by the Contractor to perform the Services under this Contract. If the State transfers any software licenses to the Contractor, those licenses shall, upon expiration of the Contract, transfer back to the State at their current revision level. Upon notification by the State, Contractor may be required to freeze all non-critical changes to Deliverables/Services.

(e) **Payment** - If the transition results from a termination for any reason, reimbursement shall be governed by the termination provisions of this Contract. If the transition results from expiration, the Contractor will be reimbursed for all reasonable transition costs (i.e. costs incurred within the agreed period after contract expiration that result from transition operations). The Contractor will prepare an accurate accounting from which the State and Contractor may reconcile all outstanding accounts.

2.219 State Transition Responsibilities

In the event that this Contract is terminated, dissolved, voided, rescinded, nullified, or otherwise rendered unenforceable, the State agrees to perform the following obligations, and any others upon which the State and the Contractor agree:

- (a) Reconciling all accounts between the State and the Contractor;
- (b) Completing any pending post-project reviews.



2.220 Termination by Contractor

2.221 Termination by Contractor

If the State materially breaches its obligation to pay Contractor undisputed amounts due and owing under this Contract in accordance with **Section 2.090**, or if the State breaches its other obligations under this Contract to an extent that makes it impossible or commercially impractical for Contractor to perform the Services, and if the State does not cure the breach within the time period specified in a written notice of breach provided to the State by Contractor (such time period not to be less than thirty (30) days), then Contractor may terminate this Contract, in whole or in part based on Statement of Work for cause, as of the date specified in the notice of termination; provided, however, that Contractor must discharge its obligations under **Section 2.250** before any such termination.

2.230 Stop Work

2.231 Stop Work Orders

The State may, at any time, by written stop work order to Contractor, require that Contractor stop all, or any part, of the work called for by the Contract for a period of up to 90 calendar days after the stop work order is delivered to Contractor, and for any further period to which the parties may agree. The stop work order shall be specifically identified as such and shall indicate that it is issued under this **Section 2.230**. Upon receipt of the stop work order, Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the stop work order during the period of work stoppage. Within the period of the stop work order, the State shall either: (a) cancel the stop work order; or (b) terminate the work covered by the stop work order as provided in **Section 2.210**.

2.232 Cancellation or Expiration of Stop Work Order

If a stop work order issued under this **Section 2.230** is canceled or the period of the stop work order or any extension thereof expires, Contractor shall resume work. The parties shall agree upon an equitable adjustment in the delivery schedule, the Contract price, or both, and the Contract shall be modified, in writing, accordingly, if: (a) the stop work order results in an increase in the time required for, or in Contractor's costs properly allocable to, the performance of any part of the Contract; and (b) Contractor asserts its right to an equitable adjustment within thirty (30) calendar days after the end of the period of work stoppage; provided that, if the State decides the facts justify the action, the State may receive and act upon a Contractor proposal submitted at any time before final payment under the Contract. Any adjustment will conform to the requirements of **Section 2.106**.

2.233 Allowance of Contractor Costs

If the stop work order is not canceled and the work covered by the stop work order is terminated for reasons other than material breach, such termination shall be deemed to be a termination for convenience under **Section 2.212**, and the State shall allow reasonable costs resulting from the stop work order in arriving at the termination settlement. For the avoidance of doubt, the State shall not be liable to Contractor for loss of profits because of a stop work order issued under this **Section 2.230**.

2.240 Reserved

2.250 Dispute Resolution**2.251 In General**

Any claim, counterclaim, or dispute between the State and Contractor arising out of or relating to the Contract or any Statement of Work shall be resolved as follows. For all Contractor claims seeking an increase in the amounts payable to Contractor under the Contract, or the time for Contractor's performance, Contractor shall submit a letter executed by Contractor's Contract Administrator or his designee certifying that (a) the claim is made in good faith, (b) the amount claimed accurately reflects the adjustments in the amounts payable to Contractor or the time for Contractor's performance for which Contractor believes the State is liable and covers all costs of every type to which Contractor is entitled from the occurrence of the claimed event, and (c) the supporting data provided with such an affidavit are current and complete to Contractor's best knowledge and belief.

2.252 Informal Dispute Resolution

(a) All operational disputes between the parties shall be resolved under the Contract Management procedures developed pursuant to **Section 2.100**. If the parties are unable to resolve any disputes after compliance with such processes, the parties shall meet with the Director of Purchasing Operations, DMB, or designee, for the purpose of attempting to resolve such dispute without the need for formal legal proceedings, as follows:

(i) The representatives of Contractor and the State shall meet as often as the parties reasonably deem necessary in order to gather and furnish to each other all information with respect to the matter in issue which the parties believe to be appropriate and germane in connection with its resolution. The representatives shall discuss the problem and negotiate in good faith in an effort to resolve the dispute without the necessity of any formal proceeding.

(ii) During the course of negotiations, all reasonable requests made by one party to another for non-privileged information reasonably related to the Contract will be honored in order that each of the parties may be fully advised of the other's position.

(iii) The specific format for the discussions will be left to the discretion of the designated State and Contractor representatives, but may include the preparation of agreed upon statements of fact or written statements of position.

(iv) Following the completion of this process within 60 calendar days, the Director of Purchasing Operations, DMB, or designee, shall issue a written opinion regarding the issue(s) in dispute within 30 calendar days. The opinion regarding the dispute shall be considered the State's final action and the exhaustion of administrative remedies.

(b) This **Section 2.250** will not be construed to prevent either party from instituting, and a party is authorized to institute, formal proceedings earlier to avoid the expiration of any applicable limitations period, to preserve a superior position with respect to other creditors, or pursuant to **Section 2.253**.

(c) The State will not mediate disputes between the Contractor and any other entity, except state agencies, concerning responsibility for performance of work pursuant to the Contract.

2.253 Injunctive Relief

The only circumstance in which disputes between the State and Contractor will not be subject to the provisions of **Section 2.252** is where a party makes a good faith determination that a breach of the terms of the Contract by the other party is such that the damages to such party resulting from the breach will be so immediate, so large or severe and so incapable of adequate redress after the fact that a temporary restraining order or other immediate injunctive relief is the only adequate remedy.

2.254 Continued Performance

Each party agrees to continue performing its obligations under the Contract while a dispute is being resolved except to the extent the issue in dispute precludes performance (dispute over payment shall not be deemed to preclude performance) and without limiting either party's right to terminate the Contract as provided in **Section 2.210** and **2.220**, as the case may be.



2.260 Federal and State Contract Requirements

2.261 Nondiscrimination

In the performance of the Contract, Contractor agrees not to discriminate against any employee or applicant for employment, with respect to his or her hire, tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to employment, because of race, color, religion, national origin, ancestry, age, sex, height, weight, marital status, physical or mental disability. Contractor further agrees that every subcontract entered into for the performance of this Contract or any purchase order resulting from this Contract will contain a provision requiring non-discrimination in employment, as specified here, binding upon each Subcontractor. This covenant is required pursuant to the Elliot Larsen Civil Rights Act, 1976 PA 453, MCL 37.2101, *et seq.*, and the Persons with Disabilities Civil Rights Act, 1976 PA 220, MCL 37.1101, *et seq.*, and any breach of this provision may be regarded as a material breach of the Contract.

2.262 Unfair Labor Practices

Pursuant to 1980 PA 278, MCL 423.231, *et seq.*, the State shall not award a Contract or subcontract to an employer whose name appears in the current register of employers failing to correct an unfair labor practice compiled pursuant to section 2 of the Act. This information is compiled by the United States National Labor Relations Board. A Contractor of the State, in relation to the Contract, shall not enter into a contract with a Subcontractor, manufacturer, or supplier whose name appears in this register. Pursuant to section 4 of 1980 PA 278, MCL 423.324, the State may void any Contract if, subsequent to award of the Contract, the name of Contractor as an employer or the name of the Subcontractor, manufacturer or supplier of Contractor appears in the register.

2.263 Workplace Safety and Discriminatory Harassment

In performing Services for the State, the Contractor shall comply with the Department of Civil Services Rule 2-20 regarding Workplace Safety and Rule 1-8.3 regarding Discriminatory Harassment. In addition, the Contractor shall comply with Civil Service regulations and any applicable agency rules provided to the Contractor. For Civil Service Rules, see <http://www.mi.gov/mdcs/0,1607,7-147-6877---,00.html>.

2.270 Litigation

2.271 Disclosure of Litigation

(a) Disclosure. Contractor must disclose any material criminal litigation, investigations or proceedings involving the Contractor (and each Subcontractor) or any of its officers or directors or any litigation, investigations or proceedings under the Sarbanes-Oxley Act. In addition, each Contractor (and each Subcontractor) must notify the State of any material civil litigation, arbitration or proceeding which arises during the term of the Contract and extensions thereto, to which Contractor (or, to the extent Contractor is aware, any Subcontractor hereunder) is a party, and which involves: (i) disputes that might reasonably be expected to adversely affect the viability or financial stability of Contractor or any Subcontractor hereunder; or (ii) a claim or written allegation of fraud against Contractor or, to the extent Contractor is aware, any Subcontractor hereunder by a governmental or public entity arising out of their business dealings with governmental or public entities. Any such litigation, investigation, arbitration or other proceeding (collectively, "Proceeding") must be disclosed in a written statement to the Contract Administrator within 30 days of its occurrence. Details of settlements which are prevented from disclosure by the terms of the settlement may be annotated as such. Information provided to the State from Contractor's publicly filed documents referencing its material litigation will be deemed to satisfy the requirements of this Section.

(b) Assurances. In the event that any such Proceeding disclosed to the State pursuant to this Section, or of which the State otherwise becomes aware, during the term of this Contract would cause a reasonable party to be concerned about:



- (i) the ability of Contractor (or a Subcontractor hereunder) to continue to perform this Contract in accordance with its terms and conditions, or
- (ii) whether Contractor (or a Subcontractor hereunder) in performing Services for the State is engaged in conduct which is similar in nature to conduct alleged in such Proceeding, which conduct would constitute a breach of this Contract or a violation of Michigan law, regulations or public policy, then Contractor shall be required to provide the State all reasonable assurances requested by the State to demonstrate that:
 - (A) Contractor and/or its Subcontractors hereunder will be able to continue to perform this Contract and any Statements of Work in accordance with its terms and conditions, and
 - (B) Contractor and/or its Subcontractors hereunder have not and will not engage in conduct in performing the Services which is similar in nature to the conduct alleged in such Proceeding.
 - (C) Contractor shall make the following notifications in writing:
 - (1) Within 30 days of Contractor becoming aware that a change in its ownership or officers has occurred, or is certain to occur, or a change that could result in changes in the valuation of its capitalized assets in the accounting records, Contractor shall notify the Office of Purchasing Operations.
 - (2) Contractor shall also notify the Office of Purchasing Operations within thirty (30) days whenever changes to asset valuations or any other cost changes have occurred or are certain to occur as a result of a change in ownership or officers.
 - (3) Contractor shall also notify Purchasing Operations within 30 days whenever changes to company affiliations occur.

2.272 Governing Law

The Contract shall in all respects be governed by, and construed in accordance with, the substantive laws of the State of Michigan without regard to any Michigan choice of law rules that would apply the substantive law of any other jurisdiction to the extent not inconsistent with, or pre-empted by federal law.

2.273 Compliance with Laws

Contractor shall comply with all applicable state, federal, and local laws and ordinances ("Applicable Laws") in providing the Services/Deliverables.

2.274 Jurisdiction

Any dispute arising from the Contract shall be resolved in the State of Michigan. With respect to any claim between the parties, Contractor consents to venue in Ingham County, Michigan, and irrevocably waives any objections it may have to such jurisdiction on the grounds of lack of personal jurisdiction of such court or the laying of venue of such court or on the basis of forum non conveniens or otherwise. Contractor agrees to appoint agents in the State of Michigan to receive service of process.

2.280 Environmental Provision

2.281 Environmental Provision

For the purposes of this Section, "Hazardous Materials" is a generic term used to describe asbestos, ACBMs, PCBs, petroleum products, such construction materials as paint thinners, solvents, gasoline, oil, etc., and any other material the manufacture, use, treatment, storage, transportation or disposal of which is regulated by the federal, state or local laws governing the protection of the public health, natural resources or the environment. This includes, but is not limited to, materials such as batteries and circuit packs, and other materials that are regulated as (1) "Hazardous Materials" under the Hazardous Materials Transportation Act, (2) "chemical hazards" under the Occupational Safety and Health Administration standards, (3) "chemical substances or mixtures" under the Toxic Substances Control Act, (4) "pesticides" under the Federal Insecticide Fungicide and Rodenticide Act, and (5) "hazardous wastes" as defined or listed under the Resource Conservation and Recovery Act. This Contract does not cover the handling, removal, or disposal of all Hazardous Materials.



(a) The Contractor shall use, handle, store, dispose of, process, transport and transfer any material considered a Hazardous Material in accordance with all federal, State and local laws. The State shall provide a safe and suitable environment for performance of Contractor's Work. Prior to the commencement of Work, the State shall advise Contractor of the presence at the work site of any Hazardous Material to the extent that the State is aware of such Hazardous Material. If the Contractor encounters material reasonably believed to be a Hazardous Material and which may present a substantial danger, the Contractor shall immediately stop all affected Work, give written notice to the State of the conditions encountered, and take appropriate health and safety precautions.

(b) Upon receipt of a written notice, the State will investigate the conditions. If (a) the material is a Hazardous Material that may present a substantial danger, and (b) the Hazardous Material was not brought to the site by the Contractor, or does not result in whole or in part from any violation by the Contractor of any laws covering the use, handling, storage, disposal of, processing, transport and transfer of Hazardous Materials, the State shall order a suspension of Work in writing. The State shall proceed to have the Hazardous Material removed or rendered harmless. In the alternative, the State shall terminate the affected Work for the State's convenience.

(c) Once the Hazardous Material has been removed or rendered harmless by the State, the affected Work shall be resumed as directed in writing by the State. Any determination by the Michigan Department of Community Health and/or the Michigan Department of Environmental Quality (whichever is applicable) that the Hazardous Material has either been removed or rendered harmless shall be binding upon the State and Contractor for the purposes of resuming the Work. If any such incident with Hazardous Material results in delay not reasonable anticipatable under the circumstances and which is attributable to the State, the applicable SLAs for the affected Work will not be counted in **Section 2.076** for a time as mutually agreed by the parties.

(d) If the Hazardous Material was brought to the site by the Contractor, or results in whole or in part from any violation by the Contractor of any laws covering the use, handling, storage, disposal of, processing, transport and transfer of Hazardous Material, or from any other act or omission within the control of the Contractor, the Contractor shall bear its proportionate share of the delay and costs involved in cleaning up the site and removing and rendering harmless the Hazardous Material in accordance with Applicable Laws to the condition approved by applicable regulatory agency(ies). If the Contractor fails to take appropriate action pursuant to Applicable Laws and consistent with the State requirements, then the State may take appropriate action.

2.290 *General*

2.291 Amendments

The Contract may not be modified, amended, extended, or augmented, except by a writing executed by the parties.

2.292 Assignment

(a) Neither party shall have the right to assign the Contract, or to assign or delegate any of its duties or obligations under the Contract, to any other party (whether by operation of law or otherwise), without the prior written consent of the other party; provided, however, that the State may assign the Contract to any other State agency, department, division or department without the prior consent of Contractor and Contractor may assign the Contract to an affiliate so long as such affiliate is adequately capitalized and can provide adequate assurances that such affiliate can perform the Contract. Any purported assignment in violation of this Section shall be null and void. It is the policy of the State of Michigan to withhold consent from proposed assignments, subcontracts, or novations when such transfer of responsibility would operate to decrease the State's likelihood of receiving performance on the Contract or the State's ability to recover damages.

(b) Contractor may not, without the prior written approval of the State, assign its right to receive payments due under the Contract. In the event of any such permitted assignment, Contractor shall not be relieved of its responsibility to perform any duty imposed upon it herein, and the requirement under the Contract that all payments shall be made to one entity shall continue.

2.293 Entire Contract; Order of Precedence

(a) The Contract, including any Statements of Work and Exhibits, to the extent not contrary to the Contract, each of which is incorporated for all purposes, constitutes the entire agreement between the parties with respect to the subject matter and supersedes all prior agreements, whether written or oral, with respect to such subject matter and as additional terms and conditions on the purchase order shall apply as limited by **Section 2.061**.



(b) In the event of any inconsistency between the terms of the Contract and a Statement of Work, the terms of the Statement of Work will take precedence (as to that Statement of Work only); provided, however, that a Statement of Work may not modify or amend the terms of **Sections 2.110 through 2.220** of the Contract, which may be modified or amended only by a formal Contract amendment.

2.294 Headings

Captions and headings used in the Contract are for information and organization purposes. Captions and headings, including inaccurate references, do not, in any way, define or limit the requirements or terms and conditions of the Contract.

2.295 Relationship of the Parties (Independent Contractor Relationship)

The relationship between the State and Contractor is that of client and independent Contractor. No agent, employee, or servant of Contractor or any of its Subcontractors shall be or shall be deemed to be an employee, agent or servant of the State for any reason. Contractor will be solely and entirely responsible for its acts and the acts of its agents, employees, servants and Subcontractors during the performance of the Contract.

2.296 Notices

(a) Any notice given to a party under the Contract shall be deemed effective, if addressed to such party as addressed below, upon: (i) delivery, if hand delivered; (ii) receipt of a confirmed transmission by facsimile if a copy of the notice is sent by another means specified in this Section; (iii) the third (3rd) Business Day after being sent by U.S. mail, postage pre-paid, return receipt requested; or (iv) the next Business Day after being sent by a nationally recognized overnight express courier with a reliable tracking system.

State:
State of Michigan
Purchasing Operations
Attention: Jim Wilson
PO Box 30026
530 West Allegan
Lansing, Michigan 48909

Contractor(s):
TIAA-CREF Tuition Financing, Inc.
Attention: Doug Chittenden, VP for Product Management
8500 Andrew Carnegie Blvd.
Charlotte, NC 28262

Either party may change its address where notices are to be sent by giving notice in accordance with this Section.

(b) Binding Commitments

Representatives of Contractor identified in **Article 1B.104** shall have the authority to make binding commitments on Contractor's behalf within the bounds set forth in such table. Contractor may change such representatives from time to time upon written notice.

2.297 Media Releases and Contract Distribution

(a) Media Releases

Neither Contractor nor the State will make any news releases, public announcements or public disclosures, nor will they have any conversations with representatives of the news media, pertaining to the Contract, the Services or the Contract without the prior written approval of the other party, and then only in accordance with explicit written instructions provided by that party. In addition, neither Contractor nor the State will use the name, trademarks or other proprietary identifying symbol of the other party or its affiliates without such party's prior written consent. Prior written consent of the Contractor must be obtained from authorized representatives.



(b) Contract Distribution

Purchasing Operations shall retain the sole right of Contract distribution to all State agencies and local units of government unless other arrangements are authorized by Purchasing Operations.

2.298 Reformation and Severability

Each provision of the Contract shall be deemed to be severable from all other provisions of the Contract and, if one or more of the provisions of the Contract shall be declared invalid, the remaining provisions of the Contract shall remain in full force and effect.

2.299 Consents and Approvals

Except as expressly provided otherwise in the Contract, if either party requires the consent or approval of the other party for the taking of any action under the Contract, such consent or approval shall be in writing and shall not be unreasonably withheld or delayed.

2.300 No Waiver of Default

The failure of a party to insist upon strict adherence to any term of the Contract shall not be considered a waiver or deprive the party of the right thereafter to insist upon strict adherence to that term, or any other term, of the Contract.

2.301 Survival

Any provisions of the Contract that impose continuing obligations on the parties including the parties' respective warranty, indemnity and confidentiality obligations, shall survive the expiration or termination of the Contract for any reason. Specific references to survival in the Contract are solely for identification purposes and not meant to limit or prevent the survival of any other section.

2.302 Covenant of Good Faith

Each party agrees that, in its dealings with the other party or in connection with the Contract, it shall act reasonably and in good faith. Unless stated otherwise in the Contract, the parties will not unreasonably delay, condition or withhold the giving of any consent, decision or approval that is either requested or reasonably required of them in order for the other party to perform its responsibilities under the Contract.

2.303 Permits

Contractor shall obtain and pay any associated costs for all required governmental permits, licenses and approvals for the delivery, installation and performance of the Services. The State shall pay for all costs and expenses incurred in obtaining and maintaining any necessary easements or right of way.

2.304 Website Incorporation

State expressly states that it will not be bound by any content on the Contractor's website, even if the Contractor's documentation specifically referenced that content and attempts to incorporate it into any other communication, unless the State has actual knowledge of such content and has expressly agreed to be bound by it in a writing that has been manually signed by an authorized representation of the State.

2.305 Taxes

Vendors are expected to collect and pay all applicable federal, state, and local employment taxes, including the taxes defined in Section 3.022 for all persons involved in the resulting Contract.

The State may refuse to award a contract to any Vendor who has failed to pay any applicable State taxes. The State may refuse to accept Vendor's bid, if Vendor has any outstanding debt with the State. Prior to any award, the State will verify whether Vendor has any outstanding debt with the State.

**2.306 Prevailing Wage**

The rates of wages and fringe benefits to be paid each class of individuals employed by the Contractor, its subcontractors, their subcontractors, and all persons involved with the performance of this Contract in privity of contract with the Contractor shall not be less than the wage rates and fringe benefits established by the Michigan Department of Labor and Economic Development, Wage and Hour Bureau, schedule of occupational classification and wage rates and fringe benefits for the local where the work is to be performed. The term Contractor shall include all general Contractors, prime Contractors, project managers, trade Contractors, and all of their Contractors or subcontractors and persons in privity of contract with them.

The Contractor, its subcontractors, their subcontractors, and all persons involved with the performance of this contract in privity of contract with the Contractor shall keep posted on the work site, in a conspicuous place, a copy of all wage rates and fringe benefits as prescribed in the contract. You must also post, in a conspicuous place, the address and telephone number of the Michigan Department of Labor and Economic Development, the office responsible for enforcement of the wage rates and fringe benefits. You shall keep an accurate record showing the name and occupation of the actual wage and benefits paid to each individual employed in connection with this contract. This record shall be available to the State upon request for reasonable inspection.

If any trade is omitted from the list of wage rates and fringe benefits to be paid to each class of individuals by the Contractor, it is understood that the trades omitted shall also be paid not less than the wage rate and fringe benefits prevailing in the local where the work is to be performed.

2.307 Call Center Disclosure

Contractor and/or all subcontractors involved in the performance of this Contract providing call or contact center services to the State must disclose the location of its call or contact center services to inbound callers. Failure to disclose this information shall be a material breach of this Contract.

2.308 Future Bidding Preclusion

Contractor acknowledges that, to the extent this Contract involves the creation, research, investigation or generation of a future RFP, it may be precluded from bidding on the subsequent RFP. The State reserves the right to disqualify any Contractor if the State determines that the Contractor has used its position (whether as an incumbent Contractor, or as a Contractor hired to assist with the RFP development, or as a Vendor offering free assistance) to gain a leading edge on the competitive RFP.

2.310 Reserved

2.320 Extended Purchasing

2.321 MiDEAL (Reserved)**2.322 RESERVED**



2.330 Federal Grant Requirements

2.331 Additional Clarifications

Additional Clarifications requested from TFI as follow:

Would TFI be able to provide a broker sold plan in the state of Michigan?

TFI's Response:

TFI is able to provide a broker-sold program.

As a leading provider of 529 programs, TFI understands that a direct-sold low-cost program provides the opportunity for people to meet their college savings goals without burdening them with loads, commissions and other fees. We also recognize that a segment of the population prefers to work with a financial advisor. Early in our term as program manager we submitted a proposal to then-Treasurer Douglas Roberts for the development and implementation of an advisor-sold plan. At that time there was no interest from the State in this proposal.

If the State so desires we would provide a broker-sold program with the following design elements:

- The direct-sold and broker-sold components would both be within the MESP program.
- TFI would serve as the program manager and would continue to be responsible for all aspects of the contract.
- TFI would partner with a fund company that has a well-established Advisor network. We have had discussions with a number of companies including OppenheimerFunds Inc and Morgan Stanley.
- The investment line-up would be developed in partnership with the Contract Compliance Inspector, the Bureau of Investments and any other designees of the State Treasurer.



TIAA-CREF Tuition Financing, Inc.
730 Third Avenue
New York, NY 10017-3206

Exhibit A

December 21, 2004

Ms. Robin R. McMillan
Contract Administrator
Michigan Education Savings Program
Department of Treasury
430 West Allegan Street
Lansing, Michigan 48922

Dear Ms. McMillan:

This is to advise you that it is our understanding that the State Treasurer (the "Treasurer") has directed TIAA-CREF Tuition Financing, Inc. ("TFI") as the current Program Manager under the Management Agreement dated October 15, 2000, as amended (the "Management Agreement") between the State of Michigan and TFI for the Michigan Education Savings Program (the "Program") to disclose certain information and records of the Program on the attached Schedule A (the "Program Records") to:

1. The Oakland Livingston Human Service Agency ("OLHSA"); and
2. The Center for Social Development at Washington University at St. Louis ("CSD").

for the Saving for Education, Entrepreneurship and Downpayment Policy and Practice Initiative (SEED) research activities (the "Project") not later than two weeks after December 31, 2004, and thereafter not later than two weeks after the end of each subsequent quarter through March 2009 or as mutually agreed to in writing by TFI, OLHSA, and CSD except in the event (i) the Project is not consummated, (ii) a Project participant withdraws his or her consent at any time, (iii) the State of Michigan directs TFI otherwise, (iv) TFI is no longer the Program Manager for the Program, (v) that OLHSA has not promptly forwarded to TFI and its affiliates, an executed Michigan Education Savings Program Informed Consent for each Project participant in the form of Exhibit A, attached to this Letter, or (vi) the State Matching Grant program for the Program is terminated and the Program Match Account for a Project participant is either liquidated or transferred to another qualified tuition program.

As set forth in Section I-P of the Management Agreement, the State of Michigan is the owner of all program records. By executing this Letter, except as provided otherwise in this Letter, the Treasurer gives express written authorization pursuant to the Management Agreement for the disclosure of the Program Records to OLHSA and CSD.

Please indicate your agreement with the foregoing by executing two copies of this Letter Agreement, returning one to TFI and retaining one copy for your records.



Agreed and Accepted by:

TIAA-CREF TUITION FINANCING, INC.

By: J. Brandon Grubert
Title: 2nd Vice President

THE MICHIGAN DEPARTMENT OF TREASURY

By: _____
Title: _____



Agreed and Accepted by:

TIAA-CREF TUITION FINANCING, INC.

By: _____
Title: _____

THE MICHIGAN DEPARTMENT OF TREASURY

By: *Rachel M. Smith*
Title: *Contract Administrator*
MESP



Schedule A

Program Records

1. Name of MESP Account Owner participating in the Project ("Project Account Owner").
2. Truncated Social Security Number limited to the last six digits for Project Account Owner.
3. Truncated Social Security Number limited to the last six digits for Project Account Owner's beneficiary.
4. Name of Beneficiary of Project Account Owner.
5. Date of Birth of Beneficiary of Project Account Owner.
6. Account number for each MESP account owned by Project Account Owner.
7. Total quarterly contributions made by Project Account Owner for each MESP account.
8. Total quarterly withdrawals made by Project Account Owner for each MESP account.
9. Total cumulative contributions made by Project Account Owner for each MESP account.
10. Total cumulative withdrawals made by Project Account Owner for each MESP account.
11. Value of total account balance for each MESP account, by account number, owned by Project Account Owner.
12. Account number for each State Matching Grant Account that Project Account Owner applied for ("Project State Matching Grant Account").
13. Total quarterly contributions for each Project State Matching Grant Account by account number.
14. Total cumulative contributions for each Project State Matching Grant Account by account number.
15. Value of total account balance for each Project State Matching Grant Account by account number.



Exhibit A



Michigan Education Savings Program

Toll-free 1-877-861-MESP (1-877-861-6377)

P.O. Box 30361, Lansing, Michigan 48909-7861

MESP is distributed by TIAA-CREF Individual & Institutional Services, LLC

Michigan Education Savings Program

Informed Consent

In connection with my participation in a research study conducted by Margaret Clancy from the Center for Social Development at Washington University in St. Louis to study the effects of savings-based strategies (the "SEED Project"), I authorize the Michigan Education Savings Program (MESP), TIAA-CREF Tuition Financing, Inc., Teachers Personal Investors Services, Inc., and TIAA-CREF Individual & Institutional Services, LLC to release any and all information contained in MESP program records relating to my current or future MESP accounts ("MESP Records") including the last six numbers of my and my beneficiary's social security numbers as an identifier to the Center for Social Development at Washington University in St. Louis and the Oakland Livingston Human Services Agency (collectively, the "Entities") for the period commencing December 31, 2004 through April 30, 2009. I understand and acknowledge that if I have any concerns or questions about retention of my MESP Records by the Entities, I can contact the Entities directly.

Dated: _____

Name of Participant: _____

Address of Participant: _____

Signature of Participant: _____

Name of Parent or Legal Guardian if Participant is less than 18 years of age: _____

Address of Parent or Legal Guardian if Participant is less than 18 years of age: _____

Signature of Parent or Legal Guardian if Participant is less than 18 years of age: _____



TIAA-CREF Tuition Financing, Inc.
730 Third Avenue
New York, NY 10017-3206

December 21, 2004

Oakland Livingston Human Service Agency
196 Cesar E. Chavez Avenue
Pontiac, Michigan 48343-0598

Washington University at St. Louis
Center for Social Development
George Warren Brown School of Social Development
Campus Box 1196
One Brookings Drive
St. Louis, Missouri 63130-4899

Dear Sirs:

In connection with the Saving for Education, Entrepreneurship and Downpayment Policy and Practice Initiative (SEED) research activities (the "Project") conducted by the Oakland Livingston Human Service Agency ("OLHSA") and the Center for Social Development at Washington University at St. Louis ("CSD" together with OLHSA, the "Entities"), TIAA-CREF Tuition Financing, Inc. ("TFI") as current Program Manager of the Michigan Education Savings Program (the "Program") has received written authorization by the Michigan State Treasurer to disclose certain information and records of the Program on the attached Schedule A (the "Program Records") to OLHSA and CSD not later than two weeks after December 31, 2004, and thereafter not later than two weeks after the end of each subsequent quarter through March 2009 or as mutually agreed to in writing by the parties, except in the event (i) the Project is not consummated, (ii) a Project participant withdraws his or her consent at any time, (iii) the State of Michigan directs TFI otherwise, (iv) TFI is no longer the Program Manager for the Program, (v) that OLHSA has not promptly forwarded to TFI and its affiliates, an executed Michigan Education Savings Program Informed Consent for each Project participant in the form of Exhibit A, attached to this agreement, or (vi) the State Matching Grant program for the Program is terminated and the Program Match Account for a Project participant is either liquidated or transferred to another qualified tuition program.

As a condition to TFI or one of its affiliates, Teachers Personal Investors Services, Inc. ("TPIS") and TIAA-CREF Individual & Institutional Services, LLC ("Services") furnishing to the Entities and their directors, officers, employees, agents and representatives (the "Entities' Representatives") the Program Records, each of the Entities agrees to treat the Program Records furnished to it by TFI, TPIS, Services or their representatives on or after the date of this agreement as follows:



1. Each of the Entities agrees to treat all Program Records that have been or will be delivered to the Entities by TFI, TPIS or Services as confidential and will use the Program Records only for the purpose of conducting the Project. Each of the Entities also agrees that the Entities and the Entities' Representatives will not disclose any of the Program Records to any third party. Washington University, may after removing all personally identifiable information ("PII") including, but not limited to, names of account owners, beneficiaries, and contingent account owners, account numbers, partial social security numbers, and addresses from the Program Records (the "Non-PII") share the Non-PII with other researchers associated with the SEED initiative; provided that Washington University shall promptly provide to TFI a written certificate each time it shares Non-PII with a researcher associated with the SEED initiative specifically, identifying the Non-PII, the researcher and the date of such exchange. Each of the Entities shall not, directly or indirectly, disclose the Program Records to anyone who is not authorized by the Michigan State Treasurer, TFI, TPIS or Services to receive such Program Records, or use or appropriate for the Entities' own benefit or for the benefit of anyone other than the Michigan State Treasurer, TFI, TPIS or Services, any Program Records. Each of the Entities agrees to ensure that (i) only those Entities' Representatives who are on a need to know basis shall be given access to or learn about the Program Records and (ii) such Entities' Representatives shall be advised of the proprietary nature of the Program Records.
 - a. Each of the Entities agrees to comply with privacy laws applicable to their respective organizations. Further, each of the Entities shall implement appropriate security measures, policies, and procedures that are designed to meet the objectives of the Fair Credit Reporting Act ("FCRA") and the Gramm-Leach-Bliley Financial Services Modernization Act of 1999 ("GLB"), and applicable state law. Each of the Entities agrees to review and implement the applicable rules and regulations of government agencies promulgated pursuant to GLB in order to establish standards for safeguarding PII. Each of the Entities shall implement appropriate measures in compliance with GLB ("Appropriate Measures") to do the following:
 - (i) Ensure the security and confidentiality of PII;
 - (ii) Protect against any anticipated threats or hazards to the security or integrity of PII; and
 - (iii) Protect against unauthorized access to or use of PII that could result in substantial harm or inconvenience to any Program account owner.
 - b. Each of the Entities agrees that it shall institute and monitor procedures in line with the Appropriate Measures. Each of the Entities further agrees that it shall monitor the effectiveness of its security



measures, policies, and procedures in implementing the Appropriate Measures and shall promptly respond to any written request from TFI, Services or TPIS, by providing written confirmation summarizing the results of the Entities' monitoring, which confirmation shall include but not be limited to the results of audits, summaries or test results, or other equivalent evaluations in monitoring the effectiveness of such Appropriate Measures.

- c. Each of the Entities shall promptly respond to any reasonable written request by TFI, TPIS or Services for assistance regarding their respective obligations with respect to PII protected under this provision, including obligations to exercise due diligence and to audit each of the Entities' privacy policy and information security program.
 - d. Each of the Entities agrees not to disclose PII to any person or entity not otherwise authorized to have access to or to receive PII herein. Each of the Entities further agrees to notify TFI within a reasonable time and in any event no later than 72 hours after discovery of any breach of its computer systems which may have compromised PII of Program account owners.
2. Each of the Entities agrees that all Program Records coming into the Entities' possession shall be the sole and exclusive property of the State of Michigan and that the State of Michigan shall retain all title, copyright and other proprietary rights in the Program Records. In no event shall the Entities be deemed by virtue of execution of this agreement to have acquired any right or interest, in or to the Program Records. Each of the Entities acknowledges and agrees that it recognizes TFI, TPIS and Services strict legal obligation as it relates to the protection of Program Records.
 3. Each of the Entities agrees that in the event that the (i) Project contemplated by this agreement is not consummated, or (ii) if a Project participant withdraws his or her consent at any time, that in the case of clause (i), all Program Records and in the case of clause (ii), the Program Records of any participant who withdraws his or her consent at any time, shall be promptly returned to TFI, TPIS or Services and neither the Entities nor any of the Entities' Representatives shall retain any copies, extracts or other reproductions in whole or in part of such Program Records, and all documents, memoranda, notes and other writings whatsoever, in written, electronic, or other format prepared by the Entities or any of the Entities' Representatives based on the information contained in the Program Records shall be promptly destroyed, and such destruction shall be certified in writing to TFI, TPIS or Services.

Each of the Entities agrees that no later than May 1, 2016, all of the



Program Records for any and all Project participants shall be promptly returned to TFI and its affiliates and the Michigan State Treasurer and neither the Entities nor any of the Entities' Representatives shall retain any copies, extracts or other reproductions in whole or in part of such Program Records that contain PII. Each of the Entities agrees that no later than May 1, 2016, all documents, memoranda, notes and other writings whatsoever, in written, electronic, or other format prepared by the Entities or any of the Entities' Representatives based on the information contained in the Program Records and containing PII shall be destroyed, and such destruction shall be certified in writing to TFI and its affiliates and the Michigan State Treasurer.

4. Each of the Entities agrees that in the event that the Entities are required by legal or regulatory process to disclose any of the Program Records or the existence of this agreement, the Entities shall provide TFI, TPIS or Services with prompt notice of such requirement so that TFI, TPIS or Services may seek a protective order or other appropriate remedy or waive compliance with the provisions of this agreement. In the event that a protective order or other remedy is obtained, the Entities shall use all reasonable efforts to assure that all Program Records disclosed will be covered by such order or other remedy. Whether such protective order or other remedy is obtained or TFI, TPIS or Services waive compliance with the provisions of this agreement, the Entities will disclose only that portion of the Program Records which it is legally required to disclose
5. Each of the Entities acknowledges that if it should breach any provision of this agreement, TFI, TPIS and Services will suffer irreparable injury; and, therefore, TFI, TPIS and Services will, in addition to any other remedies it has, including an action for damages, be entitled to specific performance of the provisions of the agreement or injunctive relief against any act which would violate any of its provisions.
6. This agreement shall be governed by and construed and enforced in accordance with the laws of the State of Michigan without regard to the conflict of laws provision thereof and may not be assigned without TFI's, TPIS' or Services' prior written consent. This agreement may not be amended except by written agreement of the parties hereto and supersedes all prior agreements among the parties, oral or written, concerning the disclosure and treatment of the Program Records.
7. Each of the Entities makes the following representations and warranties as of the date of this Agreement: (a) each Entity certifies that it has received a letter or memorandum (the "Letter") from the Internal Revenue Service indicating that the entity is a 501(c)(3) organization as described in Section 501(c)(3) of the Internal Revenue Code and the Letter continues to be in effect; (b) this Agreement has been duly



executed by an authorized representative of each Entity and has been delivered by such Entity and is a valid and legally binding obligation of such Entity enforceable in accordance with its terms, and delivery and performance of this agreement by such Entity will not result in a violation of its governing instruments or any violation of governing law or any material violation of any agreement; and (c) no permit, authorization, consent or approval of or by, or any notification of or filing with, any governmental authority or any other person or body is required in connection with the execution, delivery or performance of such Entity under this Agreement.



Please acknowledge your agreement with the foregoing by executing this agreement in the place provided below.

Very truly yours,

F. Brenda Griebert

F. Brenda Griebert
Second Vice President

Accepted and Agreed to this 21st day of December, 2004

OAKLAND LIVINGSTON HUMAN SERVICE AGENCY

By: _____
Name:
Title:

WASHINGTON UNIVERSITY

By: _____
Name:
Title:



Please acknowledge your agreement with the foregoing by executing this agreement in the place provided below.

Very truly yours,

F. Brenda Griebert
Second Vice President

Accepted and Agreed to this 21st day of December, 2004

OAKLAND LIVINGSTON HUMAN SERVICE AGENCY

By: Ronald B. Borgesser
Name: Ronald B. Borgesser
Title: Chief Executive Officer

WASHINGTON UNIVERSITY

By: _____
Name:
Title:



Please acknowledge your agreement with the foregoing by executing this agreement in the place provided below.

Very truly yours,

F. Brenda Griebert
Second Vice President

Accepted and Agreed to this 21st day of December, 2004

OAKLAND LIVINGSTON HUMAN SERVICE AGENCY

By: _____
Name:
Title:

WASHINGTON UNIVERSITY

By: Edward F. Lawlor
Edward F. Lawlor
Dean, George Warren Brown School of Social Work
Washington University in St. Louis

Schedule AProgram Records

1. Name of MESP Account Owner participating in the Project ("Project Account Owner").
2. Truncated Social Security Number limited to the last six digits for Project Account Owner.
3. Truncated Social Security Number limited to the last six digits for Project Account Owner's beneficiary.
4. Name of Beneficiary of Project Account Owner.
5. Date of Birth of Beneficiary of Project Account Owner.
6. Account number for each MESP account owned by Project Account Owner.
7. Total quarterly contributions made by Project Account Owner for each MESP account.
8. Total quarterly withdrawals made by Project Account Owner for each MESP account.
9. Total cumulative contributions made by Project Account Owner for each MESP account.
10. Total cumulative withdrawals made by Project Account Owner for each MESP account.
11. Value of total account balance for each MESP account, by account number, owned by Project Account Owner.
12. Account number for each State Matching Grant Account that Project Account Owner applied for ("Project State Matching Grant Account").
13. Total quarterly contributions for each Project State Matching Grant Account by account number.
14. Total cumulative contributions for each Project State Matching Grant Account by account number.
15. Value of total account balance for each Project State Matching Grant Account by account number.



Exhibit A



Michigan Education Savings Program

Toll-free 1-877-861-MESP (1-877-861-6377)

P.O. Box 30361, Lansing, Michigan 48909-7861

MESP is distributed by TIAA-CREF Individual & Institutional Services, LLC

Michigan Education Savings Program
Informed Consent

In connection with my participation in a research study conducted by Margaret Clancy from the Center for Social Development at Washington University in St. Louis to study the effects of savings-based strategies (the "SEED Project"), I authorize the Michigan Education Savings Program (MESP), TIAA-CREF Tuition Financing, Inc., Teachers Personal Investors Services, Inc., and TIAA-CREF Individual & Institutional Services, LLC to release any and all information contained in MESP program records relating to my current or future MESP accounts ("MESP Records") including the last six numbers of my and my beneficiary's social security numbers as an identifier to the Center for Social Development at Washington University in St. Louis and the Oakland Livingston Human Services Agency (collectively, the "Entities") for the period commencing December 31, 2004 through April 30, 2009. I understand and acknowledge that if I have any concerns or questions about retention of my MESP Records by the Entities, I can contact the Entities directly.

Dated: _____

Name of Participant: _____

Address of Participant: _____

Signature of Participant: _____

Name of Parent or Legal Guardian if Participant is less than 18 years of age: _____

Address of Parent or Legal Guardian if Participant is less than 18 years of age: _____

Signature of Parent or Legal Guardian if Participant is less than 18 years of age: _____

**TIAA-CREF Life Insurance Company**

730 Third Avenue, New York, N.Y. 10017-3209

Telephone: 800-842-2733

Funding Agreement

Contract Number: FA-008-MI

Date of Issue: April 1, 2007

Policyholder: The State of Michigan, Department of Management and Budget for Department of Treasury, Michigan Education Savings Program

This is a Contract between You, the Policyholder, and TIAA-CREF Life Insurance Company ("TIAA-CREF Life"). This page briefly describes some of the features of the Contract. The next pages set forth in detail the rights and obligations of both TIAA-CREF Life and the Policyholder under the Contract.

GENERAL DESCRIPTION

All premiums for this Contract will be remitted by the Policyholder. The Contract will be credited with a guaranteed interest rate and may also be credited with additional interest. TIAA-CREF Life does not guarantee that there will be additional interest. The Policyholder has the right to periodically withdraw interest.

This Contract cannot be assigned nor does it provide for loans.

*Chairman, President and
Chief Executive Officer*



TIAA-CREF Life Funding Agreement

PART A: TERMS USED IN THIS CONTRACT

1. **An Account Owner** is an individual who has established an account representing an interest in the State Tuition Program.
2. **Business Day** means any day that the New York Stock Exchange is open for trading. A Business Day ends at 4:00 p.m. Eastern time, or when trading closes on the New York Stock Exchange, if earlier.
3. **Contract:** The Contract is this agreement and is made between the Policyholder and TIAA-CREF Life.
4. **Effective Date** shall mean the first date (April 1, 2007) this Contract is in force.
5. **Funding Agreement Account** means the account established and maintained in accordance with Section 15 for the purpose of accumulating funds to be withdrawn to make payments to Account Owners and as otherwise permitted herein.
6. **The General Account** consists of all of TIAA-CREF Life's assets other than those in separate accounts.
7. **The Management Agreement** refers to the agreement, and any subsequent amendments and clarifying documents thereto, by and between TIAA-CREF Tuition Financing, Inc. ("TFI") and the Michigan Education Savings Program dated March 19, 2007, pursuant to which TFI has been named program manager of the Michigan Education Savings Program.
8. **Premium** means a cash payment made by the Policyholder to TIAA-CREF Life, which we accept, for credit to the Funding Agreement Account.
9. **State Tuition Program** is the Michigan Education Savings Program.
10. **"We," "Us," "Our," and "Company"** refer to TIAA-CREF Life.
11. **"You," "Your," "Yours," "Policyholder" and "Trust"** refer to the Policyholder named on the cover page of this Contract.



TIAA-CREF Life Funding Agreement

PART B: CONTRACT AND PREMIUMS

12. **The Contract.** The Contract constitutes the entire agreement between TIAA-CREF Life and the Policyholder and the provisions herein alone will govern with respect to the rights and obligations of TIAA-CREF Life and the Policyholder. We have issued this Contract as a supplemental contract, replacing the previous funding agreement issued by us to You to fund the State Tuition Program, in consideration of an initial premium consisting of all accumulations held under such previous funding agreement as of the Effective Date of this contract. Except as otherwise provided in Section 15, any endorsement or amendment of this Contract or waiver of any of its provisions will be valid only when made in writing by TIAA-CREF Life and signed by an Executive Officer of TIAA-CREF Life. All premiums and benefits are payable at the home office of TIAA-CREF Life at 730 Third Avenue, New York, NY 10017.

13. **Premiums.** Premiums remitted under this Contract will be remitted by the Policyholder.

14. **Premium taxes.** State and local government premium tax, if applicable, will be deducted from Your Contract accumulation when incurred by TIAA-CREF Life. TIAA-CREF Life may deduct these taxes when the premium is received by TIAA-CREF Life or when qualified and non-qualified withdrawals, rollovers, and transfers of funds are made. If no amount for premium tax was deducted, but premium tax is later determined to be due, TIAA-CREF Life will reduce Your Funding Agreement Account by the amount of tax that is determined to be due by TIAA-CREF Life.

PART C. FUNDING AGREEMENT

15. Your Funding Agreement Account is equal to:
- A) all premiums allocated to this Contract; plus
 - B) guaranteed interest credited to Your account accumulation on a daily basis at the effective annual rate described below; plus
 - C) any additional interest in excess of the guaranteed interest credited to Your account accumulation, pursuant to Section 17; less
 - D) premium taxes deducted pursuant to Section 14, if any; less
 - E) the amount of any withdrawals, rollovers, and transfers of funds.

Interest will be credited on amounts applied to this Contract from the end of the day on which such amount is credited to the date such amount is withdrawn, on the following basis:



TIAA-CREF Life Funding Agreement

The initial minimum effective annual interest rate to be credited under this Contract is 3.00%. The minimum effective annual interest rate to be credited will be reset each October 1. Subject to the constraint that the minimum rate will not be less than 1% nor greater than 3%, the rate will be reset to the CMT less .0125, rounded to the nearest 0.0005. The CMT is the average five-year Constant Maturity Treasury Rate reported by the Federal Reserve for the calendar month of August that precedes the reset date.

We may make future changes to the reset date and/or to the choice of calendar month for which the CMT is calculated. Any such change will be made only after we have given You thirty days' written notice.

16. General Account. Your Funding Agreement Account is part of TIAA-CREF Life's General Account and is separate and apart from any assets in separate accounts.

17. Additional Interest may be credited to Your account accumulation by TIAA-CREF Life. TIAA-CREF Life does not guarantee that there will be additional interest. TIAA-CREF Life will determine at least annually whether additional interest will be credited daily under the Contract.

Additional interest, if any, will be credited daily under a schedule of additional interest rates declared by TIAA-CREF Life from time to time. The additional interest rates will not be modified for a period of twelve months following the schedule's effective date. For any premiums and additional amounts applied to the Funding Agreement Account during the twelve-month period, TIAA-CREF Life may declare additional interest rates, which remain in effect through the end of such twelve-month period. Thereafter, any additional interest rates declared for such premiums and additional amounts will remain in effect for periods of at least twelve months.

PART D: WITHDRAWALS

18. Withdrawals. The Policyholder may direct Us to distribute amounts held under this Contract at its discretion, in order to satisfy withdrawal, rollover, and transfer of funds requests by Account Owners as defined by the State Tuition Program. The Policyholder may, at its discretion, also direct Us to make withdrawals that do not satisfy withdrawal requests by Account Owners, subject to the provisions on large withdrawals in Section 21. In addition, withdrawals of interest may be made by the Policyholder pursuant to Section 20.



TIAA-CREF Life Funding Agreement

19. Funding Agreement Account Reduction Basis. When different rate schedules apply to different parts of the Funding Agreement Account, as described in Section 17, any reduction made to provide withdrawals, rollovers, and transfers of funds, other than those pursuant to Section 20, will be made on a “first in, first out” (FIFO) basis.

20. Right to Withdraw Interest Credited. The Policyholder has the right, at the end of each calendar quarter, to request in writing a withdrawal of the interest credited that quarter. The Policyholder must notify TIAA-CREF Life of its intent to withdraw the interest not more than 10 Business Days and not less than 5 Business Days prior to the end of the quarter. The amount will be transferred, as directed by the Policyholder, on the last day of the quarter, or if that is not a Business Day, the next Business Day, to an account specified by the Policyholder. If the next Business Day is in the following calendar year, the amount will be paid on the last Business Day prior to December 31 of the current calendar year.

21. Large Withdrawals. In the event the Policyholder requests withdrawals totaling more than \$1,000,000, other than pursuant to Section 20, over a 30-day period which are not used to satisfy qualified and non-qualified withdrawals, rollovers, and transfers of funds from Michigan Education Savings Program, these amounts will be paid as specified in Section 24, below.

PART E: EXPIRATION DATE

22. Expiration. This Contract will remain in effect until March 31, 2010, unless renewed by the parties or unless discontinued pursuant to Section 23. If the Contract is not renewed, distributions will be made in accordance with Section 24.

PART F: DISCONTINUANCE OF CONTRACT

23. Discontinuance by Policyholder and Effective Dates. Notwithstanding Section 22, on written notice to TIAA-CREF Life, the Policyholder may elect to discontinue this Contract as of a date, to be stated in such notice, provided TIAA-CREF Life receives such notice on or before such date. Otherwise, the date of discontinuance will be the date TIAA-CREF Life receives such notice. If this Contract is discontinued, the provisions set forth in Section 24 will apply.

24. Large Sum Discontinuance or Withdrawal by Policyholder. If this Contract is discontinued in accordance with Section 23, or in the event of termination of the Management Agreement, or in the event the Policyholder requests withdrawals (other than pursuant to Section



TIAA-CREF Life Funding Agreement

20) totaling more than \$1,000,000 over a 30-day period, the value of the Funding Agreement Account or the amount of the withdrawal, as the case may be, which are not used to satisfy qualified and non-qualified withdrawals, rollovers, and transfer of funds from the Michigan Education Savings Program, will be paid out over a five-year period. This five-year pay-out will operate as follows: 20% of such value or withdrawal, as the case may be, will be paid to the Policyholder 30 days after a written request is received by TIAA-CREF Life, with 25%, 33%, 50% and 100% or the remaining balance, along with accumulated interest on such remaining balance, being paid on each of the first four anniversaries of the date the request was received, respectively.

PART G: GENERAL PROVISIONS

25. No Assignment. Neither the Policyholder nor any other person may assign, pledge, or transfer ownership of this Contract or any benefits under its terms. Any such action will be void and of no effect.

26. Service of Process upon TIAA-CREF Life. TIAA-CREF Life will accept service of process in any action or suit against TIAA-CREF Life on this Contract in any court of competent jurisdiction in the United States provided such process is properly made. TIAA-CREF Life will also accept such process sent to TIAA-CREF Life by registered mail if the plaintiff is a resident of the state or district in which the action or suit is brought. This Section does not waive any of TIAA-CREF Life's rights, including the right to remove such action or suit to another court.

27. Compliance with Laws and Regulations. TIAA-CREF Life will administer the Contract to comply with all laws and regulations pertaining to the terms and conditions of the Contract.

28. Severability. If any part of this Contract is declared invalid for any reason, such decision shall not affect the validity of any remaining portion. Such remaining portion shall remain in full force and effect as if the Contract had been executed with the invalid portion eliminated.

29. Notice Requirement. No notice, application, form, or request for benefits will be deemed to be received by us unless it is received in writing at our home office in New York, New York. Any questions about this Contract should be directed to us at our home office address: 730 Third Avenue, New York, New York 10017-3209.