



**Maryland Teachers & State Employees
Supplemental Retirement Plans
(MSRP)**



REQUEST FOR PROPOSALS (RFP)

SOLICITATION NO. G50B8400004

Issue Date: August 30, 2018

**PLAN ADMINISTRATOR FOR SUPPLEMENTAL
RETIREMENT PLANS**

NOTICE

A Prospective Offeror that has received this document from the MSRP Board of Trustees' website <http://MSRP.Maryland.gov>, <https://emaryland.buyspeed.com/bsol/>, or a source other than the Procurement Officer, and that wishes to assure receipt of any changes or additional materials related to this RFP should immediately contact the Procurement Officer and provide the Prospective Offeror's name and mailing address so that addenda to the RFP or other communications can be sent to the Prospective Offeror.

Minority Business Enterprises Are Encouraged to Respond to this Solicitation

**STATE OF MARYLAND
NOTICE TO VENDORS**

To help us improve the quality of State solicitations, and to make our procurement process more responsive and business friendly, take a few minutes and provide comments and suggestions regarding this solicitation. Please return your comments with your response. If you have chosen not to respond to this solicitation, please email or fax this completed form to the attention of the Procurement Officer: Mr. Richard A. Arthur, at email address richard.arthur@maryland.gov or to fax number 410-659-0349. (See Key Information Sheet below for contact information).

**Title: PLAN ADMINISTRATOR for Supplemental Retirement Plans
Solicitation No: G50B8400004**

1. If you have chosen not to respond to this solicitation, please indicate the reason(s) below:

- Other commitments preclude our participation at this time.
- The subject of the solicitation is not something we ordinarily provide.
- We are inexperienced in the work/commodities required.
- Specifications are unclear, too restrictive, etc. (Explain in REMARKS section.)
- The scope of work is beyond our present capacity.
- Doing business with the State of Maryland is simply too complicated. (Explain in REMARKS section.)
- We cannot be competitive. (Explain in REMARKS section.)
- Time allotted for completion of the Proposal is insufficient.
- Start-up time is insufficient.
- Bonding/Insurance requirements are restrictive. (Explain in REMARKS section.)
- Proposal requirements (other than specifications) are unreasonable or too risky. (Explain in REMARKS section.)
- MBE or VSBE requirements. (Explain in REMARKS section.)
- Prior State of Maryland contract experience was unprofitable or otherwise unsatisfactory. (Explain in REMARKS section.)
- Payment schedule too slow.
- Other: _____

2. If you have submitted a response to this solicitation, but wish to offer suggestions or express concerns, please use the REMARKS section below. (Attach additional pages as needed.)

REMARKS:

Vendor Name: _____ Date: _____

Contact Person: _____ Phone (____) _____ - _____

Address: _____

E-mail Address: _____

STATE OF MARYLAND
Board of Trustees,
Maryland Teachers & State Employees Supplemental Retirement Plans
(MSRP)
RFP KEY INFORMATION SUMMARY SHEET

Request for Proposals: Services: PLAN ADMINISTRATOR for Supplemental Retirement Plans

Solicitation Number: G50B8400004

RFP Issue Date: August 30, 2018

RFP Issuing Office: Maryland Supplemental Retirement Plans (MSRP)

Procurement & MBE Liaison Officer: Richard A. Arthur, Director of Technology & Operations
Maryland Supplemental Retirement Plans
6 Saint Paul Street, Suite 200, Baltimore, MD 21202
Phone: 410-767-0457 Fax: 410-659-0349
e-mail: Richard.Arthur@maryland.gov

Proposals are to be sent to: Maryland Supplemental Retirement Plans (MSRP)
6 Saint Paul Street, Suite 200
Baltimore, Maryland 21202
Attention: Mr. Richard A. Arthur

Pre-Proposal Conference: September 27, 2018 (Thursday) at 1:00 PM Local Time
Maryland Supplemental Retirement Plans (MSRP)
6 Saint Paul Street, Suite 200
Baltimore, Maryland 21202

Proposal Due (Closing) Date and Time: November 15, 2018 (Thursday) at 1:00 PM Local Time

MBE Subcontracting Goal: 15 %

VSBE Subcontracting Goal: 0%

Contract Type: Firm fixed rate
(Percent of assets on an annual basis, taken monthly, plus fees for optional Plan services)

Contract Duration: Five (5) Years, plus one renewal option of 12 months

Table of Contents

SECTION 1 – MINIMUM QUALIFICATIONS	7
1 Offeror Minimum Qualifications	7
SECTION 2 – CONTRACTOR REQUIREMENTS: SCOPE OF WORK	8
2 Summary Statement	8
2.2 Background and Purpose	8
2.3 Scope of Work - Requirements.....	10
SECTION 3 – CONTRACTOR REQUIREMENTS: GENERAL REQUIREMENTS	17
3.1 Insurance Requirements.....	17
3.2 Security Requirements	17
3.3 Problem Escalation Procedure	21
3.4 Invoicing and Fees	22
3.5 SOC 2 Type 2 Audit Report.....	22
3.6 SOC 1 Type 2 Audit Report.....	24
3.7 MBE Reports	25
3.8 VSBE Reports	25
3.9 Substitution of Personnel	25
3.10 End of Contract Transition.....	28
SECTION 4 – PROCUREMENT INSTRUCTIONS	29
4.1 Pre-Proposal Conference	29
4.2 eMaryland Marketplace	29
4.3 Questions.....	29
4.4 Procurement Method.....	30
4.5 Proposals Due (Closing) Date and Time	30
4.6 Multiple or Alternate Proposals	30
4.7 Economy of Preparation	30
4.8 Public Information Act Notice.....	30
4.9 Award Basis	31
4.10 Oral Presentation.....	31
4.11 Duration of Proposal	31
4.12 Revisions to the RFP.....	31
4.13 Cancellations.....	31
4.14 Incurred Expenses	32
4.15 Protest/Disputes	32
4.16 Offeror Responsibilities	32
4.17 Mandatory Contractual Terms	32
4.18 Proposal Affidavit.....	32
4.19 Contract Affidavit	32
4.20 Compliance with Laws/Arrearages.....	33
4.21 Verification of Registration and Tax Payment	33
4.22 False Statements.....	33
4.23 Payments by Electronic Funds Transfer	33
4.24 Prompt Payment Policy.....	33

4.25	Electronic Procurements Authorized	34
4.26	Minority Business Enterprise Goals	35
4.27	Veteran-Owned Small Business Enterprise Goal	37
4.28	Living Wage Requirements	38
4.29	Federal Funding Acknowledgement	38
4.30	Conflict of Interest Affidavit and Disclosure.....	39
4.31	Non-Disclosure Agreement	39
4.32	HIPAA - Business Associate Agreement	39
4.33	Nonvisual Access.....	39
4.34	Mercury and Products That Contain Mercury	39
4.35	Location of the Performance of Services Disclosure.....	39
4.36	Department of Human Resources (DHR) Hiring Agreement.....	39
4.37	Small Business Reserve (SBR) Procurement	39
SECTION 5 – PROPOSAL FORMAT.....		41
5.1	Two Part Submission	41
5.2	Proposals	41
5.3	Delivery.....	41
5.4	Volume I – Technical Proposal.....	42
5.5	Volume II – Financial Proposal	48
SECTION 6 – EVALUATION AND SELECTION PROCESS.....		49
6.1	Evaluation Committee	49
6.2	Technical Proposal Evaluation Criteria	49
6.3	Financial Proposal Evaluation Criteria	49
6.4	Reciprocal Preference	49
6.5	Selection Procedures.....	50
6.6	Documents Required upon Notice of Recommendation for Contract Award	51
RFP ATTACHMENTS.....		52
ATTACHMENT A – PRE-PROPOSAL CONFERENCE RESPONSE FORM		54
ATTACHMENT B – FINANCIAL PROPOSAL INSTRUCTIONS & FORM.....		55
ATTACHMENT C – PROPOSAL AFFIDAVIT		58
ATTACHMENTS D – MINORITY BUSINESS ENTERPRISE FORMS.....		59
ATTACHMENTS E – VETERAN-OWNED SMALL BUSINESS ENTERPRISE		60
ATTACHMENT F – LIVING WAGE REQUIREMENTS FOR SERVICE CONTRACTS..		61
ATTACHMENT G- FEDERAL FUNDS ATTACHMENT		63
ATTACHMENT H – CONFLICT OF INTEREST AFFIDAVIT AND DISCLOSURE		64
ATTACHMENT I – NON-DISCLOSURE AGREEMENT		65
ATTACHMENT J – HIPAA BUSINESS ASSOCIATE AGREEMENT.....		66
ATTACHMENT K – MERCURY AFFIDAVIT		67
ATTACHMENT L – LOCATION OF THE PERFORMANCE OF SERVICES DISCLOSURE.....		68
ATTACHMENT M – CONTRACT.....		69
ATTACHMENT N – CONTRACT AFFIDAVIT		95
ATTACHMENT O – DHR HIRING AGREEMENT		96
Abbreviations and Definitions		97

ADDITIONAL ATTACHMENTS

ATTACHMENT P – QUARTERLY/YEAR-END UNAUDITED FINANCIAL STATEMENTS

ATTACHMENT Q – QUARTERLY PLAN ADMINISTRATOR REPORT (EXCERPTS)

ATTACHMENT R – ENROLLMENT MATERIALS SELECTION

ATTACHMENT S – MARKETING SCHEDULE EXAMPLE

SECTION 1 – MINIMUM QUALIFICATIONS

1 Offeror Minimum Qualifications

- 1.1 The Offeror must provide proof with its Proposal that the following Minimum Qualifications have been met:
- 1.1.1 The Offeror must have performed as a full-service defined contribution plan administrator, accurately and satisfactorily fulfilling the responsibilities of record keeping, issuing participant statements, initiating and following up with participant contacts, conducting timely financial transactions, providing custodial trustee services and making plan financial reports for at least two (2) large defined contribution plans valued greater than \$500 million. Of these large plans, **one (1)** plan must be a 457(b) plan, and **one (1)** plan must be a 401(k), 401(a), or 403(b) plan.
- 1.1.2 The Offeror must have performed as plan administrator for a minimum of 30,000 participants for at least three (3) years. In addition, the Offeror must have performed for at least three (3) years as plan administrator for a single, large plan with at least 10,000 participants.
- 1.1.3 As proof of meeting this minimum requirement, the Offeror shall include a **listing of such engagements over the past five (5) years** with its Proposal. Such listing shall include the following:
- plan size data;
 - plan type;
 - number of participants covered by plan;
 - other pertinent data such as
 - number of investment options,
 - number of participants in payout,
 - frequency of asset transfers permitted, and
 - plan sponsor contact information for each plan.
- The Proposal shall **highlight the two large comparable plans exceeding \$500 million and the large plan with at least 10,000 participants.**
- 1.2 The Offeror must possess all required licenses and registrations from appropriate regulatory agencies. If, for example, the Offeror is a registered broker/dealer, the Proposal should state the Securities and Exchange Commission (the “SEC”) and the Financial Industry Regulatory Authority (the “FINRA”) licenses currently held by those individuals primarily responsible for making mutual fund presentations and their supervisors. Specifically, with respect to the managed account services to be provided under Section 2.3.3.6 below, the Offeror (or an affiliate of the Offeror, if it will be an affiliate of the Offeror providing such services) must be an investment advisor registered with the SEC. As proof of meeting this requirement, the Offeror shall provide with its Proposal a copy of its most recent Form ADV Part 1, as filed with the SEC.

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SECTION 2 – CONTRACTOR REQUIREMENTS: SCOPE OF WORK

2 Summary Statement

- 2.1.1 The Board of Trustees intends to procure professional services for a superior level of independent, full service administration, marketing, enrollment, transaction processing and record-keeping services for the four Plans under its administration: the 457(b) Plan; the 401(k) Plan; the 403(b) Plan; and the 401(a) Match Plan. Both pre-tax and Roth after-tax contributions are record-kept in the 457(b) plan and the 401(k) plan. The 403(b) plan accepts only pre-tax dollars. The 401(a) Match plan receives only employer contributions. The successful vendor shall also be required to operate (without additional compensation) distinct rollover accounts under each Plan and, if requested by the Board of Trustees, Deemed IRA accounts. The successful Offeror must carry out all the duties and responsibilities connected to the day-to-day operation of these Plans as necessary for proper administration.
- 2.1.2 It is the Board's intention to obtain services, as specified in this RFP, from a Contract between the selected Offeror and the State. The anticipated duration of services to be provided under this Contract is five (5) years with an option to extend for one additional year.
- 2.1.3 The Board intends to make a single award as a result of this RFP. See Section 4.9 for more Contract award information.
- 2.1.4 An Offeror, either directly or through its subcontractor(s), must be able to provide all services and meet all of the requirements requested in this solicitation and the successful Offeror (the Contractor) shall remain responsible for Contract performance regardless of subcontractor participation in the work.

2.2 Background and Purpose

- 2.2.1 **Purpose** - The purpose of this RFP is to procure, through competitive sealed proposals, professional services of a single, independent Plan administrator for all four Maryland state-sponsored supplemental retirement savings plans—to perform general record-keeping, marketing, enrollment, transaction processing and other administrative and technical services for the Plans.

This solicitation is not a search for, and does not seek proposals for, specific investment products to be offered to Participants. Entities with specific investment offerings are encouraged to submit such proposals at any time, in writing, directly to the MSRP Board of Trustees, Attn: Investment Committee, where all such proposals receive serious and diligent consideration.

- 2.2.2 **Background** - The Maryland Teachers and State Employees Supplemental Retirement Plans (the "MSRP") Board of Trustees (the "Board") is an independent Agency created under Title 35 of the State Personnel and Pensions Article of the Maryland Code. The Board has general oversight authority and responsibility for certain tax-favored defined contribution plans for State employees: the 457(b) Plan; the 401(k) Plan; the 403(b) Plan; and the 401(a) Match Plan (each a "Plan" and collectively, the "Plans"). The Board has appointed an executive director and a staff of eleven employees. The Board does not directly administer the Plans. Its executive director and staff supervise the administrator, advisors, and accountants hired by the Board and provide general education to State employees with respect to the benefits of participation in the Plans.
- 2.2.3 **Existing Administrator** - The Board currently has a contract with Nationwide Retirement Solutions, Inc. ("NRS", a wholly owned subsidiary of Nationwide Corporation, of Columbus, Ohio) to administer the Plans, and this contract expires December 31, 2018. All funds to pay for administrative services are collected from the accounts of State employees participating in the Plans; by statute no State funds are appropriated or expended for this purpose. Participant accounts are now charged 14 basis points, with 9 basis points paid to

the third-party administrator (NRS) under the expiring contract, and 5 basis points paid to the Board for the balance of administrative costs. All such charges are capped, so that no participant account is charged asset fees more than \$2,000 per year in any one Plan. Note that since May 2010 the Board has directed the third-party administrator to separately collect fifty cents per month from each 457(b), 401(k) and 403(b) account exceeding \$500, and remit the sum monthly to MSRP.

- 2.2.4 Existing Advisors - The Board has a contract with Segal Marco Advisors, Inc. (*f/k/a* Segal Advisors, Inc.) (“Segal”) for investment advice and defined contribution plan consulting services. Segal has performed such services for the Board since 2011 and during a prior contract period. The Board has contracted for such services since mid-1985.

The Board has a separate contract with Galliard Capital Management investment management services with respect to the investment contract pool (“ICP”). Galliard has managed the ICP since 2014, and other investment management firms have performed similar contractual services with respect to the ICP since 2001. The ICP is the single investment option with the largest percentage of assets in the Plans and is, therefore, an important focus for the Board in terms of both administration and reporting to the Board.

The Board has a contract with SB & Company LLC to audit and issue opinions on the financial statements of the Plans and to assist with the preparation of a Comprehensive Annual Financial Report (“CAFR”). The audited financial statements for MSRP for 2016 and prior years are available on our website (<http://MSRP.maryland.gov>) under “Agency Information” and contained in the CAFRs listed thereunder.

Lastly, the Board has a contract with Wells Fargo Bank, N.A. arranged with assistance and consultation of the Maryland State Treasurer’s Office, for customary banking services to the Plans through June 30, 2019, with annual renewal options. The third party administrator under the Contract is authorized to act as the MSRP Board’s agent in conducting banking transactions for the Plans, and the Contractor will be responsible for prompt payment of all banking charges.

- 2.2.5 **MSRP History and General Plan Information** - The Maryland Supplemental Retirement Plans commenced operation in 1975 with the authorization of the 457(b) Plan. As of June 30, 2018, the 457(b) Plan had 34,292 Participants maintaining active accounts, approximately 19,711 Participants contributing to the 457(b) Plan, and \$1.760 billion in invested assets. It is the only 457(b) plan available for all State employees. There are, however, alternatives only for employees in higher education, as explained below. Employees of local governments are not eligible to participate in the State’s 457(b) Plan, but instead participate in 457(b) arrangements offered by their local employer, if any. The administrator selected hereunder will be the exclusive administrator for the State’s 457(b) Plan for State employees during the term of the Contract.

The 403(b) Plan commenced operation in 1987, and the level of participation in recent years has generally decreased. As of June 30, 2018, there were 831 participants maintaining active accounts, approximately 325 Participants contributing to the 403(b) Plan, and \$100.5 million in invested assets. Participants in the 403(b) Plan are generally free during the course of employment to transfer assets to and from other qualifying 403(b) arrangements administered outside the 403(b) Plan. No such transfers took place during 2017. Unlike the State’s 457(b) Plan, by statute, the 403(b) Plan may be offered to local jurisdictions upon request of their governing bodies. None to date have so requested.

The 401(k) Plan commenced operation in 1991 as a "grandfathered" 401(k) government plan under the 1986 Tax Reform Act. As of June 30, 2018, the 401(k) Plan had approximately 32,780 Participants maintaining active accounts in the 401(k) Plan, 17,288 Participants contributing to the 401(k) Plan, and \$1.965 billion in invested assets. The administrator selected hereunder will be the exclusive administrator for the 401(k) Plan during the term of the Contract. Under State law, the 401 (k) Plan is available to all qualifying State employees including employees in State operated institutions of higher education.

Early in 2011, the MSRP Board amended the 457(b) and 401(k) Plans to accept pre-tax Roth contributions. April 1st marked the beginning of a statewide communication campaign to encourage Participants to update their contributions and consider the Roth option, and the first Roth contributions commenced at that time. As of June 30, 2018, Roth balances totaled \$42.5 million on behalf of 5,204 Participants (\$19.4 million for 2,569 members in the 457(b) Plan and \$23.1 million for 2,635 members in the 401(k) Plan, included in the asset/Participant data reported by Plan above).

The Board adopted the 401(a) Match Plan on July 1, 1999, pursuant to State Personnel & Pensions Art. Subtitle 32. Under the Match Plan, the State may contribute a 100% match to the Match Plan, based on employee contributions to any of the other Plans supervised by the Board. Eligibility for the Match Plan is determined through membership in the defined benefit plan (basic pension system) for State employees. The maximum matching contribution is \$600 per employee per fiscal year as provided in the State budget. The Match has been suspended through the budget process since June 20, 2010; however, the match may be restarted by any approved budget which includes a match appropriation. As of June 30, 2018, the Match Plan had approximately 30,500 active accounts and \$196.1 million in invested assets.

Most payroll contributions are coordinated through the Central Payroll Bureau of the Comptroller's Office, which has statewide payroll responsibility for most of approximately 77,750 State employees eligible for the Plans, and most of whom are paid biweekly. There are approximately six (6) additional payroll centers, some of which are quite small.

The Board follows a general policy of offering substantially similar investment options across all four Plans.

For employees of higher education only, there are a variety of other elective and non-elective 401(a), 403(b), 457(b) arrangements offered by State educational institutions under the authority of the State Personnel & Pensions Art. §30-101 et seq. as part of the Optional Retirement System, which are not subject to oversight or administration by this Board, and are not part of this Contract. The Optional Retirement System is under the authority of the State higher education institutions and the State Retirement Agency, and Offerors are referred to those entities for information with respect to those arrangements.

2.3 Scope of Work - Requirements

2.3.1 **Summary** – The Contractor shall provide professional and comprehensive services of a single, independent Plan administrator for all four Plans under the authority of the Board. The selected Offeror will agree to perform general record-keeping, marketing, enrollment, transaction processing, Participant statement generation and distribution, financial reporting and other administrative and technical services for the Plans.

The Contractor shall agree that neither it nor its agents or employees will receive compensation or other benefit from any source other than from the Board of Trustees solely in connection with the Contract, and specifically that it will not receive any such compensation from any investment provider under the Plan, directly or indirectly, by commission or otherwise. Thus, while a Contractor may conduct separate transactions and arrangements with entities offering investments to the Plans, and receive compensation therefore, all such activity must be totally independent of the Plans.

Conflicts created by existing investments will not disqualify an Offeror so long as the Offeror is willing to terminate future deferrals or exchanges into that investment upon its assumption of administrative responsibility under the Contract.

Offerors should note that selection as administrator will not result in the grant of any specific or vested right in the assets of any Plan, that such assets shall in all events be held by the Plans and associated trusts, and that the administrator shall function solely as agent for the Board. Selection as administrator will also not result in

the grant any right or profit from use of annuity contracts of affiliated companies for the payment of Plan distributions.

Offerors should also note that the Contract will prohibit the Contractor from using the information obtained as Plan administrator to offer or sell other financial products to State employees, or to refer such employee or Participant data to other entities, unless such activities are specifically authorized by the Board.

Entities whose primary experience is in performing full service administration that is tied to investments offered or managed by their affiliated companies are encouraged to respond to this RFP, so long as they are willing to function solely as an independent administrator for the Plans. Entities that currently offer or manage (or are affiliated with entities that offer or manage) investment options currently offered to Participants will be required to agree to “freeze” Participant participation in any such affiliated investment options (i.e., accept no new Participant contributions in such investment options upon the effective date of the Contract), so as not to disqualify a selected administrator from consideration under this procurement.

2.3.2 Plan Administration Services

- 2.3.2.1 General administration and record-keeping at the Participant and Plan level. This includes daily valuation of Participant accounts, including calculation of daily income accrual of the ICP; adjustment of Participant accounts (at least quarterly) to distribute to Participant accounts mutual fund expense reimbursements, if any, received from mutual funds that are held by the Plans; and ability to make periodic class adjustments of accounts for special charges; ability to collect and account for the Participant charges that pay the cost of administration, both for the Board and the administrator, and to do so on a percentage and/or per capita or transaction basis; ability to perform all aspects of Participant accounting for both pre-tax and after-tax Roth contributions and for the 401(a) Match Plan.
- 2.3.2.2 Quarterly statements of account to Participants detailing all Participant deferral, investment and withdrawal transactions, administration charges, account values and applicable mutual fund expense reimbursements, all to be mailed to Participants within ten (10) business days of the end of the quarter. The statement shall be consolidated for all Plans in which an employee participates and shall show a consolidated asset balance. The statement will be presented in a two/three color format, and contain a graphical representation of closing date asset allocation, and rate of return for the Participant's account on at least a year-to-date basis.
- 2.3.2.3 Advice and technical assistance to the Board through its own personnel (or that of an affiliate) for regulatory compliance—including assistance in procuring appropriate private letter rulings concerning the Plan from the Internal Revenue Service, consulting on Plan tax reporting and withholding, and any required federal regulatory filings.
- 2.3.2.4 Assistance in contracting for investment providers and investment advisors, and timely action in making administrative and automated system changes to implement decisions of the Board to open, close and freeze investment options including mutual funds, separate accounts, and, possibly in the future, collective trusts and electronically traded funds.
- 2.3.2.5 Preparation of quarterly Plan financial statements and, especially, calendar year-end financial statements prior to their audit by the Board's independent auditor, and assistance to the auditor as is necessary for it to issue opinions on the statements as in ATTACHMENT P.
- 2.3.2.6 Required federal and state tax withholding and reporting.
- 2.3.2.7 Periodic plan administrator reports in writing and in person to the Board, at least quarterly, of the current status of the Plan and related activities, similar in overall tone and information as that contained in the excerpt provided as ATTACHMENT Q.

- 2.3.2.8 Design, production and distribution (with prior Board approval) of Participant forms, publications, statements of account and other standardized communications, including, but not limited to, Plan handbooks, videos and enrollment kits such as ATTACHMENT R.
- 2.3.2.9 Assistance to the Board in obtaining and compiling information for the Comprehensive Annual Financial report (CAFR), supplementary analyses for annual Plan reports to the Governor and the Maryland General Assembly, and for periodic surveys or requests for information conducted by or approved by the Board or its staff and legal counsel.
- 2.3.2.10 *Nationwide Fixed* - As shown in the financial statements of the 457(b) Plan, Participant funds are held in a Nationwide Fixed Account, an investment option funded by a group annuity contract between the Board and Nationwide Life Insurance Company. This investment option was frozen to new deferrals in 1986; however, Participants may currently elect to transfer funds from this investment option to other Plan investment options, and Participants eligible to take a distribution are free to take distributions from this investment option without penalty or other restriction. The selected Offeror will be required to integrate Participant account values from this investment option onto the Participant statements the selected Offeror prepares, and the selected Offeror will also be required to handle all Participant transactions (e.g., transfers and distributions) with respect to this investment option.
- 2.3.2.11 *Great-West Fixed* - As shown in the financial statements for the 403(b) Plan, Participant funds are held in a Great-West Certificate Fixed investment option. This investment option has been frozen to new deferrals since 1999; however, Participants may elect to transfer funds from this contract to other Plan investment options at certificate maturity, or as payments of Plan distributions. The selected Offeror will be required to integrate Participant account values from this investment option onto the Participant statement it prepares, and the selected Offeror will also be required to handle all Participant transactions (e.g., transfers and distributions) with respect to this investment option.
- 2.3.2.12 *Compliance Program* – The Contractor must have a well-documented, specific compliance program and qualified staff to ensure that Plan transactions and reporting comply with all applicable tax and securities laws and that the Plans generally meet requirements for their tax-favored status. The Contractor will not be required to guarantee tax results.

2.3.3 Enrollment and Participant Services

- 2.3.3.1 Marketing services, employee presentations, and communication materials directed to all eligible employees, regardless of compensation or deferral levels. The selected Offeror shall conduct a schedule of on-site employee presentations generally similar to that shown on **Attachment S**. The selected Offeror shall maintain a Maryland office with sufficient employees based in that office to perform the necessary direct services to Participants. At least **four** (4) of these local employees must have as his or her exclusive duties the counseling of Participants on their retirement/Plan distribution options. The Offeror shall identify the number and qualifications of proposed Maryland staff as (1) administrative staff, (2) enrollment/servicing representatives, or (3) retirement counsellors.
- 2.3.3.2 Face-to-face Participant enrollment, usually conducted at employees' normal work sites throughout the State, both individually and in conjunction with the group presentations discussed in the previous section.
- 2.3.3.3 Consultation with Participants by telephone and in person regarding Plan provisions, investment options, changes, and service requests.
- 2.3.3.4 Timely processing of all phases of participant "hardship" withdrawal requests, including hardship eligibility determinations for the 457(b), 403(b) and 401(k) Plans.

- 2.3.3.5 Timely processing of loan requests and repayments as may be permitted in the 457(b), 403(b) and 401(k) Plans. Repayments will customarily be by automatic debit from the borrowing Participant's bank account. Nominal loan charges to each applicant for initial setup and periodic processing are permitted and shall be disclosed in the Financial Proposal response. **Note that this fee information with respect to loans should not be included or otherwise mentioned in the Technical Proposal and should only be included in the Offeror's Financial Proposal.**
- 2.3.3.6 Managed account service provided to Participants separately-enrolled in this service. The managed account service shall be provided to Participants for an additional fee paid to the advisor/servicing-manager from the Participant's Plan account, and the Plan Administrator shall provide record keeping and statement reports with respect to Plan assets managed under to this service. The managed account service enrollment must be optional for Participants and eligible employees; there must be no mandatory service period associated with enrollment, and there must be no cost of cancellation or other penalty associated therewith.

Offerors should note that assets in the Nationwide Fixed Account, which as noted elsewhere has been frozen to new contributions since 1986, should not be considered by Offerors as assets eligible to participate in any such managed account service. Offerors should consider only Plan assets invested in mutual funds or variable insurance sub-accounts in the 457 Plan, 401(a) Plan and the 401(a) Match Plan. The Nationwide Fixed Account assets will remain invested outside of any managed account service until further action is taken by the Participant to transfer his or her assets to another investment option, or the Board.

Offerors should further note that, notwithstanding the fact that the Plans are government plans not subject to the Employees Retirement Income Security Act of 1974 ("ERISA"), the Offeror (or the affiliate of the Offeror who will provide the managed account services, if applicable) will be required to acknowledge, as part of the Contract, that it is an investment manager within the meaning of Section 3(38) of ERISA and the Internal Revenue Code of 1986, as amended, and that it is a fiduciary (as that term is defined in Section 3(21) of ERISA) with respect to Participant accounts, for Participants who opt to participate in the managed account service.

Note that fee information with respect to the managed account service should not be included or otherwise mentioned in the Technical Proposal and should only be included in the Offeror's Financial Proposal.

2.3.4 Plan Operations

- 2.3.4.1 Assembly and maintenance of a Participant database including pertinent Participant identification, address, date of birth, employment location, telephone numbers, and demographic information for effective and appropriate Plan communications, including takeover and maintenance of the existing data base, records and transaction history.
- 2.3.4.2 Electronic transaction capability and services, including: paperless enrollment processing; design and maintenance of an Internet web site for the Plan that performs participant account inquiries, deferral and investment changes, enrollment and distribution requests, and copies of quarterly participant statements; on-demand participant account information, and Plan financial, transaction and demographic information for the Board and its staff.
- 2.3.4.3 Full coordination of Plan operations, Participant services and regulatory compliance.
- 2.3.4.4 At least full business day customer service operations available through toll free telephone lines, preferably with same-day (but no later than next business day) processing of Participant-requested transactions, with adequate written confirmation of such transactions provided to Participants within five (5) days.

- 2.3.4.5 Serving as the Board's agent for processing the daily banking transactions necessary for the efficient operation of the Plans.
- 2.3.4.6 Timely movement of deferrals and exchanges to, and between, investment providers (e.g., executing "buys and sells" of any investment options). The Contractor shall be required to provide broker-dealer services managing transactions and accounting for values of Plans assets titled in the name of the Board.
- 2.3.4.7 Payment and record keeping for periodic Plan distributions other than from discrete annuity contracts.
- 2.3.4.8 Elective, periodic re-balancing of Participant accounts according to a Participant-selected asset allocation.
- 2.3.4.9 Board Fees – The Board imposes certain charges on Participant accounts and Plan assets administered by and accounted for by the Contractor in order to pay for the Board's administration expenses for the Plans. The Contractor will be responsible for the collection of these charges and will remit the proceeds into the Plans' disbursement bank account to be transferred to the Board's revenue account, as instructed. The Board fees described in this Section 2.3.4.9 are the property of the Plan to which they relate, whether before or after collection by the Contractor and remittance to the Board. The types of charges that may be imposed by the Board are as follows:
- a. Board Asset Fee. This is a percentage charge against assets identical in format and calculation method to the remuneration received by the Contractor under Section 3.4.1 below. Invoices for this Board Asset Fee are included in the invoices required by Section 3.4.1 below and are calculated in accordance with Section 2.3.7.1 below (Asset Fee Statement Report).
 - b. Board Account Fee. This is a monthly Participant charge on a per Plan account basis in all or specified Plans and includes a possible specified Participant threshold account value. Invoices of this Board Account Fee are calculated in accordance with Section 2.3.7.2 below (Account Fee Statement Reports).
 - c. Transaction charges based upon transfer of account values among the investment options of the Plans.
- 2.3.5 **Description of Optional Services** - The Board intends to make prudent improvements and additions for all or any of the four Plans under its administration and supervision. The Contractor shall plan, document and implement such changes in a timely fashion and with reasonable or no additional cost. The successful Offeror must carry out all the duties and responsibilities connected to the day-to-day operation of these Plan modifications as necessary for proper operation. Those Plan modifications may include:
- 2.3.5.1 Record keeping and reporting for a brokerage window investment option for Participant-directed selections and transactions.
- Note that fee information with respect to this optional service should not be included or otherwise mentioned in the Technical Proposal and should only be included in the Offeror's Financial Proposal.**
- 2.3.5.2 Enrollment, recordkeeping and reporting for one or more Individual Retirement Accounts (IRAs) in addition to existing plans for payroll-deductions and rollovers.
- Note that fee information with respect to the managed account service should not be included or otherwise mentioned in the Technical Proposal and should only be included in the Offeror's Financial Proposal.**
- 2.3.6 **Reports Itemized** – The Contractor shall provide the following reports to the Board and others as specified:
- 2.3.6.1 *Asset Fee Statement Report* - Monthly, deliverable within ten (10) business days of the end of each month, an electronic report of the asset fees calculated and collected from Participant accounts must be delivered to the Board's Director of Finance. This report must on a Plan-by-Plan basis and total Plan basis the amount of Board asset fees transferred to the Maryland State Treasurer's Office account for the Board, as instructed. This report must also include the report on a Plan-by-Plan basis and total Plan basis of all record-keeper and other fees collected from Participants, including asset fees, loan charges, and mutual fund expense reimbursements. Within no later than fifteen (15) business days of the end of each month, a report of

Participant assets for each Plan supporting the asset fees assessed must be submitted to the Board's Finance Director either electronically or in hard copy.

- 2.3.6.2 *Account Fee Statement Reports* - As authorized by the Board, a report of monthly account fees collected before month closing from Participant accounts will be electronically delivered to the Board's Director of Finance within ten (10) business days of the fee assessment date. The Contractor is currently authorized to collect \$0.50 monthly from each Participant 457(b), 403(b) and 401(k) account over \$500, collected on or about the 7th of each month and reported within five (5) business days and promptly remitted to the Board through the Maryland State Treasurer's Office, as instructed.
- 2.3.6.3 *MSRP Fund Balances Report* – Monthly and quarterly report to MSRP and Investment Advisor of MSRP investment option data by Plan, including beginning balance, contributions, exchanges in, withdrawals, exchanges out, administrative fees, asset fees, investment performance and ending balance. Due fifteen (15) days after month or quarter end.
- 2.3.6.4 *MSRP Monthly ICP Report* – Monthly report to MSRP and the ICP Manager including for each Plan the beginning balance, total deferrals, net exchanges, administrative fees, asset fees, investment performance, and end balance. Due 15 days after month end.
- 2.3.6.5 *MSRP Demographic Report* – Semi-annual report to MSRP and the ICP Manager including for each Plan data for Participant age groups in 10-year increments. Each increment accumulates total account balance for account segments with contributions, without contributions, in payout and all accounts combined. The same data for age increments and activity segments is also reported by the tally of Participants. Both of these Plan reports are repeated for Participant assets and tallies only in the ICP. Due 30 days after the period end.
- 2.3.6.6 *Unaudited Financial Reports* – Quarterly and annual financial statements to MSRP of assets available for benefits, additions and deductions during the period, a schedule of investments by Plan and total, and supporting notes. Due 45 days after year and quarter end.
- 2.3.6.7 *Plan Administrator Report* – Quarterly report to the Board of the Plans assets, membership, transactions and Plan Administrator activities. Due 45 days after quarter end.
- 2.3.6.8 *Participant Account Statements* – Quarterly Consolidated Account report to Participant of beginning and end balances with contributions, distributions, fees deducted, mutual funds expense reimbursements (savings) credited, and investment results. This same data should also be reported by Plan and investment option. The statement should report the Participant's new money allocation at quarter end, chronology of transactions, loan summary and transactions, designated beneficiaries, personal rate of return and an investment performance report of all investment options offered in the Plans. Finally, the statement should provide notices of important Plan information or changes. Paper statements shall be mailed to participants within ten (10) business days of quarter end.
- 2.3.6.9 *Administration Manual* – The Contractor shall compose and maintain for the Board and for auditor inspection a full and comprehensive administration manual containing:
 - a. All forms currently used by Participants of the Plans in connection with the operations of the Plans.
 - b. Narrative descriptions of how transactions under the Plans are processed and accounted for by the Contractor and what time standards are imposed.
 - c. Narrative descriptions of how each item on the Plans financial statement is determined.
 - d. Narrative descriptions of each account in the general ledger that the Contractor will maintain for the Plans.

An electronic version of the first draft of this administrative manual shall be provided to the Contract Monitor within ninety (90) days after the effective date of the Contract, unless otherwise extended by the Contract Monitor, in the Contract Monitor's sole discretion, and shall be subject to review and comment by the Contract Monitor, the Board's legal counsel and such other consultants as the Board and the Contract Manager deem appropriate for such review. An electronic version of the final version of the administrative manual shall be provided to the Contract Monitor no later than one hundred fifty (150) days after the effective

date of the Contract, unless otherwise extended by the Contract Monitor, in the Contract Monitor's sole discretion.

2.3.7 **Meetings** – The Contractor shall be expected to attend the following meetings:

- Regularly scheduled Board meetings – (typically held five (5) times per year for quarterly report presentation, plus one additional regular Board meeting);
- Board education or planning meetings (typically one or two per year); and
- Investment Committee meetings (typically held five (5) times per year in conjunction with regular Board meetings).

2.3.8 **Start of Contract Transition**

The Contractor will be required to manage a transition between the performance of services by the existing Plan Administrator, NRS, and the beginning of its own performance of services in accordance with the Contract, so that the full range of services will be offered as of the Go-Live Date of the Contract (which, unless otherwise specified in a Notice to Proceed from the Procurement Officer, shall be the Effective Date of the Contract, as defined in Attachment M). The Technical Proposal must include a detailed transition plan, which should include, without limitation, a project management timeline, deliverables, milestones, and estimated deadlines for each such deliverable and milestone.

For purposes of the preparation of the transition plan, the Offeror should assume a termination date for the current contract with the incumbent of December 31, 2019; however, this assumption is for purposes of the transition plan only, and Offerors should note that the State makes no representation as to the actual termination date of the current contract or the Effective Date of the Contract. In addition, Offerors should note that the successful Contractor shall not be entitled to compensation during the period between the termination of the current contract and the commencement of the Contract with the successful Offeror.

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SECTION 3 – CONTRACTOR REQUIREMENTS: GENERAL REQUIREMENTS

3.1 Insurance Requirements

- 3.1.1 The Contractor shall maintain Commercial General Liability Insurance to cover losses resulting from, or arising out of, Contractor action or inaction in the performance of the Contract by the Contractor, its agents, servants, employees, or subcontractors, with a minimum limit of \$25,000,000 per occurrence and aggregate.
- 3.1.2 The Contractor shall maintain Errors and Omissions/Professional Liability insurance with minimum limits of \$50,000,000 per claim and annual aggregate.
- 3.1.3 The Contractor shall maintain Crime Insurance/Employee Theft Insurance to cover employee theft with a minimum single loss limit of \$1,000,000 per loss, and a minimum single loss retention not to exceed \$10,000. The State of Maryland and MSRP should be added as a “loss payee.”
- 3.1.4 Within five (5) Business Days of recommendation for Contract award, and before any work begins, the Contractor shall provide the Procurement Officer with current certificates of insurance, and update such certificates periodically, but no less than annually in multi-year contracts, as directed by the Contract Monitor. Such copy of the Contractor’s current certificate of insurance shall contain at minimum the following:
- a. Workers’ Compensation – The Contractor shall maintain such insurance as necessary and/or required under Workers’ Compensation Acts, the Longshore and Harbor Workers’ Compensation Act, and the Federal Employers’ Liability Act.
 - b. Commercial General Liability as required in Section 3.1.1.
 - c. Errors and Omissions/Professional Liability as required in Section 3.1.2.
 - d. Crime insurance as required in Section 3.1.3.
- 3.1.5 The State of Maryland shall be listed as an additional insured on any Commercial General Liability, Auto Liability, Professional/Cyber Liability, and excess liability or umbrella policies with the exception of Workers’ Compensation Insurance, which is currently handled by the Chesapeake Employer’s Insurance Company (formerly Injured Workers’ Insurance Fund). This means the faces of the certificates of insurance for these policies must state, “The State of Maryland is an Additional Insured.” All insurance policies shall be endorsed to include a clause that requires that the insurance carrier provide the Contract Monitor, by certified mail, not less than 30 days’ advance notice of any non-renewal, cancellation, or expiration. In the event the Contract Monitor receives a notice of non-renewal, the Contractor shall provide the Contract Monitor with an insurance policy from another carrier at least 15 days prior to the expiration of the insurance policy then in effect. All insurance policies shall be with a company licensed by the State to do business and provide such policies.
- 3.1.6 The Contractor shall require that any subcontractors providing primary services (as opposed to non-critical, ancillary services) under this Contract obtain and maintain the same levels of insurance and shall provide the Contract Monitor with the same documentation as is required of the Contractor.

3.2 Security Requirements

3.2.1 Employee Identification

- 3.2.1.1 Each person who is an employee or agent of the Contractor or subcontractor shall display his or her company ID badge at all times while on State premises. Upon request of authorized State personnel, each such employee or agent shall provide additional photo identification.

3.2.1.2 At all times at any facility, the Contractor's personnel shall cooperate with State site requirements that include but are not limited to being prepared to be escorted at all times, providing information for badge issuance, and wearing the badge in a visible location at all times.

3.2.2 Security Clearance / Criminal Background Check

The Contractor shall obtain from all Contractor and subcontractor personnel assigned to provide primary services in state of Maryland locations under the Contract a signed statement permitting a criminal background check. The Contractor shall secure at its own expense a Criminal Justice Information System (CJIS) State and federal criminal background check, including fingerprinting, and provide the Contract Monitor with completed checks on the above-listed personnel assigned to work under the Contract prior to assignment. At a minimum, these background checks must include all convictions and probation before judgment (PBJ) dispositions. The Contractor may not assign an individual whose background check reflects any criminal activity to work under this Contract unless prior written approval is obtained from the Contract Monitor.

3.2.3 Information Technology

For purposes of this solicitation and the resulting Contract:

- (1) "Sensitive Data" means information that is protected against unwarranted disclosure, to include Personally Identifiable Information (PII), Protected Health Information (PHI) or other private/confidential data, as specifically determined by the State. Sensitive Data includes information about an individual that (1) can be used to distinguish or trace an individual's identity, such as name, social security number, date and place of birth, mother's maiden name, or biometric records; (2) is linked or linkable to an individual, such as medical, educational, financial, and employment information; (3) falls within the definition of "personal information" under Md. Code Ann., General Provisions § 14-3501(d); or (4) falls within the definition of "personal information" under Md. Code Ann., St. Govt. § 10-1301(c).
- (2) "Relevant subcontractor" includes any subcontractor that assists the Contractor in the critical functions of the Contract, handles Sensitive Data, and/or assists with any related implemented system, excluding subcontractors that provide secondary services that are not pertinent to assisting the Contractor in the critical functions of the Contract, handling Sensitive Data, and/or assisting with any related implemented system.
- (3) The Contractor, including any relevant subcontractor(s), shall implement administrative, physical, and technical safeguards to protect State data that are no less rigorous than accepted industry standards for information security such as those listed below, and ensure that all such safeguards, including the manner in which State data is collected, accessed, used, stored, processed, disposed of and disclosed, comply with applicable data protection and privacy laws as well as the terms and conditions of this solicitation and resulting Contract.
- (4) The Contractor, including any and all subcontractor(s), agrees to abide by all applicable federal, State and local laws concerning information security and comply with current State of Maryland Department of Information Technology Security Policy available at: www.doit.maryland.gov – keyword: Security Policy. The State IT Security Policy may be revised from time to time. The Contractor and all subcontractors shall comply with all such revisions. Updated and revised versions of the State IT Policy and Standards are available online on this website.

3.2.3.1 Information Security Requirements

To ensure appropriate data protection safeguards are in place, the Contractor and any relevant subcontractor(s) shall at a minimum implement and maintain the following information technology controls at all times throughout the life of the Contract. The Contractor and any relevant subcontractor(s) may augment this list with additional information technology controls.

- (1) Establish separate production, test, and training environments for systems supporting the services provided under this Contract and ensure that production data is not replicated in the test and/or training environment unless it has been previously anonymized or otherwise modified to protect the confidentiality of Sensitive Data elements.
- (2) Apply hardware and software hardening procedures as recommended by the manufacturer to reduce the Contractor/subcontractor's systems' surface of vulnerability. The purpose of system hardening procedures is to eliminate as many security risks as possible. These procedures may include but are not limited to removal of unnecessary software, disabling or removing of unnecessary services, removal of unnecessary usernames or logins, and deactivation of unneeded features in the Contractor/subcontractor's system configuration files.
- (3) Establish policies and procedures to implement and maintain mechanisms for regular internal vulnerability testing of operating system, application, and network devices supporting the services provided under this Contract. Such testing is intended to identify outdated software versions; missing software patches; and device or software misconfigurations; and validate compliance with or deviations from the Contractor's and/or subcontractor's security policy. The Contractor and any relevant subcontractor(s) shall evaluate all identified vulnerabilities for potential adverse effect on the system's security and/or integrity and remediate the vulnerability promptly or document why remediation action is unnecessary or unsuitable. The Board shall have the right to inspect these policies and procedures and the performance of vulnerability testing to confirm the effectiveness of these measures for the services being provided under this Contract.
- (4) Where website hosting or Internet access is the service provided or part of the service provided, the Contractor and any relevant subcontractor(s) shall conduct regular external vulnerability testing. External vulnerability testing is an assessment designed to examine the Contractor's and subcontractor's security profile from the Internet without benefit of access to internal systems and networks behind the external security perimeter. The Contractor and any relevant subcontractor(s) shall evaluate all identified vulnerabilities on Internet-facing devices for potential adverse effect on the system's security and/or integrity and remediate the vulnerability promptly or document why remediation action is unnecessary or unsuitable. The Board shall have the right to inspect these policies and procedures and the performance of vulnerability testing to confirm the effectiveness of these measures for the services being provided under this Contract.
- (5) Ensure that anti-virus and anti-malware software is installed and maintained on all systems supporting the services provided under this Contract, automatically updated, and configured to actively scan and detect threats to the system for remediation.
- (6) Enforce strong user authentication and password control measures over the Contractor/subcontractor's systems supporting the services provided under this Contract to minimize the opportunity for unauthorized system access through compromise of the user access controls. At a minimum, the implemented measures should be consistent with the most current State of Maryland Department of Information Technology's Information Security Policy (<http://doit.maryland.gov/support/Pages/SecurityPolicies.aspx>), including specific requirements for password length, complexity, history, and account lockout.
- (7) Ensure State data under this service is not processed, transferred, or stored outside of the United States.
- (8) Ensure that State data is not comingled with the Contractor's and subcontractor's other clients' data through the proper application of data compartmentalization security measures.

- This includes but is not limited to classifying data elements and controlling access to those elements based on the classification and the user's access or security level.
- (9) Apply data encryption to protect State data, especially Sensitive Data, from improper disclosure or alteration. Data encryption should be applied to State data in transit over networks and, where possible, State data at rest within the system, as well as to State data when archived for backup purposes. Encryption algorithms which are utilized for this purpose must comply with current Federal Information Processing Standards (FIPS), "Security Requirements for Cryptographic Modules", FIPS PUB 140-2:
<http://nvlpubs.nist.gov/nistpubs/FIPS/NIST.FIPS.140-2.pdf>
 - (10) Enable appropriate logging parameters on systems supporting services provided under this Contract to monitor user access activities, authorized and failed access attempts, system exceptions, and critical information security events as recommended by the operating system and application manufacturers as well as information security standards including the current State of Maryland Department of Information Security Policy:
<http://doit.maryland.gov/support/Pages/SecurityPolicies.aspx>
 - (11) Retain the aforementioned logs and review them at least daily to identify suspicious or questionable activity for investigation and documentation as to their cause and perform remediation, if required. The Board shall have the right to inspect these policies and procedures and the Contractor or subcontractor's performance to confirm the effectiveness of these measures for the services being provided under this Contract.
 - (12) Ensure system and network environments are separated by properly configured and updated firewalls to preserve the protection and isolation of Sensitive Data from unauthorized access as well as the separation of production and non-production environments.
 - (13) Restrict network connections between trusted and untrusted networks by physically and/or logically isolating systems supporting the services being provided under the Contract from unsolicited and unauthenticated network traffic.
 - (14) Review at regular intervals the aforementioned network connections, documenting and confirming the business justification for the use of all service, protocols, and ports allowed, including the rationale or compensating controls implemented for those protocols considered insecure but necessary.
 - (15) Ensure that the Contractor's and any subcontractor's personnel shall not connect any of their own equipment to a State LAN/WAN without prior written approval by the State. The Contractor/subcontractor shall complete any necessary paperwork as directed and coordinated with the Contract Monitor to obtain approval by the State to connect Contractor/subcontractor-owned equipment to a State LAN/WAN.

3.2.3.2 Contingency / Disaster Recovery Plans

- (1) The Contractor and any relevant subcontractor(s) shall have robust contingency and disaster recovery plans in place to ensure that the services provided under this Contract will be maintained in the event of disruption to the Contractor/subcontractor's operations (including, but not limited to, disruption to information technology systems), however caused.
- (2) The contingency and disaster recovery plans must be designed to ensure that services under this Contract are restored after a disruption within 24 hours in order to avoid unacceptable consequences due to the unavailability of services.
- (3) The Contractor and any relevant subcontractor(s) shall test the contingency/disaster recovery plans at least twice annually to identify any changes that need to be made to the plan(s) to ensure a minimum interruption of service. Coordination shall be made with the State to ensure limited system downtime when testing is conducted. At least one annual test shall include backup media restoration and failover/fallback operations.
- (4) Such contingency and disaster recovery plans shall be available for the Board to inspect and practically test at any reasonable time, and subject to regular updating, revising, and testing throughout the term of the Contract.

3.2.3.3 Incident Response Requirement

- (1) The Contractor shall notify the Contract Monitor when any Contractor and/or subcontractor system that may access, process, or store State data or work product is subject to unintended access or attack. Unintended access or attack includes compromise by computer malware, malicious search engine, credential compromise or access by an individual or automated program due to a failure to secure a system or adhere to established security procedures.
- (2) The Contractor shall notify the Contract Monitor within two (2) Business Days of the discovery of the unintended access or attack by providing notice via written or electronic correspondence to the Contract Monitor and Procurement Officer.
- (3) The Contractor shall notify the Contract Monitor within two (2) Business Days if there is a threat to the Contractor's and/or subcontractor's systems as it pertains to the use, disclosure, and security of the Plans' Sensitive Data.
- (4) If an unauthorized use or disclosure of any Sensitive Data occurs, the Contractor must provide written notice to the Contract Monitor within two (2) Business Days after the Contractor's discovery of such use or disclosure and, thereafter, all information the State requests concerning such unauthorized use or disclosure.
- (5) The Contractor, within two (2) Business Days of discovery, shall report to the Contract Monitor any improper or non-authorized use or disclosure of Sensitive Data. The Contractor shall provide such other information, including a written report, as reasonably requested by the State. The Contractor's report shall identify:
 - a. The nature of the unauthorized use or disclosure;
 - b. The Sensitive Data used or disclosed;
 - c. Who made the unauthorized use or received the unauthorized disclosure;
 - d. What the Contractor has done or shall do to mitigate any deleterious effect of the unauthorized use or disclosure; and
 - e. What corrective action the Contractor has taken or shall take to prevent future similar unauthorized use or disclosure.
- (6) The Contractor shall comply with all applicable laws that require the notification of individuals in the event of unauthorized release of PII or other event requiring notification. In the event of a breach of any of the Contractor's security obligations or other event requiring notification under applicable law, the Contractor agrees to assume responsibility for informing all such individuals in accordance with applicable law and indemnify, hold harmless, and defend the State and its officials and employees from and against any claims, damages, or other harm related to such security obligation breach or other event requiring the notification.
- (7) This Section 3.2.3.3 shall survive expiration or termination of the Contract.

3.3 Problem Escalation Procedure

3.3.1 The Contractor must provide and maintain a Problem Escalation Procedure (PEP) for both routine and emergency situations. The PEP must state how the Contractor will address problem situations as they occur during the performance of the Contract, especially problems that are not resolved to the satisfaction of the State within appropriate timeframes.

The Contractor shall provide contact information to the Contract Monitor, as well as to other State personnel as directed should the Contract Monitor not be available.

3.3.2 The Contractor must provide the PEP no later than ten (10) Business Days after Contract Commencement. The PEP, including any revisions thereto, must also be provided within ten (10) Business Days after the start of each Contract year and within ten (10) Business Days after any change in circumstance which changes the

PEP. The PEP shall detail how problems with work under the Contract will be escalated in order to resolve any issues in a timely manner. The PEP shall include:

- a. The process for establishing the existence of a problem;
- b. Names, titles, and contact information for progressively higher levels of personnel in the Contractor's organization who would become involved in resolving a problem;
- c. For each individual listed in the Contractor's PEP, the maximum amount of time a problem will remain unresolved with that individual before the problem escalates to the next contact person listed in the Contractor's PEP;
- d. Expedited escalation procedures and any circumstances that would trigger expediting them;
- e. The method of providing feedback on resolution progress, including the frequency of feedback to be provided to the State;
- f. Contact information for persons responsible for resolving issues after normal business hours (e.g., evenings, weekends, holidays, etc.) and on an emergency basis; and
- g. A process for updating and notifying the Contract Monitor of any changes to the PEP.

Nothing in this section shall be construed to limit any rights of the Contract Monitor or the State which may be allowed by the Contract or applicable law.

3.4 Invoicing and Fees

3.4.1 **Contractor Asset Fees** - All payments to the Contractor for the charges imposed under the Contract shall be made as follows:

- a. The Contractor determines the accumulated dollar amount of monthly charges to which it is entitled because of the charges due to it under the Contract.
- b. The Contractor's redemption of sufficient mutual fund shares, and/or withdrawals from investment contracts, and/or reduction of investment purchases, to fund said sum.
- c. The direction of said resulting funds into the Plans' disbursement bank account.
- d. The presentation to the Board of an invoice, reflecting the transactions and showing the calculation method used to arrive at the Contractor Asset Fee and the Board Asset Fee. *See* Section 2.3.6.1 above (Asset Fee Statement Report) and Section 3.4.2 below.
- e. Withdrawal of the invoiced amount by the Contractor from the disbursement bank account five (5) business days later if prior to that time no written objection has been made by the Board and delivered to the Contractor.

3.4.2 The Board Asset Fee and Board Account Fee are currently as follows: the Board imposes a Board Asset Fee (0.05% on an annual basis) to all accounts and a per capita fee (\$0.50 per month) on each Participant account with a balance in excess of \$500 in each of the 457(b), 401(k) and 403(b) Plans. These Board fees are subject to change with 60 days advance notice to the Contractor.

3.5 SOC 2 Type 2 Audit Report

This Section 3.5 applies to the Contractor and any relevant subcontractor who provides services for the Plans' identified critical functions, handles Sensitive Data (as defined in Section 3.2.3 above), and/or hosts any related implemented system for the State under the Contract. For purposes of this section, "relevant subcontractor" includes any subcontractor that assists the Contractor in the critical functions of the Contract, handles Sensitive Data, and/or assists with any related implemented system, excluding subcontractors that provide secondary services that are not pertinent to assisting the Contractor in the critical functions of the Contract, handling Sensitive Data, and/or assisting with any related implemented system.

The Contractor shall have an annual audit performed, by an independent audit firm of the Contractor's choosing, of the Contractor's and any relevant subcontractor's handling of Sensitive Data and the Plans' critical functions., and shall address all areas relating to information technology security and operational processes (*See Section 3.2.3 above.*) For purposes of this annual audit requirement, the Plans' critical functions have been identified as follows: (1) identification and enrollment of Participants, (2) identification and notification of beneficiaries, (3) implementation of Board decisions with respect to investment options (additions, replacements, removal) and appropriate operational mapping of Plan assets and Participant contributions in connection with such implementation, if applicable, (4) recordkeeping contributions, distributions, transfers, exchanges, fees, market values and tax withholdings. Such critical functions are subject to change with 60 days advance notice to the Contractor.

These services provided by the Contractor and any relevant subcontractor that shall be covered by the audit will collectively be referred to as the "Information Functions and/or Processes." Such audits shall be performed in accordance with audit guidance: *Reporting on Controls at a Service Organization Relevant to Security, Availability, Processing Integrity, Confidentiality, or Privacy (SOC 2)* as published by the American Institute of Certified Public Accountants (AICPA) and as updated from time to time, or according to the most current audit guidance promulgated by the AICPA or similarly-recognized professional organization, as agreed to by the Department, to assess the security of outsourced client functions or data (collectively, the "Guidance") as follows:

- 3.5.1 The type of audit to be performed in accordance with the Guidance is a SOC 2 Type 2 Audit (referred to as the "SOC 2 Audit" or "SOC 2 Report"). The initial SOC 2 Audit shall be scheduled and completed within a timeframe to be specified by the Contract Monitor. All subsequent SOC 2 Audits that are arranged after this initial audit shall be performed on annual basis and submitted to the Contract Monitor by April 30th for the preceding calendar year.
- 3.5.2 The SOC 2 Audit shall report on the Contractor's and any relevant subcontractor's system(s) and suitability of the design and operating effectiveness of controls of the Information Functions and/or Processes to meet the requirements of the Contract, including the Security Requirements identified in Section 3.2, relevant to the following trust principles: Processing Integrity, Security, Availability, Confidentiality, and Privacy as defined in the aforementioned Guidance.
- 3.5.3 The audit scope of each year's SOC 2 Report may need to be adjusted (including the inclusion or omission of the relevant trust services principles of Security, Availability, Confidentiality, Processing Integrity, and/or Privacy) to accommodate any changes to the Contractor's and any relevant subcontractor's environment since the previous SOC 2 Report. Such changes may include but are not limited to the addition of Information Functions and/or Processes through modifications to the Contract, or due to changes in information technology or operational infrastructure implemented by the Contractor and/or subcontractor. The Contractor and any relevant subcontractor shall ensure that the audit scope of each year's SOC 2 Report engagement shall accommodate these changes by including in the SOC 2 Report all appropriate controls related to the current environment supporting the Information Functions and/or Processes, including those controls required by the Contract.
- 3.5.4 The scope of the SOC 2 Report shall include work performed by any subcontractors that provide essential support to the Contractor for the Information Functions and/or Processes for the services provided to the Board under the Contract. The Contractor shall ensure the audit includes all subcontractors operating in performance of the Contract.
- 3.5.5 All SOC 2 Audits, including those of the Contractor and any relevant subcontractor, shall be performed at no additional expense to the Board.
- 3.5.6 The Contractor and all relevant subcontractors shall promptly provide a complete copy of the final SOC 2 Report(s) to the Contract Monitor upon completion of each SOC 2 Audit engagement.
- 3.5.7 The Contractor shall provide to the Contract Monitor, within 30 calendar days of the issuance of each SOC 2 Report, a documented corrective action plan which addresses each audit finding or exception contained in a SOC 2 Report. The corrective action plan shall identify in detail the remedial action to be taken by the Contractor and/or subcontractor(s) along with the date(s) when each remedial action is to be implemented.

- 3.5.8 If the Contractor, including any relevant subcontractor, currently has an annual information security assessment performed that includes the operations, systems, and repositories of the Information Functions and/or Processes being provided to the Board under the Contract, and if that assessment generally conforms to the content and objective of the Guidance, the Board will determine in consultation with appropriate State government technology and audit authorities whether the Contractor's and any relevant subcontractor's current information security assessments are acceptable in lieu of the SOC 2 Report(s).

If the Contractor and any relevant subcontractor fails during the Contract term to obtain an annual SOC 2 Report by the date specified in Section 3.5.1, the Board shall have the right to retain an independent audit firm to perform an audit engagement of a SOC 2 Report of the Information Functions and/or Processes utilized or provided by the Contractor and any relevant subcontractor under the Contract. The Contractor and any relevant subcontractor agrees to allow the independent audit firm to access its facility/ies for purposes of conducting this audit engagement(s), and will provide the necessary support and cooperation to the independent audit firm that is required to perform the audit engagement of the SOC 2 Report. The Board will invoice the Contractor for the expense of the SOC 2 Report(s).

3.6 SOC 1 Type 2 Audit Report

The Contractor shall have an annual audit performed, by an independent audit firm of the Contractor's choosing, of the Contractor's internal controls over financial reporting and the effectiveness of those controls. For purposes of this annual audit requirement, the Plans' critical functions have been identified as follows: (1) preparation of quarterly unaudited financial statements for the Board of Trustees, (2) preparation of annual financial statements for examination by the Board's independent auditor and for publication in the Comprehensive Annual Financial Report, (3) daily valuation of participant accounts and allocated investments, (4) recordkeeping contributions, distributions, transfers, exchanges, fees, market values and tax withholdings, and (5) preparation and timely issuance of quarterly participant account statements. Such critical functions are subject to change with 60 days advance notice to the Contractor.

These services provided by the Contractor and any relevant subcontractor that shall be covered by the audit will collectively be referred to as the "Critical Financial Functions and Reports." Such audits shall be performed in accordance with audit guidance: *Reporting on an Examination of Controls at a Service Organization Relevant to User Entities' Internal Control over Financial Reporting (SOC 1)* as published by the American Institute of Certified Public Accountants (AICPA) and as updated from time to time, or according to the most current audit guidance promulgated by the AICPA or similarly-recognized professional organization, as agreed to by the Department, to assess the internal controls over financial reporting (collectively, the "Guidance") as follows:

- 3.6.1 The type of audit to be performed in accordance with the Guidance is a SOC 1 Type 2 Audit (referred to as the "SOC 1 Audit" or "SOC 1 Report"). The initial SOC 1 Audit shall be scheduled and completed within a timeframe to be specified by the Contract Monitor. All subsequent SOC 1 Audits that are arranged after this initial audit shall be performed on annual basis and submitted to the Contract Monitor by April 30th for the preceding calendar year.
- 3.6.2 The SOC 1 Audit shall report on the fairness of the presentation of the Contractor's and any relevant subcontractor's description of the system(s) and the suitability of the design and operating effectiveness of the controls to achieve the requirements of the Contract.
- 3.6.3 The scope of the SOC 1 Report shall include work performed by any subcontractors that provide essential support to the Contractor for the financial reporting services provided to the Board under the Contract. The Contractor shall ensure the audit includes all subcontractors operating in performance of the Contract.
- 3.6.4 All SOC 1 Audits, including those of the Contractor and any relevant subcontractor, shall be performed at no additional expense to the Board.
- 3.6.5 The Contractor and all relevant subcontractors shall promptly provide a complete copy of the final SOC 1 Report(s) to the Contract Monitor upon completion of each SOC 1 Audit engagement.

- 3.6.6 The Contractor shall provide to the Contract Monitor, within 30 calendar days of the issuance of each SOC 1 Report, a documented corrective action plan which addresses each audit finding or exception contained in a SOC 1 Report. The corrective action plan shall identify in detail the remedial action to be taken by the Contractor and/or subcontractor(s) along with the date(s) when each remedial action is to be implemented.
- 3.6.7 If the Contractor, including any relevant subcontractor, currently has an annual internal control for financial reporting assessment performed that includes the operations, systems, transactions, valuations and financial reports being provided to the Board under the Contract, and if that assessment generally conforms to the content and objective of the Guidance, the Board will determine in consultation with appropriate State government accounting and audit authorities whether the Contractor's and any relevant subcontractor's current internal control over financial reporting assessments are acceptable in lieu of the SOC 1 Report(s).

If the Contractor and any relevant subcontractor fails during the Contract term to obtain an annual SOC 1 Report by the date specified in Section 3.6.1, the Board shall have the right to retain an independent audit firm to perform an audit engagement of a SOC 1 Report of the Critical Financial Functions and Reports utilized or provided by the Contractor and any relevant subcontractor under the Contract. The Contractor and any relevant subcontractor agrees to allow the independent audit firm to access its facility/ies for purposes of conducting this audit engagement(s), and will provide the necessary support and cooperation to the independent audit firm that is required to perform the audit engagement of the SOC 1 Report. The Board will invoice the Contractor for the expense of the SOC 1 Report(s).

3.7 MBE Reports

This solicitation includes a 15% MBE Goal. *See* Section 4.26 below. The Contractor and its MBE subcontractors shall provide the following MBE Monthly Reports based upon the commitment to the goal:

- (1) **Attachment D-4A**, the MBE Participation Prime Contractor Paid/Unpaid MBE Invoice Report by the 10th of the month following the reporting period to the Contract Monitor and the MBE Liaison Officer;
- (2) **Attachment D-4B** (*if applicable*), the MBE Prime Contractor Report by the 10th of the month following the reporting period to the Contract Monitor and the MBE Liaison Officer; and
- (3) **Attachment D-5**, the MBE Participation Subcontractor Paid/Unpaid MBE Invoice Report by the 10th of the month following the reporting period to the Contract Monitor and the MBE Liaison Officer.

3.8 VSBE Reports

There is no Veteran-Owned Small Business Enterprise (VSBE) participation goal for this procurement.

3.9 Substitution of Personnel

3.9.1 **Continuous Performance of Key Personnel.** Unless substitution is approved pursuant to paragraphs 3.9.2-3.9.4 of this section 3.9, Key Personnel shall be the same personnel proposed in the Contractor's Technical Proposal, which shall be incorporated into the Contract by reference. Such identified Key Personnel shall perform continuously for the duration of the Contract, or such lesser duration as specified in the Technical Proposal. Key Personnel may not be removed by the Contractor from working under this Contract, as described in this RFP or the Contractor's Technical Proposal, without the prior written approval of the Contract Monitor.

3.9.2 **Definitions.** For the purposes of this Section 3.9, the following definitions apply:

Extraordinary Personal Circumstance – Any circumstance in an individual’s personal life that reasonably requires immediate and continuous attention for more than fifteen (15) days and precludes the individual from performing his/her job duties under this Contract. Examples of such circumstances may include, but are not limited to: a sudden leave of absence to care for a family member who is injured, sick, or incapacitated; the death of a family member, including the need to attend to the estate or other affairs of the deceased or his/her dependents; substantial damage to, or destruction of, the individual’s home that causes a major disruption in the individual’s normal living circumstances; criminal or civil proceedings against the individual or a family member; jury duty; and military service call-up.

Incapacitating – Any health circumstance that substantially impairs the ability of an individual to perform the job duties described for that individual’s position in this RFP or the Contractor’s Technical Proposal.

Sudden – When the Contractor has less than thirty (30) days’ prior notice of a circumstance beyond its control that will require the replacement of any Key Personnel working under the Contract.

3.9.3 **Key Personnel General Substitution Provisions.** The following provisions apply to all of the circumstances of staff substitution described in paragraph 3.8.4 of this Section 3.8.

1. The Contractor shall demonstrate to the Contract Monitor’s satisfaction that the proposed substitute Key Personnel have qualifications at least equal to those of the Key Personnel for whom the replacement is requested.
2. The Contractor shall provide the Contract Monitor with a substitution request that shall include:
 - A detailed explanation of the reason(s) for the substitution request;
 - The resume of the proposed substitute personnel, signed by the substituting individual and his/her formal supervisor;
 - The official resume of the current personnel for comparison purposes; and
 - Any evidence of any required credentials.
3. The Contract Monitor may request additional information concerning the proposed substitution. In addition, the Contract Monitor and/or other appropriate State personnel involved with the Contract may interview the proposed substitute personnel prior to deciding whether to approve the substitution request.
4. The Contract Monitor will notify the Contractor in writing of: (i) the acceptance or denial, or (ii) contingent or temporary approval for a specified time limit, of the requested substitution. The Contract Monitor will not unreasonably withhold approval of a requested Key Personnel replacement.

3.9.4 **Replacement Circumstances**

3.9.4.1 Voluntary Key Personnel Replacement. To voluntarily replace any Key Personnel, the Contractor shall submit substitution request as described in paragraph 3.9.3 of this Section 3.9 to the Contract Monitor at least fifteen (15) days prior to the intended date of change. Except in a circumstance described in paragraph 3.9.4.2 of this clause, a substitution may not occur unless and until the Contract Monitor approves the substitution in writing.

3.9.4.2 Key Personnel Replacement Due to Vacancy. The Contractor shall replace Key Personnel whenever a vacancy occurs due to the sudden termination, resignation, leave of absence due to an Extraordinary Personal Circumstance, Incapacitating injury, illness or physical condition, or death of such personnel. (A termination or resignation with thirty (30) days or more advance notice shall be treated as a Voluntary Key Personnel Replacement as per Section 3.9.4.1 of this Section 3.9.)

Under any of the circumstances set forth in this paragraph 3.9.4.2 of this Section 3.9, the Contractor shall identify a suitable replacement and provide the same information or items required under paragraph 3.9.3 of

this Section 3.9 within fifteen (15) days of the actual vacancy occurrence or from when the Contractor first knew or should have known that the vacancy would be occurring, whichever is earlier.

3.9.4.3 Key Personnel Replacement Due to an Indeterminate Absence. If any Key Personnel has been absent from his/her job for a period of ten (10) days due to injury, illness, or other physical condition, leave of absence under a family medical leave, or an Extraordinary Personal Circumstance and it is not known or reasonably anticipated that the individual will be returning to work within the next twenty (20) days to fully resume all job duties, before the 25th day of continuous absence, the Contractor shall identify a suitable replacement and provide the same information or items to the Contract Monitor as required under paragraph 3.9.3 of this Section 3.9.

However, if such person is available to return to work and fully perform all job duties before a replacement has been authorized by the Contract Monitor, at the option and sole discretion of the Contract Monitor, the original personnel may continue to work under the Contract, or the replacement personnel will be authorized to replace the original personnel, notwithstanding the original personnel's ability to return.

3.9.4.4 Directed Personnel Replacement.

3.9.4.4.1 The Contract Monitor may direct the Contractor to replace any personnel who are perceived as being unqualified, non-productive, unable to fully perform the job duties due to full or partial Incapacity or Extraordinary Personal Circumstance, disruptive, or known, or reasonably believed, to have committed a major infraction(s) of law, agency, or Contract requirements. Normally, a directed personnel replacement will occur only after prior notification of problems with requested remediation, as described in paragraph 3.9.4.4.2 of this Section 3.9. If after such remediation the Contract Monitor determines that the personnel performance has not improved to the level necessary to continue under the Contract, if at all possible at least fifteen (15) days notification of a directed replacement will be provided. However, if the Contract Monitor deems it necessary and in the State's best interests to remove the personnel with less than fifteen (15) days' notice, the Contract Monitor can direct the removal in a timeframe of less than fifteen (15) days, including immediate removal.

In circumstances of directed removal, the Contractor shall, in accordance with paragraph 3.9.3 of this section, provide a suitable replacement for approval within fifteen (15) days of the notification of the need for removal, or the actual removal, whichever occurs first.

3.9.4.4.2 If deemed appropriate in the discretion of the Contract Monitor, the Contract Monitor shall give written notice of any personnel performance issues to the Contractor, describing the problem and delineating the remediation requirement(s). The Contractor shall provide a written Remediation Plan within ten (10) days of the date of the notice and shall implement the Remediation Plan immediately upon written acceptance by the Contract Monitor. If the Contract Monitor rejects the Remediation Plan, the Contractor shall revise and resubmit the plan to the Contract Monitor within five (5) days, or in the timeframe set forth by the Contract Monitor in writing.

Should performance issues persist despite the approved Remediation Plan, the Contract Monitor will give written notice of the continuing performance issues and either request a new Remediation Plan within a specified time limit or direct the substitution of personnel whose performance is at issue with a qualified substitute, including requiring the immediate removal of the Key Personnel at issue.

Replacement or substitution of personnel under this section shall be in addition to, and not in lieu of, the State's remedies under the Contract or which otherwise may be available at law or in equity.

3.10 End of Contract Transition

The Contractor shall cooperate in the orderly transition of services from the Contract awarded under this solicitation to any subsequent contract for similar services. In the event that the Board gives notice to the Contractor that the Contract shall terminate, the transition period shall begin immediately, and the Contractor shall commence performance of its transition responsibilities. The Contractor's transition responsibilities shall include the delivery to the Board of all Plans and Participant records in good working order suitable for use by such new administrator or administrators as may be selected by the Board.

If the Board terminates the Contract prior to the end of its term, the Contractor shall make such delivery no later than ninety (90) days after receipt of such Contract termination notice. If the Contract terminates in accordance with its terms (and has not otherwise been extended by the Board pursuant to the exercise by the Board of an option or the approval and execution of contract extension or a new contract with the Contractor), the Contractor shall make such delivery no later than ninety (90) days prior to the end date of the Contract (or the end date of any final exercised option or contract extension, if applicable).

The Contractor shall be obligated to work toward a prompt and timely transition, proceeding in accordance with the directions of the Contract Monitor. The Contract Monitor may provide the Contractor with additional instructions to meet specific transition requirements prior to the end of Contract. Notice of termination of the Contract or the beginning of the transition period shall not eliminate the Contractor's responsibility to account for Plans transactions up to the date of termination. However, the Contractor will continue to be required to provide certain Plan financial and Participant statements subsequent to such termination date in accordance with the term of the Contract and remain subject to liability for any failure to perform its obligations under the Contract, as well as certain other obligations set that survive termination of the Contract.

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SECTION 4 – PROCUREMENT INSTRUCTIONS

4.1 Pre-Proposal Conference

A Pre-Proposal Conference (the “Conference”) will be held at the date, time, and location indicated on the RFP Key Information Summary Sheet. All prospective Offerors are encouraged to attend in order to facilitate better preparation of their Proposals.

The Conference will be summarized. As promptly as is feasible after the Conference, a summary of the Conference and all questions and answers known at that time will be distributed to all prospective Offerors known to have received a copy of this RFP. This summary, as well as the questions and answers, will also be posted on eMaryland Marketplace. See Section 4.2 below.

In order to ensure adequate seating and other accommodations at the Conference, please e-mail or fax the Pre-Proposal Conference Response Form (**Attachment A**) to the attention of the Procurement Officer at least five (5) Business Days prior to the Conference date. In addition, if there is a need for sign language interpretation and/or other special accommodations due to a disability, please notify the Procurement Officer at least five (5) Business Days prior to the Conference date. The Board will make a reasonable effort to provide such special accommodation.

4.2 eMaryland Marketplace

Each Offeror is requested to indicate its eMaryland Marketplace (eMM) vendor number in the Transmittal Letter (cover letter) submitted at the time of its Proposal submission to this RFP.

eMM is an electronic commerce system administered by the Maryland Department of General Services. In addition to using the MSRP Board website (<http://MSRP.maryland.gov>) and possibly other means for transmitting the RFP and associated materials, solicitation and summary of the Conference, Offeror questions, and Procurement Officer’s responses, addenda, and other solicitation-related information will be provided via eMM.

In order to receive a contract award, a vendor must be registered on eMM. Registration is free. Go to <https://emaryland.buyspeed.com/bsol/login.jsp>, click on “Register” to begin the process, and then follow the prompts.

4.3 Questions

Written questions from prospective Offerors will be accepted by the Procurement Officer prior to the Conference. If possible and appropriate, such questions will be answered at the Conference. (No substantive question will be answered prior to the Conference.) Questions to the Procurement Officer shall be submitted via e-mail to the Procurement Officer’s e-mail address indicated on the RFP Key Information Summary Sheet. Please identify in the subject line the Solicitation Number and Title. Questions, both oral and written, will also be accepted from prospective Offerors attending the Conference. If possible and appropriate, these questions will be answered at the Conference.

Questions will also be accepted subsequent to the Conference and should be submitted to the Procurement Officer via email in a timely manner prior to the Proposal due date. Questions are requested to be submitted at least five (5) days prior to the Proposal due date. The Procurement Officer, based on the availability of time to research and communicate an answer, shall decide whether an answer can be given before the Proposal due date. Time permitting, answers to all substantive questions that have not previously been answered, and are not clearly specific only to the requestor, will be distributed to all vendors that are known to have received a copy of the RFP in sufficient time for the answer to be taken into consideration in the Proposal.

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4.4 Procurement Method

This Contract will be awarded in accordance with the Competitive Sealed Proposals method under COMAR 21.05.03.

4.5 Proposals Due (Closing) Date and Time

Proposals, in the number and form set forth in Section 5.2 “Proposals” must be received by the Procurement Officer at the Procurement Officer’s address no later than the Proposal Due date and time indicated on the RFP Key Information Summary Sheet in order to be considered.

Requests for extension of this time or date will not be granted. Offerors mailing Proposals should allow sufficient mail delivery time to ensure timely receipt by the Procurement Officer. Except as provided in COMAR 21.05.03.02.F and 21.05.02.10, Proposals received after the due date and time listed in the RFP Key Information Summary Sheet will not be considered.

Proposals may be modified or withdrawn by written notice received by the Procurement Officer before the time and date set forth in the RFP Key Information Summary Sheet for receipt of Proposals.

Proposals may not be submitted by e-mail or facsimile. Proposals will not be opened publicly.

Vendors not responding to this solicitation are requested to submit the “Notice to Vendors” form, which includes company information and the reason for not responding (e.g., too busy, cannot meet mandatory requirements, etc.). This form is located in the RFP immediately following the Title Page (page ii).

4.6 Multiple or Alternate Proposals

Multiple and/or alternate Proposals will not be accepted.

4.7 Economy of Preparation

Proposals should be prepared simply and economically and provide a straightforward and concise description of the Offeror’s Proposal to meet the requirements of this RFP.

4.8 Public Information Act Notice

An Offeror should give specific attention to the clear identification of those portions of its Proposal that it considers confidential and/or proprietary commercial information or trade secrets, and provide justification why such materials, upon request, should not be disclosed by the State under the Public Information Act, Md. Code Ann., General Provisions Article, Title 4. (Also, see Section 5.4.2.2 “Claim of Confidentiality”). This confidential and/or proprietary information should be identified by page and section number and placed after the Title Page and before the Table of Contents in the Technical Proposal and, if applicable, separately in the Financial Proposal.

Offerors are advised that, upon request for this information from a third party, the Procurement Officer is required to make an independent determination whether the information must be disclosed.

4.9 Award Basis

The Contract shall be awarded to the responsible Offeror submitting the Proposal that has been determined to be the most advantageous to the State, considering price and evaluation factors set forth in this RFP (*see* COMAR 21.05.03.03F), for providing the goods and services as specified in this RFP. *See* Section 6 below for further award information.

4.10 Oral Presentation

Offerors may be required to make oral presentations to State representatives. Offerors must confirm in writing any substantive oral clarification of or change in their Proposals made in the course of discussions. Any such written clarifications or changes then become part of the Offeror's Proposal and are binding if the Contract is awarded. The Procurement Officer will notify Offerors of the time and place of oral presentations.

4.11 Duration of Proposal

Proposals submitted in response to this RFP are irrevocable for 120 days following the closing date for submission of Proposals or best and final offers, if requested (*See* Section 6.5.2.5 below.) This period may be extended at the Procurement Officer's request only with the Offeror's written agreement.

4.12 Revisions to the RFP

If it becomes necessary to revise this RFP before the due date for Proposals, the Board shall endeavor to provide addenda to all prospective Offerors that were sent this RFP or are otherwise known by the Procurement Officer to have obtained this RFP. In addition, addenda to the RFP will be posted on the Board's procurement web page and through eMM. It remains the responsibility of all prospective Offerors to check all applicable websites for any addenda issued prior to the submission of Proposals. Addenda made after the due date for Proposals will be sent only to those Offerors that submitted timely Proposals and that remain under award consideration as of the issuance date of the addenda.

Acknowledgment of the receipt of all addenda to this RFP issued before the Proposal due date shall be included in the Transmittal Letter accompanying the Offeror's Technical Proposal. Acknowledgement of the receipt of addenda to the RFP issued after the Proposal due date shall be in the manner specified in the addendum notice. Failure to acknowledge receipt of an addendum does not relieve the Offeror from complying with the terms, additions, deletions, or corrections set forth in the addendum.

4.13 Cancellations

The State reserves the right to cancel this RFP, accept or reject any and all Proposals, in whole or in part, received in response to this RFP, waive or permit the cure of minor irregularities, and conduct discussions with all qualified or potentially qualified Offerors in any manner necessary to serve the best interests of the State. The State also reserves the right, in its sole discretion, to award a Contract based upon the written Proposals received without discussions or negotiations.

In the event, a government entity proposes and receives the recommendation for award for the Contract resulting from this RFP, the procurement may be cancelled and the award processed as a Memorandum of Understanding in accordance with COMAR 21.01.03.01.A(4).

4.14 Incurred Expenses

The State will not be responsible for any costs incurred by any Offeror in preparing and submitting a Proposal, in making an oral presentation, providing a demonstration, or performing any other activities related to submitting a Proposal in response to this solicitation.

4.15 Protest/Disputes

Any protest or dispute related, respectively, to this solicitation or the resulting Contract shall be subject to the provisions of COMAR 21.10 (Administrative and Civil Remedies).

4.16 Offeror Responsibilities

The selected Offeror shall be responsible for all products and services required by this RFP. All subcontractors must be identified and a complete description of their role relative to the Proposal must be included in the Offeror's Proposal. If applicable, subcontractors utilized in meeting the established MBE or VSBE participation goal(s) for this solicitation shall be identified as provided in the appropriate Attachment(s) to this RFP. (*See* Section 4.26 "Minority Business Enterprise Goals" and Section 4.27 "Veteran-Owned Small Business Enterprise Goal".)

If an Offeror that seeks to perform or provide the services required by this RFP is the subsidiary of another entity, all information submitted by the Offeror, including but not limited to references, financial reports, or experience and documentation (e.g. insurance policies, bonds, letters of credit) used to meet minimum qualifications, if any, shall pertain exclusively to the Offeror, unless the parent organization will guarantee the performance of the subsidiary. If applicable, the Offeror shall submit with its Proposal an explicit statement, signed by an authorized representative of the parent organization, stating that the parent organization will guarantee the performance of the subsidiary.

A parental guarantee of the performance of the Offeror under this section will not automatically result in crediting the Offeror with the experience and/or qualifications of the parent under any evaluation criteria pertaining to the Offeror's experience and qualifications. Instead, the Offeror will be evaluated on the extent to which the State determines that the experience and qualification of the parent are transferred to and shared with the Offeror, the parent is directly involved in the performance of the Contract, and the value of the parent's participation as determined by the State.

4.17 Mandatory Contractual Terms

By submitting a Proposal in response to this RFP, an Offeror, if selected for award, shall be deemed to have accepted the terms and conditions of this RFP and the Contract, attached herein as **Attachment M**. Any exceptions to this RFP or the Contract shall be clearly identified in the Executive Summary of the Technical Proposal. **A Proposal that takes exception to these terms may be rejected. See Section 5.4.2.4 below.**

4.18 Proposal Affidavit

A Proposal submitted by an Offeror must be accompanied by a completed Proposal Affidavit. A copy of this Affidavit is included as **Attachment C** of this RFP.

4.19 Contract Affidavit

All Offerors are advised that if a Contract is awarded as a result of this solicitation, the successful Offeror will be required to complete a Contract Affidavit, a copy of which is included as **Attachment N** of this RFP. This Contract

Affidavit must be provided within five (5) Business Days of notification of proposed Contract award. The Contractor must also submit a Contract Affidavit with any Contract renewal, including the exercise of any options or modifications that may extend the Contract term. For purposes of completing Section “B” of this Contract Affidavit (Certification of Registration or Qualification with the State Department of Assessments and Taxation), a business entity that is organized outside of the State of Maryland is considered a “foreign” business.

4.20 Compliance with Laws/Arrearages

By submitting a Proposal in response to this RFP, the Offeror, if selected for award, agrees that it will comply with all federal, State, and local laws applicable to its activities and obligations under the Contract.

By submitting a response to this solicitation, each Offeror represents that it is not in arrears in the payment of any obligations due and owing the State, including the payment of taxes and employee benefits, and shall not become so in arrears during the term of the Contract if selected for Contract award.

4.21 Verification of Registration and Tax Payment

Before a business entity can do business in the State, it must be registered with the State Department of Assessments and Taxation (SDAT). SDAT is located at State Office Building, Room 803, 301 West Preston Street, Baltimore, Maryland 21201. For registration information, visit <https://www.egov.maryland.gov/businessexpress>.

It is strongly recommended that any potential Offeror complete registration prior to the due date for receipt of Proposals. An Offeror’s failure to complete registration with SDAT may disqualify an otherwise successful Offeror from final consideration and recommendation for Contract award.

4.22 False Statements

Offerors are advised that Md. Code Ann., State Finance and Procurement Article, § 11-205.1 provides as follows:

- (a) In connection with a procurement contract a person may not willfully:
 - (1) falsify, conceal, or suppress a material fact by any scheme or device;
 - (2) make a false or fraudulent statement or representation of a material fact; or
 - (3) use a false writing or document that contains a false or fraudulent statement or entry of a material fact.
- (b) A person may not aid or conspire with another person to commit an act under subsection (a) of this section.
- (c) A person who violates any provision of this section is guilty of a felony and on conviction is subject to a fine not exceeding \$20,000 or imprisonment not exceeding 5 years or both.

4.23 Payments by Electronic Funds Transfer

This Contract does not require electronic funds transfer payments to the Contractor for services.

4.24 Prompt Payment Policy

This procurement and the Contract to be awarded pursuant to this solicitation are subject to the Prompt Payment Policy Directive issued by the Governor’s Office of Small, Minority, and Women Business Affairs (GOSBA)

and dated August 1, 2008. Promulgated pursuant to Md. Code Ann., State Finance and Procurement Article, §§ 11-201, 13-205(a), and Title 14, Subtitle 3, and COMAR 21.01.01.03 and 21.11.03.01, the Directive seeks to ensure the prompt payment of all subcontractors on non-construction procurement contracts. The Contractor shall comply with the prompt payment requirements outlined in the Contract “Prompt Payment” clause. See **Attachment M**. Additional information is available on GOSBA’s website at: <http://goma.maryland.gov/Documents/Legislation/PromptPaymentFAQs.pdf>.

4.25 Electronic Procurements Authorized

- 4.25.1 Under COMAR 21.03.05, unless otherwise prohibited by law, the Board may conduct procurement transactions by electronic means, including the solicitation, proposing, award, execution, and administration of a contract, as provided in Md. Code Ann., Maryland Uniform Electronic Transactions Act, Commercial Law Article, Title 21.
- 4.25.2 Participation in the solicitation process on a procurement contract for which electronic means has been authorized shall constitute consent by the Offeror to conduct by electronic means all elements of the procurement of that Contract which are specifically authorized under the solicitation or Contract.
- 4.25.3 “Electronic means” refers to exchanges or communications using electronic, digital, magnetic, wireless, optical, electromagnetic, or other means of electronically conducting transactions. Electronic means includes facsimile, e-mail, internet-based communications, EFT, specific electronic bidding platforms (e.g., <https://emaryland.buyspeed.com/bsol/>), and electronic data interchange.
- 4.25.4 In addition to specific electronic transactions specifically authorized in other sections of this solicitation (e.g., Section 4.23 “Payments by Electronic Funds Transfer” above) and subject to the exclusions noted in Section 4.25.5 of this subsection, the following transactions are authorized to be conducted by electronic means on the terms described:
- 4.25.4.1 The Procurement Officer may conduct the procurement using eMM, e-mail, or facsimile to issue:
- (a) The solicitation (e.g., the RFP);
 - (b) Any amendments;
 - (c) Pre-Proposal conference documents;
 - (d) Questions and responses;
 - (e) Communications regarding the solicitation or Proposal to any Offeror or potential Offeror;
 - (f) Notices of award selection or non-selection; and
 - (g) The Procurement Officer’s decision on any Proposal protest or Contract claim.
- 4.25.4.2 An Offeror or potential Offeror may use e-mail or facsimile to:
- (a) Ask questions regarding the solicitation;
 - (b) Reply to any material received from the Procurement Officer by electronic means that includes a Procurement Officer’s request or direction to reply by e-mail or facsimile, but only on the terms specifically approved and directed by the Procurement Officer; and
 - (c) Submit a “No Proposal Response” to the solicitation.
- 4.25.4.3 The Procurement Officer, the Contract Monitor, and the Contractor may conduct day-to-day Contract administration, except as outlined in Section E of this subsection utilizing e-mail, facsimile, or other electronic means if authorized by the Procurement Officer or Contract Monitor.
- 4.25.5 The following transactions related to this procurement and any Contract awarded pursuant to it are *not authorized* to be conducted by electronic means:

- (a) Submission of initial Proposals;
- (b) Filing of Proposal Protests;
- (c) Filing of Contract Claims;
- (d) Submission of documents determined by the Board to require original signatures (e.g., Contract execution, Contract modifications, etc.); or
- (e) Any transaction, submission, or communication where the Procurement Officer has specifically directed that a response from the Contractor or Offeror be provided in writing or hard copy.

4.25.6 Any facsimile or e-mail transmission is only authorized to the facsimile numbers or e-mail addresses for the identified person as provided in the solicitation, Contract, or direction from the Procurement Officer or Contract Monitor.

4.26 Minority Business Enterprise Goals

4.26.1 Establishment of Goal and Subgoals. An overall MBE subcontractor participation goal of 15% of the total contract dollar value, including all option years, if any, has been established for this procurement.

There are no MBE subcontractor participation subgoals for this procurement.

4.26.2 Attachments D-1 to D-5 – The following Minority Business Enterprise participation instructions, and forms are provided to assist Offerors:

Attachment D-1A	MBE Utilization and Fair Solicitation Affidavit & MBE Participation Schedule (must be submitted with Proposal)
Attachment D-1B	Waiver Guidance
Attachment D-1C	Good Faith Efforts Documentation to Support Waiver Request
Attachment D-2	Outreach Efforts Compliance Statement
Attachment D-3A	MBE Subcontractor Project Participation Certification
Attachment D-3B	MBE Prime Project Participation Certification
Attachment D-4A	Prime Contractor Paid/Unpaid MBE Invoice Report
Attachment D-4B	MBE Prime Contractor Report
Attachment D-5	Subcontractor/Contractor Unpaid MBE Invoice Report

4.26.3 An Offeror shall include with its Proposal a completed MBE Utilization and Fair Solicitation Affidavit (**Attachment D-1A**) whereby:

- (a) The Offeror acknowledges the certified MBE participation goal and commits to make a good faith effort to achieve the goal and any applicable subgoals, or requests a waiver, and affirms that MBE subcontractors were treated fairly in the solicitation process; and
- (b) The Offeror responds to the expected degree of MBE participation, as stated in the solicitation, by identifying the specific commitment of certified MBEs at the time of Proposal submission. The Offeror shall specify the percentage of total contract value associated with each MBE subcontractor identified on the MBE participation schedule, including any work performed by the MBE Prime (including a Prime participating as a joint venture) to be counted towards meeting the MBE participation goals.
- (c) An Offeror requesting a waiver should review Attachment D-1B (Waiver Guidance) and D-1C (Good Faith Efforts Documentation to Support Waiver Request) prior to submitting its request.

If an Offeror fails to submit a completed Attachment D-1A with the Proposal as required, the Procurement Officer shall determine that the Proposal is not reasonably susceptible of being selected for award.

- 4.26.4** Offerors are responsible for verifying that each MBE (including any MBE Prime and/or MBE Prime participating in a joint venture) selected to meet the goal and any subgoals and subsequently identified in **Attachment D-1A** is appropriately certified and has the correct NAICS codes allowing it to perform the committed work.
- 4.26.5** Within ten (10) Business Days from notification that it is the recommended awardee or from the date of the actual award, whichever is earlier, the Offeror must provide the following documentation to the Procurement Officer.
- (a) Outreach Efforts Compliance Statement (**Attachment D-2**);
 - (b) MBE Subcontractor/Prime Project Participation Certification (**Attachment D-3A/3B**); and
 - (c) Any other documentation required by the Procurement Officer to ascertain Offeror responsibility in connection with the certified MBE subcontractor participation goal.

Further, if the recommended awardee believes a waiver (in whole or in part) of the overall MBE goal is necessary, the recommended awardee must submit a fully-documented waiver request that complies with COMAR 21.11.03.11.

If the recommended awardee fails to return each completed document within the required time, the Procurement Officer may determine that the recommended awardee is not responsible and, therefore, not eligible for Contract award. If the Contract has already been awarded, the award is voidable.

- 4.26.6** A current directory of certified MBEs is available through the Maryland State Department of Transportation (MDOT), Office of Minority Business Enterprise, 7201 Corporate Center Drive, Hanover, Maryland 21076. The phone numbers are (410) 865-1269, 1-800-544-6056, or TTY (410) 865-1342. The directory is also available on the MDOT website at <http://mbe.mdot.maryland.gov/directory/>. The most current and up-to-date information on MBEs is available via this website. **Only MDOT-certified MBEs may be used to meet the MBE subcontracting goals.**
- 4.26.7** The Contractor, once awarded a Contract, will be responsible for submitting or requiring its subcontractor(s) to submit the following forms to provide the State with ongoing monitoring of MBE participation:
- (a) **Attachment D-4A** (Prime Contractor Paid/Unpaid MBE Invoice Report);
 - (b) **Attachment D-4B** (MBE Prime Contractor Report, *if applicable*); and
 - (c) **Attachment D-5** (MBE Subcontractor Unpaid MBE Invoice Report).
- 4.26.8** An Offeror that requested a waiver of the goal or any of the applicable subgoals will be responsible for submitting the Good Faith Efforts Documentation to Support Waiver Request (**Attachment D-1C**) and all documentation within ten (10) Business Days from notification that it is the recommended awardee or from the date of the actual award, whichever is earlier, as required in COMAR 21.11.03.11.
- 4.26.9** All documents, including the MBE Utilization and Fair Solicitation Affidavit & MBE Participation Schedule (**Attachment D-1A**), completed and submitted by the Offeror in connection with its certified MBE participation commitment shall be considered a part of the resulting Contract and are hereby expressly incorporated into the Contract by reference thereto. All of the referenced documents will be considered a part of the Proposal for order of precedence purposes (see Contract – **Attachment M**, Section 4).
- 4.26.10** The Offeror is advised that liquidated damages will apply in the event the Contractor fails to comply in good faith with the requirements of the MBE program and pertinent Contract provisions. (See Contract – **Attachment M**, “Liquidated Damages” clause).
- 4.26.11** As set forth in COMAR 21.11.03.12-1(D), when a certified MBE firm participates on a Contract as a Prime Contractor (including a joint-venture where the MBE firm is a partner), a procurement agency may count the distinct, clearly defined portion of the work of the contract that the certified MBE firm performs with its own

work force towards fulfilling up to fifty-percent (50%) of the MBE participation goal (overall) and up to one hundred percent (100%) of not more than one of the MBE participation sub-goals, if any, established for the contract.

In order to receive credit for self-performance, an MBE Prime must list its firm in Section 4A of the MBE Participation Schedule (**Attachment D-1A**) and include information regarding the work it will self-perform. For the remaining portion of the overall goal and the sub-goals, the MBE Prime must also identify certified MBE subcontractors (see Section 4B of the MBE Participation Schedule (**Attachment D-1A**)) used to meet those goals. If dually-certified, the MBE Prime can be designated as only one of the MBE sub-goal classifications but can self-perform up to 100% of the stated sub-goal.

As set forth in COMAR 21.11.03.12-1, once the Contract work begins, the work performed by a certified MBE firm, including an MBE Prime, can only be counted towards the MBE participation goal(s) if the MBE firm is performing a commercially useful function on the Contract.

4.26.12 With respect to Contract administration, the Contractor shall:

- (1) Submit to the Board's designated representative by the 10th of the month following the reporting period:
 - a. A Prime Contractor Paid/Unpaid MBE Invoice Report (**Attachment D-4A**) listing any unpaid invoices, over 45 days old, received from any certified MBE subcontractor, the amount of each invoice and the reason payment has not been made; and
 - b. (If Applicable) An MBE Prime Contractor Report (**Attachment D-4B**) identifying an MBE Prime's self-performing work to be counted towards the MBE participation goals.
- (2) Include in its agreements with its certified MBE subcontractors a requirement that those subcontractors submit to the Board's designated representative by the 10th of the month following the reporting period an MBE Subcontractor Paid/Unpaid Invoice Report (**Attachment D-5**) that identifies the Contract and lists all payments to the MBE subcontractor received from the Contractor in the preceding reporting period month, as well as any outstanding invoices, and the amounts of those invoices.
- (3) Maintain such records as are necessary to confirm compliance with its MBE participation obligations. These records must indicate the identity of certified minority and non-minority subcontractors employed on the Contract, type of work performed by each, and actual dollar value of work performed. Subcontract agreements documenting the work performed by all MBE participants must be retained by the Contractor and furnished to the Procurement Officer on request.
- (4) Consent to provide such documentation as reasonably requested and right-of-entry at reasonable times for purposes of the State's representatives verifying compliance with the MBE participation obligations. Contractor must retain all records concerning MBE participation and make them available for State inspection for three years after final completion of the Contract.
- (5) Upon completion of the Contract and before final payment and/or release of retainage, submit a final report in affidavit form and under penalty of perjury, of all payments made to, or withheld from MBE subcontractors.

4.27 Veteran-Owned Small Business Enterprise Goal

There is no Veteran-Owned Small Business Enterprise (VSBE) participation goal for this procurement.

4.28 Living Wage Requirements

- 4.28.1 Maryland law requires that Contractors meeting certain conditions pay a living wage to covered employees on State service contracts over \$100,000. Maryland Code, State Finance and Procurement, § 18-101 *et seq.* The Commissioner of Labor and Industry at the Department of Labor, Licensing and Regulation requires that a Contractor subject to the Living Wage law submit payroll records for covered employees and a signed statement indicating that it paid a living wage to covered employees; or receive a waiver from Living Wage reporting requirements. *See* COMAR 21.11.10.05.
- 4.28.2 If subject to the Living Wage law, Contractor agrees that it will abide by all Living Wage law requirements, including but not limited to reporting requirements in COMAR 21.11.10.05. Contractor understands that failure of Contractor to provide such documents is a material breach of the terms and conditions and may result in Contract termination, disqualification by the State from participating in State contracts, and other sanctions. See the “Living Wage” clause in the Contract (**Attachment M**).
- 4.28.3 Additional information regarding the State’s living wage requirement is contained in **Attachment F**. Offerors must complete and submit the Maryland Living Wage Requirements Affidavit of Agreement (**Attachment F-1**) with their Proposals. If an Offeror fails to complete and submit the required documentation, the State may determine the Offeror to be not responsible under State law.
- 4.28.4 Contractors and subcontractors subject to the Living Wage Law shall pay each covered employee at least the minimum amount set by law for the applicable Tier area. The specific living wage rate is determined by whether a majority of services take place in a Tier 1 Area or Tier 2 Area of the State. The Tier 1 Area includes Montgomery, Prince George’s, Howard, Anne Arundel and Baltimore Counties, and Baltimore City. The Tier 2 Area includes any county in the State not included in the Tier 1 Area. In the event that the employees who perform the services are not located in the State, the head of the unit responsible for a State Contract pursuant to §18-102(d) of the State Finance and Procurement Article shall assign the tier based upon where the recipients of the services are located.
- 4.28.5 The Contract resulting from this solicitation will be determined to be a Tier 1 Contract or a Tier 2 Contract depending on the location(s) from which the Contractor provides 50% or more of the services. The Offeror must identify in its Proposal the location(s) from which services will be provided, including the location(s) from which 50% or more of the Contract services will be provided.
- (1) If the Contractor provides 50% or more of the services from a location(s) in a Tier 1 jurisdiction(s) the Contract will be a Tier 1 Contract.
 - (2) If the Contractor provides 50% or more of the services from a location(s) in a Tier 2 jurisdiction(s), the Contract will be a Tier 2 Contract.
 - (3) If the Contractor provides more than 50% of the services from an out-of-State location, the State agency determines the wage tier based on where the majority of the service recipients are located. In this circumstance, this Contract will be determined to be a Tier 1 Contract.
- 4.28.6 Information pertaining to reporting obligations may be found by going to the Maryland Department of Labor, Licensing and Regulation (DLLR) website: <http://www.dllr.state.md.us/labor/prev/livingwage.shtml>.

NOTE: Whereas the Living Wage may change annually, the Contract price may not be changed because of a Living Wage change.

4.29 Federal Funding Acknowledgement

This Contract does not contain federal funds.

4.30 Conflict of Interest Affidavit and Disclosure

Offerors shall complete and sign the Conflict of Interest Affidavit and Disclosure (**Attachment H**) and submit it with their Proposals. All Offerors are advised that if a Contract is awarded as a result of this solicitation, the Contractor's personnel who perform or control work under this Contract and each of the participating subcontractor personnel who perform or control work under this Contract shall be required to complete agreements substantially similar to **Attachment H**, Conflict of Interest Affidavit and Disclosure. For policies and procedures applying specifically to Conflict of Interests, the Contract is governed by COMAR 21.05.08.08.

4.31 Non-Disclosure Agreement

All Offerors are advised that this solicitation and any Contract(s) are subject to the terms of the Non-Disclosure Agreement (NDA) contained in this solicitation as **Attachment I**. This Agreement must be provided within five (5) Business Days of notification of recommended award; however, to expedite processing, it is suggested that this document be completed and submitted with the Proposal.

4.32 HIPAA - Business Associate Agreement

A HIPAA Business Associate Agreement is not required for this procurement.

4.33 Nonvisual Access

This solicitation does not contain Information Technology (IT) provisions requiring Nonvisual Access.

4.34 Mercury and Products That Contain Mercury

This solicitation does not include the procurement of products known to likely include mercury as a component.

4.35 Location of the Performance of Services Disclosure

The Offeror is required to complete the Location of the Performance of Services Disclosure. A copy of this Disclosure is included as **Attachment L**. The Disclosure must be provided with the Proposal.

4.36 Department of Human Resources (DHR) Hiring Agreement

This solicitation does not require a DHR Hiring Agreement.

4.37 Small Business Reserve (SBR) Procurement

This solicitation is not designated as a Small Business Reserve (SBR) Procurement.

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SECTION 5 – PROPOSAL FORMAT

5.1 Two Part Submission

Offerors shall submit Proposals in separate volumes:

- Volume I – TECHNICAL PROPOSAL
- Volume II – FINANCIAL PROPOSAL

5.2 Proposals

5.2.1 Volume I – Technical Proposal, and Volume II – Financial Proposal shall be sealed separately from one another. It is preferred, but not required, that the name, email address, and telephone number of a contact person for the Offeror be included on the outside of the packaging for each volume. Each Volume shall contain an unbound original, so identified, and six (6) copies. Unless the resulting package will be too unwieldy, the Board’s preference is for the two (2) sealed Volumes to be submitted together in a single package including a label bearing:

- (1) RFP title and number,
- (2) Name and address of the Offeror, and
- (3) Closing date and time for receipt of Proposals

to the Procurement Officer prior to the date and time for receipt of Proposals. *See* Key Information Summary Sheet for the name and address of Procurement Officer and the Proposal Due (Closing) Date and Time.

5.2.2 An electronic version (on CD, DVD, or USB Flash/Thumb Drive) of Volume I - Technical Proposal in Microsoft Word format must be enclosed with the original Volume I - Technical Proposal submission. An electronic version (on CD, DVD, or USB Flash Drive) of Volume II - Financial Proposal in Microsoft Excel format must be enclosed with the original Volume II - Financial Proposal submission. Each CD/DVD/USB Flash Drive must be labeled on the outside with the RFP title and number, name of the Offeror, and volume number (e.g., I or II). Each CD/DVD/USB Flash Drive must be packaged with the original copy of the appropriate Proposal (Technical or Financial). In the event of any discrepancy between the hard copy and electronic versions of an Offeror’s Proposal, the State shall determine the controlling version in accordance with the State’s interests.

5.2.3 A second electronic version of Volume I and Volume II in searchable Adobe .pdf format shall be submitted on CD, DVD, or USB Flash/Thumb Drive for Public Information Act (PIA) requests. This copy shall be redacted so that confidential and/or proprietary information has been removed. (See Section 4.8 “Public Information Act Notice” above.)

5.2.4 Beginning with Tab B (*see* Section 5.4.2.3 below), all pages of both Proposal volumes shall be consecutively-numbered from beginning (Page 1) to end (Page “x”). The Title Page, Table of Contents, and any Claim of Confidentiality (Tabs A and A-1; *see* 5.4.2.1 and 5.4.2.2 below), should be numbered using romanettes (ex. i, ii, iii, iv, v, etc.).

5.2.5 Proposals and any modifications to Proposals will be shown only to State employees, members of the Evaluation Committee, and other persons deemed by the Board to have a legitimate interest in them.

5.3 Delivery

Offerors may either mail or hand-deliver Proposals.

- 5.3.1 For U.S. Postal Service deliveries, any Proposal that has been received at the appropriate mailroom, or typical place of mail receipt, for the respective procuring unit by the time and date listed in the RFP will be deemed to be timely. If an Offeror chooses to use the U.S. Postal Service for delivery, the Board recommends that it use Express Mail, Priority Mail, or Certified Mail only as these are the only forms for which both the date and time of receipt can be verified by the Board. It could take several days for an item sent by first class mail to make its way by normal internal mail to the procuring unit and an Offeror using first class mail will not be able to prove a timely delivery at the mailroom.
- 5.3.2 Hand-delivery includes delivery by commercial carrier acting as agent for the Offeror. For any type of direct (non-mail) delivery, an Offeror is advised to secure a dated, signed, and time-stamped (or otherwise indicated) receipt of delivery.
- 5.3.3 After receipt, a Register of Proposals will be prepared that identifies each Offeror. The Register of Proposals will be open to inspection only after the Procurement Officer makes a determination recommending the award of the Contract.

5.4 Volume I – Technical Proposal

Note: No pricing information is to be included in the Technical Proposal (Volume I). Pricing information is to be included only in the Financial Proposal (Volume II).

- 5.4.1 **Format of Technical Proposal.** Inside a sealed package described in Section 5.2 “Proposals,” the unbound original, six (6) copies, and the electronic version shall be provided. The RFP sections are numbered for ease of reference. Section 5.4.2 sets forth the order of information to be provided in the Technical Proposal, e.g., Section 5.4.2.1 “Title and Table of Contents,” Section 5.4.2.2 “Claim of Confidentiality,” Section 5.4.2.3 “Transmittal Letter,” Section 5.4.2.4 “Executive Summary,” etc. In addition to the instructions below, responses in the Offeror’s Technical Proposal should reference the organization and numbering of Sections in the RFP (ex. “Section 2.2.1 Response . . . ; “Section 2.2.2 Response . . . ,” etc.). This Proposal organization will allow State officials and the Evaluation Committee (*see* Section 6.1) to “map” Offeror responses directly to RFP requirements by Section number and will aid in the evaluation process.
- 5.4.2 **The Technical Proposal** shall include the following documents and information in the order specified as follows. Each section of the Technical Proposal shall be separated by a TAB as detailed below:
 - 5.4.2.1 **Title Page and Table of Contents (Submit under TAB A).** The Technical Proposal should begin with a Title Page bearing the name and address of the Offeror and the name and number of this RFP. A Table of Contents shall follow the Title Page for the Technical Proposal, organized by section, subsection, and page number.
 - 5.4.2.2 **Claim of Confidentiality (If applicable, submit under TAB A-1).** Any information which is claimed to be confidential is to be noted by reference and included after the Title Page and before the Table of Contents, and if applicable, also in the Offeror’s Financial Proposal. An explanation for each claim of confidentiality shall be included. (*See* Section 4.8 “Public Information Act Notice.”) The entire Proposal should not be given a blanket confidentiality designation. Any confidentiality designation must apply to specific sections, pages, or portions of pages of the Proposal.
 - 5.4.2.3 **Transmittal Letter (Submit under TAB B).** A Transmittal Letter shall accompany the Technical Proposal. The purpose of this letter is to transmit the Proposal and acknowledge the receipt of any addenda. The Transmittal Letter should be brief and signed by an individual who is authorized to commit the Offeror to the services and requirements as stated in this RFP. The Transmittal Letter should include the following:

- (1) Name and address of the Offeror;
- (2) Name, title, e-mail address, and telephone number of primary contact for the Offeror;
- (3) Solicitation Title and Solicitation Number that the Proposal is in response to;
- (4) Signature, typed name, and title of an individual authorized to commit the Offeror to its Proposal;
- (5) Federal Employer Identification Number (FEIN) of the Offeror, or if a single individual, that individual's Social Security Number (SSN);
- (6) Offeror's eMM number;
- (7) Offeror's MBE certification number (if applicable);
- (8) Acceptance of all State RFP and Contract terms and conditions (*see* Section 4.17); if any exceptions are taken, they are to be noted in the Executive Summary (*see* Section 5.4.2.4); and
- (9) Acknowledgement of all addenda to this RFP.

5.4.2.4 **Executive Summary (Submit under TAB C).** The Offeror shall condense and highlight the contents of the Technical Proposal in a separate section titled "Executive Summary." The Summary shall identify the Service Category(ies) and Region(s) for which the Offeror is proposing to provide services (if applicable). In addition, the Summary shall indicate whether the Offeror is the subsidiary of another entity, and if so, whether all information submitted by the Offeror pertains exclusively to the Offeror. If not, the subsidiary Offeror shall include a guarantee of performance from its parent organization as part of its Executive Summary.

The Summary shall also identify any exceptions the Offeror has taken to the requirements of this RFP, the Contract (**Attachment M**), or any other attachments. Exceptions to terms and conditions may result in having the Proposal deemed unacceptable or classified as not reasonably susceptible of being selected for award.

If the Offeror has taken no exceptions to the requirements of this RFP, the Contract (**Attachment M**), or any other attachments, the Executive Summary shall so state.

5.4.2.5 **Minimum Qualifications Documentation (If applicable, Submit under TAB D).** The Offeror shall submit any Minimum Qualifications documentation that may be required, as set forth in Section 1, "Minimum Qualifications."

5.4.2.6 **Offeror Technical Response to RFP Requirements and Proposed Work Plan (Submit under TAB E).**

5.4.2.6.1 The Offeror shall address each Scope of Work requirement (Section 2) in its Technical Proposal and describe how its proposed services, including the services of any proposed subcontractor(s), will meet or exceed the requirement(s). If the State is seeking Offeror agreement to any requirement(s), the Offeror shall state its agreement or disagreement. Any paragraph in the Technical Proposal that responds to a Scope of Work requirement shall include an explanation of how the work will be done. Any exception to a requirement, term, or condition may result in having the Proposal classified as not reasonably susceptible of being selected for award or the Offeror deemed not responsible.

5.4.2.6.2 The Offeror shall give a definitive **section-by-section** description of the proposed plan to meet the requirements of the RFP (i.e., the "Work Plan"). The Work Plan shall include the specific methodology, techniques, and number of staff, if applicable, to be used by the Offeror in providing the required services as outlined in Section 2, "Scope of Work." The Work Plan shall include an outline of the overall management concepts employed by the Offeror and a project management plan, including project control mechanisms and overall

timelines. Project deadlines considered Contract deliverables must be recognized in the Work Plan.

5.4.2.6.3 In connection with the provision of managed account services (*see* Section 2.3.3.6 above), the Offeror shall also submit with its Technical Proposal and the Work Plan under **TAB E** any forms, agreements and other information necessary for the implementation of the managed account services by the Offeror, including any forms of agreements required to be entered into by and between the Board and the Offeror (or an affiliate of the Offeror, as applicable) in order for the Board to appoint the Offeror (or an affiliate of the Offeror, as applicable) to exercise discretionary authority to allocate and reallocate Participant accounts in accordance with the Offeror's proposed managed account service. Any such agreement(s) with the Board will be reviewed by legal counsel to the Board and will either be incorporated into the Contract (**Attachment M**) or included as an addendum to the Contract, as deemed appropriate and in the best interest of the State by legal counsel to the Board, provided that to the extent the form of agreement(s) with the Board to allow for the provision of managed account services includes provisions that conflict with the standard state contract terms included in the Contract (**Attachment M**) or other legal requirements to which MSRP and/or the Plans are subject, such conflicting provisions will be removed or otherwise made inapplicable to MSRP or the Plans, as the case may be.

5.4.2.6.4 In connection with the provision of managed account services (*see* Section 2.3.3.6 above) and as evidence of its satisfaction of the minimum requirement set forth in Section 1.2 above, the Offeror shall under **TAB E** submit a copy of its most recent Form ADV Part 1, as filed with the SEC.

5.4.2.6.5 The Offeror shall identify the location(s) from which it proposes to provide the services, including, if applicable, any current facilities that it operates, and any required construction to satisfy the State's requirements as outlined in this RFP.

5.4.2.6.6 The Offeror shall provide a draft Problem Escalation Procedure (PEP) that includes, at a minimum, titles of individuals to be contacted by the Board's Contract Monitor should problems arise under the Contract and explains how problems with work under the Contract will be escalated in order to resolve any issues in a timely manner. Final procedures shall be submitted as indicated in Section 3.3 above.

5.4.2.7 **Experience and Qualifications of Proposed Staff (Submit under TAB F).** The Offeror shall identify the qualifications and types of staff proposed to be utilized under the Contract.

The Offeror shall describe in detail how the proposed staff's experience and qualifications relate to their specific responsibilities, including any staff of proposed subcontractor(s), as detailed in the Work Plan. The Offeror shall include individual resumes for the Key Personnel, including Key Personnel for any proposed subcontractor(s), who are to be assigned to the project if the Offeror is awarded the Contract. Each resume should include the amount of experience the individual has had relative to the Scope of Work set forth in this solicitation. Letters of intended commitment to work on the project, including letters from any proposed subcontractor(s), shall be included in this section.

The Offeror shall provide an Organizational Chart outlining personnel and their related duties. The Offeror shall include job titles and the percentage of time each individual will spend on his/her assigned tasks. Offerors using job titles other than those commonly used by industry standards must provide a crosswalk reference document.

5.4.2.8 **Offeror Qualifications and Capabilities (Submit under TAB G).** The Offeror shall include information on past experience with similar projects and/or services. The Offeror shall describe how

its organization can meet the requirements of this RFP and shall also include the following information:

- (1) The number of years the Offeror has provided the similar services;
- (2) The number of clients/customers and geographic locations that the Offeror currently serves;
- (3) The names and titles of headquarters or regional management personnel who may be involved with supervising the services to be performed under this Contract;
- (4) The Offeror's process for resolving billing errors;
- (5) An organizational chart that identifies the complete structure of the Offeror, including any parent company, headquarters, regional offices, and subsidiaries of the Offeror. ; and
- (6) The Offeror's large pension plan engagements over the past five (5) years identifying each by plan type, size, number of participants covered, number of investment options, number of participants contributing, number of participants in payout, with specific indication of two (2) defined contribution assignments with assets of not less than \$500,000,000.

5.4.2.9 References (Submit under TAB H). At least three (3) references are requested from customers who are capable of documenting the Offeror's ability to provide the services specified in this RFP. References used to meet any Minimum Qualifications (see Section 1) may be used to meet this request. Each reference shall be from a client for whom the Offeror has provided services within the past five (5) years and shall include the following information:

- (1) Name of client organization;
- (2) Name, title, telephone number, and e-mail address, if available, of point of contact for client organization; and
- (3) Value, type, duration, and description of services provided.

The Board reserves the right to request additional references or utilize references not provided by an Offeror.

5.4.2.10 List of Current or Prior State Contracts (Submit under TAB I). Provide a list of all contracts with any entity of the State of Maryland for which the Offeror is currently performing services or for which services have been completed within the last five (5) years. For each identified contract, the Offeror is to provide:

- (1) The State contracting entity;
- (2) A brief description of the services/goods provided;
- (3) The dollar value of the contract;
- (4) The term of the contract;
- (5) The State employee contact person (name, title, telephone number, and, if possible, e-mail address); and
- (6) Whether the contract was terminated before the end of the term specified in the original contract, including whether any available renewal option was not exercised.

Information obtained regarding the Offeror's level of performance on State contracts will be used by the Procurement Officer to determine the responsibility of the Offeror and considered as part of the experience and past performance evaluation criteria of the RFP.

5.4.2.11 Financial Capability (Submit under TAB J). An Offeror must include in its Proposal a commonly-accepted method to prove its fiscal integrity. If available, the Offeror shall include Financial Statements, preferably a profit and loss (P&L) statement and a balance sheet, for the last two (2) years (independently audited preferred).

In addition, the Offeror may supplement its response to this section by including one or more of the following with its response:

- (1) Dun & Bradstreet Rating;
- (2) Standard and Poor's Rating;
- (3) Lines of credit;
- (4) Evidence of a successful financial track record; and
- (5) Evidence of adequate working capital.

5.4.2.12 **Certificate of Insurance (Submit under TAB K).** The Offeror shall provide a copy of its current certificate of insurance showing the types and limits of insurance in effect as of the Proposal submission date. The current insurance types and limits do not have to be the same as described in Section 3.1. See Section 3.1 for the required insurance certificate submission for the recommended Offeror.

5.4.2.13 **Subcontractors (Submit under TAB L).** The Offeror shall provide a complete list of all subcontractors that will work on the Contract if the Offeror receives an award, including those utilized in meeting the MBE and/or VSBE subcontracting goal, if applicable. This list shall include a full description of the duties each subcontractor will perform and why/how each subcontractor was deemed the most qualified for this project.

5.4.2.14 **Legal Action Summary (Submit under TAB M).** This summary shall include:

- (1) A statement as to whether there are any outstanding legal actions or potential claims against the Offeror and a brief description of any action;
- (2) A brief description of any settled or closed legal actions or claims against the Offeror over the past five (5) years;
- (3) A description of any judgments against the Offeror within the past five (5) years, including the case name, court case docket number, and what the final ruling or determination was from the court; and
- (4) In instances where litigation is on-going and the Offeror has been directed not to disclose information by the court, the name of the judge and location of the court.

5.4.2.15 **Economic Benefit Factors (Submit under TAB N).** The Offeror shall submit with its Proposal a narrative describing benefits that will accrue to the Maryland economy as a direct or indirect result of its performance of this Contract. Proposals will be evaluated to assess the benefit to Maryland's economy specifically offered. The economic benefit offered should be consistent with—**but should not quote or otherwise quantify**—the Offeror's Total Proposal Price from **Attachment B**, the Financial Proposal Form. See COMAR 21.05.03.03A(3).

Proposals that identify specific benefits as being contractually enforceable commitments will be rated more favorably than Proposals that do not identify specific benefits as contractual commitments, all other factors being equal.

Offerors shall identify any performance guarantees that will be enforceable by the State if the full level of promised benefit is not achieved during the Contract term.

As applicable, for the full duration of the Contract, including any renewal period, or until the commitment is satisfied, the Contractor shall provide to the Procurement Officer or other designated agency personnel reports of the actual attainment of each benefit listed in response to this section. These benefit attainment reports shall be provided quarterly, unless elsewhere in these specifications a different reporting frequency is stated.

In responding to this section, the following do not generally constitute economic benefits to be derived from this Contract:

- (1) Generic statements that the State will benefit from the Offeror's superior performance under the Contract;
- (2) Descriptions of the number of Offeror employees located in Maryland other than those that will be performing work under this Contract; and
- (3) Tax revenues from Maryland-based employees or locations, other than those that will be performing, or used to perform, work under this Contract.

Discussion of Maryland-based employees or locations may be appropriate if the Offeror makes some projection or guarantee of increased or retained presence based upon being awarded this Contract.

Examples of economic benefits to be derived from a contract may include any of the following. For each factor identified below, identify the specific benefit and contractual commitments and provide a breakdown of expenditures in that category:

- (1) The Contract dollars to be recycled into Maryland's economy in support of the Contract, through the use of Maryland subcontractors, suppliers and joint venture partners. Do not include actual fees or rates paid to subcontractors or information from your Financial Proposal;
- (2) The number and types of jobs for Maryland residents resulting from the Contract. Indicate job classifications, number of employees in each classification and aggregate payroll to which the Offeror has committed, including contractual commitments at both prime and, if applicable, subcontract levels; and whether Maryland employees working at least 30 hours per week and are employed at least 120 days during a 12-month period will receive paid leave. If no new positions or subcontracts are anticipated as a result of this Contract, so state explicitly;
- (3) Tax revenues to be generated for Maryland and its political subdivisions as a result of the Contract. Indicate tax category (sales taxes, payroll taxes, inventory taxes and estimated personal income taxes for new employees). Provide a forecast of the total tax revenues resulting from the Contract;
- (4) Subcontract dollars committed to Maryland small businesses and MBEs; and
- (5) Other benefits to the Maryland economy which the Offeror promises will result from awarding the Contract to the Offeror, including contractual commitments. Describe the benefit, its value to the Maryland economy, and how it will result from, or because of the Contract award. Offerors may commit to benefits that are not directly attributable to the Contract, but for which the Contract award may serve as a catalyst or impetus.

5.4.3 **Additional Required Technical Submissions (Submit under TAB O).**

5.4.3.1 The following documents shall be completed, signed, and included in the Technical Proposal, under TAB O that follows the material submitted in response to Section 5.4.2.

- a. Completed Proposal Affidavit (**Attachment C**).
- b. Completed Maryland Living Wage Requirements Affidavit of Agreement (**Attachment F-1**).

5.4.3.2 ***If Required**, the following documents shall be completed, signed, and included in the Technical Proposal, under TAB O that follows the material submitted in response to Section 5.4.2. *See appropriate RFP Section to determine whether the particular document is required for this procurement:

- (1) A Signed Statement from the Offeror’s Parent Organization Guaranteeing Performance of the Offeror. **See Section 4.16;**
- (2) Completed MDOT Certified MBE Utilization and Fair Solicitation Affidavit (**Attachment D-1A**). **See Section 4.26;**
- (3) Completed Conflict of Interest Affidavit and Disclosure (**Attachment H**). **See Section 4.30.**
- (4) Completed Veteran-Owned Small Business Enterprise (VSBE) Utilization Affidavit and Prime/Subcontractor Participation Schedule. (**Attachment E-1**). **See Section 4.27;**
- (5) Completed Location of the Performance of Services Disclosure (**Attachment L**). **See Section 4.35.**

5.5 Volume II – Financial Proposal

Under separate sealed cover from the Technical Proposal and clearly identified in the format identified in Section 5.2 “Proposals,” the Offeror shall submit an original unbound copy, six (6) copies, and an electronic version in Microsoft Word or Microsoft Excel of the Financial Proposal. The Financial Proposal shall contain all price information in the format specified in **Attachment B** by submitting the **Attachment B-2 Financial Proposal Form** in electronic spreadsheet format. The Offeror shall complete the Financial Proposal Form only as provided in the Financial Proposal Instructions and the Financial Proposal Form itself.

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SECTION 6 – EVALUATION AND SELECTION PROCESS

6.1 Evaluation Committee

Evaluation of Proposals will be performed in accordance with COMAR 21.05.03 by a committee established for that purpose and based on the evaluation criteria set forth below. The Evaluation Committee will review Proposals, participate in Offeror oral presentations and discussions, and provide input to the Procurement Officer. The Board reserves the right to utilize the services of individuals outside of the established Evaluation Committee for advice and assistance, as deemed appropriate.

6.2 Technical Proposal Evaluation Criteria

The criteria to be used to evaluate each Technical Proposal are listed below in descending order of importance. Unless stated otherwise, any subcriteria within each criterion have equal weight.

- 6.2.1 Offeror's Technical Response to RFP Requirements and Work Plan (*See Section 5.4.2.6*). The State prefers an Offeror's response to work requirements in the RFP that illustrates a comprehensive understanding of work requirements and mastery of the subject matter, including an explanation of how the work will be done. Proposals which include limited responses to work requirements such as "concur" or "will comply" will receive a lower ranking than those Proposals that demonstrate an understanding of the work requirements and include plans to meet or exceed them.
- 6.2.2 Experience and Qualifications of Proposed Staff (*See Section 5.4.2.7*)
- 6.2.3 Offeror Qualifications and Capabilities, including proposed Subcontractors (*See Sections 5.4.2.8 – 5.4.2.14*)
- 6.2.4 Economic Benefit to State of Maryland (*See Section 5.4.2.15*)

6.3 Financial Proposal Evaluation Criteria

All Qualified Offerors will be ranked from the lowest (most advantageous) to the highest (least advantageous) price based on the Total Proposal Price within the stated guidelines set forth in this RFP and as submitted on **Attachment B-2** - Financial Proposal Form.

6.4 Reciprocal Preference

Although Maryland law does not generally authorize procuring units to favor resident Offerors in awarding procurement contracts, many other states do grant their resident businesses preferences over Maryland contractors. Therefore, COMAR 21.05.01.04 permits procuring units to apply a reciprocal preference in favor of a Maryland resident business under the following conditions:

- (1) The Maryland resident business is a responsible Offeror;
- (2) The most advantageous offer is from a responsible Offeror whose principal office or principal operations through which it would provide the services required under this RFP is in another state;
- (3) The other state gives a preference to its resident businesses through law, policy, or practice; and
- (4) The Maryland resident preference does not conflict with a federal law or grant affecting the procurement Contract.

The preference given shall be identical to the preference that the other state, through law, policy, or practice gives to its resident businesses.

6.5 Selection Procedures

6.5.1 **General.** The Contract will be awarded in accordance with the Competitive Sealed Proposals (CSP) method found at COMAR 21.05.03. The Competitive Sealed Proposals method allows for the conducting of discussions and the revision of Proposals during these discussions. Therefore, the State may conduct discussions with all Offerors that have submitted Proposals that are determined to be reasonably susceptible of being selected for contract award or potentially so. However, the State reserves the right to make an award without holding discussions.

In either case (i.e., with or without discussions), the State may determine an Offeror to be not responsible and/or an Offeror's Proposal to be not reasonably susceptible of being selected for award at any time after the initial closing date for receipt of Proposals and prior to Contract award. If the State finds an Offeror to be not responsible and/or an Offeror's Technical Proposal to be not reasonably susceptible of being selected for award, that Offeror's Financial Proposal will subsequently be returned if the Financial Proposal is unopened at the time of the determination.

6.5.2 Selection Process Sequence

6.5.2.1 A determination is made that the MDOT Certified MBE Utilization and Fair Solicitation Affidavit (**Attachment D-1A**) is included and properly completed, if there is an MBE goal. In addition, a determination is made that the VSBE Utilization Affidavit and Subcontractor Participation Schedule (**Attachment E-1**) is included and is properly completed, if there is a VSBE goal. Finally, a determination is made that all Minimum Qualifications, if any (*See* Section 1 above), have been satisfied.

6.5.2.2 Technical Proposals are evaluated for technical merit and ranked. During this review, oral presentations and discussions may be held. The purpose of such discussions will be to assure a full understanding of the State's requirements and Offeror's ability to perform the services, as well as facilitate arrival at a Contract that is most advantageous to the State. Offerors will be contacted by the State as soon as any discussions are scheduled.

6.5.2.3 Offerors must confirm in writing any substantive oral clarifications of, or changes in, their Technical Proposals made in the course of discussions. Any such written clarifications or changes then become part of the Offeror's Technical Proposal. Technical Proposals are given a final review and ranked.

6.5.2.4 The Financial Proposal of each Qualified Offeror (a responsible Offeror determined to have submitted an acceptable Proposal) will be evaluated and ranked separately from the Technical evaluation. After a review of the Financial Proposals of Qualified Offerors, the Evaluation Committee or Procurement Officer may again conduct discussions to further evaluate the Offeror's entire Proposal.

6.5.2.5 When in the best interest of the State, the Procurement Officer may permit Qualified Offerors to revise their initial Proposals and submit, in writing, Best and Final Offers (BAFOs). The State may make an award without issuing a request for a BAFO.

6.5.3 **Award Determination.** Upon completion of the Technical Proposal and Financial Proposal evaluations and rankings, each Offeror will receive an overall ranking. The Procurement Officer will recommend award of the Contract to the responsible Offeror that submitted the Proposal determined to be the most advantageous to the State. In making this most advantageous Proposal determination, technical factors will receive greater weight than financial factors.

6.6 Documents Required upon Notice of Recommendation for Contract Award

Upon receipt of a Notification of Recommendation for Contract Award, the following documents shall be completed, signed if applicable with original signatures, and submitted by the recommended awardee within five (5) Business Days, unless noted otherwise. Submit three (3) copies of each of the following documents:

- (1) Contract (**Attachment M**),
- (2) Contract Affidavit (**Attachment N**),
- (3) MBE **Attachments D-2 and D-3A/B**, within ten (10) Business Days, if applicable; **See Section 4.26*,
- (4) MBE Waiver Justification within ten (10) Business Days (see **MBE Waiver Guidance and forms in Attachments D-1B and D-1C**), if a waiver has been requested (if applicable; **See Section 4.26*),
- (5) VSBE **Attachment E-2**, if applicable **See Section 4.27*,
- (6) Non-Disclosure Agreement (**Attachment I**), if applicable; **See Section 4.31*,
- (7) HIPAA Business Associate Agreement (**Attachment J**), if applicable; **See Section 4.32*,
- (8) DHR Hiring Agreement (**Attachment O**), if applicable; **See Section 4.36*, and
- (9) Copy of a current Certificate of Insurance with the prescribed limits set forth in Section 3.1 “Insurance Requirements,” listing the State as an additional insured, if applicable **See Section 3.1*.

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RFP ATTACHMENTS

ATTACHMENT A – Pre-Proposal Conference Response Form

It is requested that this form be completed and submitted as described in Section 4.1 by those potential Offerors that plan on attending the Pre-Proposal Conference.

ATTACHMENT B – Financial Proposal Instructions and Form

The Financial Proposal Form must be completed and submitted in the Financial Proposal package.

ATTACHMENT C –Proposal Affidavit

This Attachment must be completed and submitted with the Technical Proposal.

ATTACHMENTS D – Minority Business Enterprise Forms

If required (*see* Section 4.26), these Attachments include the MBE subcontracting goal statement and instructions, and MBE Attachments D-1 through D-5. Attachment D-1 must be properly completed and submitted with the Offeror's Technical Proposal or the Proposal will be deemed not reasonably susceptible of being selected for award and rejected. Within ten (10) Business Days of receiving notification of recommendation for Contract award, the Offeror must submit Attachments D-2 and D-3A/B.

ATTACHMENTS E – Veteran-Owned Small Business Enterprise Forms

Not required.

ATTACHMENT F – Maryland Living Wage Requirements for Service Contracts and Affidavit of Agreement

Attachment F-1 Living Wage Affidavit of Agreement must be completed and submitted with the Technical Proposal.

ATTACHMENT G – Federal Funds Attachment

Not required.

ATTACHMENT H – Conflict of Interest Affidavit and Disclosure

If required (*see* Section 4.30), this Attachment must be completed and submitted with the Technical Proposal.

ATTACHMENT I – Non-Disclosure Agreement

This Attachment must be completed and submitted within 5 Business Days after recommended award—however it is suggested that the form be completed and submitted with the Proposal.

ATTACHMENT J – HIPAA Business Associate Agreement

Not required.

ATTACHMENT K – Mercury Affidavit

Not required.

ATTACHMENT L – Location of the Performance of Services Disclosure

If required (*see* Section 4.35), this Attachment must be completed and submitted with the Technical Proposal.

ATTACHMENT M – Contract

This is the sample contract used by the Board. It is provided with the RFP for informational purposes and is not required to be submitted at Proposal submission time. Upon notification of recommendation for award, a completed contract will be sent to the recommended awardee for signature. The recommended awardee must return to the Procurement Officer three (3) executed copies of the Contract within five (5) Business Days after receipt. Upon Contract award, a fully-executed copy will be sent to the Contractor.

ATTACHMENT N – Contract Affidavit

This Attachment must be completed and submitted by the recommended awardee to the Procurement Officer within five (5) Business Days of receiving notification of recommendation for award.

ATTACHMENT O – Department of Human Resources (DHR) Hiring Agreement

Not required.

ATTACHMENT P – QUARTERLY/YEAR-END UNAUDITED FINANCIAL STATEMENTS

An example of the quarterly financial statements required from the Plan Administrator here including the year-end format.

ATTACHMENT Q – QUARTERLY PLAN ADMINISTRATOR REPORT (EXCERPTS)

An example of the Plan Administrator Report prepared for quarterly Board of Trustees meetings.

ATTACHMENT R – ENROLLMENT MATERIALS SELECTION

A variety of communications used as part of booklets, pamphlets, flyers produced for eligible employees.

ATTACHMENT S – MARKETING SCHEDULE EXAMPLE

A sample of a web document announcing Plan Administrator representative visits to various work sites.

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ATTACHMENT A – PRE-PROPOSAL CONFERENCE RESPONSE FORM

**Solicitation Number G50B840004
PLAN ADMINISTRATOR FOR SUPPLEMENTAL RETIREMENT PLANS**

A Pre-Proposal Conference will be held at the date, time, and location indicated in the RFP Key Information Summary Sheet (near the beginning of the solicitation, after the Title Page and Notice to Vendors).

Please return this form at least five (5) Business Days prior to the Pre-Proposal Conference date, advising whether or not you plan to attend. The completed form should be returned via e-mail or fax to the Procurement Officer. The Procurement Officer’s contact information is provided in the RFP Key Information Summary Sheet.

Please indicate:

_____ Yes, the following representatives will be in attendance:

- 1.
- 2.
- 3.

_____ No, we will not be in attendance.

Please specify whether any reasonable accommodations are requested (*see* Section 4.1 “Pre-Proposal Conference”):

Signature

Title

Name of Firm (please print)

B-1: FINANCIAL PROPOSAL INSTRUCTIONS

In order to assist Offerors in the preparation of their Financial Proposal and to comply with the requirements of this solicitation, MSRP has prepared *Financial Proposal Instructions* and a *Financial Proposal Form*. Offerors shall submit their Financial Proposal on the *Financial Proposal Form* in accordance with these *Financial Proposal Instructions*. Do not alter the Financial Proposal Form or the Proposal may be determined to be not reasonably susceptible of being selected for award. The *Financial Proposal Form* is to be signed and dated, where requested, by an individual who is authorized to bind the Offeror to the prices entered on the *Financial Proposal Form*.

The *Financial Proposal Form* is used to record the Offeror's PROPOSED ASSET FEE and calculate the Offeror's TOTAL PROJECTED PROPOSAL PRICE for Plan Administration. The *Financial Proposal Form* also elicits the Offeror's Proposed Fee for Participant-elected services (e.g., managed account services) and for Optional Services the Board may choose to implement in the future (*see* Section 2.3.5).

Follow the following instructions carefully when completing your *Financial Proposal Form*:

- A. Offerors are required to record the fully-loaded asset fee proposed for Plan Administration in a single percentage figure to be calculated against assets of all four Plans, calculated and paid monthly after the last business day of each month. The proposed asset fee shall be a single rate for all five (5) years of the contract and the optional one-year renewal period.
- B. Plan Assets subject to the proposed asset fee exclude: (1) assets within the Nationwide Fixed Account (a frozen 457(b) investment option); (2) life insurance policies (a frozen 457(b) investment option); (3) assets of individual annuity contracts purchased for specific distribution of Plan benefits; and (4) assets liquidated in processing eligible participant loans.
- C. The Contractor will assume its proportionate share of the reduced fee revenue pursuant to the Board asset fee cap program. Under the current terms and conditions of this program, the asset fee cap or maximum combined asset fee (Board asset fee and Contractor asset fee) for a participant in a Plan is \$2,000 annually. This cap applies on a per-Plan, non-consolidated basis. Once a Participant's asset fee in a Plan reaches \$2,000 in a year, asset fees are suspended for that Participant in that Plan until the beginning of the following year. The \$2,000 per Plan per Participant cap is not expected to change over the life of the Contract. The approximate total account value subject to the cap on a per Participant basis under the current fee structure is about \$6 million.
- D. Offerors are required to quote, for the term of the Contract, loan fees to be charged to eligible-applicant Participants for 1) loan origination or set-up, 2) annual processing, 3) default charge, and 4) insufficient funds charge.
- E. Offerors are required to state their proposed fee for managed-account services for Participants electing additional guidance in allocating and managing their Plan investments.
- F. Every blank in every *Financial Proposal Form* must be completed. Any handwritten changes or corrections made to the *Financial Proposal Form* completed by the Offeror prior to its submission to the Procurement Officer shall be initialed and dated in accordance with the requirements for signing this *Financial Proposal Form* (i.e., by an officer with the ability to bind the Offeror).
- G. Except as instructed on the *Financial Proposal Form*, nothing shall be entered on or attached to the *Financial Proposal Form* that alters or proposes conditions or contingencies to the prices entered thereon. Alterations and/or conditions may render the Proposal not reasonably susceptible of being selected for Contract award.
- H. It is imperative that the prices included on the *Financial Proposal Form* have been entered correctly and calculated accurately by the Offeror and that the respective total prices agree with the entries on the *Financial*

Proposal Form. Any incorrect entries or inaccurate calculations by the Offeror will be treated as provided in COMAR 21.05.03.03, and may cause the Proposal to be rejected.

- I. Failure to adhere to any of these instructions may result in the Proposal being determined not reasonably susceptible of being selected for Contract award.

B-2: FINANCIAL PROPOSAL FORM

See attached spreadsheet form for Financial Proposal

ATTACHMENT C – PROPOSAL AFFIDAVIT

See link at http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/AttachmentC-Bid_Proposal-Affidavit.pdf.

ATTACHMENTS D – MINORITY BUSINESS ENTERPRISE FORMS

See link at <http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/05/AttachmentDMBE-Forms-1.pdf>.

This solicitation includes a Minority Business Enterprise (MBE) participation goal of 15 percent and no subgoals.

ATTACHMENTS E – VETERAN-OWNED SMALL BUSINESS ENTERPRISE

This solicitation does not include a Veteran-Owned Small Business Enterprise goal.

ATTACHMENT F – LIVING WAGE REQUIREMENTS FOR SERVICE CONTRACTS

See link at <http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/AttachmentF-LivingWageAffidavit.pdf> to complete the Affidavit.

- A. This contract is subject to the Living Wage requirements under Md. Code Ann., State Finance and Procurement Article, Title 18, and the regulations proposed by the Commissioner of Labor and Industry (Commissioner). The Living Wage generally applies to a Contractor or subcontractor who performs work on a State contract for services that is valued at \$100,000 or more. An employee is subject to the Living Wage if he/she is at least 18 years old or will turn 18 during the duration of the contract; works at least 13 consecutive weeks on the State Contract and spends at least one-half of the employee's time during any work week on the State Contract.
- B. The Living Wage Law does not apply to:
- (1) A Contractor who:
 - (a) Has a State contract for services valued at less than \$100,000, or
 - (b) Employs 10 or fewer employees and has a State contract for services valued at less than \$500,000.
 - (2) A subcontractor who:
 - (a) Performs work on a State contract for services valued at less than \$100,000,
 - (b) Employs 10 or fewer employees and performs work on a State contract for services valued at less than \$500,000, or
 - (c) Performs work for a Contractor not covered by the Living Wage Law as defined in B(1)(b) above, or B (3) or C below.
 - (3) Service contracts for the following:
 - (a) Services with a Public Service Company;
 - (b) Services with a nonprofit organization;
 - (c) Services with an officer or other entity that is in the Executive Branch of the State government and is authorized by law to enter into a procurement ("Unit"); or
 - (d) Services between a Unit and a County or Baltimore City.
- C. If the Unit responsible for the State contract for services determines that application of the Living Wage would conflict with any applicable Federal program, the Living Wage does not apply to the contract or program.
- D. A Contractor must not split or subdivide a State contract for services, pay an employee through a third party, or treat an employee as an independent Contractor or assign work to employees to avoid the imposition of any of the requirements of Md. Code Ann., State Finance and Procurement Article, Title 18.
- E. Each Contractor/subcontractor, subject to the Living Wage Law, shall post in a prominent and easily accessible place at the work site(s) of covered employees a notice of the Living Wage Rates, employee rights under the law, and the name, address, and telephone number of the Commissioner.
- F. The Commissioner shall adjust the wage rates by the annual average increase or decrease, if any, in the Consumer Price Index for all urban consumers for the Washington/Baltimore metropolitan area, or any successor index, for the previous calendar year, not later than 90 days after the start of each fiscal year. The Commissioner shall publish any adjustments to the wage rates on the Division of Labor and Industry's

website. An employer subject to the Living Wage Law must comply with the rate requirements during the initial term of the contract and all subsequent renewal periods, including any increases in the wage rate, required by the Commissioner, automatically upon the effective date of the revised wage rate.

- G. A Contractor/subcontractor who reduces the wages paid to an employee based on the employer's share of the health insurance premium, as provided in Md. Code Ann., State Finance and Procurement Article, §18-103(c), shall not lower an employee's wage rate below the minimum wage as set in Md. Code Ann., Labor and Employment Article, §3-413. A Contractor/subcontractor who reduces the wages paid to an employee based on the employer's share of health insurance premium shall comply with any record reporting requirements established by the Commissioner.
- H. A Contractor/subcontractor may reduce the wage rates paid under Md. Code Ann., State Finance and Procurement Article, §18-103(a), by no more than 50 cents of the hourly cost of the employer's contribution to an employee's deferred compensation plan. A Contractor/subcontractor who reduces the wages paid to an employee based on the employer's contribution to an employee's deferred compensation plan shall not lower the employee's wage rate below the minimum wage as set in Md. Code Ann., Labor and Employment Article, §3-413.
- I. Under Md. Code Ann., State Finance and Procurement Article, Title 18, if the Commissioner determines that the Contractor/subcontractor violated a provision of this title or regulations of the Commissioner, the Contractor/subcontractor shall pay restitution to each affected employee, and the State may assess liquidated damages of \$20 per day for each employee paid less than the Living Wage.
- J. Information pertaining to reporting obligations may be found by going to the Division of Labor and Industry website <http://www.dllr.state.md.us/labor/prev/livingwage.shtml> and clicking on Living Wage for State Service Contracts.

ATTACHMENT G- FEDERAL FUNDS ATTACHMENT

This solicitation does not include a Federal Funds Attachment.

ATTACHMENT H – CONFLICT OF INTEREST AFFIDAVIT AND DISCLOSURE

See link at <http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/AttachmentH-ConflictofInterestAffidavit.pdf>.

ATTACHMENT I – NON-DISCLOSURE AGREEMENT

See link at <http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Attachment-I-Non-DisclosureAgreementContractor.pdf>.

ATTACHMENT J – HIPAA BUSINESS ASSOCIATE AGREEMENT

This solicitation does not require a HIPAA Business Associate Agreement.

ATTACHMENT K – MERCURY AFFIDAVIT

This solicitation does not include the procurement of products known to likely include mercury as a component.

ATTACHMENT L – LOCATION OF THE PERFORMANCE OF SERVICES DISCLOSURE

See link at <http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Attachment-L-PerformanceofServicesDisclosure.pdf>.

ATTACHMENT M – CONTRACT

**BOARD OF TRUSTEES OF THE MARYLAND TEACHERS & STATE EMPLOYEES
SUPPLEMENTAL RETIREMENT PLANS**

**PLAN ADMINISTRATOR FOR SUPPLEMENTAL RETIREMENT PLANS
G50B8400004**

This Contract is made this [redacted] day of [redacted], 201[redacted] by and between the Board of Trustees of the Maryland Teachers & State Employees Supplemental Retirement Plans (the “**Board**”) and [redacted] (the “**Contractor**”). Capitalized terms used in this Contract but not otherwise defined herein shall have the meanings ascribed to them in the RFP (as defined in **Section 4** below)

In consideration of the promises and the covenants herein contained, the adequacy and sufficiency of which are hereby acknowledged by the parties, the parties agree as follows:

1. **Appointment.**

The Board hereby appoints [redacted] as the exclusive administrator and marketer of the benefit plans under the authority of the Board under Title 35 of the State Personnel and Pensions Article, Annotated Code of Maryland, viz., the §457 Plan; the §401(k) Plan; the §403(b) Plan; and the §401(a) Match Plan (collectively, the “**Plans**”). .

2. **Period of Performance.**

- (a) The term of this Contract begins on the date the Contract is signed by the Board following any required prior approvals, including approval by the Board of Public Works, if such approval is required (the “**Effective Date**”)and shall continue until [redacted], 2023 (the “**Initial Term**”).
- (b) In its sole discretion, the Board shall have the unilateral right to extend the Contract for an additional twelve (12) months (the “**Renewal Term**”) at the prices established in the Contract. “**Term**” means the Initial Term and any Renewal Term.
- (c) The Contractor’s performance under the Contract shall commence as of the date provided in a written NTP.
- (d) The Contractor’s obligation to pay invoices to subcontractors providing products/services in connection with this Contract, as well as the audit; confidentiality; document retention; patents, copyright and intellectual property; warranty; indemnification obligations; and limitations of liability under this Contract; and any other obligations specifically identified, shall survive expiration or termination of this Contract.

3. **The Contractor.**

[redacted] has principal offices located at [redacted]. The Contractor will throughout the Term maintain a local office in Maryland and several other regional offices at locations chosen at the discretion of the Contractor through which its personnel will provide direct marketing and Participant services to the Board, Plan Participants and potential Plan Participants.

The Contractor is a registered broker/dealer and member of the Financial Industry Regulatory Authority (“**FINRA**”). Agents of the Contractor will also be licensed as registered representatives and will hold any

required state or federal securities licenses and/or registration required by law for the marketing of Plan options that are registered as securities. The Contractor will abide by all FINRA broker/dealer rules and regulations in all of its dealings with the Board, with the Plan, and with the Plan Participants, including, but not limited to, the filing and approval of all materials which the FINRA would consider to be sales literature and advertising prior to the dissemination of any such materials through the Contractor or through the Contractor's registered representatives. The Board may distribute independently created and prepared sales literature and advertising directly to its employees, provided such sales literature and advertising does not reference the Contractor, its products or services. If such Board generated sales literature and/or advertising is subject to FINRA regulation, the applicable sales literature/advertising piece shall be subject to review and comment by the Contractor, and shall be conformed to meet any applicable FINRA requirements. The Board and the Contractor will cooperate to obtain FINRA approval for such material, and the Board will incorporate any comments and make any changes offered by the Contractor to make such material comply with FINRA rules.

The status of the Contractor, its officers, agents, and employees under this Contract, with respect to the State and the Board, is that of independent contractor.

Subject to the warranty exceptions related to the administration of the 401(k) and 403(b) Plans found in **Section 6(c)**, it is expressly understood and agreed by the Contractor that any aspect of this Agreement relating to, or making it liable for, activities and transactions of the Plans that occurred prior to the effective date of the Contract shall apply to the Contractor as defined herein, whether or not such activity or transaction was performed by the Contractor, as defined herein, or by one or more predecessor companies affiliated to the Contractor through common ownership.

4. **Scope of Contract.**

- (a) The Contractor shall perform in accordance with this Contract and Exhibits A-D, which are listed below and incorporated herein by reference. If there is any conflict between this Contract and the Exhibits, the terms of this Contract shall control. If there is any conflict among the Exhibits, the following order of precedence shall determine the prevailing provision:

Exhibit A – Request for Proposals, Solicitation No. G50B8400004, Issued dated [REDACTED], 2018 for Plan Administrator for Supplemental Retirement Plans (the “**RFP**”)

Exhibit B – Contract Affidavit, executed by the Contractor and dated [REDACTED], 2018

Exhibit C – Contractor's Technical Proposal, dated [REDACTED], 2018 (the “**Technical Proposal**”)

Exhibit D – Contractor's Financial Proposal, dated [REDACTED], 2018 (the “**Financial Proposal**” and together with the Technical Proposal, the “**Proposal**”)

The Contractor reaffirms that all of the representations made in Exhibits C and D are accurate as of the signing of this Contract.

- (b) The Procurement Officer may, at any time, by written order, make unilateral changes in the work within the general scope of the Contract. No other order, statement, or conduct of the Procurement Officer or any other person shall be treated as a change or entitle the Contractor to an equitable adjustment under this section. Except as otherwise provided in this Contract, if any change under this section causes an increase or decrease in the Contractor's cost of, or the time required for, the performance of any part of the work, whether or not changed by the order, an equitable adjustment in the Contract price shall be made and the Contract modified in writing accordingly. The Contractor must assert in writing its right to an adjustment under this section within thirty (30) days of receipt of written change order and shall include a written statement setting forth the nature and cost of such claim. No claim by the Contractor shall be allowed if asserted after final payment under this Contract.

Failure to agree to an adjustment under this section shall be a dispute under the Disputes clause. Nothing in this section shall excuse the Contractor from proceeding with the Contract as changed.

- (c) Without limiting the rights of the Procurement Officer under Subsection (b) above, the Contract may be modified by mutual agreement of the parties, provided (a) the modification is made in writing; (b) all parties sign the modification; and (c) all approvals by the required agencies as described in COMAR Title 21, are obtained.

5. Duties of Administrator.

- (a) In its capacity as the exclusive administrator and marketer of the Plans, the Contractor shall, on a timely basis, carry out all of the duties and responsibilities connected with the day-to-day operation of the Plans as enumerated in the RFP and Proposal, including the basic functional responsibilities of Plan administrator and record keeper at the Plan and Participant levels.
- (b) In performing any of its duties and responsibilities as Plan administrator, the Contractor promises to (i) perform same according to professional standards for administration of plans of this type, size, and scope; (ii) make accurate representations to the Board, or Participants, as the case may be, when advising upon technical requirements of administration, or taking action on behalf of the Board with respect to Participants, Participants' accounts, Plan financial statements, or Plan records; and (iii) perform all of its obligations on a timely basis.

6. Plan Financial Statement.

- (a) The Contractor shall prepare and submit to the Board on a timely basis: (i) quarterly unaudited financial statements of each Plan in the aggregate as administered by the Contractor, (ii) a reconciled annual financial statement of each Plan in the aggregate as administered by the Contractor, prepared according to generally accepted accounting principles, suitable for audit conducted in accordance with generally accepted auditing standards ("GAAP"), and an unqualified auditors opinion (except for such qualifications as the auditors may determine to be necessary, and are not the fault of the Contractor) that the financial statement presents fairly the financial position and results of operations of each Plan in conformity with generally accepted accounting principles applied on a consistent basis. The audit shall be performed by a certified public accounting firm of the Board's selection, and at the Board's expense. The unaudited quarterly financial statement shall be submitted by the Contractor to the Board no later than 45 days after the end of each quarter and the annual statement, conforming to the standards set forth above, no later than 75 days after the end of each year. It is the intent of this **Section 6** that each of the annual Plan financial statements required hereunder shall be, when presented to the Board, and prior to any audit, fully reconciled with the sum total of all Participant transactions hereunder for the relevant period and Plan, as reflected on the records of the Contractor for such individual Participant accounts within any particular Plan, including any adjustment for timing differentials on contribution, investments or disbursements.
- (b) The reconciled annual financial statement for each Plan shall show:
 - (i) reconciled contributions for the Contractor administered Plan options, subdivided by each investment option, all as reported by State payroll centers forwarding contributions to the custodial account;
 - (ii) gross earnings or losses and beginning and ending balances for each investment option as reported by the investment providers;
 - (iii) amounts remitted to the Contractor as its compensation hereunder;

- (iv) amounts remitted to the Board pursuant to **Sections 12 and 13** hereof;
 - (v) amounts withdrawn from administration, either for payment to Participants or their beneficiaries, or for purchase of annuities making such payments over time;
 - (vi) premium payments and beginning and ending aggregate cash surrender values with respect to any Plan life insurance option;
 - (vii) a balance sheet for each Plan showing the total value of all Plan assets and liabilities at the beginning and end of the year;
 - (viii) a narrative description of the methodology used to value, for each Plan, all Plan assets and allocate earnings, losses and expenses among Participants;
 - (ix) a reconciliation, for each Plan, of each Plan's receipts, disbursements and individual Participant allocations to the income statement and balance sheet.
- (c) The Contractor acknowledges that other than a discrepancy or loss attributable to a former administrator of the Plans, which loss or discrepancy could not have been reasonably discovered by the Contractor, it is charged with record keeping for each of the Plans, and that Participant records are its responsibility.
- (d) If:
- (i) the Contractor is unable to produce a timely accurate financial statement for a Plan as required hereunder, or:
 - (ii) the accounting firm retained by the Board is not able to perform or complete an examination of a Plan in accordance with GAAP and to offer, within nine (9) months after the close of the year, an unqualified opinion that the financial statement for that Plan as presented to it represents fairly the financial position and results of that Plan in conformity with GAAP applied on a consistent basis (except for such qualifications as the auditors may determine are not the fault of the Contractor),

such event shall be deemed a material breach of this Contract. Such a material breach as defined herein shall entitle the Board to immediately terminate this Contract without any liability for costs or expense that the Contractor or related entities may have incurred. The Board may also seek such recompense from the Contractor as is necessary to compensate the Plan for any necessary and reasonable expense incurred in producing an accurate financial statement and Participant allocation. In the event that termination under this provision does occur the Contractor shall fulfill its transition and termination responsibilities as contemplated under **Section 20** (*Transition Responsibility*), and shall be liable for any directly resulting, necessary, reasonable, and itemized expense incurred by the Board by reason of such termination. The Board's right to terminate this Contract for default of the Contractor in timely production of a reconciled annual financial statement, or for the inability of the Board's auditor to timely furnish an unqualified opinion thereon, shall not apply if the failure is caused by delays in receipt by the Contractor of accurate confirmations of financial transactions and closing balances from one or more investment providers under the Plan, or necessary information from Participants or Payroll centers; delays in receipt by the auditor of required representations from the Board or its legal counsel; or by delays caused by the Board's auditor in completing its examination in a timely manner; but in order to be entitled to this waiver of normally applicable default, the Contractor must (a) timely request the information; (b) notify the Board in writing in advance of the deadline dates of the particular information sought and the lack of its receipt, with copies of its written request. In such event the timeliness requirement, whether for the Plan financial

statement, or for the auditors opinion, shall be suspended during the period beginning on the date of the Contractor's request for information and ending on the date the Contractor receives such information from the Provider or other party, with the due dates for same being extended for an identical period.

- (e) The right of immediate termination granted hereunder shall apply for the Contract as a whole, even if the Contractor error or omission occurs only with respect to one of the Plans administered hereunder.
- (f) The Contractor agrees that its accounting for, and method of purchasing and liquidating, assets of the Plan shall be in full compliance with all applicable insurance and securities laws and regulations of the Securities and Exchange Commission; and that its accounting procedures will account for the pricing of purchases and redemptions as actually effected with the individual investment providers.
- (g) The termination rights possessed by the Board under this section are in addition to, and not in limitation of, any other rights of terminations possessed by the Board under other provisions of this Contract, or by State law.

7. **Participant Statements.**

- (a) The Contractor shall prepare and mail to Participants a quarterly statement showing all account activity, and beginning and ending balances for the period then ending, all in a format to be agreed upon between the Board and the Contractor. The statement format shall contain at least the data and information contained in the current Participant statement, including, but not limited to, an explicit separate line item for mutual fund fee reductions.
- (b) The Contractor may not send to any Participant a statement that it believes may be in error and shall hold such statement until the error is resolved. The Contractor shall send to the Board a per Participant list of all statements so held. All other Participant statements shall be mailed within ten (10) business days of the close of the quarter unless the Board has granted the Contractor a reasonable extension of time for good cause outside of the Contractor's control. Failure to meet a 95% timely mailing rate for any two (2) statement periods out of the most recent four (4) statement periods shall entitle the Board to terminate this Contract at the December 31 next following, without any liability for such termination. Excepted from the 10 business day requirement, however, are: (a) any statement including a participant investment in a §403(b) fixed annuity contract; (b) any statement (or group of statements) held at the Board's request to await simultaneous mailing of other material; and (c) any and all statements which cannot be completed due to inaccurate and/or incomplete information, including index information received from the Plans' investment providers.

8. **Records.**

- (a) The Contractor agrees to deliver to the Board, at its request, a duplicate copy of records of all Plan transactions during the year. This delivery shall consist of duplicates of the quarterly statements mailed to all Participants for that year, and shall be delivered in the form specified by the Board. The Contractor also agrees to maintain Plan transaction records converted to a reduced storage medium (such as microfilm, micro-fiche, computer tape, compact disc, or similar electronic storage medium), in fireproof, flood proof facility, and to maintain during the term of this Contract a data and record security system at least equal in scope and security to that described in its Proposal.
- (b) The Contractor agrees to maintain (and to deliver to the Board pursuant to **Section 20** (*Transition Responsibility*)) all records of Plan transactions and Participant elections necessary to fully administer the Plans upon termination of the Contract. The Contractor warrants that existing records for past

Plan activity are in good working order, and actually exist; that any subsequently discovered deficiency in same shall be corrected by the Contractor within six (6) months of notice to it; and that the Contractor will be liable for any loss or ordinary and reasonable expenses incurred by the Board because of a subsequently discovered record keeping deficiency.

9. **Fund Management.**

- (a) The parties agree that the Plans shall be administered through operation of one or more custodial accounts into which all contributions shall be directed and out of which all disbursements shall be made, whether for investment, remission to the Board for such charges as it may impose, compensation of the Contractor for services performed as administrator, or withdrawal of funds from the Plans by a Participant, whether for payment directly to him or her or for purchase of one or more annuities. The State of Maryland shall determine the bank or banks that will provide the custodial accounts, which accounts shall be owned by the Plans for which the transactions are conducted and, in the case of the §457 Plan, the §401(k) Plan, and the §401(a) Match Plan held in trust for the exclusive benefit of the Plan Participants and their beneficiaries. While the Board by reason of this Contract contemplates that the Contractor shall have certain powers to direct the transactions of these accounts, as agent for the Board, any of said powers may be terminated by the Board at any time, for any reason, in its sole and absolute discretion; provided, however, that if the Contractor's authority to direct transactions of said account is terminated, and no substitute bank or method of accomplishing Plan transactions is devised by the Board, the Contractor shall not be deemed in breach of this Contract by reason of a failure to continue processing Plan transactions that is caused by such a termination. The Board shall be liable in the event of cessation of authorization for any monies advanced by the Contractor into the account.
- (b) The Contractor's powers of direction of funds from said custodial account shall be solely that of agent for the Board and shall be limited to: (i) the direction of funds to investment media maintained under the Plan; (ii) payments to Plan Participants or their beneficiaries as authorized under the Plans (except for payments under an annuity); (iii) payment to itself on a monthly basis of such compensation due it under **Sections 10 and 11** (*Compensation; Method of Payment to the Contractor of Compensation under Section 10*). Payments under clause (iii) of the preceding sentence may be stopped in the sole discretion of the Board if the Contractor's rights to payment is disputed. Such a cessation of payment of compensation shall not serve to eliminate the Contractor's continuing obligation to perform hereunder; and the Contractor and the Board agree that they are subject to **Section 30** (*Disputes*). Pending resolution of a dispute the Contractor shall proceed diligently with its required performance under this Contract in accordance with the decision of the Procurement Officer as may be appointed by the Board from time to time; provided however, that payments withheld from the Contractor under this provision shall be only as recompense for an itemized list of recoverable damages or expense presented to the Contractor by the Procurement Officer. Once such amounts withheld, or to be withheld, exceed, in the aggregate, an amount equal to one year's estimated compensation, and the Contractor has received no compensation by reason of said stop payment for a four month period, the Contractor's duty to perform its obligations on a continuing basis shall be suspended.
- (c) Any net earnings (after custodial account expenses) of the custodial account shall be the sole property of the Plans for which the particular account is used.

10. **Compensation.**

Compensation to the Contractor shall be at the rate set forth in its Financial Proposal (Exhibit D), and calculated in the manner therein described on the asset base for such charges as specified in the RFP (Exhibit A).

11. **Method of Payment to the Contractor of Compensation under Section 10.**

All payments to the Contractor for the charges imposed under **Section 10** (*Compensation*) shall be made by:

- (a) the Contractor determining the accumulated dollar amount of monthly charges to which it is entitled because of the charges due to it under **Section 10**;
- (b) the redemption by the Contractor of sufficient mutual fund shares, and/or withdrawals from insurance contracts (other than life insurance contracts), and/or reduction of investment purchases, to fund said sum;
- (c) the direction of said resulting funds into the custodial account;
- (d) the presentation to the Board of an invoice reflecting the transactions and showing the calculation method used to arrive at same.
- (e) withdrawal of the invoiced amount by the Contractor from the custodial account five (5) business days later if prior to that time no written objection has been made by the Board and delivered to the Contractor.

12. **Board Charges.**

- (a) It is expressly agreed that under the administration format contemplated by this Contract certain charges are to be imposed by the Board on assets administered by and accounted for by the Contractor to pay for its own administration expenses for the Plans. The Contractor agrees to collect said charges, and remit the proceeds thereof into the custodial account for withdrawal by the Board. Said charges shall be the property of the Plan to which they relate whether before or after collection by the Contractor and remittance to the Board. The types of charges that may be imposed are:
 - (i) percentage charges against assets, identical in format and calculation method to the remuneration received by the Contractor under **Section 10** (*Compensation*).
 - (ii) monthly Participant charges on a per capita basis;
 - (iii) transaction charges based upon transfer of account values among the investment options of the Plans.
- (b) At the commencement of this Contract the only charges to be imposed is that specified in (a)(i) and (ii) above, and the Board shall give 90 days' notice to the Contractor if any different type of permitted charge as specified in this **Section 12** is to be imposed and then accounted for and collected by the Contractor.

13. **Calculation of Board Charges.**

The charges to be imposed under **Section 12** (*Board Charges*) shall be collected by the Contractor and remitted to the custodial account for subsequent withdrawal by the Board to its own account in an identical manner to the Contractor charge under **Section 10**(*Compensation*). The failure of the Contractor to actually receive (by withdrawal from the custodial account) compensation due to it shall not affect its obligation to collect and remit the Board charges as aforesaid.

14. **Administration Manual.**

The Contractor agrees to maintain and keep current for Board and auditor inspection a full and complete administration manual (the "**Administration Manual**") containing:

- (a) all forms currently used by Participants or the Board in connection with the operations of the Plans.

- (b) narrative descriptions of how transaction under the Plans are processed by the Contractor and accounted for;
- (c) a narrative description of how each item on the Plan financial statement is determined.
- (d) a narrative description of each account in the general ledger that the Contractor will maintain under the provisions of **Section 15** (*General Ledger*).

The first draft of the Administration Manual shall be due to the Contract Manager within sixty (60) days after the Effective Date, unless extended in the sole discretion of the Contract Manager, and shall be subject to the review and comment of the Contract Manager, the Board and the Assistant Attorney General appointed to represent the Board and such consultants and contractors as the Board deems appropriate for such review; provided that any third party contractors and consultants may be required by the Contractor to execute and deliver a standard non-disclosure agreement prior to such review. The final version of the Administration Manual, which incorporates the changes required by the Contract Manager, shall be due to the Contract Manager no later than one hundred fifty (150) days after the Effective Date. Each of the first draft and the final version of the Administration Manual shall be delivered to the Contract Manager in electronic format (drafts in both Word and portable document format (.pdf); and final version in .pdf.)

15. **General Ledger.**

The Contractor agrees to maintain a general ledger for Plan transactions. The general ledger currently maintained for the Plan properly reflects Plan financial transactions and, with supporting documentation, is sufficient to verify that any Participant's account is properly reflected on the Contractor's books and records, and that the Contractor is liable for any loss or expense occasioned by any deficiency in the Contractor's general ledger, prospectively. The Contractor agrees that the general ledger maintained by it contains within it all accounts used to perform a full reconciliation between the values reported on Participant statements, and the values of each Plan as a whole.

16. **Contractor Personnel.**

The Contractor agrees to provide sufficient personnel within the State of Maryland to perform the required marketing and enrollment services hereunder and to furnish to the Board twice a year a schedule listing the names of individuals employed within Maryland. The Contractor agrees that no personnel shall be compensated on a basis that varies their remuneration according to the investment option selected by a Participant, and that no employee may receive compensation directly or indirectly from any investment provider under the Plans for any Participant election or investment within the Plans. The Contractor reaffirms all representations made during the proposal process with respect to the number of representatives, and the duties of representatives to be employed and provide services under this agreement. The Contractor reaffirms its commitment in the RFP that four (4) of the full-time personnel provided to perform services under this Contract, shall be residents in its Maryland office, and have as their principle duty retirement/distribution counseling to Participants.

From time to time the Contractor may subcontract with registered broker/dealers who are members of FINRA in order to satisfy certain other goals such as the Minority Business Enterprise participation goal as contemplated elsewhere in this Contract. Such transactions and contracts shall occur under the standards set forth in the Contractor's Minority Business Affidavit (*Attachment D to Exhibit C hereto*). Representatives provided through such subcontracted arrangements will also be required to be licensed as registered representatives of the subcontractor broker/dealer and hold any required state or federal securities licenses and/or registration required by law for the marketing of Plan options that are registered as securities. The subcontractor will be required to abide by all FINRA broker/dealer rules and regulations in all of its dealings with the Board, with the Plans, and with the Plan Participants, including, but not limited to, the filing and approval of all materials which FINRA would consider to be sales literature and advertising prior to the

dissemination of any such materials through the subcontractor broker/dealer or through the subcontractor broker/dealer's registered representatives. The Contractor will have oversight responsibility for the activities of these subcontractors including the sales, marketing, and education efforts of the Plans. The oversight responsibility the Contractor exercises shall be limited to those activities the subcontractors perform related solely to the Plans.

17. **Responsibilities of the Board.**

The Board agrees to the following provisions:

- (a) The Board shall assist the Contractor in arranging group meetings and presentation sessions so that the Contractor can fulfill its duty to communicate the Plans' availability, provisions and options to all eligible employees of the State, in order to encourage the greatest possible participation. The Board shall promote the growth of the Plans through direct communication with eligible employees, in a manner deemed appropriate by the Board.
- (b) The Board shall arrange through the various payroll offices within the State for reductions from the salaries and wages of all participating employees. All amounts so contributed shall be remitted by the appropriate payroll center (or the Treasurer's office) to such custodian bank as the Board may designate.
- (c) The Board shall authorize the Contractor, and give notice to any custodian bank of such authorization, to act as its agent in directing the custodian bank to transmit all Plan deferrals to the appropriate investment providers, as designated by Participants, all subject to the limitations of **Section 9** (*Fund Management*), with respect to custodial account operation. The Contractor shall also be responsible for paying normal and customary net banking charges on behalf of the Plans pursuant to a contract for banking services procured through and in accordance with the policies and procedures of the Maryland State Treasurer's Office.
- (d) The Board shall enter into contracts with the companies offering any insurance or investment products approved by the Board for funding the Plans. The Contractor will assist the State in negotiating such contracts on the most favorable cost and return basis to Participants. Investment provider contracts, the terms of which shall be enforced by the Board, shall also be require such providers to deliver or otherwise furnish to the Contractor a suitable number of prospectuses to deliver or otherwise furnish to potentially interested Plan Participants, if delivery of a prospectus would be required for the purchase of such investment directly by a Participant. The Board agrees that investment providers will be required by the Board to furnish on a timely and accurate basis all information necessary for the Contractor proper accounting and administration of the Plans.
- (e) The Board agrees that all investment options made available to Participants under the Plans will be exclusively marketed and administered by the Contractor during the term of this Contract, subject to all of the provisions of this Contract, including those relating to compensation.
- (f) The Board shall be responsible for all material Plan policy decisions, once the Contractor has presented such matter to the Board for decision in suitable form. The Contractor shall be responsible for operational decisions, such as determining whether a particular Participant is entitled to withdraw from a Plan by reason of financial hardship, determining the precise date and methods of distributing the benefits to participants, determining whether a person is eligible for participation in the Plan, all according to standards set by the Board.
- (g) The Board shall, within thirty (30) days of receipt, review and approve or disapprove all descriptive literature, advertising material, and visual aids proposed by the Contractor for communicating in presenting the Plan and its options to eligible employees. Unless the Board, through staff, explicitly

disapproves material within thirty (30) days, approval shall be deemed to have been given. The Contractor is required to submit any such material to the Board prior to its use.

- (h) The Board shall make available to the Contractor those records and information in its possession or control that the Contractor believes is essential to the proper administration of the Plans.

18. **Books and Records.**

- (a) **Inspection by State:** All books, records, ledgers, and journals of the Contractor relating to the operation of the Plans shall be open upon reasonable advance notice for inspection by the Board, or its designated agents, attorneys, and accountants at any time during normal working hours at the location in which such material is maintained by the Contractor. In addition, the Board and its designated agents, attorneys, and accountants may examine those books, records, ledgers, and journals of the Contractor which relate to: (i) the operation of the Plans; (ii) the compensation and expenses derived by the Contractor or its employees or agents from services performed under this Contract; (iii) the ability of the Contractor to carry out the duties and responsibilities undertaken through this Contract; (iv) any transaction between the Contractor and any company affiliated with the Contractor that relates to the administration of the Plans; and (v) any record of the Contractor relating to purchases or contracts made to achieve the Minority Business Enterprise participation goal of the RFP and exhibits to this Contract.
- (b) **Ownership and Access:** All material, records, documents, and accounting records relating to deferred or invested amounts of the Plans maintained by the Contractor shall at all times remain the property of the Board notwithstanding the fact that the records may be stored upon or within one or more computers or data retention systems owned, operated, or leased by the Contractor. The Board shall, during normal business hours and upon reasonable notice, have access to those records. The Contractor data processing system and related software shall, at all times, remain the exclusive property of the Contractor or its corporate parent, subject to the obligation of the Contractor to convert any data maintained on such system to usable hard copy or electronic format if necessary for the Board to administer the Plans upon termination of the Contractor's services.

19. **Additional Covenants and Representations of Administrator.**

- (a) All information obtained by the Contractor from the Board or from any employee of the State, whether such employee becomes a Participant or not, shall be kept in absolute confidence and shall not be utilized by the Contractor or any of its personnel in connection with any other matters of any type, nor shall such information be disclosed to any other person or company, unless the prior written consent of the Board has been obtained, or unless such disclosure is required by some legal or regulatory authority. The Contractor warrants that the data and information obtained under this Contract shall not be used as a device to market financial or insurance products to State employees, either during or after the Term. The Contractor agrees to provide, upon request, sufficient information about its integrated data storage and financial product sales to provide assurance to the Board, in its sole discretion, compliance with this **Section 19(a)**.
- (b) Neither the Contractor nor any of its officers, shareholders, directors, employees, or affiliates are subject to any present or threatened litigation or administrative proceeding before any court or administrative body which would have a materially adverse effect on the Contractor or its ability to perform the services hereunder. The Contractor agrees to give the Board prompt written notice of the commencement of any such proceedings, or in the event of the threat of such proceedings, prompt written notice of such threat upon the Contractor obtaining knowledge of such threatened proceedings.

- (c) The Contractor expressly agrees that during the Term, neither the Contractor, nor any of its Affiliates (as defined below) shall acquire any beneficial interest, direct or indirect, that would conflict in any manner or degree with the performance of its services hereunder. The Contractor further agrees that neither it nor any Affiliate shall receive any remuneration from any investment provider by reason of the selection, or continued maintenance, of such investment provider by the Board, or selection of an investment option offered by such investment provider by a Participant, or that is in any way related to the performance of services by the Contractor under this Contract. The Contractor further agrees that the acquisition by the Contractor or any of its Affiliates of a beneficial interest in more than 50% of the voting securities of any entity (or an Affiliate thereof) offering an investment option under the Plans, or the acquisition by the Contractor or its Affiliates of a beneficial interest in more than 50% of the voting securities of one of the investment providers (or an Affiliate thereof) under the Plans, without providing notice to and obtaining the prior consent of the Board, shall give the Board the unilateral right to terminate this Contract as soon as reasonably practicable after it learns of such acquisition, but not later than the December 31 next succeeding such acquisition, and that such termination shall be without any liability on the part of the Board for expenses or damages to the Contractor or any other party for early termination of this Contract. “**Affiliate**” means, with respect to any person, any other person who, directly or indirectly, controls, is controlled by, or is under common control with such person. “**Control**” shall be defined by and determined by reference to the Federal securities laws.

20. **Transition Responsibility.**

In the event that the Board gives notice to the Contractor that the Contract shall terminate, the Contractor shall, immediately upon receipt of such notice, commence performance of its transition responsibilities hereunder. The Board shall not be required to give notice of termination at the conclusion of the Renewal Term. Whenever termination occurs, the Contractor’s responsibilities shall include the delivery to the Board of all Plan and Participant records in good working order suitable for use by such new administrator or administrators as may be selected by the Board. Such delivery is to take place no later than ninety (90) days after the delivery of termination notice; *provided, however*, that if the termination occurs by reason of the end of the Term (and in the absence of an extension of this Contract or the award of a new contract to the Contractor), such delivery shall take place no later than ninety (90) days before the expiration of the Term. Termination of the Contract shall not eliminate the Contractor’s responsibility to account for Plan transactions up to the date of termination set forth in the notice of termination (or the end of the Term, as the case may be). Notwithstanding the foregoing, the Contractor shall be required to furnish the following subsequent to termination:

- (a) a year-end Plan financial statement and Participant statement as otherwise required;
- (b) identical statements covering any partial year ending with the termination.

Notwithstanding when and how termination of this Contract occurs, the Board shall have the right to collect damages from the Contractor for any failure to perform its obligations hereunder, whether said damages are obtained from: (i) withholding of compensation due to the Contractor; (ii) suit at law for such damages; (iii) suit on such bond as is maintained by the Contractor.

21. **Termination of Deferrals.**

The parties agree that cessation of all contributions into one or more of the Plans may occur, by reason of a change in the law governing said Plan, or by unilateral decision on the part of the Board, and that any such cessation of contributions shall not be viewed as a breach of the Board’s obligations hereunder, or cause the Contractor to cease performing its responsibilities hereunder.

22. Consideration and Payment

- 22.1 In consideration of the satisfactory performance of the work set forth in this Contract, the Board shall pay the Contractor in accordance with the terms of this Contract and at the prices quoted in the Financial Proposal.
- 22.2 Unless a payment is unauthorized, deferred, delayed, or set off under COMAR 21.02.07, payments to the Contractor pursuant to this Contract shall be made no later than thirty (30) days after the Board's receipt of a proper invoice from the Contractor. The Contractor may be eligible to receive late payment interest at a rate of 9% per annum if: (1) the Contractor submits an invoice for the late payment interest within thirty (30) days after the date of the State's payment of the amount on which the interest accrued; and (2) a Contract claim has not been filed under State Finance and Procurement Article, Title 15, Subtitle 2, Annotated Code of Maryland. The State is not liable for interest: (1) accruing more than one (1) year after the thirty-first (31st) day after the agency receives the proper invoice; or (2) on any amount representing unpaid interest. Charges for late payment of invoices are authorized only as prescribed by Title 15, Subtitle 1, of the State Finance and Procurement Article, Annotated Code of Maryland, or by the Public Service Commission of Maryland with respect to regulated public utilities, as applicable. Each invoice for services rendered must include the Contractor's Federal Tax Identification which is [REDACTED]. Charges for late payment of invoices other than as prescribed at Md. Code Ann., State Finance and Procurement Article, §15-104 are prohibited. Invoices shall be submitted to the Contract Monitor. Electronic funds transfer shall be used by the State to pay the Contractor pursuant to this Contract and any other State payments due to the Contractor unless the State Comptroller's Office grants the Contractor an exemption.
- 22.3 In addition to any other available remedies, if, in the opinion of the Contract Monitor, the Contractor fails to perform in a satisfactory and timely manner, the Contract Monitor may refuse or limit approval of any invoice for payment, and may cause payments to the Contractor to be reduced or withheld until such time as the Contractor meets performance standards as established by the Contract Monitor.
- 22.4 Payment of an invoice by the Board is not evidence that services were rendered as required under this Contract.
- 22.5 Contractor's eMaryland Marketplace vendor ID number is [REDACTED].

23. Rights to Records

- 23.1 The Contractor agrees that all documents and materials including, but not limited to, software, reports, drawings, studies, specifications, estimates, tests, maps, photographs, designs, graphics, mechanical, artwork, computations, and data prepared by the Contractor for purposes of this Contract shall be the sole property of the State and shall be available to the State at any time. The State shall have the right to use the same without restriction and without compensation to the Contractor other than that specifically provided by this Contract.
- 23.2 The Contractor agrees that at all times during the term of this Contract and thereafter, works created as a Deliverable under this Contract, and services performed under this Contract shall be "**works made for hire**" as that term is interpreted under U.S. copyright law. To the extent that any products created as a Deliverable under this Contract are not works made for hire for the State, the Contractor hereby relinquishes, transfers, and assigns to the State all of its rights, title, and interest (including all intellectual property rights) to all such products created under this Contract, and will cooperate reasonably with the State in effectuating and registering any necessary assignments.
- 23.3 The Contractor shall report to the Contract Monitor, promptly and in written detail, each notice or claim of copyright infringement received by the Contractor with respect to all data delivered under this Contract.

23.4 The Contractor shall not affix any restrictive markings upon any data, documentation, or other materials provided to the State hereunder and if such markings are affixed, the State shall have the right at any time to modify, remove, obliterate, or ignore such warnings.

23.5 Upon termination or expiration of the Contract, the Contractor, at its own expense, shall deliver any equipment, software or other property provided by the State to the place designated by the Procurement Officer.

24. Exclusive Use

24.1 The State shall have the exclusive right to use, duplicate, and disclose any data, information, documents, records, or results, in whole or in part, in any manner for any purpose whatsoever, that may be created or generated by the Contractor in connection with this Contract. If any material, including software, is capable of being copyrighted, the State shall be the copyright owner and Contractor may copyright material connected with this project only with the express written approval of the State.

24.2 Except as may otherwise be set forth in this Contract, Contractor shall not use, sell, sub-lease, assign, give, or otherwise transfer to any third party any other information or material provided to Contractor by the Board or developed by Contractor relating to the Contract, except as provided for in **Section 26** (*Confidential or Proprietary Information and Documentation*).

25. Patents, Copyrights, and Intellectual Property

25.1 All copyrights, patents, trademarks, trade secrets, and any other intellectual property rights existing prior to the Effective Date shall belong to the party that owned such rights immediately prior to the Effective Date (“**Pre-Existing Intellectual Property**”). If any design, device, material, process, or other item provided by Contractor is covered by a patent or copyright or which is proprietary to or a trade secret of another, the Contractor shall obtain the necessary permission or license to permit the State to use such item or items pursuant to its rights granted under the Contract.

25.2 Except for (1) information created or otherwise owned by the Board or licensed by the Board from third parties, including all information provided by the Board to Contractor; (2) materials created by Contractor or its subcontractor(s) specifically for the State under the Contract (“**Deliverables**”), except for any Contractor Pre-Existing Intellectual Property included therein; and (3) the license rights granted to the State, all right, title, and interest in the intellectual property embodied in the solution, including the know-how and methods by which the solution is provided and the processes that make up the solution, will belong solely and exclusively to Contractor and its licensors, and the Board will have no rights to the same except as expressly granted in this Contract. Any SaaS Software developed by Contractor during the performance of the Contract will belong solely and exclusively to Contractor and its licensors. For all Software provided by the Contractor under the Contract, Contractor hereby grants to the State a nonexclusive, irrevocable, unlimited, perpetual, non-cancelable, and non-terminable right to use and make copies of the Software and any modifications to the Software. For all Contractor Pre-Existing Intellectual Property embedded in any Deliverables, Contractor grants to the State a license to use such Contractor Pre-Existing Intellectual Property in connection with its permitted use of such Deliverable. During the period between delivery of a Deliverable by Contractor and the date of payment therefor by the State in accordance with this Contract (including throughout the duration of any payment dispute discussions), subject to the terms and conditions contained herein, Contractor grants the State a royalty-free, non-exclusive, limited license to use such Deliverable and to use any Contractor Materials contained therein in accordance with this Contract.

25.3. Subject to the terms of **Section 28** (*Indemnification and Notification of Legal Requests*), Contractor shall defend, indemnify and hold harmless the State and its agents and employees, from and against any and all claims, costs, losses, damages, liabilities, judgments and expenses (including without limitation reasonable attorneys’ fees) arising out of or in connection with any third party claim that the Contractor-provided

products/services infringe, misappropriate or otherwise violate any third party intellectual property rights. Contractor shall not enter into any settlement involving third party claims that contains any admission of or stipulation to any guilt, fault, liability or wrongdoing by the State or that adversely affects the State's rights or interests, without the State's prior written consent.

- 25.4 Without limiting Contractor's obligations under **Section 23.3**, if an infringement claim occurs, or if the State or the Contractor believes such a claim is likely to occur, Contractor (after consultation with the State and at no cost to the State): (a) shall procure for the State the right to continue using the allegedly infringing component or service in accordance with its rights under this Contract; or (b) replace or modify the allegedly infringing component or service so that it becomes non-infringing and remains compliant with all applicable specifications.
- 25.5 Except as otherwise provided herein, Contractor shall not acquire any right, title or interest (including any intellectual property rights subsisting therein) in or to any goods, Software, technical information, specifications, drawings, records, documentation, data or any other materials (including any derivative works thereof) provided by the State to the Contractor. Notwithstanding anything to the contrary herein, the State may, in its sole and absolute discretion, grant the Contractor a license to such materials, subject to the terms of a separate writing executed by the Contractor and an authorized representative of the State as well as all required State approvals.
- 25.6 Without limiting the generality of the foregoing, neither Contractor nor any of its subcontractors shall use any Software or technology in a manner that will cause any patents, copyrights or other intellectual property which are owned or controlled by the State or any of its affiliates (or for which the State or any of its subcontractors has received license rights) to become subject to any encumbrance or terms and conditions of any third party or open source license (including, without limitation, any open source license listed on <http://www.opensource.org/licenses/alphabetical>) (each an "**Open Source License**"). These restrictions, limitations, exclusions and conditions shall apply even if the State or any of its subcontractors becomes aware of or fails to act in a manner to address any violation or failure to comply therewith. No act by the State or any of its subcontractors that is undertaken under this Contract as to any Software or technology shall be construed as intending to cause any patents, copyrights or other intellectual property that are owned or controlled by the State (or for which the State has received license rights) to become subject to any encumbrance or terms and conditions of any open source license.
- 25.7 The Contractor shall report to the Board, promptly and in written detail, each notice or claim of copyright infringement received by the Contractor with respect to all Deliverables delivered under this Contract.
- 25.8 The Contractor shall not affix (or permit any third party to affix), without the Board's consent, any restrictive markings upon any Deliverables that are owned by the State, and if such markings are affixed, the Board shall have the right at any time to modify, remove, obliterate, or ignore such warnings.

26. Confidential or Proprietary Information and Documentation

- 26.1 Subject to the Maryland Public Information Act and any other applicable laws including, without limitation, HIPAA, the HI-TECH Act, and the Maryland Medical Records Act and the regulations promulgated pursuant thereto, all confidential or proprietary information and documentation relating to either party (including without limitation, any information or data stored within the Contractor's computer systems or cloud infrastructure, if applicable) shall be held in confidence by the other party. Each party shall, however, be permitted to disclose, as provided by and consistent with applicable law, relevant confidential information to its officers, agents, and Contractor Personnel to the extent that such disclosure is necessary for the performance of their duties under this Contract. Each officer, agent, and Contractor Personnel to whom any of the State's confidential information is to be disclosed shall be advised by the Contractor provided that each officer, agent, and Contractor Personnel shall be advised by the Contractor of the obligations hereunder, and be bound by, confidentiality obligations at least as restrictive as those set forth in this Contract.
- 26.2 The provisions of this section shall not apply to information that: (a) is lawfully in the public domain; (b) has been independently developed by the other party without violation of this Contract; (c) was already rightfully

in the possession of such party; (d) was supplied to such party by a third party lawfully in possession thereof and legally permitted to further disclose the information; or (e) which such party is required to disclose by law.

27. Loss of Data

- 27.1 In the event of loss of any State data or records where such loss is due to the act or omission of the Contractor or any of its subcontractors or agents, the Contractor shall be responsible for restoring or recreating, as applicable, such lost data in the manner and on the schedule set by the Contract Monitor. The Contractor shall ensure that all data is backed up and recoverable by the Contractor. At no time shall any Contractor actions under this Contract (or any failures to act when Contractor has a duty to act) damage or create any vulnerabilities in data bases, systems, platforms, and/or applications with which the Contractor is working hereunder.
- 27.2 In accordance with prevailing federal or state law or regulations, the Contractor shall report the loss of non-public data as directed in **RFP Section 3.2**.
- 27.3 Protection of data and personal privacy (as further described and defined in **RFP Section 3.2**) shall be an integral part of the business activities of the Contractor to ensure there is no inappropriate or unauthorized use of State information at any time. To this end, the Contractor shall safeguard the confidentiality, integrity and availability of State information and comply with the conditions identified in **RFP Section 3.2**.

28. Indemnification and Notification of Legal Requests

- 28.1 At its sole cost and expense, the Contractor shall (i) indemnify and hold the State, the Plans, the Board, and their respective officers, employees and agents harmless from and against any and all claims, demands, actions, suits, damages, liabilities, losses, settlements, judgments, costs and expenses (including, but not limited to, attorneys' fees and costs), whether or not involving a third party claim, which arise out of the performance of the Contractor or its subcontractors under this Contract and (ii) cooperate, assist, and consult with the State in the defense or investigation of any such claim, demand, action or suit. Contractor shall not enter into any settlement involving third party claims that contains any admission of or stipulation to any guilt, fault, liability or wrongdoing by the State or that adversely affects the State's rights or interests, without the State's prior written consent.
- 28.2 The State has no obligation (i) to provide legal counsel or defense to the Contractor or its subcontractors in the event that a suit, claim, or action of any character is brought against the Contractor or its subcontractors as a result of or relating to the Contractor's obligations or performance under this Contract, or (ii) to pay any judgment or settlement of any such suit, claim or action. Notwithstanding the foregoing, the Contractor shall promptly notify the Procurement Officer of any such claims, demands, actions, or suits.
- 28.3 In the event the Contractor receives a subpoena or other validly issued administrative or judicial process, or any discovery request in connection with any litigation, requesting State Pre-Existing Intellectual Property, of other information considered to be the property of the State, including but not limited to State data stored with or otherwise accessible by the Contractor, the Contractor shall not respond to such subpoena, process or other legal request without first notifying the State, unless prohibited by law from providing such notice. The Contractor shall promptly notify the State of such receipt providing the State with a reasonable opportunity to intervene in the proceeding before the time that Contractor is required to comply with such subpoena, other process or discovery request.

29. Non-Hiring of Employees

No official or employee of the State, as defined under Md. Code Ann., General Provisions Article, § 5-101, whose duties as such official or employee include matters relating to or affecting the subject matter of this

Contract, shall, during the pendency and term of this Contract and while serving as an official or employee of the State, become or be an employee of the Contractor or any entity that is a subcontractor on this Contract.

30. Disputes

This Contract shall be subject to the provisions of Md. Code Ann., State Finance and Procurement Article, Title 15, Subtitle 2, and COMAR 21.10 (Administrative and Civil Remedies). Pending resolution of a claim, the Contractor shall proceed diligently with the performance of the Contract in accordance with the Procurement Officer's decision. Unless a lesser period is provided by applicable statute, regulation, or the Contract, the Contractor must file a written notice of claim with the Procurement Officer within thirty (30) days after the basis for the claim is known or should have been known, whichever is earlier. Contemporaneously with or within thirty (30) days of the filing of a notice of claim, but no later than the date of final payment under the Contract, the Contractor must submit to the Procurement Officer its written claim containing the information specified in COMAR 21.10.04.02.

31. Maryland Law Prevails

- 31.1 This Contract shall be construed, interpreted, and enforced according to the laws of the State of Maryland.
- 31.2 The Maryland Uniform Computer Information Transactions Act (Commercial Law Article, Title 22 of the Annotated Code of Maryland) does not apply to this Contract or any purchase order, task order, or Notice to Proceed issued thereunder, or any software, or any software license acquired hereunder.
- 31.3 Any and all references to the Maryland Code, Annotated contained in this Contract shall be construed to refer to such Code sections as are from time to time amended.

32. Nondiscrimination in Employment

The Contractor agrees: (a) not to discriminate in any manner against an employee or applicant for employment because of race, color, religion, creed, age, sex, sexual orientation, gender identification, marital status, national origin, ancestry, genetic information, or any otherwise unlawful use of characteristics, or disability of a qualified individual with a disability unrelated in nature and extent so as to reasonably preclude the performance of the employment, or the individual's refusal to submit to a genetic test or make available the results of a genetic test; (b) to include a provision similar to that contained in subsection (a), above, in any underlying subcontract except a subcontract for standard commercial supplies or raw materials; and (c) to post and to cause subcontractors to post in conspicuous places available to employees and applicants for employment, notices setting forth the substance of this clause.

33. Contingent Fee Prohibition

The Contractor warrants that it has not employed or retained any person, partnership, corporation, or other entity, other than a bona fide employee, bona fide agent, bona fide salesperson, or commercial selling agency working for the Contractor, to solicit or secure the Contract, and that the Contractor has not paid or agreed to pay any person, partnership, corporation, or other entity, other than a bona fide employee, bona fide agent, bona fide salesperson, or commercial selling agency, any fee or any other consideration contingent on the making of this Contract.

34. Non-Availability of Funding

If the General Assembly fails to appropriate funds or if funds are not otherwise made available for continued performance for any fiscal period of this Contract succeeding the first fiscal period, this Contract shall be canceled automatically as of the beginning of the fiscal year for which funds were not appropriated or otherwise made available; provided, however, that this will not affect either the State's or the Contractor's

rights under any termination clause in this Contract. The effect of termination of the Contract hereunder will be to discharge both the Contractor and the State from future performance of the Contract, but not from their rights and obligations existing at the time of termination. The Contractor shall be reimbursed for the reasonable value of any nonrecurring costs incurred but not amortized in the price of the Contract. The State shall notify the Contractor as soon as it has knowledge that funds may not be available for the continuation of this Contract for each succeeding fiscal period beyond the first.

35. Termination for Default

If the Contractor fails to fulfill its obligations under this Contract properly and on time, or otherwise violates any provision of the Contract, the State may terminate the Contract by written notice to the Contractor. The notice shall specify the acts or omissions relied upon as cause for termination. All finished or unfinished work provided by the Contractor shall, at the State's option, become the State's property. The State shall pay the Contractor fair and equitable compensation for satisfactory performance prior to receipt of notice of termination, less the amount of damages caused by the Contractor's breach. If the damages are more than the compensation payable to the Contractor, the Contractor will remain liable after termination and the State can affirmatively collect damages. Termination hereunder, including the termination of the rights and obligations of the parties, shall be governed by the provisions of COMAR 21.07.01.11B.

36. Termination for Convenience

The performance of work under this Contract may be terminated by the State in accordance with this clause in whole, or from time to time in part, whenever the State shall determine that such termination is in the best interest of the State. The State will pay all reasonable costs associated with this Contract that the Contractor has incurred up to the date of termination, and all reasonable costs associated with termination of the Contract. However, the Contractor shall not be reimbursed for any anticipatory profits that have not been earned up to the date of termination. Termination hereunder, including the determination of the rights and obligations of the parties, shall be governed by the provisions of COMAR 21.07.01.12A(2).

37. Delays and Extensions of Time

37.1 The Contractor agrees to prosecute the work continuously and diligently and no charges or claims for damages shall be made by it for any delays or hindrances from any cause whatsoever during the progress of any portion of the work specified in this Contract.

37.2 Time extensions will be granted only for excusable delays that arise from unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including but not restricted to, acts of God, acts of the public enemy, acts of the State in either its sovereign or contractual capacity, acts of another Contractor in the performance of a contract with the State, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, or delays of subcontractors or suppliers arising from unforeseeable causes beyond the control and without the fault or negligence of either the Contractor or the subcontractors or suppliers.

38. Suspension of Work

The State unilaterally may order the Contractor in writing to suspend, delay, or interrupt all or any part of its performance for such period of time as the Procurement Officer may determine to be appropriate for the convenience of the State.

39. Pre-Existing Regulations

In accordance with the provisions of Section 11-206 of the State Finance and Procurement Article, Annotated Code of Maryland, the regulations set forth in Title 21 of the Code of Maryland Regulations (COMAR 21) in effect on the date of execution of this Contract are applicable to this Contract.

40. Financial Disclosure

The Contractor shall comply with the provisions of Section 13-221 of the State Finance and Procurement Article, Annotated Code of Maryland, which requires that every business that enters into contracts, leases, or other agreements with the State or its agencies during a calendar year under which the business is to receive in the aggregate, \$100,000 or more, shall within 30 days of the time when the aggregate value of these contracts, leases or other agreements reaches \$100,000, file with the Secretary of the State of Maryland certain specified information to include disclosure of beneficial ownership of the business.

41. Political Contribution Disclosure

The Contractor shall comply with Election Law Article, Title 14, Annotated Code of Maryland, which requires that every person that enters into a procurement contract with the State, a county, or a municipal corporation, or other political subdivision of the State, during a calendar year in which the person receives a contract with a governmental entity in the amount of \$200,000 or more, shall, file with the State Board of Elections statements disclosing: (a) any contributions made during the reporting period to a candidate for elective office in any primary or general election; and (b) the name of each candidate to whom one or more contributions in a cumulative amount of \$500 or more were made during the reporting period. The statement shall be filed with the State Board of Elections: (a) before execution of a contract by the State, a county, a municipal corporation, or other political subdivision of the State, and shall cover the 24 months prior to when a contract was awarded; and (b) if the contribution is made after the execution of a contract, then twice a year, throughout the contract term, on or before: (i) May 31, to cover the six (6) month period ending April 30; and (ii) November 30, to cover the six (6) month period ending October 31. Additional information is available on the State Board of Elections website: http://www.elections.state.md.us/campaign_finance/index.html.

42. Retention of Records

The Contractor and subcontractors shall retain and maintain all records and documents relating to this Contract for (i) three (3) years after final payment by the State hereunder, or (ii) any applicable federal or State retention requirements (such as HIPAA) or condition of award, whichever is longer, and shall make them available for inspection and audit by authorized representatives of the State, as designated by the Procurement Officer, at all reasonable times. The Contractor shall provide copies of all documents requested by the State, including, but not limited to itemized billing documentation containing the dates, hours spent and work performed by the Contractor and its subcontractors under the Contract. All records related in any way to the Contract are to be retained for the entire time provided under this section.

43. Right to Audit

43.1 The State reserves the right, at its sole discretion and at any time, to perform an audit of the Contractor's performance under this Contract. An audit is defined as a planned and documented independent activity performed by qualified personnel including but not limited to State and federal auditors, to determine by investigation, examination, or evaluation of objective evidence from data, statements, records, operations and performance practices (financial or otherwise) the Contractor's compliance with the Contract, including but not limited to adequacy and compliance with established procedures and internal controls over the services being performed pursuant to the Contract.

43.2 Upon three (3) Business Days' notice, the State shall be provided reasonable access to the Contractor's records to perform any such audits. The Board may conduct these audits with any or all of its own internal resources or by securing the services of a third party accounting or audit firm, solely at the Board's election. The Board may copy, at its own expense, any record related to the services performed and provided under this Contract. The Contractor agrees to fully cooperate and assist in any audit conducted by or on behalf of the State, including, by way of example only, making records and employees available as, where, and to the

extent requested by the State and by assisting the auditors in reconciling any audit variances. The Contractor shall be compensated for providing any such cooperation and assistance.

- 43.3 The right to audit shall include any of the Contractor's subcontractors including but not limited to any lower tier subcontractor(s). The Contractor shall ensure the Board has the right to audit such subcontractor(s).
- 43.4 The Contractor and/or subcontractors shall cooperate with Board and Board's designated accountant or auditor and shall provide the necessary assistance for the Board or Board's designated accountant or auditor to conduct the audit.
- 43.5 This Section shall survive expiration or termination of the Contract.

44. Compliance with Laws

The Contractor hereby represents and warrants that:

- (a) It is qualified to do business in the State and that it will take such action as, from time to time hereafter, may be necessary to remain so qualified;
- (b) It is not in arrears with respect to the payment of any monies due and owing the State, or any department or unit thereof, including but not limited to the payment of taxes and employee benefits, and that it shall not become so in arrears during the Term;
- (c) It shall comply with all federal, State and local laws, regulations, and ordinances applicable to its activities and obligations under this Contract; and
- (d) It shall obtain, at its expense, all licenses, permits, insurance, and governmental approvals, if any, necessary to the performance of its obligations under this Contract.

45. Cost and Price Certification

- 45.1 The Contractor, by submitting cost or price information, certifies that, to the best of its knowledge, the information submitted is accurate, complete, and current as of the date of its Proposal.
- 45.2 The price under this Contract and any change order or modification hereunder, including profit or fee, shall be adjusted to exclude any significant price increases occurring because the Contractor furnished cost or price information which, as of the date of its Proposal, was inaccurate, incomplete, or not current.

46. Subcontracting; Assignment

The Contractor may not subcontract any of its obligations under this Contract without obtaining the prior written approval of the Procurement Officer, nor may the Contractor assign this Contract or any of its rights or obligations hereunder, without the prior written approval of the Procurement Officer, each at the State's sole and absolute discretion; provided, however, that a Contractor may assign monies receivable under a contract after written notice to the State. Any subcontracts shall include such language as may be required in various clauses contained within this Contract, exhibits, and attachments. The Contract shall not be assigned until all approvals, documents, and affidavits are completed and properly registered. The State shall not be responsible for fulfillment of the Contractor's obligations to its subcontractors.

47. Limitations of Liability

- 47.1 The Contractor shall be liable for any loss or damage to the State occasioned by acts or omissions of the Contractor, its subcontractors, agents or employees as follows:

- (a) For infringement of patents, trademarks, trade secrets, and copyrights, as provided in **Section 25** (*Patents, Copyrights and Intellectual Property*);
- (b) Without limitation for damages for bodily injury (including death) and damage to real property and tangible personal property; and
- (c) For all other claims, damages, losses, costs, expenses, suits, or actions in any way related to this Contract, regardless of the form the Contractor's liability for third party claims arising under **Section 28** (*Indemnification and Notification of Legal Requests*) shall be unlimited.

47.2 The Contractor's indemnification obligations for third party claims arising under **Section 28** of this Contract are included in this limitation of liability only if the State is immune from liability. The Contractor's indemnification liability for third party claims arising under **Section 28** shall be unlimited if the State is not immune from liability for claims arising under **Section 28**.

47.3 In no event shall the existence of a subcontract operate to release or reduce the liability of the Contractor hereunder. For purposes of this Contract, the Contractor agrees that it is responsible for performance of the services and compliance with the relevant obligations hereunder by its subcontractors.

48. Commercial Nondiscrimination

48.1 As a condition of entering into this Contract, the Contractor represents and warrants that it will comply with the State's Commercial Nondiscrimination Policy, as described at under Title 19 of the State Finance and Procurement Article, Annotated Code of Maryland. As part of such compliance, the Contractor may not discriminate on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation, sexual identity, genetic information or an individual's refusal to submit to a genetic test or make available the results of a genetic test or on the basis of disability or otherwise unlawful forms of discrimination in the solicitation, selection, hiring, or commercial treatment of subcontractors, vendors, suppliers, or commercial customers, nor shall the Contractor retaliate against any person for reporting instances of such discrimination. The Contractor shall provide equal opportunity for subcontractors, vendors, and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that this clause does not prohibit or limit lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the marketplace. The Contractor understands that a material violation of this clause shall be considered a material breach of this Contract and may result in termination of this Contract, disqualification of the Contractor from participating in State contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party.

48.2 As a condition of entering into this Contract, upon the request of the Commission on Civil Rights, and only after the filing of a complaint against the Contractor under Title 19 of the State Finance and Procurement Article, Annotated Code of Maryland, as amended from time to time, the Contractor agrees to provide within sixty (60) days after the request a complete list of the names of all subcontractors, vendors, and suppliers that Contractor has used in the past four (4) years on any of its contracts that were undertaken within the State of Maryland, including the total dollar amount paid by Contractor on each subcontract or supply contract. Contractor further agrees to cooperate in any investigation conducted by the State pursuant to the State's Commercial Nondiscrimination Policy as set forth under Title 19 of the State Finance and Procurement Article, Annotated Code of Maryland, and provide any documents relevant to any investigation that are requested by the State. Contractor understands that violation of this clause is a material breach of this Contract and may result in contract termination, disqualification by the State from participating in State contracts, and other sanctions.

48.3 The Contractor shall include the language from 48.1, or similar clause approved in writing by the Board, in all subcontracts.

49. Prompt Pay Requirements

49.1 If the Contractor withholds payment of an undisputed amount to its subcontractor, the Board, at its option and in its sole discretion, may take one or more of the following actions:

- (a) Not process further payments to the Contractor until payment to the subcontractor is verified;
- (b) Suspend all or some of the contract work without affecting the completion date(s) for the Contract work;
- (c) Pay or cause payment of the undisputed amount to the subcontractor from monies otherwise due or that may become due to the Contractor;
- (d) Place a payment for an undisputed amount in an interest-bearing escrow account; or
- (e) Take other or further actions as appropriate to resolve the withheld payment.

49.2 An “**undisputed amount**” means an amount owed by the Contractor to a subcontractor for which there is no good faith dispute. Such “**undisputed amounts**” include, without limitation:

- (a) Retainage which had been withheld and is, by the terms of the agreement between the Contractor and subcontractor, due to be distributed to the subcontractor; and
- (b) An amount withheld because of issues arising out of an agreement or occurrence unrelated to the agreement under which the amount is withheld.

49.3 An act, failure to act, or decision of a Procurement Officer or a representative of the Board, concerning a withheld payment between the Contractor and a subcontractor under this provision, may not:

- (a) Affect the rights of the contracting parties under any other provision of law;
- (b) Be used as evidence on the merits of a dispute between the Board and the Contractor in any other proceeding; or
- (c) Result in liability against or prejudice the rights of the Board.

49.4 The remedies enumerated above are in addition to those provided under COMAR 21.11.03.13 with respect to subcontractors that have contracted pursuant to the Minority Business Enterprise (MBE) program.

49.5 To ensure compliance with certified MBE subcontract participation goals, the Board may, consistent with COMAR 21.11.03.13, take the following measures:

- (a) Verify that the certified MBEs listed in the MBE participation schedule actually are performing work and receiving compensation as set forth in the MBE participation schedule. This verification may include, as appropriate:
 - i. Inspecting any relevant records of the Contractor;
 - ii. Inspecting the jobsite; and
 - iii. Interviewing subcontractors and workers.

Verification shall include a review of:

- i. The Contractor’s monthly report listing unpaid invoices over thirty (30) days old from certified MBE subcontractors and the reason for nonpayment; and

- ii. The monthly report of each certified MBE subcontractor, which lists payments received from the Contractor in the preceding thirty (30) days and invoices for which the subcontractor has not been paid.
- (b) If the Board determines that the Contractor is not in compliance with certified MBE participation goals, then the Board will notify the Contractor in writing of its findings, and will require the Contractor to take appropriate corrective action. Corrective action may include, but is not limited to, requiring the Contractor to compensate the MBE for work performed as set forth in the MBE participation schedule.
 - (c) If the Board determines that the Contractor is in material noncompliance with MBE contract provisions and refuses or fails to take the corrective action that the Board requires, then the Board may:
 - i. Terminate the contract;
 - ii. Refer the matter to the Office of the Attorney General for appropriate action; or
 - iii. Initiate any other specific remedy identified by the contract, including the contractual remedies required by any applicable laws, regulations, and directives regarding the payment of undisputed amounts.
 - (d) Upon completion of the Contract, but before final payment or release of retainage or both, the Contractor shall submit a final report, in affidavit form under the penalty of perjury, of all payments made to, or withheld from, MBE subcontractors.

50. Living Wage

If a Contractor subject to the Living Wage law fails to submit all records required under COMAR 21.11.10.05 to the Commissioner of Labor and Industry at the Department of Labor, Licensing and Regulation, the agency may withhold payment of any invoice or retainage. The agency may require certification from the Commissioner on a quarterly basis that such records were properly submitted.

51. Use of Estimated Quantities

Unless specifically indicated otherwise in the State’s solicitation or other controlling documents related to the Scope of Work, any sample amounts provided are estimates only and the Board does not guarantee a minimum or maximum number of units or usage in the performance of this Contract.

52. Risk of Loss; Transfer of Title

Risk of loss for conforming supplies, equipment, materials and Deliverables furnished to the State hereunder shall remain with the Contractor until such supplies, equipment, materials and Deliverables are received and accepted by the State, following which, title shall pass to the State.

53. Effect of Contractor Bankruptcy

All rights and licenses granted by the Contractor under this Contract are and shall be deemed to be rights and licenses to “intellectual property,” and the subject matter of this Contract, including services, is and shall be deemed to be “embodiments of intellectual property” for purposes of and as such terms are used and interpreted under § 365(n) of the United States Bankruptcy Code (“Code”) (11 U.S.C. § 365(n) (2010)). The State has the right to exercise all rights and elections under the Code and all other applicable bankruptcy, insolvency and similar laws with respect to this Contract (including all executory statement of works). Without limiting the generality of the foregoing, if the Contractor or its estate becomes subject to any bankruptcy or similar proceeding: (a) subject to the State’s rights of election, all rights and licenses granted to the State under this Contract shall continue subject to the respective terms and conditions of this Contract; and (b) the State shall be entitled to a complete duplicate of (or complete access to, as appropriate) all such

intellectual property and embodiments of intellectual property, and the same, if not already in the State's possession, shall be promptly delivered to the State, unless the Contractor elects to and does in fact continue to perform all of its obligations under this Contract.

54. Contract Monitor and Procurement Officer

- 54.1 The Contract Monitor is the State representative for this Contract who is primarily responsible for Contract administration functions, including issuing written direction, invoice approval, monitoring this Contract to ensure compliance with the terms and conditions of the Contract, monitoring MBE compliance, and achieving completion of the Contract on budget, on time, and within scope. The Contract Monitor may authorize in writing one or more State representatives to act on behalf of the Contract Monitor in the performance of the Contract Monitor's responsibilities. The Board may change the Contract Monitor at any time by written notice to the Contractor.
- 54.2 The Procurement Officer has responsibilities as detailed in the Contract, and is the only State representative who can authorize changes to the Contract. The Board may change the Procurement Officer at any time by written notice to the Contractor.

55. Notices

All notices hereunder shall be in writing and either delivered personally or sent by certified or registered mail, postage prepaid, as follows:

If to the State: Richard Arthur, MSRP Director of Technology & Operations
Procurement Officer
6 Saint Paul Street, Suite 200
Baltimore, Maryland 21202
Email Richard.Arthur@maryland.gov

If to the Contractor: _____

56. Liquidated Damages

- 56.1 The Contract requires the Contractor to comply with the MBE Program and Contract provisions. The State and the Contractor acknowledge and agree that the State will incur damages, including, but not limited to, loss of goodwill, detrimental impact on economic development, and diversion of internal staff resources, if the Contractor does not comply with the requirements of the MBE Program and MBE Contract provisions. The parties further acknowledge and agree that the damages the State might reasonably be anticipated to accrue as a result of such lack of compliance are difficult to ascertain with precision.
- 56.2 Therefore, upon issuance of a written determination by the State that the Contractor failed to comply with one or more of the specified MBE Program requirements or MBE Contract provisions, the Contractor shall pay liquidated damages to the State at the rates set forth below. The Contractor expressly agrees that the State may withhold payment on any invoices as a set-off against liquidated damages owed. The Contractor further agrees that for each specified violation, the agreed-upon liquidated damages are reasonably proximate to the loss the State is anticipated to incur as a result of such violation.
 - (a) Failure to submit each monthly payment report in full compliance with COMAR 21.11.03.13B(3): \$67 per day until the monthly report is submitted as required.

- (b) Failure to include in its agreements with MBE subcontractors a provision requiring submission of payment reports in full compliance with COMAR 21.11.03.13B(4): \$67 per MBE subcontractor.
- (c) Failure to comply with COMAR 21.11.03.12 in terminating, canceling, or changing the scope of work/value of a contract with an MBE subcontractor and/or amendment of the MBE participation schedule: the difference between the dollar value of the MBE participation commitment on the MBE participation schedule for that specific MBE firm and the dollar value of the work performed by that MBE firm for the Contract.
- (d) Failure to meet the Contractor's total MBE participation goal and subgoal commitments: the difference between the dollar value of the total MBE participation commitment on the MBE participation schedule and the MBE participation actually achieved.
- (e) Failure to promptly pay all undisputed amounts to a subcontractor in full compliance with the prompt payment provisions of the Contract: \$67 per day until the undisputed amount due to the subcontractor is paid.

56.3 Notwithstanding the assessment or availability of liquidated damages, the State reserves the right to terminate the Contract and exercise any and all other rights or remedies which may be available under the Contract or Law.

If a Contractor intends to rely on its Parent Company in some manner while performing on the State Contract, the following clause should be included and completed for the Contractor's Parent Company to guarantee performance of the Contractor. The guarantor/Contractor's Parent Company should be named as a party and signatory to the Contract and should be in good standing with SDAT.

57. Parent Company Guarantee

(Corporate name of Contractor's Parent Company) hereby guarantees absolutely the full, prompt, and complete performance by (Contractor) of all the terms, conditions and obligations contained in this Contract, as it may be amended from time to time, including any and all exhibits that are now or may become incorporated hereunto, and other obligations of every nature and kind that now or may in the future arise out of or in connection with this Contract, including any and all financial commitments, obligations, and liabilities. (Corporate name of Contractor's Parent Company) may not transfer this absolute guaranty to any other person or entity without the prior express written approval of the State, which approval the State may grant, withhold, or qualify in its sole and absolute subjective discretion. (Corporate name of Contractor's Parent Company) further agrees that if the State brings any claim, action, lawsuit or proceeding against (Contractor), (Corporate name of Contractor's Parent Company) may be named as a party, in its capacity as Absolute Guarantor.

58. Miscellaneous

- 58.1 Any provision of this Contract which contemplates performance or observance subsequent to any termination or expiration of this Contract shall survive termination or expiration of this Contract and continue in full force and effect.
- 58.2 If any term contained in this Contract is held or finally determined to be invalid, illegal, or unenforceable in any respect, in whole or in part, such term shall be severed from this Contract, and the remaining terms contained herein shall continue in full force and effect, and shall in no way be affected, prejudiced, or disturbed thereby.
- 58.3 The headings of the sections contained in this Contract are for convenience only and shall not be deemed to control or affect the meaning or construction of any provision of this Contract.

58.4 This Contract may be executed in any number of counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument. Signatures provided by facsimile or other electronic means, e.g., and not by way of limitation, in Adobe .PDF sent by electronic mail, shall be deemed to be original signatures.

[Signatures Appear on Following Page]

IN WITNESS THEREOF, the parties have executed this Contract as of the date hereinabove set forth.

CONTRACTOR

**STATE OF MARYLAND
BOARD OF TRUSTEES
MARYLAND TEACHERS & STATE EMPLOYEES
SUPPLEMENTAL RETIREMENT PLANS**

By:

By: Michael T. Halpin
Executive Director and Secretary to the Board

Date

Witness

Date

Date
Approved for form and legal sufficiency
this ____ day of _____, 20__.

Witness

Assistant Attorney General

APPROVED BY BPW: _____
(Date)

(BPW Item #)

ATTACHMENT N – CONTRACT AFFIDAVIT

See link at <http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Attachment-N-ContractAffidavit.pdf>.

ATTACHMENT O – DHR HIRING AGREEMENT

This solicitation does not require a DHR Hiring Agreement.

APPENDIX 1

Abbreviations and Definitions

For purposes of this RFP, the following abbreviations or terms have the meanings indicated below:

1. **Board, or MSRP Board** – The Board of Trustees of the Maryland Teachers and State Employees Supplemental Retirement Plans.
2. **Business Day(s)** – The official working days of the week to include Monday through Friday. Official working days exclude State Holidays (see definition of “**Normal State Business Hours**” below).
3. **COMAR** – Code of Maryland Regulations available on-line at www.dsd.state.md.us.
4. **Contract** – The Contract awarded to the successful Offeror pursuant to this RFP. The Contract will be in the form of **Attachment M**.
5. **Contract Commencement** - The date the Contract is signed by the Board following any required approvals of the Contract, including approval by the Board of Public Works, if such approval is required.
6. **Contract Monitor** – The State representative for this Contract who is primarily responsible for Contract administration functions, including issuing written direction, invoice approval, monitoring this Contract to ensure compliance with the terms and conditions of the Contract, monitoring MBE and VSBE compliance, and achieving completion of the Contract on budget, on time, and within scope. The Contract Monitor may authorize in writing one or more State representatives to act on behalf of the Contract Monitor in the performance of the Contract Monitor’s responsibilities.
7. **Contractor** – The selected Offeror that is awarded a Contract by the State.
8. **eMM** – eMaryland Marketplace. *See* Section 4.2.
9. **Go-Live Date** – The date, as specified in the Notice to Proceed, when the Contractor must begin providing all services required by this solicitation. *See* Notice to Proceed below.
10. **Key Personnel** – All personnel identified in the solicitation as such, or personnel identified by the Offeror in its Proposal that are essential to the work being performed under the Contract. *See* Sections 3.10 and 5.4.2.7.
11. **Local Time** – Time in the Eastern Time Zone as observed by the State of Maryland. Unless otherwise specified, all stated times shall be Local Time, even if not expressly designated as such.
12. **Minority Business Enterprise (MBE)** – Any legal entity certified as defined at COMAR 21.01.02.01B(54) which is certified by the Maryland Department of Transportation under COMAR 21.11.03.
13. **MSRP** – The Maryland Teachers and State Employees Supplemental Retirement Plans, and the shortened title of Maryland Supplemental Retirement Plans.
14. **Normal State Business Hours** - Normal State business hours are 8:00 a.m. – 5:00 p.m. Monday through Friday except State Holidays, which can be found at: www.dbm.maryland.gov – keyword: State Holidays.
15. **Notice to Proceed (NTP)** – A written notice from the Procurement Officer that, subject to the conditions of the Contract, work under the Contract is to begin as of a specified date. The start date listed in the NTP is the Go-Live Date, and is the official start date of the Contract for the actual delivery of services as described in

this solicitation. After Contract Commencement, additional NTPs may be issued by either the Procurement Officer or the Board Contract Monitor regarding the start date for any service included within this solicitation with a delayed or non-specified implementation date.

16. **Offeror** – An entity that submits a Proposal in response to this RFP.
17. **Procurement Officer** – Prior to the award of any Contract, the sole point of contact in the State for purposes of this solicitation. After Contract award, the Procurement Officer has responsibilities as detailed in the Contract (Attachment M), and is the only State representative who can authorize changes to the Contract. The Board may change the Procurement Officer at any time by written notice to the Contractor.
18. **Proposal** – As appropriate, either or both of an Offeror’s Technical or Financial Proposal.
19. **Request for Proposals (RFP)** – This Request for Proposals issued by the Board, with the Solicitation Number and date of issuance indicated in the RFP Key Information Summary Sheet (near the beginning of the solicitation, after the Title Page and Notice to Vendors), including any addenda.
20. **State** – The State of Maryland.
21. **Five –Year Total Proposal Price** - The Offeror’s total proposed price for services in response to this solicitation, included in the Financial Proposal with Attachment B-2 – Financial Proposal Form, and used in the financial evaluation of Proposals (*see* Section 5.3).