

# REQUEST FOR PROPOSALS

## Statewide Personnel System Software as a Service Human Capital Management Solution

PROJECT NO. 060B3490012



State of Maryland  
Department of Information Technology (DoIT)

May 22, 2013

### NOTICE:

Prospective Offeror who has received this document from the DoIT's website or eMarylandMarketplace.com, or who has received this document from a source other than the Procurement Officer, and who wish to assure receipt of any changes or additional materials related to this RFP, should immediately contact the Procurement Officer and provide their name and mailing address so that amendments to the RFP or other communications can be sent to them.

*Minority Business Enterprises are encouraged to respond to this Solicitation.*

## **KEY INFORMATION SUMMARY SHEET**

### **Statewide Personnel System SaaS HCM Solution**

**PROJECT NO. 060B3490012**

**RFP Issue Date:** May 22, 2013

**RFP Issuing Office:** Department of Information Technology  
Information Technology Procurement Office (ITPO)

**Procurement Officer:** Edward Bannat  
DoIT  
45 Calvert Street, Room 445  
Annapolis, Maryland 21401  
Phone Number: 410.260.7662  
Fax: 410.974.5616  
Email: [Edward.Bannat@maryland.gov](mailto:Edward.Bannat@maryland.gov)

**Contract Type:** Fixed Price

**Proposals are to be sent to:** Edward Bannat  
DoIT  
45 Calvert Street, Room 445  
Annapolis, Maryland 21401

**Pre-Proposal Conference:** Wednesday, June 19, 2013 at 01:00 PM local time

**Location:** Conference Room L-2  
(Located inside the State of Maryland Building)  
201 West Preston Street, O'Connor Building,  
Baltimore, MD, 21201

**Response due by:** Wednesday, July 10, 2013 at 2:00 PM local time

## NOTICE TO VENDORS/CONTRACTORS

To help us improve the quality of State solicitations, and make our procurement process more responsive and “business friendly,” we ask that you take a few minutes to complete this form. Please return your comments via fax or email to the Issuing Office ([Section 1.5](#)), along with your bid, Proposals, or “no bid,” as the case may be. Thank you for your assistance.

Bid/Proposal No. 060B3490012 entitled Statewide Personnel System SaaS HCM Solution.

I. If you are not bidding, please indicate why:

- Other commitments preclude our participation at this time.
- The subject of the Contract is not in our business line.
- We lack experience in the work / commodities required.
- The scope of work is beyond our current capacity.
- We cannot be competitive. (Please explain below.)
- The specifications are either unclear or too restrictive. (Please explain below.)
- Bid/proposal requirements, other than the specifications, are unreasonable or too risky. (Please explain below.)
- Time for completion is insufficient.
- Bonding/Insurance requirements are prohibitive. (Please explain below.)
- Doing business with Government is simply too complicated.
- Prior experience with State of Maryland contracts was unprofitable or otherwise unsatisfactory. (Please explain in Remarks section.)
- Other:

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II. Please explain your response further, offer suggestions, or express concerns. (Use the back for additional information.)

REMARKS: \_\_\_\_\_

OPTIONAL: \_\_\_\_\_

Vendor Name: \_\_\_\_\_ Date: \_\_\_\_\_

Contact: \_\_\_\_\_ Phone: \_\_\_\_\_

Address or Email: \_\_\_\_\_

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## **SECTION 1 - GENERAL INFORMATION**

### **1.1 Summary Statement**

The State of Maryland (State) Department of Information Technology (DoIT) is issuing this Request for Proposals (RFP), on behalf of the Department of Budget and Management's (DBM) Office of Personnel Services and Benefits (OPSB), with the intent to procure the subscription and optional services from the successful Offeror to replace the existing Statewide Personnel Management System (SPMS), Benefits Application System (BAS), multiple timekeeping systems and a number of peripheral systems with an integrated Statewide Personnel System (SPS) using a multi-tenant, cloud, subscription-based human capital management (HCM) software-as-a-service (SaaS) solution. The SPS SaaS solution may include SaaS HCM product along with any required third party SaaS product(s) and optional services for the proposed SPS for a base term of five (5) years with two (2) optional five-year renewal terms. The anticipated award will be a fixed price (FP) contract.

The RFP for the implementation services will be released at a later date after the SPS SaaS Solution has been selected.

### **1.2 Maryland Ethics Law**

Under State Government Article, § 15-508, Annotated Code of Maryland, an Offeror who employs an individual who assists the State in drafting specifications for an invitation for bids or an RFP for a procurement may not submit a bid or proposals for the procurement or assist or represent another person, directly or indirectly, who is submitting a bid or proposals for that procurement. An Offeror with any questions regarding the applicability of this provision of the State Ethics Law in connection with this procurement should contact the State Ethics Commission at 45 Calvert Street, 3rd Floor, Annapolis, MD 21401 (Tel.: 410-260-7770, Toll-Free: 1-877-669-6085, Fax: 410-260-7747)

### **1.3 Contract Type**

The Contract that results from this RFP shall be a Fixed Price (FP) contract in accordance with COMAR 21.06.03.02.

### **1.4 Contract Duration**

The Contract(s) resulting from this RFP shall be for an initial base period of five (5) years, beginning upon the State's issuance of a Notice to Proceed (NTP).

The State, at its sole option, may renew the term of the Contract(s) for up to two (2) additional five-year renewal periods for a total potential contract length of 15 years.



## 1.5 Procurement Officer

The sole point of contact in the State for purposes of this RFP prior to the award of any contract is the Procurement Officer at the address listed below:

Edward Bannat  
DoIT  
45 Calvert Street, Room 445  
Annapolis, Maryland 21401  
Phone Number: 410.260.7662  
Email: [Edward.Bannat@maryland.gov](mailto:Edward.Bannat@maryland.gov)

DoIT may change the Procurement Officer at any time by written notice.

## 1.6 Contract Manager

The State's Contract Manager (CM) for the Contract resulting from this RFP will be:

Gagan Setia  
DoIT/DBM  
Senior Program Manager  
301 W. Preston Street, Room 507  
Baltimore, MD 21201  
Phone Number: 410.767.4085  
Email: [Gagan.Setia@maryland.gov](mailto:Gagan.Setia@maryland.gov)

DoIT may change the CM at any time by written notice.

## 1.7 eMarylandMarketplace (eMM)

eMM is an electronic commerce system administered by the Maryland Department of General Services. In addition to using the DoIT website, [www.doit.maryland.gov](http://www.doit.maryland.gov), and other means for transmitting the RFP and associated materials, the solicitation and minutes of the Pre-Bid/Proposal Conference, Offeror questions and the Procurement Officer's responses, addenda, and other solicitation-related information will be provided via eMM. This means that all such information is immediately available to eMM subscribers. Because of the instant access afforded by eMM, all Offerors interested in doing business with State agencies should subscribe to eMM. Furthermore, prior to award of any contract, the apparent awardee must be registered on eMM. Registration is free. Register at: <https://emaryland.buyspeed.com/bsol/>. Click on "Registration" to begin the process and follow the prompts.

## 1.8 Pre-Proposal Conference

A Pre-Proposal Conference (PPC) will be held on Wednesday, June 19, 2013, beginning at 1:00 PM. Attendance at the Pre-Proposal Conference is not mandatory, but all interested Offerors are encouraged to attend in order to facilitate better preparation of their proposals. The conference will be held in the Conference Room L-2 located inside the State Building, 201 West Preston Street, O'Connor Building, Baltimore, MD 21201.



Due to the anticipated interest in this RFP, seating at the PPC will be limited to two (2) attendees per company. Attendees should bring a copy of the RFP and a business card to help facilitate the sign-in process.

As promptly as is feasible subsequent to the PPC, the attendance record, and all questions and answers known at that time will be distributed via email to all prospective Offerors known to have received a copy of this RFP.

In order to assure adequate seating and other accommodations at the PPC, please email the Pre-Proposal Conference Response Form to [Edward.Bannat@maryland.gov](mailto:Edward.Bannat@maryland.gov) no later than 4:00 PM on June 12, 2013. The Pre-Proposal Conference Response Form is included as [Attachment H](#). In addition, if there is a need for sign language interpretation and/or other special accommodations due to a disability, please contact the Procurement Officer no later than June 10, 2013. DoIT will make reasonable efforts to provide such special accommodation.

## 1.9 Questions and Inquiries

All questions must be submitted via email to the Procurement Officer no later than 4:00 PM on Wednesday, June 26, 2013. No substantive question will be answered prior to the PPC. If possible and appropriate, such questions will be answered at the PPC. Questions, both oral and written, will also be accepted during the PPC. Answers given orally are not final or binding. Answers can be considered final and binding only when they have been answered in writing by the State. The final set of answers to all substantive questions that have not previously been answered, and are not administrative questions clearly specific only to the requestor, will be posted on eMM by Wednesday, July 03, 2013.

If an Offeror believes that the State has omitted a component that is required to complete the SPS SaaS Solution, the Offeror shall identify these omissions in a letter to the Procurement Officer to be submitted as soon as possible, but in no event later than the deadline for submitting questions. The Offeror shall not include the cost of any potential missing component or service element in its Financial Proposal. The State will review any potential omissions identified by Offerors and determine what, if any, follow-up action is appropriate.

## 1.10 Submission of Proposal

One unbound original and six bound copies of each Proposal (Technical and Financial, each in a separate envelope) must be received by the Procurement Officer, at the address listed in [Section 1.5](#), **no later than 2:00 PM (local time) on Wednesday, July 10, 2013**, in order to be considered. A CD or flash drive containing the Technical Proposal in Microsoft Word format shall be enclosed with the original printed Technical Proposal. A CD or flash drive of the Financial Proposal in Microsoft Excel format (not in PDF format) shall be enclosed with the original printed Financial Proposal. Label all CDs/flash drives with the RFP title, RFP number, and Offeror name and enclose with the original copy of the appropriate Proposal (Technical or Financial). Detailed instructions for preparing the Offeror's proposals are provided in [Section 3](#) of the RFP.

Requests for extension of this date or time 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, proposals received by the Procurement Officer after the **due date and time, Wednesday, July 10, 2013 at 2:00 PM (local time)** will not be considered.

*Proposals may not be submitted by email or facsimile.*

### **1.11 Duration of Offer**

Proposals submitted in response to this RFP are irrevocable for 180 days following the later of the closing date of proposals or best and final offers (BAFOs) if requested. This period may be extended at the Procurement Officer's request only with the Offeror's written agreement.

### **1.12 Multiple and Alternate Proposals**

Neither multiple nor alternate proposals will be accepted.

### **1.13 Revisions to the RFP**

If it becomes necessary to revise this RFP before the due date for proposals, amendments will be provided to all prospective Offerors who were sent this RFP or otherwise are known by the Procurement Officer to have obtained this RFP. In addition, amendments to the RFP will be posted on the DoIT Procurement website and through eMM. Amendments made after the due date for proposals will be sent only to those Offerors who submitted a timely proposal.

Acknowledgment of the receipt of all amendments to this RFP, issued before the proposal due date, must accompany the Offeror's proposal. Failure to acknowledge receipt of amendments does not relieve the Offeror from complying with all terms of any such amendments.

Acknowledgement of the receipt of amendments to the RFP, issued after the proposal due date, shall be in the manner specified in the amendment notice.

### **1.14 Proposal Modification and Withdrawal**

Proposals may be modified or withdrawn by written notice received in the Issuing Office designated in this RFP on or before the Proposal closing date and time.

### **1.15 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, to waive or permit cure of minor irregularities, and to conduct discussions with potentially qualified Offeror(s) 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.

### **1.16 Offeror Software Demonstration and Validation Workshop and Oral Presentation**

Offerors that are deemed to have met all Minimum Qualifications per [Section 2.7](#) are required to conduct a software demonstration and validation workshop and then provide an oral presentation at a State location to be determined in the Baltimore/Annapolis area.

### **1.16.1 Software Demonstration and Validation Workshop**

The Offeror shall conduct a software demonstration and validation workshop of their proposed SaaS HCM product along with all proposed third party SaaS product(s) components. The State's proposal evaluation team will establish a workshop schedule. Each Offeror will be allotted two days for the software demonstration and validation workshop.

The software demonstration and validation workshop of the Offeror's proposed SaaS HCM product shall be conducted by representatives of the Offeror. The software demonstration of any other proposed third-party application software solution components, where the software vendor is not the Offeror, may be conducted by representatives of the software vendor of that software component, under the direction of the Offeror.

The Offeror shall demonstrate all of the requirements identified in [Attachment F10a](#). The State's proposal evaluation team will establish a detailed agenda for the workshop. This detailed agenda will be provided to Offerors two weeks prior to their scheduled workshop date. The State will provide a meeting room with Internet access. All other resources required for the software demonstration and validation workshop shall be the responsibility of the Offeror.

The State requires a workshop that includes as many opportunities as possible for the State's proposal evaluation team to be hands-on in performing various functions in the proposed SaaS HCM product and any other proposed third-party application software components, versus a workshop that consists entirely of the Offeror demonstrating the capabilities of their proposed SPS SaaS Solution.

Offeror shall confirm in writing any substantive oral clarification of, or change in, their proposal made in the course of discussions with the State or during the software demonstration and validation workshop. Any such written clarification or change shall become part of the Offeror's proposal.

### **1.16.2 Offeror Oral Presentations**

Offerors that are deemed to have met all Minimum Qualifications per [Section 2.7](#) shall be required to make an oral presentation to summarize their technical proposal to the State's proposal evaluation team. The State's proposal evaluation team will establish a presentation schedule. The oral presentations will take place following the completion of each Offeror's software demonstration and validation workshop. Each Offeror shall be allotted one (1) day for the presentation.

The State's proposal evaluation team will establish an agenda to identify the topics and materials to be addressed during the oral presentation. The presentation schedule will provide each Offeror invited to present an equal opportunity to adequately prepare and distribute requested materials prior to the scheduled presentation. The proposal evaluation team may, at its option, ask questions of the Offeror to clarify any function, service, or technical capability included in the Offeror's proposal. The State will provide a meeting room with Internet access. All other resources required for the oral presentation shall be the responsibility of the Offeror.

Offerors shall confirm in writing any substantive oral clarification of, or change in, their proposals made in the course of discussions with the State or during the oral presentation. Any such written clarification or change shall become part of the Offeror's proposal.

### **1.17 Incurred Expenses**

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

### **1.18 Economy of Preparation**

Proposals shall be prepared simply and economically, providing a straightforward, concise description of the Offeror's proposals to meet the requirements of this RFP.

### **1.19 Access to Public Information Act Notice**

An Offeror shall give specific attention to the clear identification of those portions of its proposal that it considers confidential, 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, Title 10, Subtitle 6, Part III of the State Government Article of the Annotated Code of Maryland.

Offeror is advised that, upon request for this information from a third-party, the Procurement Officer is required to make an independent determination whether the information can be disclosed. Information which is claimed to be confidential is to be placed after the Title Page and before the Table of Contents in the Technical Proposal and if applicable in the Financial Proposal.

### **1.20 Offeror Responsibilities**

The Offeror shall be responsible for all products and services required by this RFP. If an Offeror providing the services required by this RFP is a subsidiary of another entity, all information submitted by the Offeror, such as but not limited to, references and financial reports, shall pertain exclusively to the Offeror, unless the parent organization guarantees the performance of the subsidiary. If applicable, the Offeror's proposal shall contain an explicit statement that the parent organization will guarantee the performance of the subsidiary.

### **1.21 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 of this RFP and the Contract, attached as [Attachment A](#).

1. An Offeror shall raise all exceptions to the Contract, attached as [Attachment A](#), itemized with specific language, prior to submitting the technical proposal (see [Section 1.9](#)). In the Executive Summary, as contained in [Section 3.3.5](#), of their Technical Proposal it is expected that Offerors will commit to sign the State's Contract.
2. The Procurement Officer may consider exceptions to the functional and non-functional requirements of the Technical Proposal that are raised by Offerors in their submitted technical proposals.

A proposal that takes exception to these terms may be rejected and therefore determined to not be reasonably susceptible for award and eliminated from further consideration.

## **1.22 Bid/Proposal Affidavit**

A proposal submitted by an Offeror shall be accompanied by a completed Bid/Proposal Affidavit. A copy of this Affidavit is included as [Attachment B](#) of this RFP.

## **1.23 Contract Affidavit**

The Offeror is advised that if a contract is awarded as a result of this solicitation, the successful Offeror shall be required to complete a Contract Affidavit. A copy of this affidavit is included for informational purposes as [Attachment C](#) of this RFP. This affidavit shall be provided within five business days of notification of proposed contract award.

## **1.24 Minority Business Enterprises**

A MBE subcontractor participation goal of 0% has been established for this solicitation.

## **1.25 Arrearages**

By submitting a response to this solicitation, an 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 that it shall not become so in arrears during the term of the Contract if selected for contract award.

## **1.26 Procurement Method**

This Contract will be awarded in accordance with the competitive sealed proposals process described under COMAR 21.05.03.

## **1.27 Contract Award**

The State's target for awarding a contract, if any, is within 180 days after the closing date for submission of proposals or of BAFOs, if requested. The award of a contract will be subject to appropriate State approvals.

Award will be made to the responsible Offeror whose proposal is determined to be the most advantageous to the State, considering both the technical and financial factors set forth in this RFP.

## **1.28 Protests/Disputes**

Any protest or dispute relating to this RFP or the resulting Contract shall be subject to Title 15, Subtitle 2 of the State Finance and Procurement (SFP) Article, Annotated Code of Maryland; and COMAR 21 (State Procurement Regulations), Subtitle 10, Administrative and Civil Remedies.

## **1.29 Registration**

All corporations doing business in Maryland are required by law to be registered with the State, Department of Assessments and Taxation, State Office Building, Room 803, 301 West Preston Street, Baltimore, Maryland 21201. 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 the Department of Assessments and Taxation may disqualify an otherwise successful Offeror from final consideration and recommendation for contract award.

All corporations doing business in Maryland are also required to register with the Department of Labor, Licensing, and Regulation (DLLR) and shall have a resident agent. The resident agent shall be either an individual (not the corporation itself) with an address within the boundaries of Maryland or a corporation which represents other corporations as a resident agent.

### **1.30 Non-Disclosure Agreement**

All Offerors are advised that if a contract is awarded as a result of this RFP, the successful Offeror shall be required to complete a Non-Disclosure Agreement. A copy of this agreement is included for informational purposes as [Attachment S](#) of this RFP. This agreement shall be provided within five business days of notification of proposed contract award.

### **1.31 Conflict of Interest**

Prospective Offerors should be aware that the State Ethics Law, State Government Article, § 15-508, might limit the Offeror's ability to respond to this solicitation, depending upon specific circumstances.

### **1.32 False Statements**

Offeror is advised that § 11-205.1 of the SFP Article of the Annotated Code of Maryland provides as follows:

- In connection with a procurement contract a person may not willfully:
  - Falsify, conceal, or suppress a material fact by any scheme or device;
  - Make a false or fraudulent statement or representation of a material fact; or
  - Use a false writing or document that contains a false or fraudulent statement or entry of a material fact;
  - A person may not aid or conspire with another person to commit an act under subsection (a) of this section; and
  - 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 five (5) years or both.

### **1.33 Invoicing and Payments**

The Contractor shall submit a DPAF (provided as [Attachment G](#)) to the Contract Manager for signature. DPAFs shall be submitted as Microsoft Word documents by email. Following the return of the executed DPAF indicating "Accepted" and signed by the Contract Manager, the Contractor shall submit an invoice in accordance with the procedures described below in this section.

The invoice must be accompanied by a copy of the executed DPAF or payment may be withheld. All invoices shall be submitted within 30 calendar days after the DPAF acceptance by the State. Invoices submitted without the required information will not be processed for payment until the Offeror provides the required information.

The invoice shall identify "DoIT Fiscal Services" as the recipient and contain the following information:

- Invoice period (Period of performance covered by the invoice)
- Invoice date
- Invoice number
- Contractor name
- Federal taxpayer identification or (if owned by an individual) his/her Social Security number
- Contract number / Purchase Order number(s) being billed
- Contractor point of contact with telephone number
- Remittance address
- Deliverable name, as found in “2.9 Deliverables, Support Requirements, & Acceptance Criteria”
- Deliverable number, as found in “2.9 Deliverables, Support Requirements, & Acceptance Criteria”
- Name and address of the Requesting Agency (DoIT SPS Project Management Office)
- Amount due
- Approved timecards, if applicable

The Contractor shall send the original of each invoice and supporting documentation (itemized deliverables reference for each deliverable and signed Deliverable Product Acceptance Form (DPAF), [Attachment G](#), for each deliverable being invoiced) submitted for payment to the following email addresses:

- [LaFrance.Garlington@maryland.gov](mailto:LaFrance.Garlington@maryland.gov)
- [Gagan.Setia@maryland.gov](mailto:Gagan.Setia@maryland.gov)

Invoice for final payment shall be clearly marked as “FINAL” and submitted when all work requirements have been completed and no further charges are to be incurred under the contract. In no event shall any invoice be submitted later than 60 calendar days from the contract termination date or the State will refuse payment.

The Offeror shall invoice the State upon the State’s acceptance of each deliverable as defined in [Section 2.9](#).

### **1.34 Payments by Electronic Funds Transfer**

By submitting a response to this solicitation, the Contractor agrees to accept payments by electronic funds transfer unless the State Comptroller’s Office grants an exemption. The Contractor shall register using the COT/GAD X-10 Offeror Electronic Funds Transfer (EFT) Registration Request Form. Any request for exemption must be submitted to the State Comptroller’s Office for approval at the address specified on the COT/GAD X-10 form and must include the business identification information as stated on the form and include the reason for the exemption. The COT/GAD X-10 form can be downloaded from [www.compnet.comp.state.md.us/gad/pdf/GADX-10.pdf](http://www.compnet.comp.state.md.us/gad/pdf/GADX-10.pdf).

### 1.35 Prompt Pay

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 Minority Affairs (GOMA) dated August 1, 2008. The Directive seeks to ensure the prompt payment of all subcontractors on non-construction procurement contracts. If the Offeror is awarded a contract under this RFP, Offeror must comply with the prompt payment requirements outlined in the Contract, § 34 (see [Attachment A](#)). Additional information is available on the GOMA website at [www.oma.state.md.us](http://www.oma.state.md.us).

### 1.36 Financial Stability

Offeror is required to complete [Attachment J](#), Financial Information and Qualifications, and submit it with their RFP Response.

### 1.37 Software Escrow

Software escrow, at the State's option, may be required for any Offeror proposed third-party software components. The applicable software escrow provisions are contained in [Section 6](#) of the Contract.

### 1.38 Living Wage Requirements

A solicitation for services under a State contract valued at \$100,000 or more may be subject to Title 18, SFP, Annotated Code of Maryland. Additional information regarding the State's Living Wage requirement is contained in this solicitation (see [Attachment E1](#), entitled Living Wage Requirements for Service Contracts). If the Offeror fails to submit and complete the Affidavit of Agreement (see [Attachment E2](#), entitled Living Wage Affidavit), the Location Commission may determine an Offeror's proposal to be unacceptable.

Contractor and Subcontractors subject to the Living Wage Law shall pay each covered employee at least the required amount per hour as specified on the DLLR website at [www.dllr.maryland.gov](http://www.dllr.maryland.gov), if State contract services, valued at 50% or more of the total value of the contract, are performed in the Tier 1 Area. If State contract services, valued at 50% or more of the total contract value, are performed in the Tier 2 Area, an Applicant shall pay each covered employee at least the required amount per hour as specified on the DLLR website. 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) shall assign the tier based upon where the recipients of the services are located.

### 1.39 Non-Visual Access

Per COMAR 21.05.08.05, the Offeror warrants that the information technology offered under this bid or proposal is in compliance with Section 508 of the U.S. Rehabilitation Act and other identified standards for effective use of information technology for persons with visual impairments. The SaaS solution shall be accessed via the internet and that the State is responsible for providing adaptive technology for devices which will be used to access the internet.



## 1.40 Document Ownership

In the event of contract award, all data and documentation produced as part of the Contract shall become the exclusive property of DoIT, State of Maryland, and may not be removed by an employee of the Offeror without written permission of DoIT. Technical proposals received from Offerors in response to the RFP and the corresponding opened Financial Proposals shall become property of DoIT, State of Maryland. Unopened Financial Proposals will be returned to the Offeror.

## 1.41 Insurance

The Contractor shall maintain property and casualty insurance with minimum limits sufficient 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.

The Contractor shall maintain a policy of general liability insurance that is of the proper type and of sufficient limits that the State, their officials, employees, their agents, servants and guests are reasonably covered in the event of injury or death.

The Contractor shall require that any subcontractors that are utilized to fulfill the obligations of the Contract obtain and maintain similar levels of insurance and shall provide the State with the same documentation as is required of the Contractor.

- A. Worker's Compensation - The vendor shall maintain such insurance as necessary and/or as required under Worker's Compensation Acts, U.S. Longshoremen's and Harbor Workers' Compensation Act, and the Federal Employers Liability Act.
- B. General Liability - The Contractor shall purchase and maintain the following insurance protection for liability claims arising as a result of the Contractor's operations under this agreement.
- \$2,000,000 - General Aggregate Limit (other than products/completed operations)
  - \$2,000,000 - Products/completed operations aggregate limit
  - \$1,000,000 - Each Occurrence Limit
  - \$1,000,000 - Personal and Accidental Injury Limits
  - \$ 50,000 - Damages to Premises rented to you
  - \$ 5,000 - Medical Expense

The State will be named as an Additional Insured on all General Liability policies (Except Workman's Compensation) and Certificates of Insurance evidencing this coverage will be provided prior to the commencement of any activities. Such certificate(s) will contain a thirty (30) day prior notice of cancellation. Upon execution of a contract with the State, then current certificates of insurance will be provided to the State from time to time, as directed by the State. Failure to maintain insurance coverage of the specified types and levels will be a breach of contract.

In the event the State receives a notice of cancellation, the Contractor must provide the State with an alternate comparable insurance policy from another carrier at least thirty (30) days prior to the expiration of the Insurance policy then in effect if the cancellation was due to the end of the policy term, and within

thirty (30) days of notice of cancellation with coverage starting on or before the date of cancellation, if the cancellation was due to any other reason.

### **1.42 Third Party Contracts**

The Offeror shall identify all proposed third party SaaS products that are part of its overall proposed SPS SaaS Solution, and shall submit with its proposal all contracts that bind the Offeror and the third party SaaS product vendor(s) to provide the proposed third party SaaS products and services (“Third Party SaaS Contracts”). The Offeror agrees that, after the SPS Go-Live date, the State may request, and the Offeror shall agree, to the assignment to the State of any or all of these SaaS Third-Party Contracts, and to a termination for convenience, at no cost to the State, of the portion or portions of its Contract with the State that constitute the services or product(s) being provided under those Third Party SaaS Contracts.

## **SECTION 2 – STATEMENT OF WORK**

### **2.1 Purpose of Solicitation**

The purpose of this solicitation is to procure a multi-tenant, cloud, subscription based SaaS solution to replace SPMS, BAS, multiple timekeeping systems, and a number of related off-line or peripheral systems with a new SPS SaaS Solution. The SPS SaaS Solution shall consist of a multi-tenant cloud SaaS HCM product and any other third-party product(s) proposed by the Offeror to be integrated with the SaaS HCM product to best meet the State's functional and non-functional requirements. This also includes optional consulting services and business analytics capabilities that can be met either through the SaaS HCM product or third-party SaaS product(s).

The RFP for the implementation services will be released at a later date after the SPS SaaS Solution has been selected.

The primary goal of the SPS project is to transform the State's human resource business processes by adopting industry best practices and using the online transaction processing, business analytical capabilities in the new SPS to perform business functions in an effective and optimized manner. The State expects to be a leader in adopting human resource best practices within the government sector and to take a leadership role in the public sector users group of the selected SaaS HCM solution.

### **2.2 SPS Background**

OPSB, along with staff in each State agency, is responsible for personnel administration, including policy development, guidance, and interpretation. The OPSB Executive Director leads a staff of approximately 119 people. OPSB operations currently include oversight of recruitment and examination, classification and salary administration, employee benefits, employee relations, employee grievances, disciplinary actions, employee assistance program, employee medical services, and statewide personnel transaction processing.

In 2006, the State completed a risk assessment, known as the Systems and Applications Risk Assessment (SARA) project, to identify and quantify operational and service delivery risks associated with the current inventory of mission-critical enterprise applications. From a statewide human resource (HR) management perspective, this risk assessment included an evaluation of SPMS, BAS, the Time-Entry Support System (TESS), and the Leave Accounting System (LAS). The risk assessment also reviewed the on-going implementation of the Maryland Time Entry and Leave Accounting (MDTime) application which was being developed as a potential replacement for LAS.

The findings from the SARA project indicated an unacceptable level of risk with the thirty-year-old legacy SPMS due to its underlying architecture, age, and costly maintenance challenges. In terms of BAS, risks identified related to the documentation of businesses processes, staff knowledge surrounding those processes, and the State's ability to support the system. In terms of the various timekeeping systems, risks identified related to the cost and complexity of maintaining multiple systems, the State's ability to support the systems internally, and limitations in functionality within some of the systems.

Due to its outdated and inflexible HR management systems, the State is at a disadvantage in meeting its HR business objectives. In response to the findings of the SARA project, the State initiated an effort to plan for the implementation of a new statewide HR management system to be known as SPS. It is anticipated that the new HR management system will be a major improvement for the State by providing

an integrated HRIS that is scalable, maintainable, and upgradeable in order to serve the State for years to come.

The State conducted a detailed project planning and requirements analysis effort involving stakeholders from OPSB and a large cross-section of State agencies. Based on the results of the initial requirements gathering effort and additional pre-planning work over the last two years, the State is committed to adopting new and improved business processes. The State expects to select a SaaS solution which incorporates HCM best business practices. The State is willing to make changes to its current business processes to adopt these best practices and consequently to maximize its investment in adopting a SaaS solution. The State also expects to lead the effort in cloud solution adoption and in setting the benchmark for HCM best practices in the government sector. At the same time, however, the State also expects the Offeror's solution to provide a high level of flexibility to accommodate certain State business processes which cannot be changed because of statutory, regulatory or other similar reasons.

In 2010, the State selected JobAps as the third-party recruitment and examination component of the new SPS SaaS Solution. JobAps has already been implemented as a SaaS application through a separate contract. The new SaaS solution shall integrate with JobAps.

### **2.3 Overview of State Human Resource Business Processes**

This subsection provides a brief overview of the State's core HR management business processes in scope for the SPS SaaS HCM Solution. The State HR business processes to be supported by the new SPS SaaS Solution include, but are not limited, to the following:

- Position Control;
- Classification & Salary Administration;
- Recruitment & Examination;
- Human Resource Transaction Processing;
- Contractual Employee Administration;
- Benefits Administration & Online Enrollment;
- Leave Administration;
- Time & Labor Tracking; and
- Employee & Manager Self-Service;

These business processes are described below.

#### **2.3.1 Position Control**

Position Control is the process that identifies and controls the Position Identification Number (PIN), an Authorized Percentage (%), and Financial Agency Code within State agencies. Additionally, this process controls the creation, management, and abolition of PINs for authorized, budgeted positions.

The SPS Future State Process Definition Requirement (PDR) document and Requirements Traceability Matrix (RTM) for Position Control is contained in [Attachment F9](#) and [Attachment F9a](#) respectively.

*\* PDRs and PDR appendices are attached for reference purposes only as it contains the State's desired future state business processes in detail.*

### **2.3.2 Classification and Salary Administration**

Classification and Salary Administration includes the activities required to maintain, control, and manage the State's classification structure and salary structure. The OPSB Classification Division also maintains/updates its library of class specifications for the State. These class specifications reflect the current work and all relevant competencies required of positions covered by OPSB's classification system.

The SPS PDR & RTM for Classification and Salary Administration is contained in [Attachment F3 and Attachment F3a](#) respectively.

*\* PDRs and PDR appendices are attached for reference purposes only as it contains the State's desired future state business processes in detail.*

### **2.3.3 Recruitment and Examination**

This function consists of the activities required to recruit, qualify, interview, select, and hire candidates for positions with the State including:

- Requisitioning Jobs;
- Creating/Updating Eligibility Lists;
- Evaluating Candidates;
- Scheduling Interviews;
- Creating and Evaluating Tests;
- Tracking Applicants;
- Selecting Candidates; and
- On-Boarding.

The JobAps application will support all of these functions. JobAps has already been implemented as a SaaS application through a separate contract.

However, the Contractor's proposed SaaS solution shall have the capabilities and tools to be integrated with JobAps and other systems required by State.

The integration requirements between JobAps and the SPS SaaS Solution are contained in the Personnel Transactions RTM and the Position Control RTM, which are provided in [Attachments F8a and F9a](#).

### **2.3.4 Human Resource Transaction Processing**

Human Resource Transaction Processing includes all of the activities and processes required to execute and update employee administrative actions and changes including:

- Hiring/Rehiring;
- Terminating;

- Reinstating;
- Promoting;
- Demoting;
- Reclassifying;
- Transferring;
- Changing Social Security Numbers;
- Changing Names;
- Changing Job Data; and
- Correcting Payroll.

The SPS PDR & RTM for Human Resource Transaction Processing is contained in [Attachment F8 and Attachment F8a](#) respectively.

*\* PDRs and PDR appendices are attached for reference purposes only as it contains the State's desired future state business processes in detail.*

### **2.3.5 Contractual Employee Administration**

Contractual Employee Administration is the processes related to the request for and approval of contractual positions, recruitment, and selection of contractual employees, on-going contract management, and post-contract actions.

The SPS PDR & RTM for Contractual Employee Administration is contained in [Attachment F4 and Attachment F4a](#) respectively.

*\* PDRs and PDR appendices are attached for reference purposes only as it contains the State's desired future state business processes in detail.*

### **2.3.6 Benefits Administration and Online Enrollment**

Benefits Administration and Online Enrollment includes the activities required to manage the State's health welfare, and other employee benefit programs. The functionality required for this process includes the capability for employees to enroll in and maintain their benefits during defined open enrollment periods.

Additionally, the new SPS SaaS Solution will provide the Employee Benefits Division with the capability to automate payment processing, COBRA Administration and the exchange of information amongst the State, vendors, and employees.

*Please note: COBRA Administration and Direct Billing Services outsourcing is not in scope of this RFP.*

The Offeror is required to comply with the State's Business Associate Agreement as contained in [Attachment V](#).

The SPS PDR & RTM for Benefits Administration and Online Enrollment is contained in [Attachment F2 and Attachment F2a](#) respectively.

*\* PDRs and PDR appendices are attached for reference purposes only as it contains the State's desired future state business processes in detail.*

### **2.3.7 Leave Administration**

The State has a requirement to track and manage employee's extended absences from the workplace, including leave under the Family and Medical Leave Act (FMLA), Service Member Leave, leave without pay (LWOP), and other extended absences. The State has statutes, regulations, and policies to manage extended leave, including:

- FMLA and Service Member Leave through the FMLA Guide published by DBM; and
- Leave without pay through COMAR 17.04.11.24.

Additionally, the new SPS SaaS Solution will provide the Employee Benefits Division with the capability to automate payment processing.

The SPS PDR & RTM for Leave Administration is contained in [Attachment F7 and Attachment F7a](#) respectively.

*\* PDRs and PDR appendices are attached for reference purposes only as it contains the State's desired future state business processes in detail.*

### **2.3.8 Time and Labor Tracking**

Time and Labor Tracking includes operations associated with a pay cycle, with the exception of the final issuance of pay, which is handled by the CPB. This includes the recording of hours worked and reporting leave and any other items that affect pay. The processes provide a time reporting and leave management capability that produces accurate and timely pay to employees.

At the State approximately 50% of the SPMS employees utilize the FLSA Alternative Work Period provision that permits 8/80 overtime in the 14-day pay period.

The SPS PDR & RTM for Time & Labor is contained in [Attachment F11 and Attachment F11a](#) respectively.

*\* PDRs and PDR appendices are attached for reference purposes only as it contains the State's desired future state business processes in detail.*

### **2.3.9 Employee and Manager Self-Service**

Employee Self-Service (ESS) functionality allows employees to initiate and receive notifications, and track status of transactions from a Web browser. Employee-initiated transactions are reviewed and/or approved based on organizational guidelines before the employee's record is actually updated and finalized in the system. Stakeholders of the ESS process include employees, supervisors/managers, agency HR, agency appointing authorities, DBM Employee Benefits Division and CPB.

Manager Self-Service (MSS) functionality allows various system users, based on their predefined role in the system, to initiate, review, approve, deny, or receive notification of an ESS transaction.

The State will continue to accommodate paper transactions to assist employees who do not have access to a computer. The employees will complete forms off-line and submit them to an HR Specialist who will enter the information into the SPS SaaS Solution.

The SPS PDR & RTM for Employee Self-Service is contained in [Attachment F5 and Attachment F5a](#) respectively.

The SPS PDR & RTM for Manager Self-Service is contained in [Attachment F6 and Attachment F6a](#) respectively.

*\* PDRs and PDR appendices are attached for reference purposes only as it contains the State's desired future state business processes in detail.*

## **2.4 Business Problem Description**

The State is facing a number of challenges with its existing statewide HR management systems, including:

- Aging tools and technologies;
- Extreme difficulty in obtaining information to support management decision-making; and
- Loss or potential loss of institutional knowledge.

These challenges are described in further detail below.

### **2.4.1 Aging Tools and Technologies**

The use of outdated tools and technologies in several systems presents risk to system operations, creates usability issues, and makes enhancements to the systems more difficult. These legacy systems contain redundant data, require duplicative data entry, lack proper security, and provide limited reporting capabilities. Because their needs are not being met in an efficient manner by the current systems, individual State agencies continue to maintain and develop their own personnel systems to address agency-specific needs, resulting in more data redundancy, time inefficiencies, and lack of standardization.

### **2.4.2 Extreme Difficulty in Obtaining Information to Support Management Decision-Making**

This difficulty results in the potential for delays or inaccuracies when providing information to decision-makers and often requires significant manual effort by State staff to assure the accuracy of the information being provided. Both the SPMS and BAS applications were designed as transaction processing systems. Neither system was designed to easily provide the various management reports requested by the Legislature or other policymakers.

As a result of the number of different timekeeping systems in use across the State, the process of providing summary-level reporting of timekeeping information requires extensive manual information gathering from different agencies.



**2.4.3 Loss or Potential Loss of Institutional Knowledge**

The SPMS system has incurred a significant loss of institutional knowledge among its application support staff over the last several years. Likewise, there is limited internal, State-staff knowledge of the BAS and TESS applications.

The first generation of system users who were involved in the initial implementation of many of these systems has left or is leaving State service. For many of these systems, no structured program exists to provide training for new users, which results in limited knowledge beyond a core group of super users for a given system. Likewise, there is limited reference documentation or standard operating procedures available for the State’s current personnel systems.

**2.5 System Transactions Levels (Estimates)**

The SPS SaaS Solution must have the capacity to accommodate the transactions for an estimated employee count levels as described below in Exhibit 1:

**Exhibit 1: System Transactions Levels (Estimates)**

| Transaction Type  | Employee Type             | Employee Count |
|---|---------------------------|----------------|
| HR/Benefits/Timekeeping Processing                                  | SPMS – Full time          | 45,000         |
|   | SPMS – Part time          | 2,000          |
|   | SPMS – Contractual        | 4,500          |
|   | SPMS – Contingent Workers | 3,300          |
| <b>Total HR/Benefits/Timekeeping Processing Employees</b>           |                           | <b>54,800</b>  |
|   |                           |                |
| Benefits Only Processing (i.e. No HR/Timekeeping processing)        | Retirees                  | 43,000         |
|   | Non-SPMS                  | 63,500         |
| <b>Total Benefits Only Processing Employees</b>                     |                           | <b>106,500</b> |
|   |                           |                |
| <b>Total Supported Population by the proposed SPS SaaS Solution</b> |                           | <b>161,300</b> |

At State's option, the State may activate proposed solution subscription for subsets of the above estimated number of employees, in multiple intervals, in order to enable an extended (phased) roll-out of the SPS SaaS Solution.

## 2.6 Requirements

### 2.6.1 Functional Requirements

The State's functional requirements are provided in [Attachment F \(F1-F13\)](#).

### 2.6.2 Non-Functional Requirements

The State's non-functional requirements are provided in [Attachment F14a](#).

In addition, the list below provides the required policies, procedures, and standards documents with which proposed SaaS solution including all third party SaaS Products shall adhere to:

- Information Security Policy at:  
<http://doit.maryland.gov/Publications/DoITSecurityPolicy.pdf>
- Password Policy and Guidance at:  
[http://doit.maryland.gov/support/Documents/security\\_guidelines/Password\\_Policy.pdf](http://doit.maryland.gov/support/Documents/security_guidelines/Password_Policy.pdf)
- Publicly Accessible Systems Policy at:  
[www.doit.maryland.gov/support/Documents/security\\_guidelines/PubliclyAccessibleSystemsPolicy.pdf](http://www.doit.maryland.gov/support/Documents/security_guidelines/PubliclyAccessibleSystemsPolicy.pdf)
- Non-Visual Access Regulatory Standards at:  
[www.doit.maryland.gov/policies/Documents/nvaguidance/it\\_nva\\_regulations.pdf](http://www.doit.maryland.gov/policies/Documents/nvaguidance/it_nva_regulations.pdf)
- State of Maryland SDLC Templates at:  
<http://www.doit.maryland.gov/SDLC/COTS/Pages/Phase01Single.aspx>
- State Project Oversight at:  
[www.doit.maryland.gov/policies/Pages/ProjectOversight.aspx](http://www.doit.maryland.gov/policies/Pages/ProjectOversight.aspx)

Also, the proposed SaaS HCM Product shall be SOC 2 Type II compliant.

## 2.7 Contractor Minimum Qualifications

A prospective Offeror shall meet the following minimum qualifications:

- Within the last five years, the proposed SaaS HCM product must have a successful implementation in an organization with at least 10,000 employees.
- Within the last five years, the proposed SaaS HCM product must be in production for at least one (1) year in an organization with at least 10,000 employees.

Only Technical proposals determined to meet these minimum qualifications will progress into the full evaluation stage by the State.

## 2.8 Subscription and Consulting Services

### 2.8.1 Subscription Services

1. The Offeror shall provide product support for the entire term of the contract for all software subscriptions purchased.
2. The Offeror shall provide support for all the product issues that cannot be resolved by the State. Issues that cannot be resolved via the State's service desk and the State's implementation team will be forwarded to the Offeror's service desk for response and resolution.
3. The Offeror's service desk shall be available by telephone between the hours of 7:30AM to 5:30PM ET from Monday to Friday excluding State Office closings.
4. For issues that require escalation beyond the Offeror's service desk, the Offeror shall provide a document that defines the process and procedures that comply with the State's Service Level Agreement (SLA) in [Attachment O](#) or Offeror's proposed SLA upon State's approval.
5. The Offeror shall be required to provide resolution to defects using the processes defined in the SLA in [Attachment O](#) or Offeror's proposed SLA upon State's approval.

### 2.8.2 Consulting Services

1. At the State's option, the Offeror shall provide all labor category resources, contained in [Attachment L](#), to assist the State in project related tasks, within five (5) business days or mutually agreed upon timeframe.
2. The Contract resulting from this RFP will also provide the State with a flexible means of obtaining consulting resources quickly, efficiently, and cost effectively by issuing Task Orders (TO) specific to its needs.
3. [Attachment L](#) encompasses eighteen (18) labor categories.
4. No resumes for actual resources shall be submitted in response to this RFP. Resumes will be requested (at State's option) via a TO. TOs will be issued, as needed, throughout the term of the Contract.
5. The State will make a determination of the appropriate labor category(ies) prior to release of the TO. A TO will address the specific process/scope requirements of the project tasks.

## 2.9 Deliverables, Support Requirements and Acceptance Criteria

The State will issue a notice to proceed (NTP) for each deliverable in the following table. Each deliverable will be exercised at the State's option. Offerors are required to provide a price for each deliverable in [Attachment N](#). Dates provided in the table represent the State's expected Not to Exceed duration of each deliverable.

### Deliverables

The Contractor shall provide the deliverables outlined in Exhibit 2.

**Exhibit 2: Contractor Deliverables**

| Deliverable Identifier | Deliverable Name   | Acceptance Criteria   | Delivery Date          |
|------------------------|--|---|------------------------|
| 2.9.1                  | Subscription Activation with First Year Subscription including Data Migration/Conversion Documentation | <ul style="list-style-type: none"> <li>• At the minimum, access to fully functional sandbox/demo/training environments for State’s use.</li> <li>• Access to the Contractor’s Data Conversion data mapping templates, loading sequence and relative documentation.</li> </ul> <p>*The State will pay a fixed annual fee for subscription services. This fee will be invoiced and paid, upon State approval, on semi-annual basis for the subscription services.</p> <p>**At State’s option, the State may activate proposed solution subscription for subsets of the above estimated number of employees, in multiple intervals, in order to enable an extended (phased) roll-out of the SPS SaaS Solution.</p> <p>***Note: The State reserves the right to request additional environments per response to <a href="#">Attachment N</a>.</p> | NTP + 15 Business Days |
| 2.9.2                  | Software Training  | <ul style="list-style-type: none"> <li>• User’s/Training material (in Microsoft Office or PDF format or Online access/tool) is concise and free of error.</li> <li>• Training is presented at an appropriate level to achieve practical application and use of software.</li> <li>• Training is conducted by training delivery type (i.e. Instructor lead, web training, etc.).</li> <li>• Training is conducted by user type.</li> </ul> <p>*Note: The State reserves the right to request Software Training per response to <a href="#">Attachment I</a>.</p>   | NTP + 5 Business Days  |
| 2.9.3                  | Annual Subscription Services   | <p>All the subscription and support services are provided per SLA referenced in <a href="#">Attachment O</a> or the proposed and mutually agreed upon SLA.</p> <p>*The State will pay a fixed annual fee for subscription services. This fee will be invoiced and paid, upon State approval, on semi-annual basis for the subscription services.</p>  | NTP + 1 Year           |

| Deliverable Identifier | Deliverable Name    | Acceptance Criteria  | Delivery Date         |
|------------------------|---------------------|--|-----------------------|
| 2.9.4                  | Consulting Services | <ul style="list-style-type: none"> <li>• Access to contractor-provided personnel who can assist the SPS in understanding the solution and best practices.</li> <li>• Access to contractor-provided personnel to assist SPS in all phases of the project life cycle.</li> <li>• Refer to <a href="#">Attachment L</a> – Labor Category Descriptions and Minimum Qualifications</li> </ul> <p>*Note: The State reserves the right to request the Consulting Services resources as detailed in <a href="#">Section 2.8.2</a>.</p> | NTP + 5 Business Days |

**2.10 Deliverable Product Acceptance Form**

In order to verify deliverable acceptance and invoice for payment for a deliverable, the Contractor shall obtain from the State a Deliverable Product Acceptance Form (DPAF), per [Attachment G](#), signed by the Contract Manager as described in [Section 1.33](#).

## SECTION 3 – PROPOSAL FORMAT

### 3.1 Two-Part Submission

The Offeror is required to submit the proposals in two (2) separate volumes:

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

Each “volume” shall be packaged separately, but submitted at the same time to the Procurement Officer at the address listed in [Section 1.5](#) of this RFP. The Offeror shall submit one (1) unbound original and six (6) bound copies of each volume. The outside of each package must bear the RFP title and number, name and address of the Offeror, volume number (I or II), and closing due date and time for receipt of the proposals.

### 3.2 General Preparation Instructions

Proposals shall be clear and precise in response to the information requested for each area identified. Offerors shall avoid insertion of language and material not directly related to an appropriate response for any section of the RFP. Offerors shall also avoid the inclusion of marketing materials.

Proposals require, at a minimum, 11-point font and one (1) inch margins. For each proposal volume, all pages shall be numbered consecutively from beginning (Page 1) to end (Page “x”).

### 3.3 Technical Proposal

This subsection describes the required elements/sections of the Offeror’s Technical Proposal.

#### 3.3.1 Transmittal Letter

The Offeror shall include a transmittal letter with the proposal. Only one transmittal letter is needed, and binding within the proposal is not required. The purpose of this letter is to transmit the proposal and acknowledge receipt of any addenda. The transmittal letter shall be prepared on the Offeror’s letterhead. The letter shall be brief and signed by an individual who is authorized to commit the Offeror to the services and requirements stated in this RFP.

The transmittal letter shall contain the following information:

- The name, title, address, telephone number, and electronic email address of the person authorized to bind the Offeror to the Contract; this person shall receive all official notices concerning this RFP;
- The Offeror’s Federal Tax Identification Number;
- Acknowledgement that proposals submitted in response to this RFP are irrevocable for the later of 180 days following the later of the closing date of proposals or BAFOs if requested; and
- An itemized acknowledgement of the receipt of any amendments/addenda to the RFP.

### 3.3.2 Format of Technical Proposal

Inside the Volume I – Technical Proposal package, described in [Section 3.3](#), an unbound original, to be so labeled and six (6) bound copies shall be enclosed. A CD containing the Technical Proposal in Microsoft Word format and the Offeror’s proposed project work plan in Microsoft Project 2003 format shall also be enclosed with the original printed copy of the Technical Proposal.

[Section 2](#) of this RFP provides requirements and [Section 3](#) provides proposal format and reply instructions. The paragraphs in these RFP sections are numbered for ease of reference. In addition to the instructions below, the Offeror’s Technical Proposal shall be organized and numbered in the same order as this RFP. This proposal organization allows the State to “map” Offeror responses directly to RFP requirements by paragraph number. The Technical Proposal shall include the sections outlined below in the stated order.

### 3.3.3 Title Page and Table of Contents

The Technical Proposal shall begin with the Title Page bearing the name and address of the Offeror and the name and number of this RFP. The Table of Contents for the Technical Proposal shall follow the title page. Note: Information that is claimed to be confidential is to be placed after the Title Page and before the Table of Contents in the Offeror’s Technical Proposal, and if applicable in its Financial Proposal. Unless there is a compelling case, an entire proposal should not be labeled confidential but just those portions that can reasonably be shown to be proprietary or confidential.

### 3.3.4 Mandatory Required Affidavits for Submission by Offeror in the Technical Proposal

The Offeror shall include all of the following affidavits in its Technical Proposal:

- Completed Bid/Proposal Affidavit ([Attachment B](#));
- Completed Conflict of Interest Affidavit ([Attachment D](#));
- Completed Living Wage Affidavit ([Attachment E](#)) and
- Signature Form and Company Contact Information ([Attachment R](#)).

The Offeror shall place these affidavits in its Technical Proposal after the Table of Contents and before the Executive Summary.

### 3.3.5 Executive Summary

The Offeror shall condense and highlight the contents of the Technical Proposal in a separate section titled “Executive Summary.” The Executive Summary shall also identify any exceptions the Offeror has taken to the requirements of this RFP, the Contract ([Attachment A](#)), or any other attachments. Exceptions to terms and conditions may result in having the proposal deemed unacceptable or not reasonably susceptible of being selected for an award. The Offeror shall document all assumptions and exceptions.

### Assumptions

The Offeror shall document any assumptions or dependencies presumed in its proposal. If the assumption relates to a specific section of the RFP, please reference the RFP section and/or attachment and attachment section. If there are no assumptions, the Offeror must state this.

### Exceptions

The Offeror must document any exceptions taken to any aspect of the RFP. Discuss exceptions to detailed requirements or evaluation factors in the Offeror's response to the appropriate section and referenced here. Document all exceptions here regardless of whether they appear elsewhere in the proposal. Please reference the RFP section and/or attachment and attachment section.

The Offeror shall provide sufficient amplification and justification to permit evaluation by the State of each exception. Offerors shall also state the anticipated benefit to the State, if any, of each exception taken.

Acceptance or rejection of exceptions is within the sole discretion of the State. If there are no exceptions, the Offeror must state this.

*Any and all assumptions or exceptions must be stated in this Section. Assumptions and exceptions included elsewhere will not be considered.*

### **3.3.6 Offeror Background, Experience and Financial Information**

The Offeror shall provide a detailed narrative description of its organization and include the following:

- Brief overview of business operations, with an emphasis on:
  - Provisioning of its proposed SaaS HCM product for other large-enterprise customers (at least 10,000 employees).
- Date established and brief corporate history with an emphasis on elements directly related to the proposed scope of work for the SPS project;
- Ownership (public, partnership, subsidiary, etc.);
- Location Offeror is incorporated;
- Office location(s) responsible for performance of proposed tasks;
- Full disclosure of any potential conflict of interest;
- A statement of whether, in the last 10 years, the Offeror and any officers in their individual or professional capacity or associated with another company have filed (or had filed against it) any bankruptcy or insolvency proceeding, whether voluntary or involuntary, or undergone the appointment of a receiver, trustee or assignee for the benefit of creditors, and if so, an explanation providing relevant details;
- A statement of whether there are any pending Securities Exchange Commission investigations involving the Offeror, and if such are pending or in progress, an explanation providing relevant details and an attached opinion of counsel as to whether the pending investigation(s) may impair the Offeror's performance in a contract under this RFP;



- A statement documenting all open or pending litigation initiated by Offeror or where Offeror is a defendant in a customer matter;
- Full disclosure of any contracts related to the proposed SaaS HCM product contracts terminated for cause or convenience in the past five (5) years;
- Full disclosure of any criminal or civil offense; and
- Statements of financial stability indicating that the Offeror has the financial capacity to provide the entire solution and that the Offeror has adequate resources to continue as an on-going concern.

The Offeror shall also provide documentation of its prior experience with the State of Maryland. If applicable, the Offeror shall submit a list of all contracts it currently holds or has held within the past five (5) years with any government entity of the State of Maryland. For each identified contract, the Offeror shall provide:

- The State contracting entity;
- A brief description of the services/goods provided;
- The dollar value of the contract;
- The term of the contract;
- Whether the contract was terminated prior to the specified original contract termination date, and if yes, the reason(s) why;
- Whether any available renewal option was not exercised; and
- The State employee contact person (name, telephone number, and email).

Please Note: It is critical that the contact information provided for any reference is current and accurate. The reference shall be knowledgeable of the project and the Offeror's performance and available to discuss the Offeror's performance.

The Offeror shall also provide its financial information and qualifications as indicated in [Attachment J](#) and submit the completed attachment as part of its RFP response.

### **3.3.7 Offeror's Approach and Methodology**

The Offeror shall provide a high-level overview of its proposed SaaS solution recommended implementation methodology\* including any templates or tools.

\*The submitted document(s) under this section are for guidance purpose only.

### **3.3.8 Proposed Project Work Plan and Aids**

The Offeror shall provide high-level recommended project work plan\* for the proposed SaaS solution including final cut-over and Go-Live forecasted timelines. The Offeror shall assume *September 09, 2013* as a project implementation start date for the project work plan. This project work plan shall be printed in a Gantt chart view and included in the original and each of the hard copies of the Technical Proposal. A soft copy of the work plan in Microsoft Project 2010 format shall be included on the CD submitted with the Technical Proposal.

\*The submitted document(s) under this section are for guidance purpose only.

### **3.3.9 Offeror's Technical Response to RFP Requirements**

#### **General**

The Offeror shall address each requirement in [Section 2](#) of the RFP in the Technical Proposal and describe how it will meet each requirement. If the State is seeking Offeror agreement to a requirement, the Offeror shall state agreement or disagreement. Any exception to a term or condition may result in having the Offeror's proposal deemed unacceptable or classified as not reasonably susceptible of being selected for award. Any paragraph that responds to a work requirement shall not merely rely on a stated agreement to perform the requested work, but rather, the Offeror shall outline how the Offeror can fulfill the requested tasks in a manner that best meets the State's needs.

#### **RTMs**

The Offeror shall fill out and submit each of the RTMs included in [Attachment F](#) to reflect those requirements that the Offeror can meet with the delivered capabilities of its proposed SaaS HCM product and third-party SaaS product(s), those areas requiring configuration of the proposed solution, those areas which cannot be supported by the SaaS HCM product and will require either another software solution or customization, and finally, any necessary comments or explanations.

The Offeror shall include the completed RTMs in the Technical Proposal. The Offeror shall include a printed version of the RTM in the original and each of the hard copies of its Technical Proposal. The Offeror shall also provide a soft copy of the completed RTM in Excel format on the CD submitted with its Technical Proposal. Please refer to the instructions for completing the RTMs in [Attachment F](#).

#### **Offeror's Response to Technical Architecture Questions**

The Offeror shall answer all questions in [Attachment O](#), Technical Architecture Questionnaire in order to confirm and further explain how the Offeror will meet

- the technical architecture requirements in the non-functional requirements RTM in [Attachment F14a](#); and
- the SLA contained in [Attachment O](#) or the Offeror's proposed SLA.

#### **Subscription and/or License Agreement**

The Offeror shall provide a copy of its subscription and/or license agreement (excluding any cost information) for its proposed SaaS HCM product.

#### **Offeror's Proposed Third-Party SaaS Product(s)**

The Offeror shall provide a list of any additional third-party SaaS product(s) proposed by the Offeror as part of its solution and the rationale for including this software in the Offeror's proposed SPS SaaS Solution. For each proposed third-party SaaS product, the Offeror shall indicate the version and the number of licenses required.

If the Offeror is proposing as part of its solution any third-party SaaS product in addition to its proposed SaaS HCM solution to meet functional requirements or non-functional requirements, the Offeror shall explain how the proposed third-party SaaS products are integrated with the SaaS HCM product, how the third-party SaaS products share security definitions and similar menu structures, what processes are handled in "real-time," and what processes require batch processing.

The Offeror shall also include a copy of the software license agreement (excluding any cost information) for each additional third-party software component proposed.

### **Proposed Training**

The Offeror shall complete [Attachment I](#). In this attachment, the Offeror shall describe its proposed training offerings by delivery methods.

### **System Interfaces**

The Offeror shall describe its proposed integration tools in its proposed SaaS HCM product for designing and developing system interfaces. The Offeror shall provide a high-level recommended integration plan depicting how the various components of SPS (SaaS HCM solution, other SaaS product(s) and any custom components) will integrate with JobAps, and the various State legacy systems as defined in the interface tabs of the RTMs contained in [Attachment F](#).

### **Data Conversion**

The Offeror shall describe in detail its recommended data conversion methodology and approach. The Offeror shall include available tools or templates, which will aid in performing the data conversion efforts.

### **Security**

The Offeror shall provide an overview of its proposed approach to meeting the security requirements contained in the non-functional requirements RTM in [Attachment F14a](#). The Offeror's security approach shall describe at a minimum the following:

- Security tools included with its proposed SaaS HCM product;
- Offeror's proposed approach to integrate with Microsoft Forefront; and
- A discussion of how the Offeror's proposed security approach restricts access to the administrative tools, application, menu, records, fields, and querying/reporting.

### **Testing**

The Offeror shall describe its recommended approach for conducting or supporting the test regimen and include any available automated testing tools or templates.

### **Subscription Services**

The Offeror shall describe its approach to providing subscription services to meet the SLA documented in [Attachment O](#) or Offeror's proposed SLA. The Offeror shall include, at a minimum, the following elements in its Technical Proposal response:

- An overview of the Offeror's prior experience in providing enterprise-level SaaS solutions for large-scale enterprises (10,000 employees);
- A discussion of the Offeror's proposed problem identification, escalation and resolution process;
- An overview of the Offeror's upgrade and enhancement methodology for its proposed SaaS HCM product;
- A discussion of the Offeror's prior experience in successfully executing functional and technical upgrades of the proposed SaaS HCM product;

- Offeror’s proposed approach to recruitment, retention and on-going training of staff to ensure continuity of well-trained and knowledgeable staff for the duration of the subscription services phase; and
- Offeror’s proposed approach to transitioning responsibility for services to the State or another provider at the end of the contract period.

### **3.3.10 Customer References**

The Offeror shall provide three (3) customer references similar in scope to the proposed SPS SaaS Solution. The Offeror shall provide the information for each customer reference in the format specified in [Attachment T](#).

For all proposed SaaS product(s) reference, the Offeror shall have provided the referenced services on a continuous basis for at least three (3) months prior to the date of submission of the Offeror’s proposal.

The State reserves the right to contact or not contact some or all of the Offeror’s customer references and any other references of the State’s choosing as part of the evaluation and selection process as deemed appropriate.

### **3.3.11 Initial Assessment of Potential Project Risks**

Based on the Offeror’s prior experience, the Offeror shall provide as part of its proposal a brief discussion of its assessment of potential project risks and the Offeror’s recommended strategies for avoiding, eliminating, or mitigating these potential risks.

## **3.4 Financial Proposal**

Under separate sealed cover from the Technical Proposal and clearly identified, the Financial Proposal shall be submitted in a separate sealed package labeled “Volume II - Financial Proposal” and shall bear the name and address of the Offeror, the name and number of the RFP and the closing date for proposals on the outside of the package. Inside this package shall be an unbound original, to be so labeled, six (6) copies, and one (1) electronic version in Microsoft Excel format on a CD in a separate envelope labeled “Financial Proposal.”

The Financial Proposal shall contain all cost information specified in [Attachment N](#). Complete the cost sheets only as provided in the Price Proposal Instructions.

Information that the Offeror deems confidential shall be clearly identified in the Offeror’s Financial Proposal. An explanation for each claim of confidentiality shall be provided by the Offeror in [Attachment N](#).

This is a FP contract; prices are all-inclusive and shall encompass all requirements in the RFP.

## **SECTION 4 – EVALUATION CRITERIA AND SELECTION PROCESS**

### **4.1 Evaluation Process**

Proposals are evaluated by a proposal evaluation team of project stakeholders, using the established criteria documented in this section of the RFP. Technical Proposals shall be separated from Financial Proposals, with Financial Proposals set aside. Technical Proposals are first evaluated to determine whether or not each Offeror meets Minimum Qualifications. Offerors that do not meet Minimum Qualifications shall not be considered for full evaluation and only their unopened Financial Proposal shall be returned. Offerors meeting Minimum Qualifications will be considered for full evaluation, with technical merit ranking higher than cost. A combination of technical and financial factors will be considered in determining best value for the State.

### **4.2 Evaluation of Technical Proposal**

The proposal evaluation team will evaluate each Offeror's Technical Proposal meeting the Minimum Qualifications based on the following factors, listed in order of descending importance.

1. Overall degree of fit of the Offeror's proposed SaaS solution with the State's functional and non-functional requirements;
2. Offeror's prior experience in successfully completing projects similar in scope to the SPS, as verified by customer references;
3. Offeror's approach to and prior experience providing subscription services;
4. Offeror's financial capability;
5. Quality of SPS SaaS Solution demonstration and validation workshop; and
6. Quality of Offeror's oral presentation.

### **4.3 Evaluation of Financial Proposal**

Following evaluation of the Technical Proposals, Financial Proposals of all Offerors determined reasonably susceptible to receiving a contract award are opened and provided to the State's proposal evaluation team for review.

The State's proposal evaluation team will evaluate the Offeror's full price including option periods.

### **4.4 Best and Final Offer**

When it is in the best interest of the State, the Procurement Officer may request Offerors who have submitted proposals determined to be reasonably susceptible of being selected for award to revise their initial proposals and submit, in writing, a BAFO. This BAFO process may apply to the initial Technical or initial Financial Proposal (or both initial proposals). Offerors are cautioned that a BAFO is an option at the sole discretion of the State. The State may elect to make a selection for award without requesting a BAFO.

The State, at its sole discretion and as deemed to be in the best interest of the State, may provide clarification in the request for BAFO regarding the anticipated scope of the project as described in the RFP and instruct Offerors to adjust their Proposals accordingly. If a BAFO is conducted, the Procurement Officer will notify each qualified Offeror of the scope of the requested BAFO and will establish a due date and time for the Offeror's submission.

The State, at its option, may conduct more than one round of BAFOs. If an additional BAFO is requested, an Offeror's immediate previous offer is construed as its BAFO, unless the Offeror submits a timely notice of withdrawal or another BAFO.

#### **4.5 Award Determination**

Upon completion of all discussions and reference checks, the Procurement Officer will recommend award of the Contract to the Offeror whose proposal is determined the most advantageous to the State considering technical evaluation factors and price factors as set forth in this RFP. This contract award is subject to approval by the Maryland Board of Public Works.

## SECTION 5 – ATTACHMENTS

Exhibit 3 provides a list of attachments to the RFP. The attachments, other than the contents of [Attachment F](#) (PDRs, PDR appendices and RTMs), are provided on the pages that follow. The RTMs, PDRs, and PDR appendices are separate files downloadable by prospective Offerors from eMM.

**Exhibit 3: Inventory of RFP Attachments**

| Attachment | Document Name  |
|------------|--|
| A          | <a href="#"><u>Contract</u></a>  |
| B          | <a href="#"><u>Bid Proposal Affidavit</u></a>  |
| C          | <a href="#"><u>Contract Affidavit</u></a>  |
| D          | <a href="#"><u>Conflict of Interest Affidavit</u></a>  |
| E          | <a href="#"><u>Living Wage Requirements for Service Contracts and Living Wage Affidavit of Agreement</u></a> |
| F          | <a href="#"><u>SPS PDRs and RTM (please refer to Exhibit F-1)</u></a>  |
| G          | <a href="#"><u>Deliverable Product Acceptance Form (DPAF)</u></a>  |
| H          | <a href="#"><u>Pre-Proposal Conference Response Form</u></a>   |
| I          | <a href="#"><u>Training Proposal Options</u></a>   |
| J          | <a href="#"><u>Financial Information and Qualifications</u></a>  |
| K          | <a href="#"><u>Investment Activities In Iran Affidavit</u></a>   |
| L          | <a href="#"><u>Consulting Services Labor Categories and Experience Requirements</u></a>                      |
| M          | <a href="#"><u>Offeror's Subcontractors</u></a>  |
| N          | <a href="#"><u>Financial Proposal</u></a>  |
| O          | <a href="#"><u>Service Level Agreement</u></a>   |
| P          | <a href="#"><u>BLANK</u></a>   |
| Q          | <a href="#"><u>Technical Architecture Questionnaire</u></a>  |
| R          | <a href="#"><u>Signature Form and Company &amp; Contact Information</u></a>                                  |
| S          | <a href="#"><u>Non-Disclosure Agreement</u></a>  |
| T          | <a href="#"><u>Customer Reference Form</u></a>   |
| U          | <a href="#"><u>Acronyms and Definitions</u></a>  |
| V          | <a href="#"><u>Business Associate Agreement (BAA)</u></a>  |

## Attachment A: Contract

THIS CONTRACT is made as of this \_\_\_\_\_ day of \_\_\_\_\_, 2012 by and between \_\_\_\_\_ (Contractor) and the Maryland Department of Information Technology (DoIT).

IN CONSIDERATION of the premises and the covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

### 1. Definitions

In this Contract, the following words have the meanings indicated:

- A. "Contract" means this Contract for a Statewide Personnel System (SPS) SaaS HCM Solution consisting of a multi-tenant, cloud, subscription-based Software as a Service (SaaS) HCM application and business analytics capabilities and optional services as described in RFP.
- B. "Contractor" means, whose principal business address is \_\_\_\_\_ and whose principal office in Maryland is \_\_\_\_\_.
- C. "Contract Manager" means the individual identified in [Section 1.6](#) of the RFP or a successor designated by the Department.
- D. "Department" means the Maryland Department of Information Technology.
- E. "Financial Proposal" means Contractor's Financial Proposal dated \_\_\_\_\_, 2012.
- F. "Not to Exceed (NTE)" means the Contractor's Total Not to Exceed Price for providing hardware, software and other materials and performing services under this Contract.
- G. "Notice to Proceed (NTP)" means a formal written notification from the Contract Manager that the Contractor as of a date contained in the notice, shall begin performance of the Contract.
- H. "Procurement Officer" means the individual identified in [Section 1.5](#) of the RFP or a successor designated by the Department.
- I. "RFP" means the Request for Proposals for Statewide Personnel System (SPS) SaaS HCM Solution, No. 060B3490012 dated \_\_\_\_\_, 2012 and any amendments, clarification questions, and any written correspondence thereto issued in writing by the State.
- J. "SPS" means the Statewide Personnel System.
- K. "State" means the State of Maryland.
- L. "Technical Proposal" means the Contractor's Technical Proposal, dated \_\_\_\_\_, 2012 and any clarification questions/answers, and any written correspondence thereto issued in writing by the Contractor.



## 2. Scope of Work

2.1. The Contractor shall provide a Statewide Personnel System (SPS) SaaS HCM Solution consisting of a multi-tenant, cloud, subscription-based SaaS HCM solution, business intelligence and business analytic capabilities and other related services as described in the RFP.

2.2. These services shall be provided in accordance with the terms and conditions of this Contract and the Attachments to the RFP, which are attached and incorporated herein by reference. If there are any inconsistencies between this Contract and the Attachments, the terms of this Contract shall control. If there is any conflict among the Attachments, the following order of precedence shall determine the prevailing provision.

Attachment A – The Contract

Attachment B - State Contract Affidavit, executed by the Contractor and dated \_\_\_\_\_

The RFP and Addendum to the RFP, and attachments to the RFP except for Attachment F

Attachment F – Requirements Traceability Matrices only

Contractor Technical Proposal, dated \_\_\_\_\_, 2012

Contractor Financial Proposal, dated \_\_\_\_\_, 2012

2.3. The Procurement Officer may, at any time, by written order, make 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 Section 11, Disputes. Nothing in this section shall excuse the Contractor from proceeding with the Contract as changed.

## 3. Time for Performance

The Contract resulting from this RFP shall be for a base period of five (5) years. The State shall have the sole right to exercise up to two (2), five-year renewal options at its sole option. All prices for rates and terms as offered in [Attachment N](#) are binding on the Contractor for the term of the Contract.

## 4. Consideration and Payment

4.1. In consideration of the satisfactory performance of the Contract, the State shall pay the Contractor in accordance with the terms of this Contract. Except with the express written consent of the Procurement Officer, total payments to the Contractor pursuant to this Contract may not exceed \$ \_\_\_\_\_ (the "NTE Amount"). Contractor shall notify the Contract Manager, in writing, at least 60 days before payments reach the NTE Amount. After notification by the Contractor, if the Procurement Officer fails to give written notice that the NTE Amount has been increased; the Contractor

shall have no obligation to perform under this Contract after payments reach the NTE Amount. The cessation of the Contractor's obligation to perform under this paragraph 4.1 is expressly conditioned on the following: that prior to the NTE Amount being reached, the Contractor shall: (i) give the notice required under this paragraph 4.1; (ii) promptly consult with the Department and cooperate in good faith with the Department to establish a plan of action to assure that every reasonable effort has been undertaken by the Contractor to complete critical work in progress prior to the date the NTE Amount will be reached; and (iii) secure data bases, systems, platforms and/or applications on which the Contractor is working so that no damage or vulnerabilities to any of the same will exist due to the existence of any such unfinished work.

4.2. The Contractor shall submit invoices as required in [Section 1.33](#) of the RFP. Invoices for third-party software support and maintenance will be paid on an annual basis and prior to the beginning of the year of maintenance. Each invoice must include the Contractor's Federal Tax Identification Number: \_\_\_\_\_ . Payments to the Contractor pursuant to this Contract shall be made no later than 30 days after the State's receipt of a proper invoice from the Contractor. Charges for late payment of invoices other than as prescribed by Title 15, Subtitle 1, of the State Finance and Procurement Article, Annotated Code of Maryland, as from time-to-time amended, are prohibited. Invoices shall be submitted to the Contract Manager.

4.3. In addition to any other available remedies, if, in the opinion of the Procurement Officer, the Contractor fails to perform in a satisfactory and timely manner, the Procurement Officer 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 Procurement Officer.

## **5. Patents, Copyrights, Intellectual Property**

5.1. If the Contractor furnishes any design, device, material, process, or other item, which 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.

5.2. Notwithstanding anything to the contrary in this Contract, to the extent (i) work performed or provided by the Contractor in connection with this Contract (the Work Product) or (ii) Pre-Existing Intellectual Property (other than a computer's operating system, supported internet browser, browser accessibility software or hardware if needed by the user, and software required to access a commonly-available data transmission tool or export format) is required to access, install, build, compile or otherwise use the Work Product (such Pre-Existing Intellectual Property individually and collectively referred to herein as "Third-party Intellectual Property," which shall be the sole property of Contractor or its third-party licensors, as applicable), Contractor hereby grants, on behalf of itself and any third-party licensors, to the State a royalty-free, paid-up, non-exclusive, unrestricted, unconditional, irrevocable, worldwide right and license, with the right to sublicense, to use, execute, reproduce, display, perform, distribute copies of internally, modify and prepare derivative works based upon, such Third-party Intellectual Property as may be necessary for the State to use the Work Product for the purposes for which such Work Product was designed and intended. "Pre-Existing Intellectual Property" means any program, utility or tool owned by Contractor or its third-party licensors that was created by

Contractor or its third-party licensors independently from its performance of this Contract and not solely using funds from this Contract.

5.3. 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.

5.4. Contractor, on behalf of itself and its Subcontractors, hereby agrees not to incorporate, link, distribute or use any third-party software in such a way that: (a) creates, purports to create or has the potential to create, obligations with respect to any State software (including any deliverable hereunder), including without limitation the distribution or disclosure of any source code; or (b) grants, purports to grant, or has the potential to grant to any third-party any rights to or immunities under any State intellectual property or proprietary rights. Without limiting the generality of the foregoing, neither Contractor nor any of its Subcontractors shall incorporate, link, distribute or use, in conjunction with the Work Product, any code or software licensed under the GNU General Public License (“GPL”), Lesser General Public License (“LGPL”), Affero GPL (“AGPL”), European Community Public License (“ECPL”), Mozilla, or any other open source license, in any manner that could cause or could be interpreted or asserted to cause any State software (or any modifications thereto) to become subject to the terms of the GPL, LGPL, AGPL, ECPL, Mozilla or any other open source software (or any modifications thereto) to become subject to the terms of the GPL, LGPL, AGPL, ECPL, Mozilla or such other open source license.

5.5. 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 being inconsistent with the intent to not 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.

## **6. Source Code Escrow**

6.1. The State will be named as a beneficiary under the escrow agreement (“Escrow Agreement”) between Contractor and its Escrow Agent during the term of this Contract. The Escrow Agreement shall govern the maintenance and release of such source code, and Contractor agrees to update, enhance, or otherwise modify such escrowed source code promptly upon each release of a new version of the Contractor’s SaaS solutions. Contractor agrees to pay the costs of State being a named beneficiary for

the term of this Contract. State shall treat the Source Code as Contractor's Confidential Information. Under all circumstances, the Source Code shall remain the property of Contractor, and the State shall only use the Source Code in conjunction with, and to maintain the software to operate the Service consistent with (including, but not limited to confidentiality provisions and usage restrictions) and through the end of the term of this Contract, and for no other purpose.

6.2. In the event that the Escrow Agent either ceases providing escrow services to Contractor or Contractor determines in its reasonable business judgment that the Escrow Agent is no longer providing acceptable services, Contractor may replace the Escrow Agent with another escrow agent, using an agreement which provides the State with rights no less advantageous than those in the Escrow Agreement.

6.3. Contractor shall inform the State of the availability of a source code escrow for any third party SaaS or software solutions it provides to the State.

6.4. In addition to the rights and obligations contained in the Software Escrow Agreement referenced in Section 6.1, the State shall have the option to exercise its rights to have the escrowed software released by the Neutral party to the State's possession if the Contractor is unable or unwilling to provide the services in accordance with this Contract. This condition will be considered met if after repeated email and phone requests by the State for service, the State makes a request for service in writing to the Contractor to its designated point of contact to its last known address served by certified signed receipt required mail delivery by U.S. Post Office, and the contractor remains unresponsive meaning that they are unable to acknowledge message receipt, unwilling or otherwise unable to satisfy the service request under this Contract for a period longer than 45 days from attempt to deliver the written request.

## **7. Rights to Records**

The Contractor shall report to the Department, 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.

## **8. Confidentiality**

Confidentiality obligations are in [Attachment S](#) to the RFP.

## **9. Loss of Data**

In the event of loss of any State data or records where such loss is due to the intentional act, omission, or negligence of the Contractor or any of its subcontractors or agents, the Contractor shall be responsible for recreating such lost data in the manner and on the schedule set by the Contract Manager. The Contractor shall ensure that all data is backed up and is recoverable by the Contractor.

## **10. Non-Hiring of Employees**

No official or employee of the State as defined under State Government Article § 15-102, Annotated Code of Maryland, 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.

## **11. Disputes**

This Contract shall be subject to the provisions of Title 15, Subtitle 2, of the State Finance and Procurement Article of the Annotated Code of Maryland, as 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 30 days after the basis for the claim is known or should have been known, whichever is earlier. Contemporaneously with or within 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.

## **12. Maryland Law**

This Contract shall be construed, interpreted, and enforced according to the laws of the State of Maryland. 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 software license acquired hereunder. Any and all references to the Annotated Code of Maryland contained in this Contract shall be construed to refer to such Code sections as from time to time amended.

## **13. 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, marital status, national origin, ancestry, or disability of a qualified individual with a disability; (b) to include a provision similar to that contained in subsection (a), above, in any 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.

## **14. 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 this Contract, and that it 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 other consideration contingent on the making of this Contract.

## **15. 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 a Contract under this Contract succeeding the first fiscal

period, the 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 rights 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 the Contract for each succeeding fiscal period beyond the first.

## **16. Termination for Cause**

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.

## **17. 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; provided, 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 21.07.01.12 (A) (2).

## **18. Delays and Extensions of Time**

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

## **19. 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 or Contract Manager may determine to be appropriate for the convenience of the State.

## **20. Pre-Existing Regulations**

In accordance with the provisions of § 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.

## **21. Financial Disclosure**

The Contractor shall comply with the provisions of § 13-221 of the State Finance and Procurement Article of the Annotated Code of Maryland, which requires that every business that enters into contracts, leases, or other agreement 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 certain specified information to include disclosure of beneficial ownership of the business.

## **22. Political Contribution Disclosure**

The Contractor shall comply with the Election Law Article, §§ 14-101 through 14-108, of the Annotated Code of Maryland, which requires that every person that enters into contracts, leases, or other agreements with the State, a county or an incorporated municipality or their agencies, during a calendar year under which the person receives in the aggregate \$100,000 or more, shall file with the State Board of Elections a statement disclosing contributions in excess of \$500 made during the reporting period to a candidate for elective office in any primary or general election. The statement shall be filed with the State Board of Elections: (1) before a purchase or execution of a lease or contract by the State, a county, an incorporated municipality, or their agencies, and shall cover the preceding two (2) calendar years; and (2) if the contribution is made after the execution of a lease or contract, then twice a year, throughout the contract term, on: (a) February 5, to cover the 6-month period ending January 31; and (b) August 5, to cover the 6-month period ending July 31.

## **23. Retention of Records**

The Contractor shall retain and maintain all records and documents in any way relating to this Contract for three (3) years after final payment by the State under this Contract or any applicable statute of limitations, whichever is longer, and shall make them available for inspection and audit by authorized representatives of the State, including by way of example only, the Procurement Officer or the Procurement Officer's designee, and the Contract Manager or the Contract Manager's designee, at all reasonable times. All records related in any way to the Contract are to be retained for the entire time provided under this section. The Contractor shall, upon request by the State, surrender all and every copy of documents needed 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. The Contractor agrees to cooperate fully 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. Contractor shall not be compensated for providing any such cooperation and assistance. This section shall survive expiration of this Contract.

## **24. Compliance with Laws**

The Contractor hereby represents and warrants that:

- A. It is qualified to do business in the State of Maryland 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 of Maryland, 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 of this Contract;
- 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.

## **25. Cost and Price Certification**

By submitting cost or price information, the Contractor certifies to the best of its knowledge that the information submitted is accurate, complete, and current as of the date of the financial proposal. The price under this Contract and any Change Request/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 the financial proposal, was inaccurate, incomplete, or not current.

## **26. Subcontracting; Assignment**

The Contractor may not subcontract any portion of the services provided 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; provided however, a Contractor may assign monies receivable under a Contract after due notice to the State. Any such subcontract or assignment shall include the terms of this Contract and any other terms and conditions that the State deems necessary to protect its interests. The State shall not be responsible for the fulfillment of the Contractor's obligations to the subcontractors.

## **27. Indemnification**

27.1 The Contractor shall hold harmless and indemnify the State against liability for any costs, expenses, loss, suits, actions, or claims of any character arising from or relating to the performance of the Contractor or its subcontractors under this Contract.



27.2 The State has no obligation 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 by any person not party to this Contract against the Contractor or its subcontractors as a result of or relating to the Contractor's obligations under this Contract.

27.3 The State has no obligation for the payment of any judgments or the settlement of any claims against the Contractor or its subcontractors as a result of or relating to the Contractor's obligations under this Contract.

27.4 The Contractor shall immediately notify the Procurement Officer of any claim or suit made or filed against the Contractor or its subcontractors regarding any matter resulting from or relating to the Contractor's obligations under the Contract. In the event that a claim, suit or action is made or filed against the State as a result of or relating to the Contractor's performance under this Contract, the Contractor agrees to assume the defense of any and all such suits and pay the costs and expenses incidental hereto, subject to the right of the State to provide additional legal counsel at the State's own expense. This section shall survive expiration of this Contract.

## **28. Limitation of Liability**

For breach of this Contract, negligence, misrepresentation or any other contract or tort claim, Contractor shall be liable as follows:

- A. For infringement of patents, trademarks, trade secrets and copyrights as provided in Section 5 ("Patents, Copyrights, Intellectual Property") of this Contract;
- 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, loss, costs, expenses, suits or actions in any way related to this Contract where liability is not otherwise set forth as being "without limitation," and regardless of the basis on which the claim is made, Contractor's liability shall not exceed fifty million dollars (\$50 Million) for the base five-year period and shall not exceed fifty million dollars (\$50 Million) for each optional renewal five-year period out of which the claim arises. Third-party claims arising under Section 27 ("Indemnification") of this Contract are included in this limitation of liability only if the State is immune from liability. Contractor's liability for third-party claims arising under Section 27 of this Contract shall be unlimited if the State is not immune from liability for claims arising under Section 27.

## **29. Administrative**

Procurement Officer. The work to be accomplished under this Contract shall be performed under the direction of the Procurement Officer and the Contract Manager. All matters relating to the interpretation of this Contract shall be referred to the Procurement Officer for determination.

## **30. 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: State of Maryland  
Department of Information Technology  
Procurement Officer  
45 Calvert Street  
Annapolis, MD 21401-1907

If to the Contractor: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**31. Risk of Loss; Transfer of Title**

Risk of loss for conforming supplies, equipment, and materials specified as deliverables to the State hereunder shall remain with the Contractor until the supplies, equipment, materials, and other deliverables are received by the State. Title of all such deliverables passes to the State upon receipt by the State, subject to the State’s acceptance and payment for the same in accordance with the terms of this Contract.

**32. Non-Visual Accessibility Warranty**

The Contractor warrants that the information technology offered under the proposal (1) provides equivalent access for effective use by both visual and non-visual means; (2) will present information, including prompts used for interactive communications, in formats intended for both visual and non-visual use; (3) if intended for use in a network, can be integrated into networks for obtaining, retrieving, and disseminating information used by individuals who are not blind or visually impaired; and (4) is available, whenever possible, without modification for compatibility with software and hardware for non-visual access. The Contractor further warrants that the cost, if any, of modifying the information technology for compatibility with software and hardware used for non-visual access does not increase the cost of the information technology by more than five percent. For purposes of this Contract, the phrase “equivalent access” means the ability to receive, use and manipulate information and operate controls necessary to access and use information technology by non-visual means. Examples of equivalent access include keyboard controls used for input and synthesized speech, Braille, or other audible or tactile means used for output.

The Contractor warrants that the information technology offered under this Contract is in compliance with Section 508 of the U.S. Rehabilitation Act and other identified standards for effective use of information technology for persons with visual impairments. The SaaS solution shall be accessed via the internet and that the State is responsible for providing adaptive technology for devices which will be used to access the internet.

### 33. Commercial Nondiscrimination

33.1. As a condition of entering into this Contract, Contractor represents and warrants that it will comply with the State's Commercial Nondiscrimination Policy, as described under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland. As part of such compliance, Contractor may not discriminate on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation, or on the basis of disability or other unlawful forms of discrimination in the solicitation, selection, hiring, or commercial treatment of subcontractors, vendors, suppliers, or commercial customers, nor shall Contractor retaliate against any person for reporting instances of such discrimination. 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. 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 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.

33.2. The Contractor shall include the above Commercial Non-Discrimination clause, or similar clause approved by the State in all subcontracts.

33.3. As a condition of entering into this Contract, upon the Maryland Human Relations Commission's request, and only after the filing of a complaint against Contractor under Title 19 of the State Finance and Procurement Article, Contractor agrees to provide within 60 days after the request a complete list of the names of all subcontractors, vendors, and suppliers that Contractor has used in the past 4 years on any of its contracts that were undertaken within the State, 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 of the Annotated Code of Maryland, and to provide any documents relevant to any investigation that is 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.

### 34. Prompt Pay Requirements

33.1 If a contractor withholds payment of an undisputed amount to its subcontractor, the State, at its option and in its sole discretion, may take one or more of the following actions:

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

34.2 An “undisputed amount” means an amount owed by a contractor to a subcontractor for which there is no good faith dispute. Such “undisputed amounts” include (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.

34.3 An act, failure to act, or decision of a Procurement Officer or a representative of the Department concerning a withheld payment between a contractor and subcontractor under this policy directive, may not:

- 34.3.1 Affect the rights of the contracting parties under any other provision of law;
- 34.3.2 Be used as evidence on the merits of a dispute between the Department and the contractor in any other proceeding; or
- 34.3.3 Result in liability against or prejudice the rights of the Department.

34.4 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 program.

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

- 34.5.1 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:

- 34.5.1.1 Inspecting any relevant records of the contractor;
- 34.5.1.2 Inspecting the jobsite; and
- 34.5.1.3 Interviewing subcontractors and workers.
- 34.5.1.4 Verification shall include a review of:
  - 34.5.1.4.1 The contractor’s monthly report listing unpaid invoices over 30 days old from certified MBE subcontractors and the reason for nonpayment; and
  - 34.5.1.4.2 The monthly report of each certified MBE subcontractor, which lists payments received from the contractor in the preceding 30 days and invoices for which the subcontractor has not been paid.

34.5.2 If the Department determines that a contractor is in noncompliance with certified MBE participation goals, then the Department 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.

34.5.3 If the Department determines that a contractor is in material noncompliance with MBE contract provisions and refuses or fails to take the corrective action that the Department requires, then the Department may:

34.5.3.1 Terminate the contract;

34.5.3.2 Refer the matter to the Office of the Attorney General for appropriate action; or

34.5.3.3 Initiate any other specific remedy identified by the Contract, including the contractual remedies required by this directive regarding the payment of undisputed amounts.

34.5.4 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.

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

CONTRACTOR

MARYLAND DEPARTMENT OF  
INFORMATION TECHNOLOGY

\_\_\_\_\_  
By: \_\_\_\_\_ (SEAL)

\_\_\_\_\_  
By: Secretary

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

\_\_\_\_\_  
Witness/Attest

\_\_\_\_\_  
Witness

Approved for form and legal sufficiency this \_\_\_\_\_ day of \_\_\_\_\_ 2012.

\_\_\_\_\_  
Assistant Attorney General

APPROVED BY BPW: \_\_\_\_\_ (Date)  
(BPW Item #)

**Attachment B: Bid Proposal Affidavit  
(Authorized Representative and Affiant)**

A. AUTHORIZED REPRESENTATIVE

I HEREBY AFFIRM THAT:

I am the (title) \_\_\_\_\_ and the duly authorized representative of (business) \_\_\_\_\_ and that I possess the legal authority to make this Affidavit on behalf of myself and the business for which I am acting.

B. CERTIFICATION REGARDING COMMERCIAL NONDISCRIMINATION

The undersigned bidder hereby certifies and agrees that the following information is correct:

In preparing its bid on this project, the bidder has considered all proposals submitted from qualified, potential subcontractors and suppliers, and has not engaged in “discrimination” as defined in § 19-103 of the State Finance and Procurement Article of the Annotated Code of Maryland. “Discrimination” means any disadvantage, difference, distinction, or preference in the solicitation, selection, hiring, or commercial treatment of a vendor, subcontractor, or commercial customer on the basis of race, color, religion, ancestry, or national origin, sex, age, marital status, sexual orientation, or on the basis of disability or any otherwise unlawful use of characteristics regarding the vendors, supplier’s or commercial customer’s employees or owners. “Discrimination” also includes retaliating against any person or other entity for reporting any incident of “discrimination.” Without limiting any other provision of the solicitation on this project, it is understood that, if the certification is false, such false certification constitutes grounds for the State to reject the bid submitted by the bidder on this project, and terminate any contract awarded based on the bid. As part of its bid or proposal, the bidder herewith submits a list of all instances within the past 4 years where there has been a final adjudicated determination in a legal or administrative proceeding in the state of Maryland that the bidder discriminated against subcontractors, vendors, suppliers, or commercial customers, and a description of the status or resolution of that determination, including any remedial action taken. Bidder agrees to comply in all respects with the State’s Commercial Nondiscrimination Policy as described under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland.

C. AFFIRMATION REGARDING BRIBERY CONVICTIONS

I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the above business (as is defined in Section 16-101(b) of the State Finance and Procurement Article of the Annotated Code of Maryland), or any of its officers, directors, partners, controlling stockholders, or any of its employees directly involved in the business’s contracting activities, including obtaining or performing Contracts with public bodies, has been convicted of, or has had probation before judgment imposed pursuant to Criminal Procedure Article, § 6-220, Annotated Code of Maryland, or has pleaded nolo contendere to a charge of, bribery, attempted bribery, or conspiracy to bribe in violation of Maryland law, or of the law of any other state or federal law, except as follows (indicate the reasons why the affirmation cannot be given and list any conviction, plea, or imposition of probation before judgment with the date, court, official or

administrative body, the sentence or disposition, the name(s) of person(s) involved, and their current positions and responsibilities with the business):

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D. AFFIRMATION REGARDING OTHER CONVICTIONS

I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the above business, or any of its officers, directors, partners, controlling stockholders, or any of its employees directly involved in the business's contracting activities including obtaining or performing contracts with public bodies, has:

- (1) Been convicted under state or federal statute of:
  - (a) a criminal offense incident to obtaining, attempting to obtain, or performing a public or private contract; or
  - (b) fraud, embezzlement, theft, forgery, falsification or destruction of records, or receiving stolen property;
- (2) Been convicted of any criminal violation of a state or federal antitrust statute;
- (3) Been convicted under the provisions of Title 18 of the United States Code for violation of the Racketeer Influenced and Corrupt Organization Act, 18 U.S.C. § 1961, et seq., or the Mail Fraud Act, 18 U.S.C. § 1341, et seq., for acts in connection with the submission of bids or proposals for a public or private contract;
- (4) Been convicted of a violation of the State Minority Business Enterprise Law, Section 14-308 of the State Finance and Procurement Article of the Annotated Code of Maryland;
- (5) Been convicted of a violation of the Section 11-205.1 of the State Finance and Procurement Article of the Annotated Code of Maryland;
- (6) Been convicted of conspiracy to commit any act or omission that would constitute grounds for conviction or liability under any law or statute described in subsection (1) through (5) above;
- (7) Been found civilly liable under a state or federal antitrust statute for acts or omissions in connection with the submission of bids or proposals for a public or private contract;
- (8) Been found in a final adjudicated decision to have violated the Commercial Nondiscrimination Policy under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland with regard to a public or private contract; or

(9) Admitted in writing or under oath, during the course of an official investigation or other proceedings, acts or omissions that would constitute grounds for conviction or liability under any law or statute described in Section B and subsections (1) through (7) above, except as follows (indicate reasons why the affirmations cannot be given, and list any conviction, plea, or imposition of probation before judgment with the date, court, official or administrative body, the sentence or disposition, the name(s) of the person(s) involved and their current positions and responsibilities with the business, and the status of any debarment):

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E. AFFIRMATION REGARDING DEBARMENT

I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the above business, or any of its officers, directors, partners, controlling stockholders, or any of its employees directly involved in the business’s contracting activities, including obtaining or performing contracts with public bodies, has ever been suspended or debarred (including being issued a limited denial of participation) by any public entity, except as follows (list each debarment or suspension providing the dates of the suspension or debarment, the name of the public entity and the status of the proceedings, the name(s) of the person(s) involved and their current positions and responsibilities with the business, the grounds of the debarment or suspension, and the details of each person’s involvement in any activity that formed the grounds of the debarment or suspension):

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F. AFFIRMATION REGARDING DEBARMENT OF RELATED ENTITIES

I FURTHER AFFIRM THAT:

(1) The business was not established and it does not operate in a manner designed to evade the application of or defeat the purpose of debarment pursuant to Sections 16-101, et seq., of the State Finance and Procurement Article of the Annotated Code of Maryland; and

(2) The business is not a successor, assignee, subsidiary, or affiliate of a suspended or debarred business, except as follows (you must indicate the reasons why the affirmations cannot be given without qualification):

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**G. SUBCONTRACT AFFIRMATION****I FURTHER AFFIRM THAT:**

Neither I, nor to the best of my knowledge, information, and belief, the above business, has knowingly entered into a contract with a public body under which a person debarred or suspended under Title 16 of the State Finance and Procurement Article of the Annotated Code of Maryland will provide, directly or indirectly, supplies, services, architectural services, construction related services, leases of real property, or construction.

**H. AFFIRMATION REGARDING COLLUSION****I FURTHER AFFIRM THAT:**

Neither I, nor to the best of my knowledge, information, and belief, the above business has:

- (1) Agreed, conspired, connived, or colluded to produce a deceptive show of competition in the compilation of the accompanying bid or offer that is being submitted;
- (2) In any manner, directly or indirectly, entered into any agreement of any kind to fix the bid price or price proposal of the bidder or Offeror or of any competitor, or otherwise taken any action in restraint of free competitive bidding in connection with the contract for which the accompanying bid or offer is submitted.

**I. FINANCIAL DISCLOSURE AFFIRMATION****I FURTHER AFFIRM THAT:**

I am aware of, and the above business will comply with, the provisions of Section 13-221 of the State Finance and Procurement Article of the Annotated Code of Maryland, which require that every business that enters into contracts, leases, or other agreements with the State of Maryland 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 the contracts, leases, or other agreements reaches \$100,000, file with the Secretary of State of Maryland certain specified information to include disclosure of beneficial ownership of the business.

**J. POLITICAL CONTRIBUTION DISCLOSURE AFFIRMATION****I FURTHER AFFIRM THAT:**

I am aware of, and the above business will comply with, Election Law Article, §§ 14-101 through 14-108, Annotated Code of Maryland, which requires that every person that enters into contracts, leases, or other agreements with the State of Maryland, including its agencies or a political subdivision of the State, during a calendar year in which the person receives in the aggregate \$100,000 or more shall file with the State Board of Elections a statement disclosing contributions in excess of \$500 made during the reporting period to a candidate for elective office in any primary or general election.

**K. DRUG AND ALCOHOL FREE WORKPLACE**

(Applicable to all contracts unless the contract is for a law enforcement agency and the agency head or the agency head's designee has determined that application of COMAR 21.11.08 and this certification would be inappropriate in connection with the law enforcement agency's undercover operations.)

**I CERTIFY THAT:**

- (1) Terms defined in COMAR 21.11.08 shall have the same meanings when used in this certification.
- (2) By submission of its bid or offer, the business, if other than an individual, certifies and agrees that, with respect to its employees to be employed under a contract resulting from this solicitation, the business shall:
  - (a) Maintain a workplace free of drug and alcohol abuse during the term of the contract;
  - (b) Publish a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of drugs, and the abuse of drugs or alcohol is prohibited in the business' workplace and specifying the actions that will be taken against employees for violation of these prohibitions;
  - (c) Prohibit its employees from working under the influence of drugs or alcohol;
  - (d) Not hire or assign to work on the contract anyone whom the business knows, or in the exercise of due diligence should know, currently abuses drugs or alcohol and is not actively engaged in a bona fide drug or alcohol abuse assistance or rehabilitation program;
  - (e) Promptly inform the appropriate law enforcement agency of every drug-related crime that occurs in its workplace if the business has observed the violation or otherwise has reliable information that a violation has occurred;
  - (f) Establish drug and alcohol abuse awareness programs to inform its employees about:
    - (i) The dangers of drug and alcohol abuse in the workplace;
    - (ii) The business' policy of maintaining a drug and alcohol free workplace;
    - (iii) Any available drug and alcohol counseling, rehabilitation, and employee assistance programs; and
    - (iv) The penalties that may be imposed upon employees who abuse drugs and alcohol in the workplace;
  - (g) Provide all employees engaged in the performance of the contract with a copy of the statement required by § J (2) (b), above;
  - (h) Notify its employees in the statement required by § J (2) (b), above, that as a condition of continued employment on the contract, the employee shall:
    - (i) Abide by the terms of the statement; and
    - (ii) Notify the employer of any criminal drug or alcohol abuse conviction for an offense occurring in the workplace not later than 5 days after a conviction;

(i) Notify the procurement officer within 10 days after receiving notice under § J (2) (h) (ii), above, or otherwise receiving actual notice of a conviction;

(j) Within 30 days after receiving notice under § J (2) (h) (ii), above, or otherwise receiving actual notice of a conviction, impose either of the following sanctions or remedial measures on any employee who is convicted of a drug or alcohol abuse offense occurring in the workplace:

(i) Take appropriate personnel action against an employee, up to and including termination; or

(ii) Require an employee to satisfactorily participate in a bona fide drug or alcohol abuse assistance or rehabilitation program; and

(k) Make a good faith effort to maintain a drug and alcohol free workplace through implementation of § J (2) (a)—(j), above.

(3) If the business is an individual, the individual shall certify and agree as set forth in § J (4), below, that the individual shall not engage in the unlawful manufacture, distribution, dispensing, possession, or use of drugs or the abuse of drugs or alcohol in the performance of the contract.

(4) I acknowledge and agree that:

(a) The award of the contract is conditional upon compliance with COMAR 21.11.08 and this certification;

(b) The violation of the provisions of COMAR 21.11.08 or this certification shall be cause to suspend payments under, or terminate the contract for default under COMAR 21.07.01.11 or 21.07.03.15, as applicable; and

(c) The violation of the provisions of COMAR 21.11.08 or this certification in connection with the contract may, in the exercise of the discretion of the Board of Public Works, result in suspension and debarment of the business under COMAR 21.08.03.

L. CERTIFICATION OF CORPORATION REGISTRATION AND TAX PAYMENT

I FURTHER AFFIRM THAT:

(1) The business named above is a (domestic\_\_\_) (foreign\_\_\_) corporation registered in accordance with the Corporations and Associations Article, Annotated Code of Maryland, and that it is in good standing and has filed all of its annual reports, together with filing fees, with the Maryland State Department of Assessments and Taxation, and that the name and address of its resident agent filed with the State Department of Assessments and Taxation is (IF NOT APPLICABLE, SO STATE):

Name: \_\_\_\_\_

Address: \_\_\_\_\_

(2) Except as validly contested, the business has paid, or has arranged for payment of, all taxes due the State of Maryland and has filed all required returns and reports with the Comptroller of the Treasury, the State Department of Assessments and Taxation, and the Department of Labor, Licensing, and Regulation, as applicable, and will have paid all withholding taxes due the State of Maryland prior to final settlement.

M. CONTINGENT FEES

I FURTHER AFFIRM THAT:

The business 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 business, to solicit or secure the Contract, and that the business 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 the Contract.

N. Repealed.

O. ACKNOWLEDGEMENT

I ACKNOWLEDGE THAT this Affidavit is to be furnished to the Procurement Officer and may be distributed to units of: (1) the State of Maryland; (2) counties or other subdivisions of the State of Maryland; (3) other states; and (4) the federal government. I further acknowledge that this Affidavit is subject to applicable laws of the United States and the State of Maryland, both criminal and civil, and that nothing in this Affidavit or any contract resulting from the submission of this bid or proposal shall be construed to supersede, amend, modify or waive, on behalf of the State of Maryland, or any unit of the State of Maryland having jurisdiction, the exercise of any statutory right or remedy conferred by the Constitution and the laws of Maryland with respect to any misrepresentation made or any violation of the obligations, terms and covenants undertaken by the above business with respect to (1) this Affidavit, (2) the contract, and (3) other Affidavits comprising part of the contract.

I DO SOLEMNLY DECLARE AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE CONTENTS OF THIS AFFIDAVIT ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF.

Date: \_\_\_\_\_

By: \_\_\_\_\_  
(Authorized Representative and Affiant)

*The balance of this page intentionally left blank*

**Attachment C: COMAR 21.07.01.25 Contract Affidavit**

A. AUTHORIZED REPRESENTATIVE

I HEREBY AFFIRM THAT:

I am the \_\_\_\_\_ (title) \_\_\_\_\_ and the duly authorized representative of \_\_\_\_\_ (business) \_\_\_\_\_ and that I possess the legal authority to make this Affidavit on behalf of myself and the business for which I am acting.

B. CERTIFICATION OF CORPORATION REGISTRATION AND TAX PAYMENT

I FURTHER AFFIRM THAT:

(1) The business named above is a (domestic\_\_\_) (foreign\_\_\_) corporation registered in accordance with the Corporations and Associations Article, Annotated Code of Maryland, and that it is in good standing and has filed all of its annual reports, together with filing fees, with the Maryland State Department of Assessments and Taxation, and that the name and address of its resident agent filed with the State Department of Assessments and Taxation is:

Name: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

(2) Except as validly contested, the business has paid, or has arranged for payment of, all taxes due the State of Maryland and has filed all required returns and reports with the Comptroller of the Treasury, the State Department of Assessments and Taxation, and the Department of Labor, Licensing, and Regulation, as applicable, and will have paid all withholding taxes due the State of Maryland prior to final settlement.

C. CERTAIN AFFIRMATIONS VALID

I FURTHER AFFIRM THAT:

To the best of my knowledge, information, and belief, each of the affirmations, certifications, or acknowledgements contained in that certain Bid/Proposal Affidavit dated \_\_\_\_\_, 20\_\_\_, and executed by me for the purpose of obtaining the contract to which this Exhibit is attached remains true and correct in all respects as if made as of the date of this Contract Affidavit and as if fully set forth herein.

I DO SOLEMNLY DECLARE AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE CONTENTS OF THIS AFFIDAVIT ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF.

Date: \_\_\_\_\_ By: \_\_\_\_\_  
(Authorized Representative and Affiant)

**Attachment D: Conflict of Interest Affidavit/Disclosure**

A. “Conflict of interest” means that because of other activities or relationships with other persons, a person is unable or potentially unable to render impartial assistance or advice to the State, or the person’s objectivity in performing the contract work is or might be otherwise impaired, or a person has an unfair competitive advantage.

B. “Person” has the meaning stated in COMAR 21.01.02.01B (64) and includes a bidder, Offeror, Contractor, consultant, or subcontractor or sub-consultant at any tier, and also includes an employee or agent of any of them if the employee or agent has or will have the authority to control or supervise all or a portion of the work for which a bid or offer is made.

C. THE BIDDER OR OFFEROR HEREBY WARRANTS THAT, except as disclosed in § E, below, there are no relevant facts or circumstances now giving rise or which could, in the future, give rise to a conflict of interest.

D. The following facts or circumstances give rise or could in the future give rise to a conflict of interest (explain in detail—attach additional sheets if necessary):

E. The bidder or Offeror agrees that if an actual or potential conflict of interest arises after the date of this affidavit, the bidder or Offeror shall immediately make a full disclosure in writing to the Procurement Officer of all relevant facts and circumstances. This disclosure shall include a description of actions which the bidder or Offeror has taken and proposes to take to avoid, mitigate, or neutralize the actual or potential conflict of interest. If the contract has been awarded and performance of the contract has begun, the Contractor shall continue performance until notified by the procurement officer of any contrary action to be taken.

I DO SOLEMNLY DECLARE AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE CONTENTS OF THIS AFFIDAVIT ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF.

Date: \_\_\_\_\_

By: \_\_\_\_\_  
(Authorized Representative and Affiant)

## **Attachment E: Living Wage Requirements for Service Contracts and Living Wage Affidavit of Agreement**

### **E1. Living Wage Requirements for Service Contracts**

A. This contract is subject to the Living Wage requirements under Title 18, State Finance and Procurement Article, Annotated Code of Maryland and the regulations proposed by the Commissioner of Labor and Industry. 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 Title 18, State Finance and Procurement, Annotated Code of Maryland.

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 of Labor and Industry 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 § 18-103(c), State Finance and Procurement Article, Annotated Code of Maryland, shall not lower an employee's wage rate below the minimum wage as set in § 3-413, Labor and Employment Article, Annotated Code of Maryland. 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 of Labor and Industry.

H. A Contractor/Subcontractor may reduce the wage rates paid under § 18-103(a), State Finance and Procurement, Annotated Code of Maryland, 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 § 3-413, Labor and Employment Article, Annotated Code of Maryland.

I. Under Title 18, State and Finance Procurement Article, Annotated Code of Maryland, 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 DLLR Website [www.dllr.state.md.us](http://www.dllr.state.md.us) and clicking on Living Wage.



**E2. Living Wage Affidavit of Agreement**

Contract No.: \_\_\_\_\_

Name of Contractor: \_\_\_\_\_

Address: \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_

**If the Contract is Exempt from the Living Wage Law**

The Undersigned, being an authorized representative of the above named Contractor, hereby affirms that the Contract is exempt from Maryland’s Living Wage Law for the following reasons: (check all that apply)

- Bidder/Offeror is a nonprofit organization
- Bidder/Offeror is a public service company
- Bidder/Offeror employs 10 or fewer employees and the proposed contract value is less than \$500,000
- Bidder/Offeror employs more than 10 employees and the proposed contract value is less than \$100,000

**If the Contract is a Living Wage Contract**

A. The Undersigned, being an authorized representative of the above named Contractor, hereby affirms our commitment to comply with Title 18, State Finance and Procurement Article, Annotated Code of Maryland and, if required, to submit all payroll reports to the Commissioner of Labor and Industry with regard to the above stated contract. The Bidder/Offeror agrees to pay covered employees who are subject to living wage at least the living wage rate in effect at the time service is provided for hours spent on State contract activities, and to ensure that its Subcontractors who are not exempt also pay the required living wage rate to their covered employees who are subject to the living wage for hours spent on a State contract for services. The Contractor agrees to comply with, and ensure its Subcontractors comply with, the rate requirements during the initial term of the contract and all subsequent renewal periods, including any increases in the wage rate established by the Commissioner of Labor and Industry, automatically upon the effective date of the revised wage rate.

B. \_\_\_\_\_ (initial here if applicable) The Bidder/Offeror affirms it has no covered employees for the following reasons (check all that apply):

- All employee(s) proposed to work on the State contract will spend less than one-half of the employee’s time during every work week on the State contract;
- All employee(s) proposed to work on the State contract will be 17 years of age or younger during the duration of the State contract; and
- All employee(s) proposed to work on the State contract will work less than 13 consecutive weeks on the State contract.

The Commissioner of Labor and Industry reserves the right to request payroll records and other data that the Commissioner deems sufficient to confirm these affirmations at any time.

Name of Authorized Representative: \_\_\_\_\_

Signature of Authorized Representative: \_\_\_\_\_

Date: \_\_\_\_\_ Title: \_\_\_\_\_

Witness Name (Typed or Printed): \_\_\_\_\_

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Date

## **Attachment F: SPS Process Definition Requirements, Process Flows and Requirements Traceability Matrices**

Attachment F contains the SPS PDRs and RTMs which define the business processes, functional requirements, and non-functional requirements, in scope for the SPS SaaS HCM Solution. Exhibit F-1 provides an inventory of the PDR, PDR Appendix and RTM documents. The PDRs and RTMs are included in separate files, which may be downloaded by prospective Offerors from eMM.

Please note that an appendix attached to a PDR or RTM is provided as reference and support for the PDR/RTM. An appendix to a PDR/RTM is not necessarily a requirement in and of itself. PDRs and PDR appendices are attached for reference purposes only as it contains the State's desired future state business processes in detail.

### **Exhibit F-1: Inventory of SPS PDR and RTM Documents**

| Attachment | Document Name                                     |
|------------|---|
| F1         | Payroll Interface PDR                             |
| F1a        | Payroll Interface RTM                             |
| F1b        | Payroll Interface Appendix A: Process Flows       |
| F2         | Benefits Administration PDR                       |
| F2a        | Benefits Administration RTM                       |
| F2b        | Benefits Administration Appendix                  |
| F2c        | Benefits Administration Appendix A-Process Flows  |
| F3         | Classification & Salary PDR                       |
| F3a        | Classification & Salary RTM                       |
| F3b        | Classification & Salary Appendix A: Process Flows |
| F4         | Contractuals PDR                                  |
| F4a        | Contractuals RTM                                  |
| F4b        | Contractuals Appendix                             |
| F4c        | Contractuals Appendix A: Process Flows            |
| F5         | Employee Self-Service PDR                         |
| F5a        | Employee Self-Service RTM                         |
| F5b        | Employee Self-Service Appendix                    |
| F5c        | Employee Self-Service Appendix A: Process Flows   |
| F6         | Manager Self-Service PDR                          |
| F6a        | Manager Self-Service RTM                          |

| Attachment | Document Name   |
|------------|---|
| F6b        | Manager Self-Service Appendix                         |
| F6c        | Manager Self-Service Appendix A: Process Flows        |
| F7         | FMLA and Leave of Absence – PDR                       |
| F7a        | FMLA and Leave of Absence – RTM                       |
| F7b        | FMLA and Leave of Absence – Appendix                  |
| F7c        | FMLA and Leave of Absence - Appendix A: Process Flows |
| F8         | Personnel Transactions PDR                            |
| F8a        | Personnel Transactions RTM                            |
| F8b        | Personnel Transactions Appendix                       |
| F8c        | Personnel Transactions Appendix A: Process Flows      |
| F9         | Position Control PDR                                  |
| F9a        | Position Control RTM                                  |
| F9c        | Position Control Appendix A: Process Flows            |
| F10a       | Demo and Validation Workshop RTM                      |
| F11        | Time and Labor PDR                                    |
| F11a       | Time and Labor RTM                                    |
| F11b       | Time and Labor Appendix A: Process Flows              |
| F12        | Not Applicable  |
| F13        | HR Business Intelligence Analytics (HR BIA) RTM       |
| F14        | Non-Functional – RTM                                  |

**Attachment G: Deliverable Product Acceptance Form (DPAF)**

**DPAF for Deliverables**

**Contractor:** \_\_\_\_\_  
**Date Submitted:** \_\_\_/\_\_\_/\_\_\_  
**Performance Period (Month / Year):** \_\_\_/\_\_\_ - \_\_\_/\_\_\_  
**Agency Name:** DBM/DoIT  
**Contract Manager / Agency Contact:** Gagan Setia, (410) 767-4085 - [Gagan.Setia@Maryland.gov](mailto:Gagan.Setia@Maryland.gov)  
**Contract #** 060B3490012

**The Contractor has submitted the deliverable below for the above referenced Contract.**

| Deliverable ID # | Deliverable Name | Amount |
|------------------|------------------|--------|
|                  |                  |        |
|                  |                  |        |

**Deliverable Disposition:**

**ACCEPTED**
                 
  **REJECTED**
                 
  **PARTIALLY REJECTED**

**Performance Rating:**

**ACCEPTABLE**
                 
  **UNACCEPTABLE**
                 
  **PARTIALLY UNACCEPTABLE**

**EXPLANATION FOR REJECTING OR PARTIALLY REJECTING DELIVERABLE:**

**REQUIRED CORRECTIVE ACTION / OTHER COMMENTS:**

\_\_\_\_\_  
**Contract Manager Signature**

\_\_\_\_\_  
**Date Signed**

**Issued by the Contract Manager**

**Attachment H: Pre-Proposal Conference Response Form**

A Pre-Proposal Conference will be held on Wednesday, June 19, 2013 at 1:00 PM in Conference Room L-2 located inside the State of Maryland Building, 201 West Preston Street, O’Connor Building, Baltimore, MD, 21201.

Please return this form by June 12, 2013 at 4:00 PM advising whether or not you plan to attend.

**For directions to the meeting site, you may contact Edward Bannat at 410-260-7662.**

Sign, scan and return this form via email to [Edward.Bannat@maryland.gov](mailto:Edward.Bannat@maryland.gov).

**Please indicate:**

\_\_\_\_\_ Yes, the following representatives will be in attendance:

- 1. \_\_\_\_\_
- 2. \_\_\_\_\_

\_\_\_\_\_ No, we will not be in attendance.

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

## **Attachment I: Training Proposal Options**

The Offeror shall complete Attachment I for their proposed training offerings by delivery method and by user type. The Offeror shall also include any recommended training development tools required to develop the State specific training material.

With the State's desire to provide process-focused, role-based training, it is expected that end users shall receive the training needed to understand the business processes to which they contribute and to perform their assigned duties and tasks as they relate to work performed within the system.

### **SPS User Types**

The following SPS user types are at a high level pending identification of discreet user roles (e.g., benefits administrator, timekeeper, etc.).

**Super User:** Four or more hours a day working with the system, part of which time is spent performing back-office procedures.

**Core User:** Four or more hours a day spent working with SPS to perform assigned role(s).

**Infrequent Users in a non-supervisory role):** Two-four hours a week spent working with SPS to perform assigned role(s).

**Manager/Supervisor:** Less than four hours a week spent working with SPS to perform approval-type tasks.

**Employee Self-Service:** Infrequent user of system (e.g., annual benefits enrollment).

**Shared Services Business Analyst:** Working full-time to support the SPS SaaS Solution (e.g., configuration, upgrade, testing, troubleshooting, etc.).

**Shared Services Technical Analyst:** Working full-time to support the SPS SaaS Solution (e.g., configuration, integration/interface development, testing, troubleshooting, etc.).

The Offeror shall complete Exhibits I-1 through I-7 for its proposed training approach for each type of user.

The Offeror may add rows to each exhibit as needed to describe any additional type of training methods it proposes as part of its approach for a particular user type.

**Exhibit I-1: Proposed Training Approach for Super Users**

| Super Users  |   |             |
|--|---|-------------|
| <b>Training Approach:</b> Based on the Offeror’s experience on similar projects, what is the estimated Learner Engagement Time (defined as the total number of hours needed to prepare a typical super user to work productively with the new system)? | Estimated Learner Engagement Time (in hours): | _____ Hours |
| Given the State’s preference to apply a blended learning approach, what percent of the Total Learner Engagement Time, does the Offeror propose for each of the training delivery methods?<br><br><i>Sum of all percentages must equal 100%</i>         | ILT   |             |
|  | Web-Based Training                            |             |
|  | Online Performance Support                    |             |
|  | Procedures-at-a-Glance and Other Job Aids     |             |
|  | Guided Practice                               |             |
|  | Online Walkthroughs (from SME)                |             |
|  | User-Accessed Demos                           |             |
|  | Informational Documentation                   |             |



**Exhibit I-2: Proposed Training Approach for Core Users**

| Core Users   |   |             |
|--|---|-------------|
| <b>Training Approach:</b> Based on the Offeror’s experience on similar projects, what is the estimated Learner Engagement Time (the total number of hours needed to prepare a typical core user to work productively with the new system)?     | Estimated Learner Engagement Time (in hours): | _____ Hours |
| Given the State’s preference to apply a blended learning approach, what percent of the Total Learner Engagement Time, does the Offeror propose for each of the training delivery methods?<br><br><i>Sum of all percentages must equal 100%</i> | Instructor-Led Training                       |             |
|  | Web-Based Training                            |             |
|  | Online Performance Support                    |             |
|  | Procedures-at-a-Glance and Other Job Aids     |             |
|  | Guided Practice                               |             |
|  | Online Walkthroughs from SME)                 |             |
|  | User-Accessed Demos                           |             |
|  | Informational Documentation                   |             |

**Exhibit I-3: Proposed Training Approach for Infrequent Users – Non-Supervisory Roles**

| Infrequent Users in Non-Supervisory Roles   |  |                    |
|---|--|--------------------|
| <p><b>Training Approach:</b> Based on the Offeror’s experience on similar projects, what is the estimated Learner Engagement Time (the total number of hours needed to prepare a typical infrequent user (non-supervisory) to work productively with the new system)?</p> | <p>Estimated Learner Engagement Time (in hours):</p> | <p>_____ Hours</p> |
| <p>Given the State’s preference to apply a blended learning approach, what percent of the Total Learner Engagement Time, does the Offeror propose for each of the training delivery methods?</p> <p><i>Sum of all percentages must equal 100%</i></p>                     | <p>Instructor-Led Training</p>                       |                    |
|   | <p>Web-Based Training</p>                            |                    |
|   | <p>Online Performance Support</p>                    |                    |
|   | <p>Procedures-at-a-Glance and Other Job Aids</p>     |                    |
|   | <p>Guided Practice</p>                               |                    |
|   | <p>Online Walkthroughs from SME)</p>                 |                    |
|   | <p>User-Accessed Demos</p>                           |                    |
|   | <p>Informational Documentation</p>                   |                    |

**Exhibit I-4: Proposed Training Approach for Managers and Supervisors**

| Managers and Supervisors  |  |                    |
|---|--|--------------------|
| <p><b>Training Approach:</b> Based on the Offeror’s experience on similar projects, what is the estimated Learner Engagement Time (the total number of hours needed to prepare a typical manager or supervisor to work productively with the new system)?</p> | <p>Estimated Learner Engagement Time (in hours):</p> | <p>_____ Hours</p> |
| <p>Given the State’s preference to apply a blended learning approach, what percent of the Total Learner Engagement Time, does the Offeror propose for each of the training delivery methods?</p> <p><i>Sum of all percentages must equal 100%</i></p>         | <p>Instructor-Led Training</p>                       |                    |
|   | <p>Web-Based Training</p>                            |                    |
|   | <p>Online Performance Support</p>                    |                    |
|   | <p>Procedures-at-a-Glance and Other Job Aids</p>     |                    |
|   | <p>Guided Practice</p>                               |                    |
|   | <p>Online Walkthroughs from SME)</p>                 |                    |
|   | <p>User-Accessed Demos</p>                           |                    |
|   | <p>Informational Documentation</p>                   |                    |

**Exhibit I-5: Proposed Training Approach for Employee Self-Service**

| Employee Self-Service  |   |             |
|--|---|-------------|
| <b>Training Approach:</b> Based on the Offeror’s experience on similar projects, what is the estimated Learner Engagement Time (the total number of hours needed to prepare a typical State employee for infrequent access and use of system)? | Estimated Learner Engagement Time (in hours): | _____ Hours |
| Given the State’s preference to apply a blended learning approach, what percent of the Total Learner Engagement Time, does the Offeror propose for each of the training delivery methods?<br><br><i>Sum of all percentages must equal 100%</i> | Instructor-Led Training                       |             |
|  | Web-Based Training                            |             |
|  | Online Performance Support                    |             |
|  | Procedures-at-a-Glance and Other Job Aids     |             |
|  | Guided Practice                               |             |
|  | Online Walkthroughs (from SME)                |             |
|  | User-Accessed Demos                           |             |
|  | Informational Documentation                   |             |

**Exhibit I-6: Proposed Training Approach for Shared Services Business Analyst**

| Shared Services Business Analyst  |  |                    |
|---|--|--------------------|
| <p><b>Training Approach:</b> Based on the Offeror’s experience on similar projects, what is the estimated Learner Engagement Time (the total number of hours needed to prepare a typical State employee for infrequent access and use of system)?</p> | <p>Estimated Learner Engagement Time (in hours):</p> | <p>_____ Hours</p> |
| <p>Given the State’s preference to apply a blended learning approach, what percent of the Total Learner Engagement Time, does the Offeror propose for each of the training delivery methods?</p> <p><i>Sum of all percentages must equal 100%</i></p> | Instructor-Led Training                              |                    |
|   | Web-Based Training                                   |                    |
|   | Online Performance Support                           |                    |
|   | Procedures-at-a-Glance and Other Job Aids            |                    |
|   | Guided Practice                                      |                    |
|   | Online Walkthroughs (from SME)                       |                    |
|   | User-Accessed Demos                                  |                    |
|   | Informational Documentation                          |                    |

**Exhibit I-7: Proposed Training Approach for Shared Services Technical Analyst**

| Shared Services Technical Analyst  |   |             |
|--|---|-------------|
| <b>Training Approach:</b> Based on the Offeror’s experience on similar projects, what is the estimated Learner Engagement Time (the total number of hours needed to prepare a typical State employee for infrequent access and use of system)? | Estimated Learner Engagement Time (in hours): | _____ Hours |
| Given the State’s preference to apply a blended learning approach, what percent of the Total Learner Engagement Time, does the Offeror propose for each of the training delivery methods?<br><br><i>Sum of all percentages must equal 100%</i> | Instructor-Led Training                       |             |
|  | Web-Based Training                            |             |
|  | Online Performance Support                    |             |
|  | Procedures-at-a-Glance and Other Job Aids     |             |
|  | Guided Practice                               |             |
|  | Online Walkthroughs (from SME)                |             |
|  | User-Accessed Demos                           |             |
|  | Informational Documentation                   |             |

**Attachment J: Financial Information and Qualifications**

**Exhibit J-1: Financial Information**

| Financial Information   |  |
|---|--|
| # Years in Business   |  |
| # Employees entire Organization   |  |
| # Employees Supporting Proposed SaaS solution   |  |
| Fiscal Yr. 2012 Annual Gross Earnings (if available yet)  |  |
| Fiscal Yr. 2012 Net Earnings (if available yet)   |  |
| Fiscal Yr. 2011 Annual Gross Earnings   |  |
| Fiscal Yr. 2011 Net Earnings  |  |
| Fiscal Yr. 2010 Annual Gross Earnings   |  |
| Fiscal Yr. 2010 Net Earnings  |  |
| Fiscal Yr. 2009 Annual Gross Earnings   |  |
| Fiscal Yr. 2009 Net Earnings  |  |
| Fiscal Year End (month)   |  |
| % of Gross Earnings from Last Completed Fiscal Year Attributable to Subscription Revenue for Proposed SaaS solution |  |
| Privately Held (Yes/No):<br>If Yes, Financial Information Available?  |  |
| Dunn & Bradstreet #   |  |

| Bank Reference   |             |             |
|------------------|-------------|-------------|
|                  | Reference 1 | Reference 2 |
| Bank Name:       |             |             |
| Address:         |             |             |
| Phone:           |             |             |
| Contact:         |             |             |
| Date of Service: |             |             |

**Financial Stability**

Offeror must include a hard copy of the most recent year’s independent audit report. The audit report must be submitted as a paper copy and attached to the Transmittal Letter as indicated in the Transmittal Letter instructions in the RFP.

**Exhibit J-2: Special Organizational Conditions**

Disclose any of the conditions that have occurred within the past five (5) years and discuss their organizational impacts. If none of these conditions are known to exist, state “None” in the boxes below.

| Judgments, Litigations, or Other Potential Financial Reversals |
|--|
|  |

| Contract Terminations |
|-----------------------|
|                       |

| Mergers, Acquisitions, and/or Known or Planned Sale of Company or Products |
|--|
|  |

| Conflicts of Interest |
|-----------------------|
|                       |

Offeror shall list all contracts awarded to it or its predecessor firm(s) by the State of Maryland during the last three (3) years. If none, state “None” in the table below. Failure to list any contract as required by this paragraph may be grounds for immediate rejection of the proposal.

**Exhibit J-3: State of Maryland Contracts**

| State Organization | State Contact Person | Period of Performance |
|--------------------|----------------------|-----------------------|
|                    |                      |                       |
|                    |                      |                       |



**Attachment K: Investment Activities in Iran Affidavit**

CERTIFICATION REGARDING INVESTMENTS IN IRAN

1. The undersigned certifies that, in accordance with State Finance & Procurement Article, §17-705:
  - i. it is not identified on the list created by the Board of Public Works as a person engaging in investment activities in Iran as described in §17-702 of State Finance & Procurement; and
  - ii. it is not engaging in investment activities in Iran as described in State Finance & Procurement Article, §17-702.
  
2. The undersigned is unable make the above certification regarding its investment activities in Iran due to the following activities:

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I DO SOLEMNLY DECLARE AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE CONTENTS OF THIS AFFIDAVIT ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF.

Date: \_\_\_\_\_

By: \_\_\_\_\_  
(Authorized Representative and Affiant)

**Attachment L: Consulting Services Labor Categories and Experience Requirements**

See Attachment L – SPS SaaS HCM Consulting Services Labor categories and Experience Requirements.PDF

**Attachment M: Offeror’s Subcontractors**

Offeror must supply the following information for all proposed subcontractors. Offeror must indicate if any offshore staff will be used by the primary Offeror or any subcontractor.

|  |  |
|--|--|
| Subcontractor Name:                      |  |
| Subcontractor Address:                   |  |
| Services to be Provided:                 |  |
| Off shore staff? Explain scope and role: |  |

|  |  |
|--|--|
| Subcontractor Name:                      |  |
| Subcontractor Address:                   |  |
| Services to be Provided::                |  |
| Off shore staff? Explain scope and role: |  |

|  |  |
|--|--|
| Subcontractor Name:                      |  |
| Subcontractor Address:                   |  |
| Services to be Provided:                 |  |
| Off shore staff? Explain scope and role: |  |

|  |  |
|--|--|
| Subcontractor Name:                      |  |
| Subcontractor Address:                   |  |
| Services to be Provided:                 |  |
| Off shore staff? Explain scope and role: |  |

|  |  |
|--|--|
| Subcontractor Name:                      |  |
| Subcontractor Address:                   |  |
| Services to be Provided:                 |  |
| Off shore staff? Explain scope and role: |  |

(Clone table to add subcontractors as needed.)

**Attachment N: Financial Proposal**

See Attachment N – SPS SaaS HCM Solution RFP Financial Proposal.xls

## Attachment O: Service Level Agreement (SLA)

This attachment provides additional specifications concerning the Contractor's requirements to provide post go-live production support as part of the subscription services for the SPS SaaS Solution.

The Contractor shall operate and maintain the SPS SaaS Solution beginning with the deployment of the SPS into production status, during the warranty period and then for up to four (4) optional three (3) year renewal terms.

The responsibilities of the Contractor and the State beginning with the deployment of SPS into production status and throughout the Contract duration are outlined in Exhibit O-1. For purposes of the responsibilities outlined in Exhibit O-1, the following definitions shall apply:

- **Tier 1:** This is the initial level of support responsible for basic user issues including re-setting passwords, problems accessing the SPS SaaS Solution, questions about how to use the application, and initial problem determination and triage. The responsibilities of Tier 1 are to gather the user's information and to determine the user's issue by analyzing the symptoms and figuring out the underlying problem. The SPS has established a goal of addressing 60% of user problems at Tier 1 during the first year of production operations and 70% of user problems at Tier 1 beginning in the second full year of production operations.
- **Tier 2:** This level of support is responsible for advanced technical troubleshooting and analysis of problems and issues which cannot be completely resolved by the Tier 1 analyst.
- **Tier 3:** This level of support is the highest level of support within the DBM Shared Services Team (SST) for SPS and is responsible for handling the most difficult or advanced problems which cannot be resolved at Tier 2. Individuals performing Tier 3 support shall be capable of performing expert-level troubleshooting and analysis methods.
- **Tier 4:** This level of support involves escalation to the Contractor.

**Exhibit O-1: Contractor and State Responsibilities**

| Project Phase/Timeline   | Contractor Responsibilities   | State Responsibilities  |
|--|---|---|
| <p>From deployment of the SPS SaaS Solution to production status through the Contract duration</p> | <p>The Contractor shall:</p> <ul style="list-style-type: none"> <li>• Manage and perform SPS SaaS Solution support;</li> <li>• Manage and perform required support for the non-production, production and disaster recovery landscapes;</li> <li>• Manage and perform Tier 2 and Tier 3 support for the SPS SaaS Solution;</li> <li>• Escalate SPS SaaS Solution issues to the appropriate Tier 4 organization when required and manage/monitor this escalation and resolution process; and</li> <li>• Support State planning and execution of any required testing.</li> </ul> | <p>The State shall:</p> <ul style="list-style-type: none"> <li>• Operate the Tier-1 SPS help desk;</li> <li>• Perform routine security administration such as the creation of user-ids, assignment of user responsibilities and the re-setting of user passwords;</li> <li>• Perform Tier 2 and Tier 3 support for issues with the State network;</li> <li>• Code and unit test all changes to interface programs developed by the State to remediate identified defects or support approved enhancement requests;</li> <li>• Manage the coding and unit testing by JobAps of changes to any interface programs developed by JobAps to remediate identified defects or support approved enhancement requests;</li> <li>• Design, code, and unit test any new interfaces to or extracts from State enterprise systems as part of approved enhancement requests;</li> <li>• Execute system testing, integration testing, and regression testing;</li> <li>• Plan and perform UAT of any system changes/updates;</li> <li>• Provide any required additional training of end users; and</li> <li>• Manage organizational change impacts.</li> </ul> |

**Required Issue Resolution Timeframes**

The Contractor shall address all SPS production system issues for which it is responsible within the timelines outlined in Exhibit O-2. The final responsibility for setting the priority on an issue resides with the State’s SPS PMO. Resolution of SPS production system issues shall be managed through the State’s Remedy application as defined in the non-functional requirements in [Attachment F14a](#).

The process for documenting a production issue shall be as follows:

- A user will either initially log an issue themselves using the self-service capabilities of the State’s Remedy solution or the user will call or email the SPS Tier 1 help desk; alternatively, a Tier 1, Tier 2, or Tier 3 support team member may enter an issue themselves;
- The SPS Help Desk staff shall assign a priority based on the criteria in Exhibit O-2; issues identified as High or Medium shall be escalated to the SPS PMO for confirmation;
- The State’s Remedy application shall route the ticket to the appropriate SPS team members based on staff assignments and business rules provided by the Contractor, with notifications provided to the CM and other SPS PMO team members for all High and Medium priority issues; and
- The Contractor team member assigned the ticket shall update the status of the ticket including recording when work is begun, the problem diagnostics performed, the solution implemented to remediate the defect/issue, and the date and time the issue is closed.

The severity definitions outlined in Exhibit O-2 shall also apply to defects identified in testing during the SPS Implementation; however, the timeframes for initiating work and correcting defects identified during pre-production testing shall be established for each type of testing.

**Exhibit O-2: SPS System Issue Resolution Timeframes**

| Severity | Description  | Timeframes for Initiating Work and Resolving the Issue  |
|----------|--|---|
| High     | Show-stopper issue which is preventing the State from performing business operations. There is no work-around or the work-around is extremely complex. | <p>The Contractor must begin problem diagnostics on the issue within 30 minutes of the issue being reported to the Contractor.</p> <p>The Contractor must resolve 100% of all High priority issues within 24 hours of issue identification by either resolving the issue or suggesting a work-around which allows the issue to be re-classified as a Medium priority issue.</p> |
| Medium   | Material impact to State business operations. However, there is a work-around allowing business operations to proceed in the interim.                  | <p>The Contractor must begin problem diagnostics on the issue within three (3) hours of the issue being reported to the Contractor.</p> <p>The Contractor must resolve at least 95% of all Medium priority issues within five (5) business days of issue identification.</p>  |

| Severity    | Description   | Timeframes for Initiating Work and Resolving the Issue  |
|-------------|---|---|
| Low         | System does not work according to approved design, but the issue is having a limited immediate impact on State business operations. | <p>The Contractor must begin problem diagnostics on the issue within 10 business days of the issue being reported to the Contractor</p> <p>The Contractor must resolve at least 90% of all Low priority issues within 20 business days of issue identification.</p> |
| Enhancement | Issue is determined to be an enhancement to the SPS system.   | Prioritized by CCB and scheduled/worked on if approved by CCB.  |

**SPS Production System Availability**

The Contractor shall ensure that the SPS SaaS Solution is highly available per the non-functional requirements in [Attachment F14a](#).

**SPS Production System Performance and Reliability**

The Contractor’s solution shall meet or exceed all reliability and performance requirements documented in the non-functional requirements RTM in [Attachment F14a](#).

In the event the Contractor is not meeting system performance requirements, the Contractor shall take all steps necessary to address and correct the performance issues including the acquisition, at its sole expense, of any additional required hardware, system software, database utilities, performance monitoring tools, or other components required to remediate the performance issue. The Contractor shall submit any proposed solution to address a performance issue to the State for review and approval. The Contractor shall first test any proposed fix in a production-like environment where the size and transaction volumes of the production landscape can be simulated prior to implementing the solution in the SPS production landscape. The Contractor shall conduct this testing in accordance with the test methods, procedures, and protocols for performance testing outlined in the approved Performance Test Plan.

**Disaster Recovery**

The Contractor shall meet the disaster recovery requirements documented in the non-functional requirements RTM in [Attachment F14a](#). Availability and performance requirements for the SPS production landscape (other than the disaster recovery requirements) shall apply to the disaster recovery landscape if/when the disaster recovery environment is acting as the SPS production landscape.

Upon contract award, the Contractor shall provide evidence that their business continuity program is certified and mapped to the international British Standards Institution (BSI) 25999 standard and the successor International Standards Organization (ISO) 22301 standard. This evidence of certification



shall then be provided annually for the duration of the contract on the anniversary date of the contract award.

### Availability of Non-Production Landscape

The Contractor shall meet the availability requirements for the non-production landscape documented in the non-functional requirements RTM in [Attachment F14a](#) during the entire contract duration.

### Service Credits

In the event that the Contractor does not meet the service levels outlined in this [Attachment O](#), the Contractor shall, upon the State's request, issue service credits as follows:

**Problem Diagnostics:** If the Contractor fails to initiate problem resolution within the required timelines, the Contractor shall issue the State a credit of \$1,000 for each hour or part thereof it fails to meet the problem diagnostic timeline for a High or Medium priority issue and a credit of \$500 for each hour or part thereof it fails to meet the problem diagnostic timeline for a Low priority issue.

**Issue Resolution:** If the Contractor fails to implement a bug fix or a work-around acceptable to the State (if a work-around is an acceptable solution to the problem based on the issue severity) within the required timelines, the Contractor shall issue the State a credit of \$1,000 for each hour or part thereof it fails to meet the issue resolution timeline for a High priority issue or a credit of \$1,000 for each hour or part thereof it fails to meet the issue resolution target as measured on a quarterly basis for Medium and Low priority issues.

**System Availability:** If the Contractor does not meet the uptime requirements for any environment of the non-production landscape as measured on a quarterly basis, the Contractor shall issue the State a credit of \$1,000 per environment for each hour or part thereof for which one or more environments does not meet the uptime requirements and for any environment of the State's production landscape or disaster recovery landscape as measured on a quarterly basis, the Contractor shall issue the State a credit of \$5,000 per environment for each hour or part thereof for which one or more environments does not meet the uptime requirements.

**Disaster Recovery:** In the event of a disaster, if the Contractor does not provide failover and restore either the production and/or non-production landscapes within the required timelines, the Contractor shall issue the State a credit of \$5,000 for each hour or part thereof for which the production landscape is down beyond the required restoration timeline and a credit of \$1,000 for each hour or part thereof for which the non-production landscape is down beyond the required restoration timeline.

### Data Center Environment

The Contractor shall be responsible for the acquisition and operation of all hardware, software and network support related to the SPS services being provided. The Contractor shall be responsible for any technical and professional activities required for establishing, managing, and maintaining the SPS environment. The SPS environment including the SaaS HCM application and any other third party application components shall be available on a 24 hour per day, 365 days per year basis, providing around - the - clock service to the State as defined in the non-functional requirements in [Attachment F14a](#).

The web portal hosting site environment shall include redundant power, fire suppression, and 24 hours

per day, 365 days per year on - site security. The hosting environment shall include redundant Internet connectivity; redundant firewalls; VPN services; secured remote access methods; fault tolerant internal network with gigabit Ethernet backbone; clustered central file and database servers; load balanced application and web servers; three tier development environment; nightly backups; and 24 hour by 365 days per year monitoring of all services and servers.

### **Data Center Operations**

The Contractor shall adhere to the following policies, standards and procedures in terms of data center operations during implementation and operation of the SPS SaaS Solution:

1. The Contractor shall provide documentation of internal and external security controls, and their compliance level to industry standards;
2. The Contractor shall disclose its security processes and technical limitations to the State such that adequate protection and flexibility can be attained between the State and the Contractor. An example might be virus checking and port sniffing where the State and the Contractor must understand each other's roles and responsibilities;
3. The Contractor shall allow the State to audit conformance to the contract terms and test for vulnerabilities. The State may perform this audit or contract with a third party at its discretion;
4. The Contractor shall provide the State with the ability to import or export data in piecemeal or in its entirety at the State's discretion without interference from the Contractor; and
5. The Contractor shall allow the State access to system logs, latency statistics, etc. that affect the State's data and/or processes.

### **Safeguarding of Personal Information**

Protection of personal privacy shall be an integral part of the business activities of the Contractor to ensure that there is no inappropriate use of State information at any time. Personal information obtained by the Contractor shall become and remain the property of the State. At no time shall any information, belonging to or intended for the State, be copied, disclosed, or retained by the Contractor or any party related to the Contractor for subsequent use in any transaction that does not include the State. The Contractor shall not use any personal information collected in connection with the services performed for the SPS project for any purpose other than fulfilling the required services of the SPS project.

### **Data Protection**

To ensure appropriate data protection safeguards are in place, the Contractor shall at all time:

1. Ensure that State information is protected with reasonable security measures;,
2. Promote and maintain among the Contractor's employees and agents an awareness of the security needs of the State's information;
3. Safeguard the confidentiality, integrity, and availability of State information;,
4. Make State data and processes available to third parties only with the express written permission of the State;

5. Ensure that the State's backed-up data is not commingled with other cloud service customer data;
6. Ensure that appropriate security measures are put in place to protect the Contractor's internal systems from intrusions and other attacks;
7. Encrypt data as identified in the non-functional requirements in [Attachment F14a](#);
8. Encrypt all non-public data in transit to the cloud;
9. Access State user accounts or State data only in the course of data center operations, in response to service or technical issues or at the State's written request; and
10. Not store or transfer any State data outside of the United States.

In addition, the Contractor shall comply with the ISO and International Electrotechnical Commission (IEC) 27001 standard for information security management systems. The Contractor shall provide prior to contract award evidence of their certification or pursuit of certification. The Contractor shall then provide evidence of their continued certification annually for the duration of the contract on the anniversary date of the contract award.

When requested by the State, the Contractor shall destroy all requested data in all of its forms including but not limited to disk, CD / DVD, tape and paper. Data shall be destroyed according to National Institute of Standards and Technology (NIST) approved methods. The Contractor shall provide certificates of destruction to the State.

#### **Discovery Requests, Subpoenas, and Other Legal Requests**

The Contractor shall disclose to the State a description of its procedures, roles and responsibilities related to electronic discovery, litigation holds, discovery searches, and expert testimonies. The Contractor shall also disclose its process for responding to subpoenas, service of process, and other legal requests.

#### **Procedures for Addressing a Security Breach**

The Contractor shall inform the State of any security breach or detection of any suspicious intrusion that is occurring or has occurred that jeopardizes the State's data or processes. The Contractor shall give notice of any breach or potential breach to the State within 24 hours of its discovery. The Contractor shall make full disclosure of the assets that might have been jeopardized. In addition, the Contractor shall inform the State of the actions it is taking or will take to reduce the risk of further loss to the State. If the breach requires public notification, the Contractor shall coordinate all communication with the State.

The Contractor shall cover the costs of response and recovery from a data breach. The State will expect to recover all breach costs from the Contractor.

#### **System Upgrades**

The Contractor shall give six (6) months advance notice to the State of any major upgrades or system changes that the Contractor will be performing. The State reserves the right to defer these changes if

desired.

### **Segregation of Duties**

The Contractor shall have robust compartmentalization of job duties, perform background checks, require/enforce non-disclosure agreements, and limit staff knowledge of State data to that which is absolutely needed to perform job duties.

### **Contractor Staff Convicted of a Felony or Class A Misdemeanor Prohibited**

The Contractor shall not utilize any staff (including subcontractors) to perform SPS services who have been convicted of a felony or class A misdemeanor.

### **Use of Subcontractors and Other Contractor Business Partners**

The Contractor shall identify all of its strategic business partners who will be involved in any SPS SaaS Solution operations. The Contractor shall make the State's data and processes available to subcontractors, other business partners and other third parties only with the express written permission of the State.

### **End of Contract Transition or Contract Termination**

The State shall be entitled to any end of contract transition or post-termination assistance generally made available by the Contractor to the customers of its SaaS HCM solution. During the end of contract transition or in the event of termination of the contract, the Contractor shall implement an orderly return of the State's data and other assets and the subsequent secure disposal of State assets. The Contractor shall provide to the State all State SPS data in a State defined format based on the then-current or planned State platforms including: database, operating systems and physical media, along with attachments in their native format.

Upon contract termination, the Contractor shall not take any action to intentionally erase any State data for a period of 180 days after the effective date of the contract termination. After such 180 day period, the Contractor shall have no obligation to maintain or provide any State data and shall thereafter, unless legally prohibited, delete all State data in its systems or otherwise in its possession or under its control.

### **Suspension of Service**

During any period of service suspension, the Contractor shall not take any action to intentionally erase any State data.

**Attachment P: BLANK**

Not Applicable

## **Attachment Q: Technical Architecture Questionnaire**

The Offeror shall provide an SPS technical infrastructure which fully meets all of the functional and non-functional requirements in the RTMs. The Offeror shall complete the information below for their proposed technical architecture solution and include it in their Technical Proposal.

### **Part 1: Production Landscape**

1. Provide a schematic diagram of the Offeror's solution depicting the locations, facilities and features that are proposed to hold the State's data; provide schematic diagram of the SPS SaaS Solution.
2. Describe the security layers, associated policies, procedures, certifications and assessments of the Offeror's solution; describe any and all customer specific components and associated security layers.
3. Provide an architectural diagram depicting each major component of the Offeror's proposed technical architecture and the relationships between the components and scalability of the architecture.
4. Describe the capability of the Offeror's proposed technical infrastructure to meet the State's requirements for high availability, redundancy, scalability, performance, reliability and failover; identify the largest number of concurrent users that have been successfully implemented on the Offeror's proposed datacenter for the production landscape; provide performance metrics for the last two years of infrastructure provisioning.
5. Identify any other tools/components including the model number/version number required to implement, operate and maintain the SPS SaaS Solution including any additional hardware or software components.
6. Describe in detail all and any customer specific monitoring and procedures to ensure stable performance during peak usage.
7. Describe Offeror's disaster recovery plan and disaster testing cycles.
8. List technological improvements implemented in the last 5 years to take advantage of advances in technology to keep the system "state of the art".
9. Will the proposed solution require any hardware or software requirements for the State of Maryland equipment? If so, detail minimum and optimum requirements for State of Maryland computers.

### **Part 2: Non-Production Landscape**

1. Identify and describe the various non-production environments the Offeror is proposing to support project development activities from initiation through the entire contract duration. Provide a diagram depicting these non-production environments and the relationship between each environment.

### **Part 3: Data Management**

1. Describe Offeror's ability to handle data and associated media identified as sensitive and secure.

2. Describe Offeror's approach to handling the State's legacy data considering the fact that the State wishes to decommission the legacy systems being replaced by the SPS SaaS Solution.
3. Describe the Offeror's solution for data retention, archiving, purging and availability of historical data for reporting purposes.

#### **Part 4: Configuration Management**

1. Describe the Offeror's proposed approach to configuration management of SPS SaaS Solution configurations and custom objects both during the project and post go-live including any proposed configuration management tools.
2. Describe the Offeror's approach to applying patches, fixes and upgrade; describe the QA and testing methodologies.

#### **Part 5: Integration and Interfaces**

1. Identify and describe the Offeror's proposed data integration tools to support conversions, interfaces and the transformation of data into the SPS SaaS Solution.

#### **Part 6: Development of Custom Objects**

1. Describe the Offeror's proposed approach for developing custom extensions to the proposed solution suite to meet the State's functional requirements and the steps the Offeror will take to assure these custom extensions shall be upgradeable in future upgrades/releases.
2. Describe the Offeror's proposed approach for developing required custom workflows, business process maps and the steps the Offeror will take to assure these custom extensions shall be upgradeable in future upgrades/releases.

#### **Part 7: Legacy Reporting**

1. Describe the Offeror's approach for addressing legacy data given that all legacy systems being replaced will be decommissioned.
2. Describe the Offeror's solution for data retention, archiving, purging and availability of historical data for reporting purposes.
3. Describe the Offeror's proposed approach for developing federated analytical reports.

#### **Part 8: Help Desk**

1. Describe Offeror's Help desk and customer support levels.

#### **Part 9: Testing Tools**

1. Describe Offeror's automated application testing tools offering to address the testing needs such as but not limited to business process testing, regression testing and user acceptance testing.

**Attachment R: Signature Form and Company Information**

Offeror must complete the company and contact information and the authorized signer must sign the Offeror’s Signature Form. The Authorized signer **MUST** be an individual who legally may enter their organization into a formal contract with the State of Maryland.

**Offeror’s Company Information**

| Offeror’s Company Information   |  |
|---|--|
| Name of Company:  |  |
| Mailing Address:  |  |
| City, State, Zip:   |  |
| Offeror’s Federal Employers ID Number:  |  |
| Company URL:  |  |
| Type of Company:  | (Check one) ___ Individual, ___ Partnership, or ___ for Profit Corporation, incorporated under the laws of the State of _____. |
| Offeror Company (check one) ___ is, ___ is not owned or controlled by a parent company. If owned or controlled by a parent company, enter name and address of parent company. |  |
| Name of Parent Company:   |  |
| Mailing Address:  |  |
| City, State, Zip:   |  |
| Phone Number:   |  |
| Fax Number:   |  |
| Email Address:  |  |

**Offeror’s Contact Information**

| Primary Contact Information |  |
|-----------------------------|--|
| Name:                       |  |
| Title:                      |  |
| Mailing Address:            |  |
| City, State, Zip:           |  |
| Phone Number:               |  |
| Fax Number:                 |  |
| Email Address:              |  |

| Proposal Clarification Contact Information |  |
|--|--|
| Name:                                      |  |
| Title:                                     |  |



|                   |  |
|-------------------|--|
| Mailing Address:  |  |
| City, State, Zip: |  |
| Phone Number:     |  |
| Fax Number:       |  |
| Email Address:    |  |

| Contract Negotiation Contact Information |  |
|--|--|
| Name:                                    |  |
| Title:                                   |  |
| Mailing Address:                         |  |
| City, State, Zip:                        |  |
| Phone Number:                            |  |
| Fax Number:                              |  |
| Email Address:                           |  |

**Offeror’s Signature Form**

| Signing Authority’s Signature and Information |  |
|---|--|
| Signature of Authorized Person:               |  |
| Type Name:                                    |  |
| Title:  |  |
| Mailing Address:                              |  |
| City, State, Zip:                             |  |
| Phone Number:                                 |  |
| Fax Number:                                   |  |
| Email Address:                                |  |

## **Attachment S: Non-Disclosure Agreement (Contractor)**

**THIS NON-DISCLOSURE AGREEMENT** (the “Agreement”) is made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, by and between the State of Maryland (the “State”), acting by and through its Department of Information Technology (the “Department”) and \_\_\_\_\_ (the “Contractor”).

### **RECITALS**

**WHEREAS**, the Contractor has been awarded a contract (the “Contract”) for the Statewide Personnel System (SPS) Software as a Service (SaaS) Human Capital Management (HCM) Solution, Contract No. \_\_\_\_\_ dated \_\_\_\_\_, 20\_\_\_\_\_, (the “Contract”); and

**WHEREAS**, in order for the Contractor to provide the SaaS Cloud Product and professional services (on State’s option) required under the Contract, it will be necessary for the State at times to provide the Contractor with access to certain information the State deems confidential information (the “Confidential Information”).

**NOW, THEREFORE**, in consideration of being given access to the Confidential Information in connection with the RFP and the Contract, and for other good and valuable consideration, the receipt and sufficiency of which the parties acknowledge the parties do hereby agree as follows:

1. Confidential Information means (a) any software utilized by Contractor in the provision of the Service and its respective source code; (b) electronic data or information submitted by Customer or Authorized Parties to the Service (Customer Data); (c) personally identifiable information; and (d) each party’s business or technical information, including but not limited to the Documentation, training materials, any information relating to software plans, designs, costs, prices and names, finances, marketing plans, business opportunities, personnel, research, development or know-how that is properly designated by the disclosing party as "confidential" or "proprietary" or the receiving party knows or should reasonably know is confidential or proprietary.
2. A party shall not disclose or use any Confidential Information of the other party except as reasonably necessary to perform its obligations or exercise its rights pursuant to this Contract except with the other party's prior written permission.
3. Each party shall limit access to the Confidential Information to the other party’s Personnel who have a demonstrable need to know such Confidential Information in order to perform under the Contract and who are under a binding nondisclosure obligation.
4. Each party agrees to protect the Confidential Information of the other party in the same manner that it protects its own Confidential Information of like kind, but in no event using less than a reasonable standard of care.
5. In the event that a party learn about any actual unauthorized use, misappropriation, disclosure or breach of the Confidential Information it shall promptly notify the other party. Such notification shall be made to the person designated in Contractor’s records as the security officer for

Customer, and to Contractor's General Counsel and Chief Security Officer if it is Contractor's Confidential Information which has been disclosed. Additionally, each party will reasonably assist the other party in remediating or mitigating any potential damage, including any notification which should be sent to individuals impacted or potentially impacted, or the provision of credit reporting services to such individuals. Each party shall bear the costs of such remediation or mitigation to the extent the breach or security incident was caused by it.

6. With respect to Confidential Information that is not Customer Data; either party may request destruction of its Confidential Information in the other party's possession at any time. Customer acknowledges that Contractor's ability to perform its obligations may be impacted by destruction of Customer's Confidential Information, and Contractor shall be excused from any performance delay or default caused by lack of necessary Customer Confidential Information if such destruction is requested. The returning party shall bear all expense of destruction of Confidential Information and shall accomplish such destruction in a secure manner. In the event that Confidential Information is stored on backup systems, destruction of Confidential Information on backup systems may be delayed until such backup systems are destroyed or Confidential Information on them is erased or deleted in accordance with the receiving party's normal documented processes. All Confidential Information on backup systems shall be maintained as confidential pursuant to this Contract until it is destroyed. Upon request from the disclosing party, the receiving party shall certify that the requested destruction of Confidential Information has occurred. Such certification may include a statement that certain Confidential Information is still on backup systems, providing an estimated date of destruction. Any such certification shall be signed by an officer authorized to bind the certifying party.
7. The parties acknowledge that any failure to abide by the terms and conditions of use of the Confidential Information may cause irreparable harm to the disclosing party and that monetary damages may be inadequate to compensate for such breach. Accordingly, the parties agree that if a party discloses or uses (or threatens to disclose or use) any Confidential Information of the other party in breach of confidentiality protections hereunder, the other party shall have the right, in addition to any other remedies available, to injunctive relief to enjoin such acts, it being acknowledged by the parties that any other available remedies are inadequate.
8. **Compelled Disclosure.** A disclosure by one party of Confidential Information of the other party to the extent required by Law shall not be considered a breach of this Agreement, provided the party so compelled promptly provides the other party with prior notice of such compelled disclosure (to the extent legally permitted) and provides reasonable assistance, at the other party's cost, if the other party wishes to contest the disclosure. Both parties recognize that Customer is subject to Maryland's Public Information Act, but that the Public Information Act includes specific exemptions, including but not limited to those found at State Government Code §10-617(d)(1), (2), and (3), which may apply to part or all of the Contractor Confidential Information requested by a member of the public.
9. **Exclusions.** Confidential Information shall not include any information that: (i) is or becomes generally known to the public without breach of any obligation owed to the other party; (ii) was known to a party prior to its disclosure by the other party without breach of any obligation owed to the other party; (iii) was independently developed by a party without breach of any obligation owed to the other party; or (iv) is received from a third party without breach of any obligation

owed to the other party. Customer Data or Personally identifiable information shall not be subject to the exclusions set forth in this Section.

Contractor: Maryland Department of Information Technology:

\_\_\_\_\_  
Contractor Name

By: \_\_\_\_\_ (SEAL) By: \_\_\_\_\_ (SEAL)

\_\_\_\_\_  
Printed Name and Title

\_\_\_\_\_  
Printed Name and Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**Attachment T: Customer Reference Form**

Offeror must complete the information below and included it in their Technical Proposal for each customer reference submitted.

| Customer Reference   |  |
|--|--|
| Organization Name:   |  |
| Contact Person:  |  |
| Mailing Address:   |  |
| City, State, Zip:  |  |
| Phone:   |  |
| Email:   |  |
| Project Name:  |  |
| Project Description:   |  |
| Project Start Date:  |  |
| Project End Date:  |  |
| Contract Value:  |  |
| Total Value of Contract Change Requests/Orders:  |  |
| Total Value of Change Requests/Orders as a % of Initial Contract Value:  |  |
| Explanation of Relevance of the Reference to the Scope of this RFP:  |  |
| Was Project Completed Per Original Schedule; if not, please explain factors causing a change in project completion date: |  |
| SaaS Versions Implemented (if applicable):   |  |

**Attachment U: Acronyms and Definitions**

See Attachment U – SPS SaaS HCM Solution RFP Acronyms and Definitions.PDF

## **Attachment V: Business Associate Agreement (BAA)**

This Business Associate Agreement (the “Agreement”) is made as of \_\_\_\_\_, 2013 by and between Maryland Department of Budget and Management (“Covered Entity”), the Maryland Department of Information Technology (“DoIT”) and the Contractor (“Business Associate”).

WHEREAS, the Department of Budget and Management is a covered entity that administers the State Employee and Retiree Health and Welfare Benefits Program (the “Program”) through which various self-funded and fully-insured group health plans are offered to certain Individuals;

WHEREAS, Business Associate and DoIT have entered into an underlying Service Contract (the “Service Contract”) dated \_\_\_\_\_ 2013 pursuant to which Business Associate provides a Statewide Personnel System (SPS) SaaS Solution consisting a multi-tenant, cloud, subscription-based Software as a Service (SaaS) HCM application, business analytics capabilities and other services and software as described in underlying Service Contract and related documents and the subscription for the SaaS HCM application and other subscription-based software or SaaS, which includes health plan enrollment and carrier eligibility transmission SaaS for Covered Entity;

**WHEREAS**, Business Associate provides services for Covered Entity pursuant to the Service Contract dated, [\_\_\_\_\_], under which Covered Entity may disclose PHI to Business Associate to enable Business Associate to perform services for Covered Entity whereby Business Associate provides Covered Entity with the infrastructure and Covered Entity is responsible for entering their data, configuring the service, and safeguarding the data;

WHEREAS, to obtain such services Covered Entity must disclose PHI to Business Associate in order to enable Business Associate to perform services for Covered Entity pursuant to the Service Contract; and

WHEREAS, the parties desire to comply with the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) and the Final Rule for Standards for Privacy of Individually Identifiable Health Information adopted by the United States Department of Health and Human Services and codified at 45 C.F.R. part 160 and part 164, subparts A & E (the “Privacy Rule”), the HIPAA Security Rule, codified at 45 C.F.R. Part 164 Subpart C and Subtitle D of the Health Information Technology for Economic and Clinical Health Act (“HITECH”) including C.F.R. Sections 164.308, 164.310, 164.312 and 164.316.

NOW THEREFORE, the parties to this Agreement hereby agree as follows:

**1. Definitions** Terms, phrases, and words in this Agreement which are defined in HIPAA, the Privacy Rule, or the Security Rule shall have the meaning provided in HIPAA and the HITECH Act.

1.1 The following terms have the meaning indicated:

(a) “Agreement” when capitalized, means this Business Associate Agreement.

- (b) “Breach” has the meaning provided in §13400 of the HITECH Act and 45 CFR §164.402 and shall include the unauthorized acquisition, access, use or disclosure of PHI that compromises the security or privacy of such information.
- (c) “Business associate” when not capitalized, has the meaning given such term in 45 CFR §160.103.
- (d) “DHHS” means the U.S. Department of Health and Human Services.
- (e) “HIPAA” means the administrative simplification provisions of the Health Insurance Portability and Accountability Act of 1996, as amended from time to time, and including the Privacy Rule and Security Rule.
- (f) “HITECH Act” means Subtitle D of the Health Information Technology for Economic and Clinical Health Act, which is Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5.
- (g) “MCMRA” means the Maryland Confidentiality of Medical Records Act, codified at Md. Ann. Code, Health-General §§4-301 et seq.
- (h) “Individual” means an individual currently or formerly enrolled in the Program established and administered by the Department, about whom PHI is created, retained, disclosed, used, maintained, exchanged, or transmitted by the Business Associate.
- (i) “Party” and “Parties,” when capitalized, means the Contractor, the Maryland Department of Information Technology, and/or the Maryland Department of Budget and Management, as the context provides.
- (j) “PHI” means “protected health information,” as that term is defined in 45 CFR §160.103, as amended from time to time, limited to Program information received by Business Associate from or on behalf of the Covered Entity when Business Associate is providing the SPS, including health plan enrollment and carrier eligibility transmission SaaS services to Covered Entity pursuant to the Service Contract
- (k) “Privacy Rule,” when capitalized, means the Standards for Privacy and Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, Subparts A and E, as amended by operation of the HITECH Act and from time to time.
- (l) “Program,” when capitalized, means the State Employee and Retiree Health and Welfare Benefits Program, established and administered pursuant to Md. Ann. Code, State Personnel and Pensions, §§2-501 et seq., and regulations promulgated pursuant thereto.
- (m) “Required by Law,” when capitalized, shall have the same meaning as the term “required by law” in 45 CFR §164.103.
- (n) “Security Incident,” when capitalized means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system, or as otherwise defined in 45 CFR §164.304.



- (o) “Security Rule,” when capitalized, means the Security Standards for the Protection of Electronic Protected Health Information at 45 CFR Part 160 and Part 164, Subparts A and B, as amended from time to time.
- (p) “State,” when capitalized, means the State of Maryland.
- (q) “Service Contract,” when capitalized, means the Contract between the Contractor and the State acting through the Maryland Department of Information Technology, dated \_\_\_\_\_ 2013, and as amended from time to time.
- (r) “Unsecured Protected Health Information” or “Unsecured PHI” means PHI that is not secured through the use of a technology or methodology specified by the Secretary of DHHS in guidance or as otherwise defined in §13402(h) of the HITECH Act and 45 CFR §164.402.

## **2. Scope and Interpretation**

- 2.1 This Agreement is an addendum to the Service Contract and supplements and amends those provisions as provided here as they relate to the Covered Entity’s function as administrator of the Program. Nothing in this Agreement shall be interpreted to apply to any other activities of the State or any other State agency. Unless and except as specifically revised by the terms of this Agreement, all of the terms of the Service Contract (including the documents incorporated therein) shall remain in full force and effect throughout the term of the Service Contract.
- 2.2 To the extent that any provision of this Agreement conflicts with the Service Contract such that compliance with both contracts by each Party is not possible, that provision which provides most closely for the Covered Entity, the Business Associate, and DoIT to remain in compliance with any respective HIPAA obligations shall control.
- 2.3 The “Whereas” clauses above are incorporated as substantive terms into this Agreement.

## **3. Obligations and Activities of Business Associate**

- 3.1 Business Associate agrees to not use or disclose PHI other than as permitted or required by this Agreement and the Service Contract, or as Required By Law, provided such use or disclosure would also be permissible by law by Covered Entity.
- 3.2 Business Associate agrees to use appropriate safeguards to prevent use or disclosure of the PHI other than as provided for by this Agreement. Business Associate agrees to implement Administrative Safeguards, Physical Safeguards and Technical Safeguards (“Safeguards”) that reasonably and appropriately protect the confidentiality, integrity and availability of electronic PHI as required by the Security Rule.
- 3.3 Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of the requirements of this Agreement.

- 3.4 Business Associate agrees to report to Covered Entity any use or disclosure of the PHI not provided for by this Agreement of which it becomes aware.
- 3.5 To the extent permitted by the Service Contract, Business Associate may use agents and subcontractors. Pursuant to 45 CFR §§164.308(b)(3) and 164.502(e)(1)(ii), Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides PHI received from, or created or received by Business Associate on behalf of Covered Entity agrees, through written agreement, to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information.
- 3.6 Business Associate agrees to make internal practices, books, and records, relating to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of, Covered Entity, available to the Covered Entity, or to the Secretary, in a time and manner reasonably designated by Covered Entity or designated by the Secretary of DHHS, for purposes of DHHS determining Covered Entity's compliance with the Privacy Rule and Security Rule.
- 3.7 Business Associate agrees to document disclosures of PHI and maintain information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR § 164.528.
- 3.8 Business Associate agrees to provide to Covered Entity or an Individual, in time and manner reasonably designated by the Covered Entity, information collected in accordance with Section 3.7 of this Agreement, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR § 164.528.
- 3.9 The Business Associate, pursuant to the HITECH Act and its implementing regulations, shall not directly or indirectly receive remuneration in exchange for any PHI of an Individual pursuant to §§13405(d)(1) and (2) of the HITECH Act. This prohibition does not apply to the State's payment of Business Associate for its performance pursuant to the Service Contract.
- 3.10 The Business Associate shall comply with the limitations on marketing and fundraising communications provided in §13406 of the HITECH Act in connection with any PHI of Individuals.
- 3.11 Upon written request, the Business Associate shall provide a Service Organization Control 2 (SOC2) report to the Covered Entity as confirmation that the Business Associate's obligations under this Agreement have been met.

#### **4. Permitted Uses and Disclosures by Business Associate**

- 4.1 Except as otherwise limited in this Agreement, Business Associate may use or disclose PHI to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in the Service Contract, provided that such use or disclosure would not violate the Privacy Rule if done by Covered Entity or the minimum necessary policies and procedures of the Covered Entity.
- 4.2 Except as otherwise limited in this Agreement, Business Associate may disclose PHI for the proper management and administration, or legal responsibilities of the Business Associate,

provided that disclosures are Required By Law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

- 4.3 Except as otherwise limited in this Agreement, Business Associate may use PHI to provide Data Aggregation services to Covered Entity as permitted by 45 CFR § 164.504(e)(2)(i)(B).
- 4.4 Business Associate may use PHI to report violations of law to appropriate Federal and State authorities, consistent with 45 CFR § 164.502(j)(1).

## 5. Reports of Security Incidents and Breaches

- 5.1 **Security Incidents.** The Business Associate shall notify the Covered Entity, which notification may be verbal, electronic, or otherwise, without unreasonable delay, but in no event later than ten (10) days following discovery by the Business Associate of any Security Incident, in connection with the Business Associate's systems that contain, house, or have access to PHI, including but not limited to any back-up copies of data in the Benefits Administration System, of which the Business Associate becomes aware during the term of this Agreement.

(a) The Business Associate shall promptly respond to Covered Entity's request for information, to the extent known, concerning any Security Incident in order to facilitate Covered Entity's response to Security Incidents, required by 45 CFR § 164.308(a)(6)(ii); or in order to facilitate Covered Entity's response to any other reporting obligation Required by Law.

(b) Notwithstanding the foregoing, the Business Associate need not notify the Covered Entity of the occurrence of unsuccessful Security Incidents that do not represent a significant risk to PHI, such as pings on Business Associate's firewall, so long as no such incident results in unauthorized access, use or disclosure of PHI.

(c) The Business Associate shall keep a log of all Security Incidents and provide the log to the Covered Entity at the end of each calendar year. Except for disclosures required by HIPAA notification procedures or DHHS audits, the parties recognize that such log is confidential and protected by the confidentiality agreement between the parties.

- 5.2 **Breach of Unsecured PHI. A Breach of Unsecured PHI shall be treated as discovered as described in 45 CFR §164.410(a)(2).**

(a) The Business Associate shall notify the Covered Entity, which notification may be verbal, electronic, or otherwise, without unreasonable delay, but in no event later than ten (10) days following discovery by the Business Associate of any Breach of Unsecured PHI of which the Business Associate becomes aware during the term of this Agreement.

(b) Following the notification of a Breach of Unsecured PHI pursuant to Section 5.2(a), the Business Associate shall provide a written report to the Covered Entity of such Breach. The Business Associate's report to the Covered Entity pursuant to this Section 5.2 (b) shall be

provided on a rolling basis, with information provided to the Covered Entity as it becomes available, but in no event later than 45 days following the discovery of the Breach by the Business Associate.

(c) Any report by the Business Associate to the Covered Entity pursuant to Section 5.2.(b) shall include:

- (i) the number of individuals, or a reasonable estimate of such number, affected by the Breach, as applicable;
- (ii) if applicable, to the extent known, the identification of each individual whose Unsecured PHI has been, or is reasonably believed to have been, accessed, acquired, used, or disclosed during the Breach;
- (iii) a description of what happened, including the date of the breach, and the date of the discovery of the breach, if known;
- (iv) a brief description of the types of Unsecured PHI that were involved in the breach (such as name, social security number, date of birth, benefit enrollment data, claims or health care services information, etc.);
- (v) identification of an individual who can provide additional information concerning the breach; and
- (vi) a brief description of the steps the Business Associate is taking to mitigate the breach, investigate the breach, and to protect against further breaches.

(d) In the event that Business Associate determines that there is no risk that the Breach or unauthorized access, acquisition, use, or disclosure compromises the integrity, security or privacy of the PHI of an individual, in lieu of the notice required by 5.2.1. (b), Business Associate shall promptly notify the Covered Entity of the event and the basis for that determination. Such notice shall occur as soon as is reasonable but in no event more than ten (10) days following discovery of the unauthorized access, acquisition, use or disclosure of PHI of an individual. Such determination shall be in writing and signed by an appropriate officer or employee of Business Associate and maintained until the expiration of any audit rights or record retention requirements of the Underlying Agreement, HIPAA, and the HITECH Act.

### 5.3 Notices to Members, Media or DHHS.

(a) In the event of a Breach of Unsecured PHI described in 45 CFR §164.408(b) (i.e. a Breach of the PHI related to 500 or more individuals), Business Associate shall provide to Covered Entity all information required by that section to be submitted to the Secretary of DHHS.

(b) Business Associate shall maintain a log of Breaches of Unsecured PHI, regardless of the number of individuals whose PHI is involved, that includes at least the information described in Section 5.2(c). Such log will be provided to the Covered Entity at the close of each calendar year

for Breaches occurring during the calendar year. Such log must contain information sufficient for the Covered Entity to comply with 45 CFR §164.408(c).

(c) Business Associate shall promptly respond to Covered Entity's request for information, to the extent known, concerning a Breach, to facilitate Covered Entity's preparation of Breach notifications, required by §§ 13402 of the HITECH Act, 45 CFR §§164.404, 164.406 and 164.408. or any other obligations Required by Law.

## **6. Obligations of Covered Entity**

6.1 Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by Covered Entity.

6.2 Covered Entity shall notify Business Associate of any limitation(s) in its notice of privacy practices of Covered Entity in accordance with 45 CFR § 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of PHI.

6.3 Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by Individual to use or disclose PHI, to the extent that such changes may affect Business Associate's use or disclosure of PHI.

6.4 Covered Entity shall notify Business Associate of any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 CFR § 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.

## **7. Term and Termination**

7.1 The Term of this Agreement shall be effective as of \_\_\_\_\_, and shall terminate when all of the PHI provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions of this Section.

7.2 Upon Covered Entity's knowledge of a material breach by Business Associate, Covered Entity shall either:

(a.) Provide an opportunity for Business Associate to cure the breach or end the violation and terminate this Agreement and the Service Contract if Business Associate does not cure the breach or end the violation within the time specified by Covered Entity;

(b.) Immediately terminate this Agreement and the Service Contract if Business Associate has breached a material term of this Agreement and cure is not possible; or

(c.) If neither termination nor cure is feasible, Covered Entity shall report the violation to the Secretary.

7.3 Except as provided in paragraph 7.4 of this section, upon termination of this Agreement, for any reason, Business Associate shall return or destroy all PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the PHI.

7.4 In the event that Business Associate determines that returning or destroying the PHI is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. Upon Covered Entity's agreement that return or destruction of PHI is infeasible, Business Associate shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI.

## **8. Miscellaneous**

8.1 Business Associate is solely responsible for all decisions made by Business Associate regarding safeguarding of PHI. Similarly, Covered Entity is solely responsible for all decisions made by Covered Entity regarding safeguarding of PHI.

8.2 Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer upon any person other than Covered Entity, Business Associate and their respective successors and assigns, any rights, remedies, obligations or liabilities whatsoever.

8.3 Modification of the terms of this Agreement shall not be effective or binding upon the parties unless and until such modification is committed to writing and executed by the parties hereto.

8.4 This Agreement shall be binding upon the parties hereto, and their respective legal representatives, trustees, receivers, successors and permitted assigns.

8.5 Should any provision of this Agreement be found unenforceable, it shall be deemed severable and the balance of the Agreement shall continue in full force and effect as if the unenforceable provision had never been made a part hereof.

8.6 This Agreement and the rights and obligations of the parties hereunder shall in all respects be governed by, and construed in accordance with, the laws of the State of Maryland, including all matters of construction, validity and performance.

8.7 All notices and communications required or permitted to be given hereunder shall be sent by certified or regular mail, addressed to the other party at its respective address as shown on the signature page, or at such other address as such party shall from time to time designate in writing to the other party, and shall be effective from the date of mailing.

8.8 This Agreement, including such portions as are incorporated by reference herein, constitutes the entire agreement by, between and among the parties, and such parties acknowledge by their signature hereto that they do not rely upon any representations or undertakings by any person or party, past or future, not expressly set forth in writing herein.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the date first set forth above.

COVERED ENTITY:

BUSINESS ASSOCIATE:

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Approved for form and legal sufficiency

this \_\_\_\_ day of \_\_\_\_\_ 2013

\_\_\_\_\_

Assistant Attorney General