

REQUEST FOR INFORMATION PRIVATE EQUITY SOFTWARE SERVICES

Introduction and Purpose

The Maryland State Retirement Agency (the “Agency”) is distributing this Request For Information (“RFI”) to software firms wishing to provide the Maryland State Retirement and Pension System (the “System”) with interactive software that provides centralized fund relationship management, qualitative and quantitative analysis capabilities, data capture and manipulation, and document access and retention with respect to the System’s private equity investments (the “Private Equity Software”) and related services. For purposes of this RFI, the Agency uses the term “private equity” to include not only private funds employing a traditional private equity strategy (e.g., buyout, growth, venture), but also other closed-end private funds focused on real estate, timber, energy, natural resources, infrastructure, and mezzanine or credit, among others. In distributing this RFI, the Agency is not seeking to develop customized private equity software.

It is the Agency’s intention to choose a firm from this process to provide Private Equity Software and related services for the Agency. However, the Agency may determine not to choose any firm to provide the services described in this RFI. If a firm is selected, the initial term of the contract would likely extend for a 5-year period, with options for additional renewal terms of up to four (4) additional years. Exercise of the renewal options will be at the sole discretion of the Agency.

The Board of Trustees for the System manages a diversified investment portfolio valued at approximately \$52.7 billion as of March 31, 2019 for the exclusive benefit of participants of the several retirement and pension systems for state employees, teachers and employees of participating municipalities. The System’s asset allocation is available on the Agency’s website:

https://sra.maryland.gov/sites/main/files/file-attachments/2019-03-31_qtrly_update_for_web.pdf.

For a list of the System’s private equity investments as of June 30, 2018, please see the System’s Comprehensive Annual Financial Reports, available online at:

https://sra.maryland.gov/sites/main/files/file-attachments/investment_cafr_2018.pdf. These investments are listed under the heading “Alternative Investments Relationship Listing.”

Further information regarding the System is set forth in the System’s Comprehensive Annual Financial Report, a copy of which is available on the Agency’s website:

https://sra.maryland.gov/sites/main/files/file-attachments/srps-cafr_2018-web.pdf.

Timeline and Submission Details

Date	Action
7/17/2019	RFI is issued.
7/26/2019	Due date for questions relating to the RFI. All questions relating to the RFI must be submitted via e-mail to PEsoftware@sra.state.md.us
8/9/2019	Answers to questions will be posted to the Agency’s website www.sra.state.md.us
8/16/2019	Responses to RFI must be submitted in hard copy (address below) and electronic copy to PEsoftware@sra.state.md.us . Please note that the electronic submission should not contain a fee schedule.

Staff will review submissions and contact those firms, if any, from which it desires additional information.

If your firm wishes to respond to this RFI, please return five (5) hard copies and one electronic copy of the firm's response to the attached questionnaire (**Attachment 1**) by 4:00 pm EST, August 16, 2019 to the address written below. Firms that respond to the RFI by submitting a proposal to provide one or more of the requested services are referenced in this RFI as "Offerors". The term "Contractor" as used in this RFI refers to the Offeror who enters into a contract with the System pursuant to this RFI. Please note that only one copy of the fee schedule should be sent in a separately marked envelope marked "**Private Equity Software Services**". The electronic submission **should not** contain a fee schedule.

Robert Burd
Maryland State Retirement Agency
120 E. Baltimore Street, 12th Floor
Baltimore, MD 21202
rburd@sra.state.md.us

On the submission's cover page, please provide the firm's name, primary contact person's name, phone and fax numbers, email address and mailing address.

This RFI, all responses, and resulting agreements are subject to Maryland's Public Information Act, Md. Code Ann., General Provisions Article ("GP") §4-101 et. seq. In the response, Offerors must specifically identify those portions of their proposals, if any, which they deem to include confidential commercial or financial information or trade secrets under GP § 4-335, and must provide justification why such material should not, upon request, be disclosed by the State. A blanket statement declaring that the entire response is confidential is not sufficient and will not be honored. Upon request for this information from a third party, the Agency will make an independent determination whether the information is disclosable.

All questions relating to the RFI should be submitted via e-mail to PESoftware@sra.state.md.us. Firms should not contact the System's Chief Investment Officer, Investment Division Staff, Board of Trustees, System's consultants or other Agency personnel to gain additional information regarding this RFI. Attempting to do so may result in the firm's disqualification.

Please note that the System will not be liable for any costs incurred with responding to this RFI. Also, the Agency reserves the right to evaluate submissions in its discretion. The Agency may decide to cancel the RFI at any time and reissue this or a similar request at a later date.

As part of the Questionnaire review process, the Agency has requested copies of the Offeror's standard form of service contract. Notwithstanding this request, the Agency expects Contractors to sign the form of contract attached as **Exhibit A**. Please note that this contract is attached for informational purposes only at this time and is not required to be completed and submitted in an Offeror's response to the RFI.

Minority Business Enterprises (MBEs) are encouraged to respond to this RFI. Offerors who consider themselves to be minority contractors are encouraged to obtain certification from the Maryland Department of Transportation. A minimum certified Minority Business Enterprise subcontract participation goal has not been established for this RFI, but certified MBE subcontract participation may be considered in evaluating proposals under certain circumstances. Offerors are encouraged to utilize MBEs for any subcontracting opportunities that may arise. The Agency also encourages Offerors to include socially and economically disadvantaged individuals on the team responding to this solicitation, if applicable.

POTENTIAL SCOPE OF SERVICES

The Agency is seeking a firm to supply interactive software to provide centralized fund relationship management, qualitative and quantitative analysis capabilities, data capture and manipulation, and document access and retention with respect to the System's private equity investments. The proposed services would be expected to include the provision of software, installation, implementation, training, on-going support and maintenance as more fully described below. Please note that the Agency is not seeking to develop customized private equity software.

A. **SOFTWARE PROGRAM.** The Agency is seeking Private Equity Software which would allow the System to access, manipulate, analyze and retain information which may include, but shall not be limited to, the following:

1. **Data services**

- Ensure data integrity through data testing and quality controls
- Capture transactions (direct, fund-of-funds, co-invests)
- Capture key data for funds – final closing, fund size, investment period ending, vintage year, currency, asset class, geographic focus, industry focus, prior funds and track records, fund raising progress, terms, side-letter provisions, etc.
- Capture geographic data
 - Proposed by fund
 - Actual by fund
- Capture sub-asset class data
- Provide for key metric calculations and graphics (pie charts, graphs, etc.)
- Allow user to manipulate and filter data to create customized reports

2. **Portfolio management**

- Track multiple fund types – direct, fund-of-funds, co-invests
- Track multiple asset classes – private equity, real estate, timber, energy partnerships, infrastructure, mezzanine / credit
- Perform peer group analysis - compare and contrast groups of funds and groups of managers using varying parameters - performance, asset class, geography, etc. – portfolio quartile rankings
- Measure performance (IRR, Value-add, TWR, multiples, etc.) – gross / net
- Benchmarking – gross / net
- Fund fee management and monitoring
 - analysis / tracking
 - waterfall modeling
- Valuation
 - Tracking & methodology
 - Cost / value
- Commitment, capital draws, distributions, recycled
- Portfolio holdings look through to underlying assets – cost / value
 - Aggregate and compare
 - portfolio positions among funds

- Valuations among funds
- Geographic / industry portfolio companies
- Fund / manager due diligence reports
 - Initial investment
 - Management of stages of investment review
 - Post-investment periodic review
 - Creation of standardized reports
- Cash flow modeling
- Performance metrics of the underlying portfolio investments

3. Portfolio accounting and cash management

- Cash flow reports
- Cash flow modeling
- Multi-currency capability

4. Document management system

- Provide online collaborative environment for document creation, sharing, and communications
- Established workflow processes with built in approval processes
- Version control
- Confidentiality
- Ability to receive and store various forms of electronic reports

5. Reporting

- Standard and custom report writer capabilities
- Multiple investment and portfolio grouping and peer fund comparisons
- Historical and current data reports
- Ability to manipulate data and produce ad hoc reports
- Report date parameter setting

B. SOFTWARE INSTALLATION, IMPLEMENTATION AND TRAINING

- Ensure that the software integrates with and operates properly in the Agency's environment
- Provide implementation services according to a mutually agreed upon work plan
- Provide hands-on on-site training including training materials, reference guides and operations manuals
- Provide web-based self-paced training

C. ONGOING SUPPORT AND MAINTENANCE

- Product updates and enhancements for technology advancements, improved functionality and compatibility with new industry standards
- Provide direct access of experienced consultants of the software
- Provide on-going prompt post-implementation support via telephone and electronic mail during normal business hours
- Provide timely problem resolution of reported concerns
- Provide online self-help functions
- Provide period updates to training materials, reference guides and operations manuals
- Provide ongoing web-based self-paced training
- Provide period on-site training to inform the Agency of software enhancements and to refresh users on initial training concepts

ATTACHMENT 1

PRIVATE EQUITY SOFTWARE SERVICES

QUESTIONNAIRE

If the firm is offering its services jointly with another firm or firms, please so indicate, and provide the information requested for all parties.

A. ORGANIZATIONAL BACKGROUND

1. Provide the following information with respect to the firm:
 - a. A brief history of the firm, including its year of organization, the ownership structure of the firm, including any parent, affiliated companies or joint venture, the percentage owned by current employees; and a list of the owners of at least 5% of the firm including individuals and all other entities.
 - b. The location of the firm's headquarters and any branch offices.
2. Describe any significant developments in the firm that have occurred since January 1, 2014 (changes in ownership, personnel reorganization, etc.).
3. Describe any anticipated changes in the firm's basic ownership structure or any other significant changes in the organization.
4. How many years has the firm been providing private equity software services to investors? Please list each type of service and its inception date.
5. Does the firm provide services other than private equity software services to any clients? If so, please list each type of service, its inception date, and a brief description.
6. Provide a breakdown of the firm's revenues by source of business activity.
7. Since January 1, 2014, has the firm, or any officer or principal been involved in any business litigation, regulatory or other legal proceedings or government investigation involving allegations of fraud, negligence, criminal activity or breach of contract? If so, provide a description, explanation, and indicate the current status.
8. How are conflicts of interest managed, disclosed or prevented if the firm or its affiliates provides software services to private equity funds?
9. How do you maintain the confidentiality of and protect user data from unauthorized use and disclosure?
10. Describe the levels of coverage for any professional liability insurance the firm carries. List the insurance carriers supplying the coverage, and supply certificates evidencing the coverage.

B. DEPTH AND EXPERIENCE OF PERSONNEL

1. Provide an organizational chart showing titles, functions, years of industry experience, years with the firm, and location of all personnel in the firm providing the proposed services.
2. What is the turnover of staff for the past five years?

C. CLIENT COVERAGE AND REFERENCES

1. What is the composition of the firm's client base, including non-investor clients? Provide the number and percentage of clients for the client types listed below. If the firm's investor client base is heavily weighted toward any particular type of investor, please provide an explanation.

Client Type

Public Pension Funds

Taft-Hartley Funds

Corporate Pension Funds

Endowments & Foundations

Non-Investors

Other (Specify)

2. Provide a current list of five (5) clients for private equity software services similar to those requested by this solicitation, including client name, contact name, telephone number, number of years the client has retained the firm, the types of services provided, countries covered by the provided services, and the client's total assets. This list should include at least three (3) public fund clients whose assets are greater than \$5 billion. The Agency reserves the right to contact any of the clients named to request references.

D. SERVICES REQUESTED

Provide a detailed description of the overall private equity software services being offered as follows:

1. Please include a detailed description of the manner in which your firm would provide each of the services outlined in the “Potential Scope of Services”. Please provide samples where appropriate.
2. What types of software services do you currently provide to similar plans?
3. If additional analytical resources are provided and made available to clients by the firm, please describe them and provide samples.
4. What Internet-based tools does the firm provide to clients? Please include a description and sample screen prints of any reports of other information that would be available to the System on-line.
5. Please provide the following additional background on your firm’s proposed software:
 - Number of subscribers
 - Characteristics of subscribers – organization type and geographic location
 - Number of partnerships tracked
 - Characteristics of partnerships – structure, strategy –sub asset class, geography, etc.
 - Number of portfolio companies tracked
 - Number of clients
 - Characteristics of clients / geography

E. TECHNOLOGY REQUIREMENTS AND SPECIFICATIONS

Provide a detailed description of the requirements necessary to successfully operate the proposed software, including but not limited to:

1. Internal Support Requirements
 - Owner
 - Manager
 - Administrator
 - Functional experts
2. Internal vs. External Hosting
3. License requirements
 - Number of users
 - Modules
 - Number of funds
4. Security
 - System management
 - User rights settings
 - Data encryption
5. System limitations

- Maximum number of manager relationship
- Maximum number of funds
- Maximum number of portfolio companies

F. FEES

Provide a fee schedule for all services requested and describe how the fees are calculated.

Any contract resulting from this process is likely to extend for an initial term of five (5) years with options for additional renewal terms of up to four (4) additional years. Exercise of the renewal options will be at the sole discretion of the Agency. Provide fees for each year of the proposed 5-year term as well as the optional renewal periods. All fees should be provided in US dollars.

The fee schedule shall provide reasonable detail about the fees proposed to be charged for particular product licenses and/or services, as applicable. Where applicable, fees for specific services based on units of work should indicate the usual anticipated time required to complete the service.

Please note that one copy of the fee schedule should be sent on a separately marked envelope marked “**Private Equity Software Services**”. The electronic submission **should not** contain a fee schedule.

G. OTHER

1. Please provide a copy of the firm’s most recent audited financial statements, SSAE 16 report, and System and Organization Controls report, whether SOC1 or SOC2 . If these are not available, please provide an explanation.
2. Please provide a copy of the firm’s Code of Ethics. Do the firm and its employees comply with the Code of Ethics and Standards of a professional association? If so, which professional association?
3. Please provide a copy of the firm’s standard contract for the services being offered.

Exhibit A

FORM OF CONTRACT

[Please see attached]

PRIVATE EQUITY SOFTWARE MASTER SERVICES AGREEMENT

This Private Equity Software Master Services Agreement is made as of the _____ day of _____, 2019 by and between the Maryland State Retirement Agency for the benefit of the Board of Trustees for the Maryland State Retirement and Pension System (collectively, the “System”) and [_____] (the “Contractor”).

In consideration of the mutual covenants and promises herein contained and other good and valuable consideration, the receipt and sufficient of which is hereby acknowledged, the System and the Contractor agree as follows:

1. Scope of Services.

1.1 The parties enter into this Master Services Agreement, together with the following exhibits which are attached and incorporated herein by reference (“MSA”) to establish the general terms and conditions to be incorporated by reference into any Addendum executed by the parties. Each Addendum will identify the products and/or services (collectively the “Services”) to be provided by the Contractor and the fees due for such Services (the “Fees”). Each Addendum, plus this MSA, shall be one separate and complete agreement (the “Agreement”), independent of any other Addenda the parties may execute. In case of a conflict between the MSA and an Addendum, the provisions of the Addendum shall govern. Capitalized terms that are used but not defined in this MSA shall have the meanings given to them in the Addendum.

1.2 The Contract Manager, as identified in Section 29, or a successor designated by the System (the “Contract Manager”) may, at any time, by written order, make changes in the work within the general scope of the Agreement. No other order, statement or conduct of the Contract Manager 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 Agreement, 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 Agreement price shall be made and the Agreement 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 Agreement. Nothing in this section shall excuse the Contractor from proceeding with the Agreement as changed.

1.3 If, as and when the Contractor develops or upgrades systems and technology services intended to assist clients in analyzing, monitoring and administering their private equity program, the Contractor will provide such systems and technology services to the System at no additional cost. Such upgrades to not include new services generally sold as a separate service by the Contractor.

2. Term and Renewal.

Unless sooner terminated in accordance with the provisions of the Agreement, the term of the Agreement shall be as set forth in the applicable Addendum. All prices rates and terms offered in the applicable Addendum are binding on the Contractor for the term of the Agreement.

3. Termination.

3.1 One party may terminate the Agreement on notice to the other upon the other party's failure to cure a material breach within ninety (90) days after notice of a demand to cure the breach. Fees shall be prorated for the period prior to the notice of termination.

3.2 If the Contractor ceases or plans to cease to offer all or any part of the Services to all clients for any reason, the Contractor may terminate the Agreement as to all or a portion of the Services by providing the System at least one hundred and eighty (180) days advance notice. The Contractor shall promptly refund the portion of Fees paid for the discontinued Services for the period following termination.

3.3 The System may terminate the Agreement or any Addendum at any time upon thirty (30) days' notice at its sole discretion.

3.4 Audit, confidentiality, document retention, patents, copyright, intellectual property, warranty, and indemnification obligations under this Agreement and any other obligations specifically identified shall survive expiration or termination of the Agreement.

3.5 Upon termination of the Agreement, the Contractor, at its own expense, shall deliver any equipment, software, or other property provided by the System to the place designated by the Contract Manager.

4. Fees and Payment.

4.1 In consideration of the satisfactory performance of the work set forth in this Agreement and any Addendum, the System shall pay the Contractor in accordance with the rates and terms in the applicable Addendum.

4.2 Invoices must be provided in the format and on the schedule identified in the Addendum. Payments to the Contractor pursuant to this Agreement shall be made no later than 30 days after the System'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. The final payment under this Agreement will not be made until after certification is received from the Comptroller of the State of Maryland that all taxes have been paid. The System represents and warrants that, as a governmental pension plan within the meaning of Section 414(d) of the Internal Revenue Code, it is tax-exempt.

4.3 In addition to any other available remedies if, in the opinion of the Contract Manager, the Contractor fails to perform in a satisfactory and timely manner, the Contractor will be notified and provided a time specified by the System to cure the breach. If the breach is not cured within the time specified within the notification, the Contract Manager 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 System pursuant to this Agreement.

4.4 The System may deduct from and set off against any amounts due and payable to the Contractor any back-charges, penalties, or damages sustained by the System, by virtue of any breach of the Agreement by the Contractor. Nothing herein shall be construed to relieve the Contractor of liability for additional costs resulting from a failure to satisfactorily perform the Services. Payment of an invoice by the System is not evidence that Services were rendered as required under this Agreement.

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 System to use such item or items.

5.2. Except as provided in Section 5.4 of this Agreement, the Contractor agrees that all documents and materials, including but not limited to, reports, drawings, studies, specifications, estimates, tests, maps, photographs, designs, software, graphics, mechanical, artwork, computations and data prepared by or for the Contractor for purposes of this Agreement (“Work Product”) shall become and remain the sole and exclusive property of the System. The System shall have the right to use the same without restriction and without compensation to the Contractor other than that specifically provided by this Agreement.

5.3. Except as provided in Section 5.4 of this Agreement, the Contractor agrees that at all times during the term of this Agreement and thereafter, Work Product shall be "works made for hire" as that term is interpreted under U.S. copyright law and shall be owned by the System. Ownership includes the right to copyright, patent, register, and the ability to transfer these rights and all information used to formulate such Work Product. In the event any Work Product is or may not be considered a work made for hire under applicable law, Contractor assigns and transfers to the System the entire right, title, and interest in and to all rights in the Work Product and any registrations and copyright applications relating thereto and any renewals and extensions thereof. Contractor shall execute all documents and perform such other proper acts as the System may deem necessary to secure for it the rights pursuant to this section.

5.4. Notwithstanding anything to the contrary in this Agreement, to the extent (i) the Work Product incorporates any commercial-off-the shelf software (“COTS”) and/or any Pre-Existing Intellectual Property or (ii) any COTS and/or 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 COTS and 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) the Contractor hereby grants to the System, on behalf of itself and any third-party licensors, a royalty-free, paid-up, non-exclusive, unrestricted, unconditional, irrevocable, worldwide right and license, with the right 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 System to use the Work Product for the purposes for which such Work Product was designed and intended, which license shall be in effect at all times during the term of this Agreement. “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 Agreement and not solely using funds from this Agreement.

5.5 Subject to the terms of Section 8, Contractor shall defend, indemnify, and hold harmless the System, including, but not limited to, the System and its agents, officers, and employees, from and against any and all claims, costs, losses, damages, liabilities, judgments and expenses (including without limitation reasonable attorneys’ fees) arising out of or in connection with any claim the Work Product or any Third-party Intellectual Property infringes, misappropriates or otherwise violates any Third-party Intellectual Property rights. Contractor shall not enter into any settlement involving third party claims that contains any admission of or stipulation to any guilt, fault, liability or wrongdoing by the System or that adversely affects the System’s rights or interests, without the System’s prior written consent, which consent may be withheld in the System’s sole and absolute discretion.

5.6 Except if Contractor has pre-existing knowledge of such infringement, Contractor's obligations under this section will not apply to the extent any Third-party Intellectual Property infringes, misappropriates or otherwise violates any third party intellectual rights as a result of modifications made by the System in violation of the license granted to the System pursuant to Section 5.4; provided that such infringement, misappropriation or violation would not have occurred absent such modification.

5.7 Without limiting Contractor's obligations under Section 5.5, if all or any part of the Work Product or any Third Party Intellectual Property is held, or Contractor or the System reasonably determines that it could be held, to infringe, misappropriate or otherwise violate any third party intellectual property right, Contractor (after consultation with the System and at no cost to the System): (a) shall procure for the System the right to continue using the item or service in accordance with its rights under this Agreement; (b) replace the item or service with an item that does not infringe, misappropriate or otherwise violate any third party intellectual property rights and, in the System's sole and absolute determination, complies with the item's specifications as defined in this Agreement, and all rights of use and/or ownership set forth in this Agreement; or (c) modify the item or service so that it no longer infringes, misappropriates or otherwise violates any third party intellectual property right and, in the System's sole and absolute determination, complies with the item's specifications and all rights of use and/or ownership set forth in this Agreement.

5.8 Contractor, on behalf of itself and its subcontractors, hereby agrees not to incorporate, link, distribute or use any Third-party Intellectual Property 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 such other open source software.

5.9 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 that are owned or controlled by the System or any of the Contractor's affiliates (or for which the System 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 System 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 System or any of its subcontractors that is undertaken under this Agreement as to any Software or technology shall be construed as intending to cause any patents, copyrights or other intellectual property that are owned or controlled by the System (or for which the System has received license rights) to become subject to any encumbrance or terms and conditions of any Open Source License.

5.10 The Contractor shall report to the System, promptly and in written detail, each notice or claim of copyright infringement received by the Contractor with respect to all Work Product delivered under this Agreement.

5.11. This Section 5 shall survive expiration or termination of this Agreement.

6. Indemnification

6.1. In addition to Contractor's indemnification obligations described in Section 5, Contractor shall indemnify, defend, and hold the System, its trustees, officers, employees and agents harmless from liability for the following conduct arising from or relating to the performance of the Contractor or its subcontractors under this Agreement: (a) tangible property damage, bodily injury and death, to the extent caused by or contributed to by Contractor or its subcontractors and (b) fraud or willful misconduct of Contractor or its subcontractors. Such indemnification shall include all related defense costs and expenses attributable to the claims of third parties, including, but not limited to, reasonable attorneys' fees and costs of investigation, litigation, settlement, judgments, interest and penalties.

6.2. Upon the System's request of indemnification under Section 5 or 6, Contractor shall be entitled to control the defense or settlement of the relevant claim with counsel reasonably satisfactory to the System. The System will: (a) provide reasonable cooperation to Contractor in connection with the defense or settlement of the claim, at Contractor's expense; and (b) be entitled to participate in the defense of the claim, at its own expense.

6.3. The System 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 Agreement against the Contractor or its subcontractors as a result of or relating to the Contractor's obligations under this Agreement.

6.4. The System 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 Agreement.

6.5. To the extent permitted by applicable law, the Contractor shall immediately notify the Contract Manager 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 Agreement, and will cooperate, assist, and consult with the System in the defense or investigation of any third party claim, suit, or action made or filed against the System as a result of or relating to the Contractor's performance under this Agreement.

6.6. This Section 6 shall survive expiration or termination of this Agreement.

7. Limitations of Liability

7.1. Contractor shall be liable for any loss or damage to the System occasioned by the acts or omissions of Contractor, its subcontractors, agents or employees, including but not limited to personal injury; physical loss; or violations of the Patents, Copyrights, Intellectual Property sections of this Agreement, as follows: (a) for infringement of patents, trademarks, trade secrets and copyrights as provided in Section 5 ("Patents, Copyrights, Intellectual Property") of this Agreement; (b) without limitation, for damages for bodily injury (including death) and damage to real property and tangible personal property; (c) without limitation for breaches of confidentiality, including Section 11 "Confidentiality"; and (d) for all other claims, damages, loss, costs, expenses, suits, or actions in any way related to this Agreement 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 [_____] (__) times the total amount of the Fees associated with the Addendum out of which the claim arises. Third-party claims arising under Section 6 of this Agreement are included in this limitation of liability only if the System is immune from liability. Contractor's liability for third-party claims arising under

Section 6 of this Agreement shall be unlimited if the System is not immune from liability for claims arising under Section 6.

7.2. In no event shall the existence of a subcontract operate to release or reduce the liability of Contractor hereunder. For purposes of this Agreement, Contractor agrees that all Subcontractors shall be held to be agents of Contractor.

8. Loss of Data.

The System will own all right, title and interest in its data that is related to the Services provided under this Agreement. In the event of loss of any 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 or records in a manner, format, and time frame acceptable to the Contract Manager. The Contractor shall ensure that all data is backed up and is recoverable by the Contractor.

9. Notification of Legal Requests

The Contractor shall contact the System upon receipt of any electronic discovery, litigation holds, discovery searches and expert testimonies related to the System's data under this Agreement, or which in any way might reasonably require access to the data of the System, unless prohibited by law from providing such notice. The Contractor shall not respond to subpoenas, service of process and other legal requests related to the System without first notifying the System, unless prohibited by law from providing such notice.

10. Confidentiality.

10.1 Subject to the Maryland Public Information Act and any other applicable laws, all confidential or proprietary information and documentation relating to either party (including without limitation, any information or data stored within the Contractor's computer systems) shall be held in absolute confidence by the other party. Each party shall, however, be permitted to disclose relevant confidential information to its officers, agents and employees to the extent that such disclosure is contemplated by this Agreement or necessary for the performance of their duties under this Agreement, provided the data may be collected, used, disclosed, stored and disseminated only as provided by and consistent with the law. The provisions of this section shall not apply to information that (a) is lawfully in the public domain; (b) has been independently developed by the other party without violation of this Agreement; (c) was already in the possession of such party; (d) was supplied to such party by a third party lawfully in possession thereof and legally permitted to further disclose the information; or (e) which such party is required to disclose by law. This Section 10 shall survive expiration or termination of the Agreement. For the avoidance of doubt, the System is permitted to disclose data and reports generated under this Agreement to its consultants who have entered into an Agreement with the Contractor to protect the confidentiality of information.

10.2 The Contractor shall not affix (or permit any third party to affix), without the System's consent, any restrictive markings upon any Work Product and if such markings are affixed, the System shall have the right at any time to modify, remove, obliterate, or ignore such warnings.

11. File backup; disaster recovery.

The Contractor shall ensure that all data is backed up and is recoverable by the Contractor. The Contractor agrees to regularly perform critical file backups, rotate backup to offsite storage locations on a regular basis and maintain and update its disaster recovery plan. The Contractor agrees to supply the

System with a copy of its disaster recovery plan, and inform the System of any material changes to its disaster recovery plan. All storage and processing of information shall be performed within the borders of the United States.

12. Insurance Requirements.

12.1 The Contractor shall maintain customary commercial insurance policies that cover losses resulting from or arising out of Contractor action or inaction in the performance of Services under the Agreement by the Contractor, its agents, servants, employees or subcontractors. Effective no later than the date of execution of the Agreement, and continuing for the term of this Agreement, the Contractor shall maintain such insurance coverage and shall report such insurance annually or upon request of the System. The Contractor shall provide prompt written notification should such coverage be canceled or modified.

12.2 The Contractor warrants that it carries adequate workers' compensation and other insurance as required by State and federal law, and shall maintain such insurance at levels acceptable to the System in full force and effect during the term of this Agreement. The Contractor agrees to furnish satisfactory evidence of this insurance coverage to the System upon request.

13. Contract Affidavit.

The Contractor's Contract Affidavit is included as **Exhibit A** of this Agreement and is incorporated herein by this reference.

14. Conflict of Interest.

14.1 The Contractor should be aware that the State Ethics Law, General Provisions Article, Title 5, might limit the selected the Contractor's ability to perform the Services required by this Agreement, depending upon specific circumstances.

14.2 The Contractor will provide Services to the System and must do so impartially and without any conflicts of interest. The Contractor will be required to complete a Conflict of Interest Affidavit. A copy of the Conflict of Interest Affidavit/Disclosure is included as **Exhibit B** of this Agreement and is incorporated herein by this reference. The Contractor shall provide periodic updates to the Agency and the Contract Manager, providing information such as that required by the Conflict of Interest Affidavit/Disclosure attached as **Exhibit B**, certifying whether an actual or potential conflict of interest exists.

15. Delays and Extensions of Time.

The Contractor agrees to perform the work under this Agreement 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 Agreement. 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 System in either its sovereign or contractual capacity, acts of another contractor in the performance of a contract with the System, 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.

16. Retention of Records; Inspection of Records; Audit Reports.

16.1 The Contractor shall maintain and retain all records and documents relating to the Agreement for a period of three (3) years from the date of final payment under the Agreement or subcontract hereunder or any applicable statute of limitations, whichever is longer, and shall make the records and documents available for inspection and audit by the Legislative Auditor of the State of Maryland, the System's actuary, the System's auditor, and authorized representatives of the System at all reasonable times. If such documentation is maintained on an automated system, appropriate retention, retrieval and back-up policies must be established, implemented and maintained.

16.2 Simultaneously with the execution of this Agreement, the Contractor shall provide the System with a copy of the most recent System and Organization Controls report (each a "SOC Report"), whether SOC1 or SOC2, issued to the Contractor under the applicable American Institute of Certified Public Accountants standards, relating to the methods and procedures maintained and employed by the Contractor with respect to Services provided hereunder. Thereafter, the Contractor shall make such SOC Report available to the Agency no less frequently than annually.

17. Compliance with Laws.

The Contractor hereby represents and warrants that:

17.1 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;

17.2 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 Agreement;

17.3 It shall comply with all federal, State and local laws, regulations, and ordinances applicable to its activities and obligations under this Agreement; and

17.4 It shall obtain, at its expense, all licenses, permits, insurance, and governmental approvals, if any, necessary to the performance of its obligations under this Agreement.

18. Security Requirements and Incident Response

18.1 The Contractor agrees to abide by all applicable federal, State and local laws concerning information security. Contractor shall limit access to and possession of Sensitive Data to only employees whose responsibilities reasonably require such access or possession and shall train such employees on the Confidentiality obligations set forth herein. "Sensitive Data" means any personally identifiable information, protected health information, or other private/confidential data.

18.2 The Contractor agrees to notify the System when any Contractor system that may access, process, or store System data or Work Product is subject to unintended access or attack. Unintended access or attack includes compromise by a computer malware, malicious search engine, credential compromise or access by an individual or automated program due to a failure to secure a system or adhere to established security procedures.

18.3 The Contractor further agrees to notify the System within twenty-four (24) hours of the discovery of the unintended access or attack by providing notice via written or electronic correspondence to the Contract Manager.

18.4 The Contractor agrees to notify the System within two (2) hours if there is a threat to Contractor's product as it pertains to the use, disclosure, and security of the System's data.

18.5 If an unauthorized use or disclosure of any Sensitive Data occurs, the Contractor must provide written notice to the System within one (1) business day after Contractor's discovery of such use or disclosure and thereafter all information the requests concerning such unauthorized use or disclosure.

18.6 The Contractor, within one day of discovery, shall report to the System any improper or non-authorized use or disclosure of Sensitive Data. Contractor's report shall identify: (a) the nature of the unauthorized use or disclosure; (b) the Sensitive Data used or disclosed; (c) who made the unauthorized use or received the unauthorized disclosure; (d) what the Contractor has done or shall do to mitigate any deleterious effect of the unauthorized use or disclosure; and (e) what corrective action the Contractor has taken or shall take to prevent future similar unauthorized use or disclosure. The Contractor shall provide such other information, including a written report, as reasonably requested by the System.

18.7. The Contractor shall protect Sensitive Data according to a written security policy no less rigorous than that of the System, and shall supply a copy of such policy to the System for validation. The Contractor agrees to comply with all applicable laws that require the notification of individuals in the event of unauthorized release of Sensitive Data or other event requiring notification and, should an event occur that triggers an obligation to provide such notification, the Contractor agrees to assume responsibility for informing all such individuals in accordance with applicable law and to indemnify, hold harmless and defend the System and its officials and employees from and against any claims, damages, or other harm related to such security obligation breach or other event requiring the notification.

18.8 This Section 18 shall survive expiration or termination of this Agreement.

19. Effect of Contractor Bankruptcy.

All rights and licenses granted by the Contractor under this Agreement are and shall be deemed to be rights and licenses to "intellectual property," and the subject matter of this Agreement, including the Services, is and shall be deemed to be "embodiments of intellectual property" for purposes of and as such terms are used and interpreted under § 365(n) of the United States Bankruptcy Code ("Code") (11 U.S.C. § 365(n) (2010)). The System has the right to exercise all rights and elections under the Code and all other applicable bankruptcy, insolvency and similar laws with respect to this Agreement (including all executory statement of works). Without limiting the generality of the foregoing, if the Contractor or its estate becomes subject to any bankruptcy or similar proceeding: (a) subject to the System's rights of election, all rights and licenses granted to the System under this Agreement shall continue subject to the respective terms and conditions of this Agreement; and (b) the System shall be entitled to a complete duplicate of (or complete access to, as appropriate) all such intellectual property and embodiments of intellectual property, and the same, if not already in the System's possession, shall be promptly delivered to the System, unless the Contractor elects to and does in fact continue to perform all of its obligations under this Agreement.

20. 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 a mutually determined specified date prior to the conclusion of any price discussions or negotiations.

The price under this Agreement and any change order or modification hereunder, including profit or fee, shall be adjusted to exclude any significant price increases occurring because the Contractor furnished cost or price information which, as of the date agreed upon by the parties, was inaccurate, incomplete, or not current.

21. Subcontracting; Assignment

The Contractor may not subcontract any portion of the Services provided under this Agreement without prior written notice to the System, nor may the Contractor assign this Agreement or any of its rights or obligations hereunder without prior written notice to the System. Any such subcontract or assignment shall be subject to any terms and conditions that the System deems necessary to protect its interests. Notwithstanding any subcontract or assignment permitted hereunder, the Contractor shall always remain liable to the System for the Contractor's obligations hereunder and for all actions of any subcontractor or assignee to the same extent as the Contractor is liable for its own actions hereunder. The System shall not be responsible for the fulfillment of the Contractor's obligations to any subcontractor or assignee.

22. 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 or agent working for the Contractor to solicit or secure this Agreement; and that it has not paid or agreed to pay any person, partnership, corporation, or other entity other than a bona fide employee or agent any fee or other consideration contingent on the making of this Agreement.

23. Maryland Law.

This Agreement 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 Agreement or any software license acquired hereunder. Any and all references to the Annotated Code of Maryland contained in this Agreement shall be construed to refer to such Code sections as from time to time amended.

24. Unilateral Right of the System to Change Duties.

The System, through the Contract Manager, retains the unilateral right to require modification or changes in the duties to be performed by the Contractor so long as the changes are within the general scope of the Contractor's duties to be performed under this Agreement and the Contractor receives notice in writing of the changes.

25. Independent Contractors.

The parties hereto are and shall remain independent contractors. Nothing herein shall be deemed to establish a partnership, joint venture or agency relationship between the parties. Neither party shall have the right to obligate or bind the other party in any manner to any third party.

26. Entire Agreement.

The Agreement constitutes the entire agreement of the parties with respect to its subject matter, and supersedes all prior oral and written agreements, proposals and discussions.

27. Mandatory Contractual Provisions.

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

27.2 Financial Disclosure. The Contractor shall comply with the provisions of Section 13-221 of the State Finance and Procurement Article, Annotated Code of Maryland, which requires that every business that enters into contracts, leases, or other agreements with the State 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 these 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.

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

27.4 Non-hiring of Officials and Employees. The Contractor shall comply with the provisions of the Annotated Code of Maryland, State Government Article, Section 15-102, which provides that no official or employee of the State of Maryland, as defined therein, whose duties as such official or employee include matters relating to or affecting the subject matter of this Agreement shall, during the pendency and term of this Agreement and while serving as an official or employee of the State, become or be an employee of the Contractor or any entity that is subcontractor on this Agreement.

28. Procurement Regulations.

Although this Agreement is exempt from certain provisions of Division II of the State Finance and Procurement Article of the Annotated Code of Maryland ("Procurement Article"), the requirements of the Procurement Article and the Code of Maryland Regulations, Title 21, State Procurement Regulations (as amended), will be applied to this Agreement to the extent practicable and consistent with obtaining the best services for the System, all as determined in the System's sole discretion. The appeal procedures contained in the Procurement Article and in the State Procurement Regulations will not apply to this Agreement.

29. Administrative

29.1 Contract Manager. The work to be accomplished under this Agreement shall be performed under the direction of the Deputy Chief Investment Officer as Contract Manager. All matters relating to the interpretation of this Agreement shall be referred to the Contract Manager for determination.

29.2 Waiver. No failure or delay on the System’s part in exercising any right or remedy hereunder shall operate as a wavier thereof. No waiver by either party of any failure or refusal to comply with an obligation hereunder shall be deemed a waiver of any other or subsequent failure or refusal to so comply. No modification or waiver shall be effective unless it is in writing and duly executed by the System.

29.3 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 System:

Robert Burd
Deputy Chief Investment Officer
Maryland State Retirement Agency
120 East Baltimore Street, 16th Floor
Baltimore, Maryland 21202
Telephone: 410-625-5571
email: rburd@sra.state.md.us

If to the Contractor:

[
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[
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30. Authority.

Each party to the Agreement represents and warrants to the other that it has the full right, power, and authority to execute this Agreement and to perform the acts contemplated hereunder and the person signing this Agreement on behalf of each party has been properly authorized and empowered to enter into this Agreement.

31. Counterparts.

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which together shall be deemed one and the same document.

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

[_____]

**MARYLAND STATE RETIREMENT AGENCY
FOR THE BENEFIT OF THE BOARD OF
TRUSTEES OF THE MARYLAND STATE
RETIREMENT AND PENSION SYSTEM**

By: _____

Name: _____

Title: _____

Company: _____

Date

By: _____

R. Dean Kenderdine,
Executive Director
Secretary of the Board

Date

Approved for form and legal
sufficiency this _____ day
of _____ 2019.

Assistant Attorney General

EXHIBITS

EXHIBIT A – CONTRACT AFFIDAVIT

EXHIBIT B – CONFLICT OF INTEREST AFFIDAVIT/DISCLOSURE

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PRIVATE EQUITY SOFTWARE MASTER SERVICES AGREEMENT

EXHIBIT A

CONTRACT AFFIDAVIT

A. AUTHORITY

I hereby affirm that I, _____ (name of affiant) am the _____(title) and duly authorized representative of _____(name of business entity) and that I possess the legal authority to make this affidavit on behalf of the business for which I am acting.

B. CERTIFICATION OF REGISTRATION OR QUALIFICATION WITH THE STATE DEPARTMENT OF ASSESSMENTS AND TAXATION

I FURTHER AFFIRM THAT:

The business named above is a (check applicable box):

- (1) Corporation — domestic or foreign;
- (2) Limited Liability Company — domestic or foreign;
- (3) Partnership — domestic or foreign;
- (4) Statutory Trust — domestic or foreign;
- (5) Sole Proprietorship.

and is registered or qualified as required under Maryland Law. I further affirm that the above business is in good standing both in Maryland and (IF APPLICABLE) in the jurisdiction where it is presently organized, and has filed all of its annual reports, together with filing fees, with the Maryland State Department of Assessments and Taxation. The name and address of its resident agent (IF APPLICABLE) filed with the State Department of Assessments and Taxation is:

Name _____ and _____ Department _____ ID _____
Number: _____ Address: _____

and that if it does business under a trade name, it has filed a certificate with the State Department of Assessments and Taxation that correctly identifies that true name and address of the principal or owner as:

Name _____ and _____ Department _____ ID _____
Number: _____ Address: _____

C. FINANCIAL DISCLOSURE AFFIRMATION

I FURTHER AFFIRM THAT:

I am aware of, and the above business will comply with, the provisions of State Finance and Procurement Article, §13-221, 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.

D. POLITICAL CONTRIBUTION DISCLOSURE AFFIRMATION

I FURTHER AFFIRM THAT:

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

E. 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 Proposal, 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 who 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's 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 §E(2)(b), above;

(h) Notify its employees in the statement required by §E(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 Contract Manager within 10 days after receiving notice under §E(2)(h)(ii), above, or otherwise receiving actual notice of a conviction;

(j) Within 30 days after receiving notice under §E(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 §E(2)(a)—(j), above.

(3) If the business is an individual, the individual shall certify and agree as set forth in §E(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.

F. 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 Proposal Affidavit dated _____, 201____, 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: _____ (printed name of Authorized Representative and Affiant)

_____ (signature of Authorized Representative and Affiant)

PRIVATE EQUITY SOFTWARE MASTER SERVICES AGREEMENT

EXHIBIT B

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 System, 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 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 Proposal is made.

C. The Offeror warrants that, except as disclosed in §D, 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 Offeror agrees that if an actual or potential conflict of interest arises after the date of this affidavit, the Offeror shall immediately make a full disclosure in writing to the Contract Manager of all relevant facts and circumstances. This disclosure shall include a description of actions which the 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 Contract Manager 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)