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State Treasurer

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INVITATION FOR BIDS

FOR

2021 MASTER EQUIPMENT LEASE-PURCHASE FINANCING

IFB #MEL-04272021

Due Date: May 18, 2021, as described herein

**Indexed Rate Private Placement Equipment
Financing of up to \$35 Million**

Issued: April 27, 2021

KEY INFORMATION SUMMARY SHEET

**Maryland State Treasurer's Office
Invitation For Bids
For
2021 Master Equipment Lease-Purchasing Financing
IFB # MEL-04272021**

Procurement Officer: Anne Jewell
Tel.: (410) 260-7903
Email: procurement@treasurer.state.md.us

Submit Bids to: Maryland State Treasurer's Office
Attn: Procurement Officer
Louis L. Goldstein Treasury Building
80 Calvert Street
Annapolis, Maryland 21401

IFB Release Date: April 27, 2021

Questions Due: May 7, 2021

Bid Due Date and Opening: May 18, 2021 at 11:00 AM Eastern Daylight Time
(EDT)

**Board of Public Works Meeting
Approval of Award:** June 16, 2021

NOTICE: A prospective bidder who received this document from a source other than the Issuing Office or eMaryland Marketplace Advantage, should immediately contact the Issuing Office and provide their name and email address in order that amendments to the IFB or other communications can be sent to them. A prospective bidder should also register on eMaryland Marketplace at: (<https://procurement.maryland.gov>). Any prospective bidder who fails to register on eMaryland Marketplace Advantage assumes complete responsibility in the event that they do not receive amendments to the solicitation prior to the closing date.

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SECTION I. OBJECTIVE

1.1 Summary Statement

The Maryland State Treasurer’s Office (the “Office”) is requesting bids for financing, on a consolidated basis, the acquisition by agencies of the State of Maryland (the “Lessee” or the “State”) of certain equipment under a lease-purchase financing arrangement (the “Master Lease”). The successful bidder will provide financing for up to \$35 million in new equipment purchases (the “Equipment”) beginning June 16, 2021, through June 30, 2023 (unless the Master Lease is terminated prior to such date in accordance with its terms) or until \$35 million of equipment has been lease financed, or such lesser amount as may be authorized by the Board of Public Works. These purchases will be consolidated, and the financing provided as described in Section III of this Invitation for Bids (“IFB”).

The Office anticipates that the first take down under the Master Lease will occur on June 16, 2021 and will finance \$3,851,871.88 of equipment, a description of which is included as Appendix D-2.

1.2 Issuing Office; Procurement Officer

Issuing Office: State Treasurer’s Office
Louis L. Goldstein Treasury Building, Room 109
80 Calvert Street
Annapolis, Maryland 21401

Procurement Officer: Anne Jewell
(410) 260-7903
E-mail: procurement@treasurer.state.md.us

The sole point of contact for purposes of this procurement is the Procurement Officer. The Procurement Officer may designate others to act on her behalf. The State may change the Procurement Officer or change the limits of her authority at its discretion.

1.3 Procurement Method

This contract will be awarded in accordance with the competitive sealed bidding process under COMAR 21.05.02.

1.4 Contract Officer

The Contract Officer monitors the daily activities of the contract and provides technical guidance to the contractor (the “Lessor”). The Contract Officer is:

Tanya M. Mekeal
Lease Administrator
Maryland State Treasurer’s Office
Louis L. Goldstein Treasury Building
80 Calvert Street, Room 109
Annapolis, Maryland 21401

Tel: (410) 260-7154
Email: tmekeal@treasurer.state.md.us

1.5 Use of eMaryland Marketplace Advantage

eMaryland Marketplace Advantage (EMMA) is a free electronic commerce system administered by the Maryland Department of General Services. The IFB and all other solicitation-related material will be provided via eMMA. Subscribers will receive solicitation notifications as well as solicitation update/change order notifications. It is recommended that all bidders interested in doing business with Maryland State agencies subscribe to eMMA. Go to: <https://procurement.maryland.gov>, click on “Login and Register for eMMA” under Quick Links to begin the process and then follow the prompts. In order to receive a contract award, a vendor must be registered on eMMA.

1.6 Schedule of Events

<u>Event</u>	<u>Date:</u>
IFB Release Date and Notice in “EMMA”	04/27/2021
Deadline for Receipt of Questions	05/7/2021
Submission Deadline for Bids	05/18/2021 at 11:00 a.m. EDT
Bid Opening	05/18/2021 at 11:30 a.m. EDT
Board of Public Works – Decision	06/16/2021
Calculation of Interest rates for first takedown	06/17/2021
Closing of first takedown	06/29/2021

1.7 Pre-Bid Conference

There will be no pre-bid conference.

1.8 Questions and Inquiries

All bidders should direct their questions and inquiries to the Procurement Officer identified in Section 1.2 above. **Questions must be submitted in writing via email and received by the Issuing Office no later than Friday, May 7, 2021 by 4:00 p.m. EDT.** If the questions or inquiries pertain to a specific section of the IFB, the page and section number(s) should be referenced. Responses to questions will be released to all prospective bidders.

1.9 Submission Requirements and Deadline

To be considered, a Bid must arrive at the Issuing Office no later than 11:00 a.m. EDT on Tuesday, May 18, 2021. Bidders may submit their bids by electronic transmission by email to the Procurement Officer at: procurement@treasurer.state.md.us by the deadline date and time. The email subject line shall state: BID - 2021 Master Equipment Lease-Purchasing Financing, #MEL-04272021. The date and time of an e-mail submission is determined by the date and time of arrival in the e-mail address. The STO will not consider proposals submitted by facsimile.

The Office will not grant requests for extension of the submission deadline. If mailing bids, Bidders should allow sufficient mail and internal delivery time to ensure the timely receipt of the bids by the Procurement Officer at the Issuing Office. Except as permitted under COMAR 21.05.02.10, bids received by the Procurement Officer after the submission deadline, regardless of the method of their transmission, will not be considered.

1.10 False Statements

Bidders are advised that State Finance and Procurement Article, § 11-205.1, Annotated Code of Maryland provides as follows:

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

1.11 Duration of Offer

Bids submitted in response to this IFB are irrevocable for 60 calendar days following its submission. At the request of the Procurement Officer, the bidder may agree in writing to extend this period. The Office expects to recommend award of the contract to the Board of Public Works on June 16, 2021.

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SECTION II. GENERAL INFORMATION

2.1 Purpose

The overall purpose of this IFB is to provide information to bidders interested in submitting bids to meet the State's needs for master equipment lease-purchase financing beginning June 16, 2021 through June 30, 2023 (unless the Master Lease is terminated prior to such date in accordance with its terms) or until \$35 million in new equipment purchases are made or such lesser amount as approved by the Board of Public Works. The State expects, under current projections, to finance approximately \$17.5 million each year over the next two-year period provided that the total amount financed under the Master Lease does not exceed \$35 million in the aggregate. See Appendix D-1.

2.2 Electronic Distribution

This IFB is published on eMMA, posted on the Office's website, and emailed to financial firms known to be interested in receiving IFBs for lease-purchase financing. Potential bidders wishing to receive copies of the written document should contact the Procurement Officer identified in Section 1.2 above.

2.3 Revisions to the IFB

The Office reserves the right to amend this IFB at any time prior to the bid due date and time. If it becomes necessary to revise this IFB at any time prior to the bid due date and time, amendments will be provided to all prospective bidders that were sent this IFB or otherwise are known by the Procurement Officer to have obtained this IFB. Written acknowledgment of the receipt of all amendments will be required. In addition, amendments to this IFB will be posted on the Office's Procurement Web Page at www.treasurer.state.md.us, (select "Procurement" and then "IFB for 2021 Master Equipment Lease-Purchase Financing"), and through eMMA at <https://procurement.maryland.gov>. Amendments made after the due date for bids will be sent only to those bidders who submitted a timely bid.

2.4 Cancellation of the IFB; Rejection of All Bids

The Office may cancel this IFB, in whole or in part, or may reject all bids submitted in response to this solicitation whenever this action is determined by the State in its sole discretion to be fiscally advantageous to the State or otherwise in its best interests.

2.5 Bid Acceptance; Discussions

The Office reserves the right, in its sole discretion to accept or reject any and all bids, in whole or in part, received in response to this IFB, to waive or permit cure of minor irregularities, and to conduct discussions with all qualified bidders in any manner necessary to serve the best interests of the State. The Office also reserves the right, in its sole discretion, to award a contract based upon the written bids received without prior discussions or negotiations.

2.6 Incurred Expenses

The State will not be responsible for any costs incurred by a bidder in preparing and submitting a bid in response to this IFB, including costs incurred in making an oral presentation, if required.

2.7 Bid Form

Bidders must submit their bids on a completed and signed Bid Form, which is included as Appendix A to this IFB. Bids are to be accompanied by an executed Bid Proposal Affidavit (Appendix B), and Living Wage Affidavit (Appendix H), forms that are included in this IFB. The Office will not accept oral, telegraphic, facsimile, or mailgram transmitted bids.

2.8 Access to Public Records Act Notice

A bidder should give specific attention to the identification of those portions of its bid 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 Access to Public Records Act, State Government Article, Title 10, Subtitle 6, Annotated Code of Maryland. The Office may charge a fee for copies and search and preparation time, in accordance with COMAR 25.01.04.09. The Office may require payment of such fees before releasing the requested information.

2.9 Protests

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

Any protest regarding this solicitation must be filed in writing with the Procurement Officer only. If the reason for the protest is apparent before the bid opening, the protest must be filed before the bid opening. In all other cases, the protest must be filed within seven calendar days after the reason for the protest is known or should have been known.

The term "filed" means receipt by the Procurement Officer who has issued this solicitation.

The protest must be in writing and must contain (1) the name and address of the protester; (2) the appropriate identification of the solicitation and, if a contract has been awarded, the contract number if it is known; (3) a statement of the reasons for the protest; and (4) any supporting exhibits, evidence, or documents to substantiate any claims unless the documents are not available within the filing time, in which case the date by which the supporting documents are expected to be available is to be noted.

2.10 Bid Opening

The Procurement Officer shall open the bids publicly at the Maryland State Treasurer's Office on Tuesday, May 18, 2021 at 11:30 a.m. EDT. The Bid Opening will be held by conference call. Bidders may call the Office conference line by dialing 605-313-4415 and using the access code: 446758. The Office shall read aloud or otherwise make available the name of each bidder, the financing bid rates, and such other information as is deemed appropriate. The Office shall tabulate the bids or make a bid abstract. The Office shall make available for public inspection opened bids at a reasonable time after bid opening but in any case, before contract award, except to the extent a bidder designates trade secrets or other proprietary data to remain confidential.

2.11 Small Business Reserve

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

2.12 Minority Business Enterprises

There is no MBE subcontractor goal for this procurement.

2.13 Veteran-Owned Small Business Enterprise

There is no veteran-owned small business enterprise ("VSBE") subcontractor participation goal for this solicitation.

2.14 No Guarantee of Work

No Lessor is guaranteed any minimum amount of work or compensation.

2.15 Bid/Proposal Affidavit

All bids submitted must be accompanied by a completed Bid/Proposal Affidavit. A copy of the Bid/Proposal Affidavit is included as Appendix B to this IFB.

2.16 Contract Affidavit

All bidders are advised that if a contract is awarded as a result of this solicitation, the successful bidder will be required to complete a Contract Affidavit. A copy of the Contract Affidavit is included for informational purposes in Appendix C to this IFB. This Contract Affidavit should not be submitted with a bidder's bid. For purposes of completing Section "B" of this Affidavit, (Certification of Registration or Qualification with the State Department of Assessments and Taxation), a business entity that is organized outside the State of Maryland is considered a "foreign" business.

Before a business entity can do business in the State, it must be registered with the State Department of Assessments and Taxation (SDAT). For registration information, visit <https://www.egov.maryland.gov/businessexpress>.

2.17 Living Wage Requirements/Affidavit of Agreement

A solicitation for services under a State contract valued at \$100,000 or more may be subject to Title 18, State Finance and Procurement Article, Annotated Code of Maryland. Additional information regarding the State's wage requirement is contained in this solicitation (see Appendix G, entitled Living Wage Requirements for Service Contracts). If the bidder fails to complete and submit the required documentation under State law, the State may determine a bidder to be not responsible.

Contractors and Subcontractors subject to the Living Wage Law shall pay each covered employee at least \$14.42 per hour, 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 value are performed in the Tier 2 Area, a bidder shall pay each covered employee at least \$10.83 per hour. 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. If 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.

The contract resulting from this solicitation has been deemed to be a Tier 1 contract. **All bids must be accompanied by a completed Living Wage – Affidavit Agreement. A copy of this Affidavit is included as Appendix H to this IFB.**

2.18 Acceptance of Terms and Conditions

2.18.1. By submitting a bid in response to this IFB, the bidder (a) accepts all of the terms and conditions set forth in this IFB, and (b) represents that it is not in arrears in the payment of any obligation due and owing the State or any department or unit thereof, including but not limited to the payment of taxes and employee benefits (the "State Obligations").

2.18.2. If selected for award, the bidder agrees (a) that it will comply with all federal, State and local laws applicable to its activities and obligations under the Contract, (b) that it shall not become in arrears under any State Obligation during the term of the Contract, and (c) to all terms and conditions set forth in the 2021 Master Equipment Lease - Purchase Agreement, a form of which is included as Appendix I to this IFB (the "Master Lease").

There will be no changes to the Master Lease other than the rates, amounts and

Equipment descriptions. Inclusion of changes to the Master Lease as part of a bid proposal may result in rejection of the bid.

2.19 Order of Precedence

The contract between the parties will be embodied in the contract documents which will consist of the following, listed in their order of precedence:

1. the Master Lease;
2. the IFB; and
3. the Lessor's Bid.

Modifications to the order of precedence provision of this solicitation will not be accepted.

2.20 Payment by Electronic Funds Transfer

By submitting a response to this IFB, the bidder agrees to accept any payments from the State by electronic funds transfer unless the State Comptroller's Office grants an exemption. The selected bidder shall register using form COT/GAD X-10 Vendor Electronic Funds (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 Vendor Electronic Funds (EFT) Registration Request Form may be downloaded from:

http://comptroller.marylandtaxes.gov/Vendor_Services/Accounting_Information/Static_Files/GADX10Form20150615.pdf.

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SECTION III. SCOPE OF SERVICES AND REQUIREMENTS

3.1. General Background

The State is a general purpose government providing a wide variety of governmental and enterprise services throughout the State. The State operates, among other activities, colleges and universities, prisons, centers for the mentally ill and developmentally disabled, a highway system, railroads, parks and forests, wildlife preserves, law enforcement programs, environmental protection activities, and regulatory programs.

The State authorizes expenditures either through the annual operating budget or through the capital budget. Much of the capital budget is financed by the State's General Obligation Bonds which as of February 2021 have received the highest rating (Aaa/AAA/AAA) from Moody's Investors Service, Inc., S&P Global Ratings, and Fitch Ratings. In addition, there are a number of State agencies that have authority to issue bonds for specific classes of facilities or to provide financing for individuals and businesses.

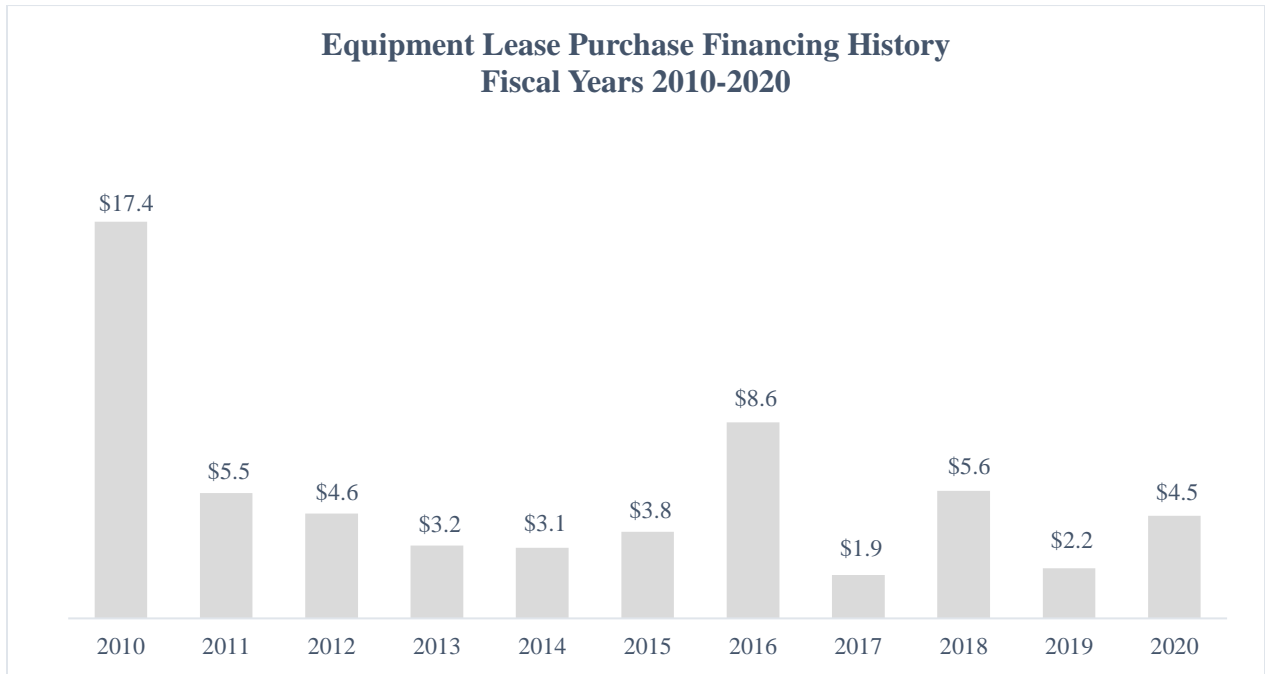
Most equipment expenditures are financed either on a pay-as-you-go basis or through the bond-financed capital program; however, since 1986, the State has financed the acquisition of certain equipment under a lease-purchase financing arrangement, on a consolidated basis, for various State agencies.

The State has also never failed to make lease payments on any lease-purchase financing or to appropriate funds in connection therewith.

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History of Equipment Lease-Purchase Financings in Maryland

The State has previously lease-purchase financed equipment in the following amounts in the Fiscal Years indicated:



The forms of documentation included as Appendix I to this IFB will be executed by the State and Agencies in connection with the Master Lease and quarterly takedowns under the Master Lease. There will be no changes to the documentation included as Appendix I for this financing other than the rates, amounts, and Equipment descriptions.

Because of the extensive amount of lease and bond financing undertaken by the State on an annual basis, this lease-financing is NOT A “BANK QUALIFIED LOAN”.

3.2. Overview

3.2.1. The Office invites sealed bids for the financing, on a consolidated basis, during the period beginning about June 16, 2021 through June 30, 2023 (unless the Master Lease is terminated prior to such date in accordance with its terms), of equipment in the aggregate principal amount of up to \$35 million (the “Aggregate Principal Equipment Amount”), to be amortized under the Master Lease over terms of three, five, seven, ten, twelve, or fifteen years (each, a “Lease Amortization Term”). All Equipment will be financed on a tax-exempt basis. The period of performance for providing lease financing under the Master Lease will terminate on the earlier of June 30, 2023 (unless the Master Lease is terminated prior to such date in accordance with its terms) or the financing of \$35 million in new Equipment. Notwithstanding the foregoing, on each June 30 during the Lease Term, each of the State and the Lessee shall have the right to terminate the Master Lease by providing at least 120 days prior

written notice to the other party. The documents to be executed in connection with the Master Lease and the quarterly takedowns, are substantially in the form attached hereto as Appendix I.

- 3.2.2. Appendix D-1 includes an estimate of equipment lease purchase financing needs based on the results of a survey of State agencies to gauge their interest in potential lease purchase financings expected in Fiscal Year 2022 through Fiscal Year 2023 (the "Survey"). The Survey is only an estimate and in no way represents a guarantee of the terms, equipment or amounts that will be financed under the Master Lease.
- 3.2.3. Any modular buildings that can be financed under this lease-purchase arrangement are expected to have a term between 10 and 15 years. Furthermore, it is possible that some equipment may be part of a project, the overall acquisition schedule for which may extend beyond the term of this financing; only the equipment accepted during the term of this financing by the Lessee will be included in this financing.
- 3.2.4. Under the Master Lease, Lessor will acquire, directly or through a third-party lessor designated by the Lessor and approved by the Office (the "Lessor's Designee"), the Equipment required by the State agencies and approved for financing by the Office and the Department of Budget and Management (the "Department"), and will lease the Equipment to the various State agencies. The Master Lease will provide the Lessor or its subsequent assignee the right to lease payments payable by the State under the Master Lease.
- 3.2.5. Lessor shall be required to finance all, and not less than all of the Equipment approved for financing by the Office and the Department, for any Lease Amortization Term (e.g., terms of three, five, seven, ten, twelve, or fifteen years as determined by the Office and the Department in their sole discretion).
- 3.2.6. Equipment acquisitions generally are consolidated to permit a single quarterly takedown against the aggregate \$35 million to be provided; however, it is possible that more frequent funding requests may, in the Office's sole discretion, occur in amounts not less than \$100,000.
- 3.2.7. Since 2008, the State has not financed any equipment purchases that required "acquisition periods" and escrow accounts. The Survey does not project acquisition periods nor the need for any escrow accounts and has not provided for them in this IFB.
- 3.2.8. Interest will accrue from the Commencement Date (as defined below) for each equipment schedule to the Master Lease (each, an "Equipment Schedule").
- 3.2.9. Lessor shall provide sufficient funds to make the payments required by the takedown documentation on the Funding Date (as defined below). The Lease Term shall commence on such date (the "Commencement Date"), with Lease Payment due on the next succeeding Payment Date.

- 3.2.10. Appendix I includes documents that are completed by the State Agencies and the Office in connection with each quarterly takedown, or more frequently as determined by the Office. These include the following documents prepared by the Agencies: Acceptance Certificate, Equipment Use Certificate, and the Acknowledgement and Certification as to Appropriation (authorizing the transfer of agency funds to the Office in an amount sufficient to make the lease payments to the Lessor). The Office is responsible for preparing: the Certificate of the State of Maryland, Equipment Schedules (including the financing terms and the related amortization schedule for each equipment item), and the Takedown Schedule that summarizes the individual Equipment Schedules for each quarterly takedown (including the amortization schedule of the full takedown amount).
- 3.2.11. On a quarterly basis, or more frequently as determined by the Office, the Office will establish a funding date, usually the third Thursday of each March, June, September and December (the "Funding Date"). Not less than 10 calendar days prior to the Funding Date, the Office will forward takedown documents to the Lessor or Lessor's designee for review. On the Funding Date, following execution and delivery of the take down documents, the Lessor or Lessor's Designee will wire transfer funds as directed in the quarterly takedown documentation. The Lessor then may file the required documents with the appropriate governmental entity to perfect its security interest.
- 3.2.12. The Office will administer the Master Lease on behalf of the participating agencies. The Office and the Department will assure, upon execution of an Equipment Schedule, that funds for the lease payments during the then-current fiscal year will be encumbered or withheld from the appropriations available to the participating agency, and will be paid by the Office on behalf of the Lessee by a single payment semi-annually to the Lessor or the Lessor's assignee (the "Assignee"). The payment will be accomplished by an Electronic Funds Transfer, settling on the payment due date.
- 3.2.13. The contract to be awarded as a result of this IFB for new equipment financing is not exclusive; the Office will retain the right to exclude from the financing, and procure alternative financing for, any lease-purchase transaction that the Office may deem appropriate; neither the amount nor the timing of any such alternative financing arrangements can be projected.

3.3. Bid Calculations and Basis for Award

Bids will be submitted using the bid form attached as Appendix A. See the Bid Form attached hereto as Appendix A for detailed instructions on how to calculate the bid. The winning bid will be awarded to the bidder with the lowest weighted average of the rates in column (f) of the Bid Form.

3.4. Process for Determining Payments to the Lessor

Equipment financed under the Master Lease shall be financed at a rate of interest that will be determined and fixed as follows:

To calculate the rates for each takedown:

- 3.4.1. Determine the Index, which shall be LIBOR (as defined in Appendix A) or a replacement index (as described in this Section) for the date that is the second Thursday prior to the applicable Funding Date.
- 3.4.2. Multiply the Index by the percentage entered on the bid form (Appendix A, column d) for the appropriate term.
- 3.4.3. Add or subtract the spread entered by the successful bidder on the bid form (Appendix A, column e) for the appropriate term.
- 3.4.4. The result of these calculations will be the rate of interest paid on the appropriate Equipment Schedules of each takedown.
- 3.4.5. In no event shall the successful bidder be entitled to receive any additional interest as a result of any adjustments to the maximum federal corporate tax rate or any other additional or supplemental interest or any fees, cost or charges in connection with any other event that could result in a yield reduction event of such successful bidder.

Using the interest rates as calculated above for the applicable Lease Amortization Term, the amortization schedules will be based on a level annual lease payment model for each Lease Amortization Term (for all years except the initial year). Interest payable on the Aggregate Principal Amount of each Schedule to the Master Lease will be calculated on a 30/360-day basis from the quarterly Funding Dates, as applicable. Interest payable on the Aggregate Principal Amount of each Schedule to the Master Lease for any period not equal to a full semi-annual period will be calculated on a 30/360-day basis from the quarterly Funding Dates, as applicable.

Principal and accrued interest will be payable semi-annually to the Lessor by the Office on January 1 and July 1 for the applicable term of each Schedule to the Master Lease. Should a payment date not be a banking day in Maryland, payment will be due on the next banking business day in Maryland.

Notwithstanding anything to the contrary contained in this IFB, if at the time of any takedown under the Master Lease (A) there shall no longer existing a reporting service with respect to the publication of LIBOR, (B) adequate and reasonable means do not exist for ascertaining LIBOR and such condition is unlikely to be temporary, (C) a contingency has occurred which materially and adversely affects the London interbank eurodollar market relating to LIBOR and such contingency is unlikely to be temporary or (D) the circumstances set forth in (A), (B) or (C) have not arisen but the applicable supervisor or administrator (if

any) of LIBOR or a Governmental Authority (as defined below) has made a public statement identifying the specific date after which LIBOR shall no longer be used for determining rates for loans, (the events, circumstances or conditions described in (A), (B), (C) or (D) being referred to herein each as a “LIBOR Termination Event” and collectively as “LIBOR Termination Events”), then the Lessor and the Lessee shall in good faith amend the Master Lease to reflect a replacement index for LIBOR and make adjustments to the applicable margins as a result of a LIBOR Termination Event, if any, such that, to the extent practicable, the all-in interest rate based on the replacement index will be substantially equivalent to the all-in LIBOR-based interest rate in effect prior to its replacement. Selection of the replacement index and adjustments to the applicable margins, if any, as a result of a LIBOR Termination Event shall be determined with due consideration to the then-current market practices for determining and implementing a rate of interest for loans converted from a LIBOR-based rate to a replacement index-based rate. Notwithstanding the foregoing, if the parties are unable to agree to a replacement index and any related adjustments within thirty (30) days from the date of any LIBOR Termination Date (or such later date as may be agreed to by the Lessor and the Lessee) despite engaging in good faith negotiations, then the State may immediately terminate the Lease upon written notice to the Lessor. The foregoing termination right is in addition to and is not intended to supersede or otherwise contradict or conflict with the termination provisions of the Lease, including (without limitation) Section 2 thereof.

“Governmental Authority” means any national, supra-national, state or local government (whether domestic or foreign), any political subdivision thereof or any other governmental, quasi-governmental, judicial, administrative, public or statutory instrumentality, authority, body, agency, department, commission, bureau, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory, fiscal, monetary or administrative powers or functions of or pertaining to government, or any arbitrator or mediator with authority to bind a party at law.

3.5. General Terms and Conditions

- 3.5.1. No Prepayment: Payments of principal and interest shall not be subject to optional prepayment and will be subject to termination only as set for in the Master Lease.
- 3.5.2. Substitution of Security: The Lessee reserves the right to substitute equipment of equivalent or greater value in any Equipment Schedule.
- 3.5.3. Bond Insurance: Lessor may not secure bond insurance on the Master Lease or lease payments or fractionalized interests or participations therein.
- 3.5.4. Ratings: Lessor may not secure ratings on the Master Lease or lease payments or fractionalized interests or participations therein.
- 3.5.5. Restriction on Resale: Lessor, or by acceptance of an assignment agreement from Lessor, the Assignee(s), shall be deemed to certify that:

- a. Lessor or the Assignee is purchasing for its own account or, after obtaining the prior written consent of the State as required by Section 20 of the Master Lease, intends to sell or distribute fractionalized interests or participations in the right to receive lease payments only to individuals or entities that meet the requirements of subsections (b), (c) and (d), below, and that have no intention of redistributing such interests or participations;
- b. Lessor or the Assignee has knowledge and experience in financial and business matters that renders it capable of evaluating the merits and risks of the investment in the Master Lease and has received such information as it has deemed necessary to make such an evaluation;
- c. Lessor or the Assignee is able to bear the economic risk of investment in the Master Lease; and
- d. If Lessor or the Assignee, after obtaining consent of Lessee, sells or distributes, in fractionalized interests or participations, its interest in its right to receive payment of the aggregate amount of the quarterly draw, it shall limit such sale or distribution to fractionalized interests or participations of \$100,000 or more, and it shall limit such sale or distribution to no more than 35 “accredited investors (as defined in Rule 501 of Regulation D).” Neither the Lessor nor the Assignee may undertake a public offering of its interest in payments due under the Master Lease.

In addition, should the Lessor or its Assignee contemplate the sale or distribution in fractionalized interests or participations of its right to receive lease payments, Lessor must provide the Principal Counsel to the Office with a copy of all offering materials 30 days prior to the time any such interests or participations are offered for sale or distribution.

THE STATE HAS NOT PREPARED AN OFFICIAL STATEMENT OR OTHER OFFERING MATERIALS IN CONNECTION WITH THIS IFB OR THE MASTER LEASE AND DOES NOT INTEND TO PREPARE SUCH MATERIALS.

IT IS THE STATE’S INTENT THAT THE RESTRICTIONS ON RESALE CONTAINED IN SECTION 20 OF THE MASTER LEASE PRECLUDE THE USE OF CERTIFICATES OF PARTICIPATION.

- 3.5.6. Documents: Lessee, from time to time, shall provide certificates of essential use, certificates of acceptance, IRS Forms 8038G, financing statements, and such other documents as reasonably may be necessary to affect the purposes of the Master Lease. The Lessee shall provide at closing of each takedown a certificate in the form set forth in Appendix E to this IFB.
- 3.5.7. Tax Opinion: The Lessee shall provide at closing of each draw under the Master Lease an opinion of tax counsel as to the excludability from gross income for federal income tax purposes of interest payments under the Master Lease.

- 3.5.8. Other Legal Matters: The Lessee's execution of the Master Lease and related documents will be subject to the following:
- a. review and approval of the Master Lease and related documents pursuant to which Lessee may be bound by Counsel to the Office; and,
 - b. delivery of an opinion of Counsel to the Office substantially in the form included as Appendix F to this solicitation.
- 3.5.9. Bid Form: A bidder's failure to submit an executed Bid Form attached as Appendix A and an executed copy of a Bid/Proposal Affidavit and Living Wage Affidavit attached as Appendix B and H respectively to this IFB may result in rejection of the bid. The State reserves the right to reject any conditional bid(s).
- 3.5.10. Availability of Funds: By submitting a bid in response to this IFB, a bidder shall be deemed to evidence its understanding that the Lessee's obligations under the Master Lease specifically are subject to annual appropriation of funds (see Section 5 of the Master Lease, the form of which is attached as Appendix I to this IFB).

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SECTION IV. EVALUATION AND SELECTION

4.1. Bid Evaluation

All qualifying bids received from responsible bidders by the submission deadline will be evaluated by the Office.

4.2. Bidder Qualifications

- 4.2.1. In General. The Office may make such reasonable investigations as deemed proper and necessary to determine the ability of any bidder to meet the requirements of this solicitation, and by submitting a bid in response to this IFB, a bidder shall be deemed to have agreed to provide to the Office all such information for this purpose as reasonably may be requested. The Office reserves the right to reject any bid if the information submitted by, or the investigation of, the bidder fails to satisfy the Office that such bidder is qualified to meet the requirements of this solicitation and the agreements contemplated herein. By submitting a bid in response to this IFB, a bidder shall be deemed to have agreed to provide financing in a manner consistent with the State's program as described in this IFB as well as the basic documentation attached to this IFB.
- 4.2.2. Qualification Conditions. If selected for award, a bidder must, in the exercise of the Office's reasonable judgment:
- a. possess the ability, capacity, and skill to perform its obligations under the Master Lease and the documents to be executed in connection therewith;
 - b. possess the appropriate character, integrity, reputation, judgment, and experience to fully perform all of its obligations under the Master Lease; and
 - c. possess sufficient financial resources to perform fully its obligations under the Master Lease.
 - d. have not been terminated for default or failed to provide funding when due under any lease financing program within the last three years; and
 - e. if a bidder does not possess sufficient financial resources of its own, provide an unconditional, irrevocable commitment from a third-party lessor providing the required financial resources to the Lessor ("Lessor's Designee") to provide funding for this Master Lease and agree to use the Master Lease, without modification, attached as Appendix I hereto. This commitment **must** be provided with the bid. The selection and use of Lessor's Designee is subject to approval of the Office.

Each bidder shall provide to the Office such information and certificates as the Office, upon the advice of counsel, shall deem sufficient to establish compliance with the conditions enumerated in subparagraphs (a) through (c), above. See Section V, below.

4.3. Selection

The award will be made to the responsible bidder, as determined pursuant to Section 4.2 above, who submitted a bid determined by the Office to represent the lowest interest cost to the State under the contemplated financing. In determining the lowest interest cost, the Office will use the weighted average of the calculated rates as if a takedown had occurred on April 26, 2021, the Index used was from April 26, 2021 and \$5,000,000.00 in three-year amortization terms, \$6,000,000.00 in five-year amortization terms, \$500,000.00 in seven-year amortization terms, \$11,500,000.00 in 10-year amortization terms, \$11,000,000.00 in the 12-year amortization terms, and \$1,000,000.00 in 15-year amortization terms were being financed. Refer to the Bid Form on Appendix A and to Section III, 3.5.9.

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SECTION V. BID FORMAT

5.1. Financial Adequacy

Provide evidence of the financial ability to carry out this contract. Provide three examples of evidence of financial ability that include, but are not limited to:

- Recently audited financial statements, including a certification by the Chief Financial Officer (or equivalent officer) that the statements are accurate and reliable.
- Financial Report from Dun and Bradstreet.
- Access to Lines of Credit (amount and source).
- History of the bidder, including significant financial events. Include the percentage of business revenues generated from Lease Purchase Financings for the most recent three-year period.

5.2. Similar Engagements/Client References

Each bidder must submit with its bid a brief description (including terms and amounts) of similar financings that were successfully performed for other clients or for the State of Maryland in the past three years. At least three such clients must be identified by name, email address, telephone number, and contract reference. The State reserves the right to contact any other known clients.

5.3 Disclosure

Each bidder must disclose any instances of its failure to provide funding when due under any lease financing within the last three years (including the name of the Lessee and the amount and date of the requested takedown) and state the reason for such failure.

5.3. Bid Form

Each bidder must submit no later than 11:00 a.m. EDT on Tuesday, May 18, 2021, a completed and signed Bid Form (Appendix A), a Bid/Proposal Affidavit (Appendix B), Living Wage Affidavit (Appendix H), and evidence of the financial ability to carry out this contract. The Bid Form must be signed by an individual authorized to bind the bidder to all terms and conditions of this IFB and the agreements contemplated hereunder. The State reserves the right to reject any conditional bid(s).

**BID FORM FOR 2021 MASTER EQUIPMENT
LEASE-PURCHASE FINANCING OF UP TO \$35 MILLION**

(a)	(b)	(c)	(d)	(e)	(f)	(g)		
			INDEX					
Type of Lease	Lease Amortization Term	Average Life of Lease	Amount Expected to be Financed	LIBOR Swap Rate* for 04/26/2021	Percentage of Index	Plus or Minus Spread	Calculated Rate	Weighted Average
Tax-exempt	3 year	2	5,000,000.00	0.280	79%			
Tax-exempt	5 year	3	6,000,000.00	0.473	79%			
Tax-exempt	7 year	4	500,000.00	0.706	79%			
Tax-exempt	10 year	6	11,500,000.00	1.102	79%			
Tax-exempt	12 year	7	11,000,000.00	1.255	79%			
Tax-exempt	15 year	9	1,000,000.00	1.477	79%			
	Total	-	35,000,000.00					
						Winning Bid will be lowest weighted average.	The weighted average of the rates in column (f) is:	

Instructions to Complete the Bid Form (See Section III, 3.3 and 3.4 of the IFB).

(c) These rates are “mid” prices for the two-year, three-year, four-year, six-year and nine-year LIBOR swaps on 04/26/2021 at 11:30 a.m. and correspond to the expected average life of the principal amortization for each lease term. Swap rates are based upon 3-month LIBOR, 30/360 day basis and semi-annual payments. The rates can be accessed on Bloomberg by typing the following keystrokes: See attached screen shot for reference.

- i. IRSB GO.
- ii. Select tab #40 Semi Swaps on the horizontal ribbon.
- iii. Reference the “Mid” column of pricing.
- (e) Complete by bidder.
- (f) Multiply column (c) by column (d) then add (subtract) column (e)
- (g) Calculate the weighted average of the total rates in column (f):
 - Multiply column (b) by column (f).
 - Total column (g)
 - Divide total of column (g) by total of column (b)
 - Enter result in designated box.

IN COMPLIANCE WITH THE IFB AND WITH ALL TERMS AND CONDITIONS SET FORTH THEREIN, THE UNDERSIGNED REPRESENTS THAT HE/SHE HAS FULL AUTHORITY TO SUBMIT THE ABOVE BID AND TO BIND HIS/HER PRINCIPAL TO THE OBLIGATIONS CONTEMPLATED THEREUNDER.

[FIRM NAME]
By: _____
Name: _____
Title: _____

***If a LIBOR Termination Event has occurred, please see Section 3.4 of the IFB with respect to the implementation of a replacement index.**

Screen Printed
United States | 98) Export | 99) Settings | Interest Rate Swap Rates

Date Range: 01/26/2021 - 04/26/2021 | 3 Months

40 Semi Swaps | 41 Sprs to Gov. | 42 FF Swaps | 43 SOFR Swaps | 44 SOFR/FF Basis | 45 SOFR/LIBOR Basis | 46 CM...

USD SemiAnnual 30/360 Swap Rates

Tenor	Bid	Ask	Mid	Change	Today	#SD	Δ/d...	Low	Range	PCS	BGN	High	Ave
1) 1 YR	0.209	0.211	0.210	0.001		0.1		0.170			0.224	0.19	
2) 2 YR	0.278	0.282	0.280	0.002		0.1		0.184			0.331	0.24	
3) 3 YR	0.471	0.475	0.473	0.002		0.0		0.244			0.569	0.40	
4) 4 YR	0.705	0.708	0.706	0.003		0.0		0.362			0.853	0.61	
5) 5 YR	0.916	0.922	0.919	0.004		0.0		0.490			1.111	0.82	
6) 6 YR	1.100	1.103	1.102	0.004		0.0		0.623			1.317	1.01	
7) 7 YR	1.254	1.257	1.255	0.004		0.0		0.747			1.477	1.17	
8) 8 YR	1.377	1.379	1.378	0.003		0.0		0.856			1.603	1.30	
9) 9 YR	1.476	1.478	1.477	0.002		0.0		0.951			1.704	1.41	
10) 10 YR	1.559	1.561	1.560	0.002		0.0		1.035			1.798	1.50	
11) 15 YR	1.816	1.818	1.817	-0.001		0.0		1.305			2.075	1.78	
12) 20 YR	1.920	1.925	1.922	-0.002		0.0		1.426			2.178	1.89	
13) 25 YR	1.957	1.960	1.958	-0.003		0.0		1.479			2.214	1.93	
14) 30 YR	1.968	1.972	1.970	-0.003		0.0		1.502			2.226	1.95	

Suggested Functions | **USER** Optimize your workflow on Bloomberg | **BHL** Expand your Bloomberg knowledge

Type here to search | 11:30 AM 4/26/2021

BID/PROPOSAL AFFIDAVIT

A. Authority

I HEREBY AFFIRM THAT:

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 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, sexual identity, genetic information or an individual’s refusal to submit to a genetic test or make available the results of a genetic test, disability, or any otherwise unlawful use of characteristics regarding the vendor’s, 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.

B-1. Certification Regarding Minority Business Enterprises.

The undersigned bidder hereby certifies and agrees that it has fully complied with the State Minority Business Enterprise Law, State Finance and Procurement Article, §14-308(a)(2), Annotated Code of Maryland, which provides that, except as otherwise provided by law, a contractor may not identify a certified minority business enterprise in a bid or proposal and:

- (1) Fail to request, receive, or otherwise obtain authorization from the certified minority

business enterprise to identify the certified minority proposal;

(2) Fail to notify the certified minority business enterprise before execution of the contract of its inclusion in the bid or proposal;

(3) Fail to use the certified minority business enterprise in the performance of the contract; or

(4) Pay the certified minority business enterprise solely for the use of its name in the bid or proposal.

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.

B-2. Certification Regarding Veteran-Owned Small Business Enterprises. The undersigned bidder hereby certifies and agrees that it has fully complied with the State veteran-owned small business enterprise law, State Finance and Procurement Article, §14-605, Annotated Code of Maryland, which provides that a person may not:

(1) Knowingly and with intent to defraud, fraudulently obtain, attempt to obtain, or aid another person in fraudulently obtaining or attempting to obtain public money, procurement contracts, or funds expended under a procurement contract to which the person is not entitled under this title;

(2) Knowingly and with intent to defraud, fraudulently represent participation of a veteran-owned small business enterprise in order to obtain or retain a bid preference or a procurement contract;

(3) Willfully and knowingly make or subscribe to any statement, declaration, or other document that is fraudulent or false as to any material matter, whether or not that falsity or fraud is committed with the knowledge or consent of the person authorized or required to present the declaration, statement, or document;

(4) Willfully and knowingly aid, assist in, procure, counsel, or advise the preparation or presentation of a declaration, statement, or other document that is fraudulent or false as to any material matter, regardless of whether that falsity or fraud is committed with the knowledge or consent of the person authorized or required to present the declaration, statement, or document;

(5) Willfully and knowingly fail to file any declaration or notice with the unit that is required by COMAR 21.11.12; or

(6) Establish, knowingly aid in the establishment of, or exercise control over a business found to have violated a provision of §B-2(1)—(5) of this regulation.

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):

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, §14-308 of the State Finance and Procurement Article of the Annotated Code of Maryland;

(5) Been convicted of a violation of §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 subsections (1)—(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;

(9) Been convicted of a violation of one or more of the following provisions of the Internal Revenue Code:

(a) §7201, Attempt to Evade or Defeat Tax;

(b) §7203, Willful Failure to File Return, Supply Information, or Pay Tax,

(c) §7205, Fraudulent Withholding Exemption Certificate or Failure to Supply Information,

(d) §7206, Fraud and False Statements, or

(e) §7207 Fraudulent Returns, Statements, or Other Documents;

(10) Been convicted of a violation of 18 U.S.C. §286 Conspiracy to Defraud the Government with Respect to Claims, 18 U.S.C. §287, False, Fictitious, or Fraudulent Claims, or 18 U.S.C. §371, Conspiracy to Defraud the United States;

(11) Been convicted of a violation of the Tax-General Article, Title 13, Subtitle 7 or Subtitle 10, Annotated Code of Maryland;

(12) Been found to have willfully or knowingly violated State Prevailing Wage Laws as provided in the State Finance and Procurement Article, Title 17, Subtitle 2, Annotated Code of Maryland, if:

(a) A court:

(i) Made the finding; and

(ii) Decision became final; or

(b) The finding was:

(i) Made in a contested case under the Maryland Administrative Procedure Act; and

(ii) Not overturned on judicial review;

(13) Been found to have willfully or knowingly violated State Living Wage Laws as provided in the State Finance and Procurement Article, Title 18, Annotated Code of Maryland, if:

(a) A court:

- (i) Made the finding; and
- (ii) Decision became final; or

(b) The finding was:

- (i) Made in a contested case under the Maryland Administrative Procedure Act; and
- (ii) Not overturned on judicial review;

(14) Been found to have willfully or knowingly violated the Labor and Employment Article, Title 3, Subtitles 3, 4, or 5, or Title 5, Annotated Code of Maryland, if:

(a) A court:

- (i) Made the finding; and
- (ii) Decision became final; or

(b) The finding was:

- (i) Made in a contested case under the Maryland Administrative Procedure Act; and
- (ii) Not overturned on judicial review; or

(15) 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 §§B and C and subsections D(1)—(14) of this regulation, 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):

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).

_____.

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):

_____.

G. SUB-CONTRACT 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. CERTIFICATION OF TAX PAYMENT

I FURTHER AFFIRM THAT: 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 Maryland Department of Labor, as applicable, and will have paid all withholding taxes due the State of Maryland prior to final settlement.

J. 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.

K. CERTIFICATION REGARDING INVESTMENTS IN IRAN

(1) The undersigned certifies that, in accordance with State Finance and Procurement Article, §17-705, Annotated Code of Maryland:

(a) 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 State Finance and Procurement Article, §17-702, Annotated Code of Maryland; and

(b) It is not engaging in investment activities in Iran as described in State Finance and Procurement Article, §17-702, Annotated Code of Maryland.

2. The undersigned is unable to make the above certification regarding its investment activities in Iran due to the following activities:

L. CONFLICT MINERALS ORIGINATED IN THE DEMOCRATIC REPUBLIC OF CONGO (FOR SUPPLIES AND SERVICES CONTRACTS)

I FURTHER AFFIRM THAT:

The business has complied with the provisions of State Finance and Procurement Article, §14-413, Annotated Code of Maryland governing proper disclosure of certain information regarding conflict minerals originating in the Democratic Republic of Congo or its neighboring countries as required by federal law.

M. I FURTHER AFFIRM THAT:

Any claims of environmental attributes made relating to a product or service included in the bid or proposal are consistent with the Federal Trade Commission's Guides for the Use of Environmental Marketing Claims as provided in 16 CFR §260, that apply to claims about the environmental attributes of a product, package, or service in connection with the marketing, offering for sale, or sale of such item or service.

N. 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: _____
(print name of Authorized Representative and Affiant)

(signature of Authorized Representative and Affiant)

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 items):

- (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 the business to file with the Secretary of State of Maryland certain specified information, including disclosure of beneficial

ownership of the business, within 30 days of the date the aggregate value of any contracts, leases, or other agreements that the business enters into with the State of Maryland or its agencies during a calendar year reaches \$200,000.

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 procurement contract with the State, a county, 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: (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 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 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), of this regulation;

(h) Notify its employees in the statement required by §E(2)(b), of this regulation, 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 §E(2)(h)(ii), of this regulation, or otherwise receiving actual notice of a conviction;

(j) Within 30 days after receiving notice under §E(2)(h)(ii), of this regulation, 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), of this regulation.

(3) If the business is an individual, the individual shall certify and agree as set forth in §E(4), of this regulation, 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 Bid/Proposal Affidavit dated_____2021, 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.

By: _____
Signature of Authorized Representative and Affiant

Printed Name: _____
Printed Name of Authorized Representative and Affiant

Title: _____

Date: _____

APPENDIX D-1

ESTIMATE OF LEASE PURCHASE FINANCING NEED FOR FY 2022* through FY 2023*

<u>Type of Equipment</u>	<u>Cost</u>
Lab Equipment	\$ 120,000
Computer Equipment	3,458,891
Furniture	1,269,000
Security Equipment	3,100,000
Dietary Equipment	1,000,000
Fare Collection System **	22,000,000
Misc. Equipment	500,000
Production Equipment	750,000
Specialty Vehicles ***	750,000
 Total	 \$ 32,947,891

* While the Treasurer’s Office surveyed State Agencies prior to the release of this IFB, there is no assurance that this estimate of lease activity will reflect the actual amount of activity under the Master Lease. The Treasurer’s Office expects that \$35 million will be sufficient to meet actual State capital lease financing needs through June 30, 2023. To the extent it is not, the Treasurer’s Office will do a separate procurement to meet any additional need.

** The Maryland Transit Administration plans to lease-purchase approximately \$22 million in capital equipment to update its fare collection systems during fiscal year 2023.

*** Specialty vehicles includes boats, fire trucks and other specialized vehicles.

APPENDIX D-2

FIRST TAKEDOWN SUMMARY OF EQUIPMENT SCHEDULES

Schedule No.	Agency	Locations	Term	Amount Financed	Equipment Description	Vendor
21-01-01	Department of Public Safety Correctional Services	DPSCS IT&CD 1201 Reisterstown Road Rd, Bldg. F Baltimore, MD 21215	3 years	\$1,798,100.00 (R)	Servers, Desktops, Laptops, Ruggedized Laptops, Monitors, Computer Hardware and Associated Peripherals	ATS Middle River, MD 21220
	Department of Public Safety Correctional Services	DPSCS IT&CD 1201 Reisterstown Road Rd, Bldg. F Baltimore, MD 21215	3 years	\$197,875.83 (R)	Servers and Associated Peripherals	CAS Severn Laurel, MD 20707
	Department of Public Safety Correctional Services	DPSCS IT&CD 1201 Reisterstown Road Rd, Bldg. F Baltimore, MD 21215	3 years	\$10,248.00 (R)	Servers and Associated Peripherals	EDS Baltimore, MD 21237
	Department of Public Safety Correctional Services	DPSCS IT&CD 1201 Reisterstown Road Rd, Bldg. F Baltimore, MD 21215	3 years	\$398,450.83 (R)	Servers and Associated Peripherals	NEC Corporation of America Irving, TX 75063
	Department of Public Safety Correctional Services	DPSCS IT&CD 1201 Reisterstown Road Rd, Bldg. F Baltimore, MD 21215	3 years	\$37,150.00 (R)	Servers and Associated Peripherals	USC/Canterbury Corp. Annapolis, MD 21401
	Department of Public Safety Correctional Services	DPSCS -MCIW 7943 Brockbridge Road Jessup, MD 20794	3 years	\$12,000.00 (R)	Dietary Equipment/Meal Delivery Carts, Food Slicer	Pasco Brokerage Inc. Plano, TX 75026
	Department of Public Safety Correctional Services	DPSCS -MCIW 7943 Brockbridge Road Jessup, MD 20794	3 years	\$4,175.00 (R)	Dietary Equipment/Tray Drying Racks	Pueblo Hotel Supply Pueblo, CO 81004
		Schedule No. 1 Total		\$2,457,999.66		
21-01-02	Maryland Department of the Environment	Maryland Department of the Environment 1800 Washington Boulevard Baltimore, MD 21230	3 years	\$114,673.00 (R)	Desktop, Laptops, Ruggedized Laptops, Tablets, Monitors and Associated Peripherals	ATS Middle River, MD 21220
		Schedule No. 2 Total		\$114,673.00		
21-01-03	Department of Housing and Community Development	Department of Housing and Community Development 7800 Harkins Road Lanham, MD 20706	3 years	\$182,400.00 (R)	Desktops, Laptops and Associated Peripherals	DSR, Inc. Hanover, MD 21067
	Department of Housing and Community Development	Department of Housing and Community Development 7800 Harkins Road Lanham, MD 20706	3 years	\$45,793.00 (R)	Desktops, Laptops, Ruggedized Laptops, Monitors and Associated Peripherals	ATS Middle River, MD 21220
		Schedule No. 3 Total		\$228,193.00		
21-01-04	Maryland Department of Veterans Affairs	Maryland Department of Veterans Affairs 16 Francis Ave., 4th floor Annapolis, MD 21403	3 years	\$329,527.66 (R)	Equipment, Grounds Maintenance, Excavators	Security Equipment Co. Baltimore, MD 21227
		Schedule No. 4 Total		\$329,527.66		
		Total 3 Year Leases		\$3,130,393.32		

**APPENDIX D-2
Cont.**

FIRST TAKEDOWN SUMMARY OF EQUIPMENT SCHEDULES

21-01-05	Office of the Public Defender	Office of the Public Defender 839 Elkridge Landing Road Linthicum Heights, MD 21090	5 years	\$151,350.00 (R)	Computer Hardware, Desktops, Laptops and Associated Peripherals	ATS Middle River, MD 21220
	Office of the Public Defender	Office of the Public Defender 839 Elkridge Landing Road Linthicum Heights, MD 21090	5 years	\$190,222.51 (R)	Server and Peripherals	IP Data Systems, Inc. Ellicott City, MD 21043
	Office of the Public Defender	Office of the Public Defender 839 Elkridge Landing Road Linthicum Heights, MD 21090	5 years	\$11,932.36 (R)	PBX Equipment and Peripherals	NEC Corporation of America Irving, TX 75063
	Office of the Public Defender	Office of the Public Defender 839 Elkridge Landing Road Linthicum Heights, MD 21090	5 years	\$270,222.69 (R)	Computer Hardware, Laptops, Servers and Peripherals, PBX Equipment and Peripherals	DELL Marketing, L.P. Round Rock, TX 78682
	Office of the Public Defender	Office of the Public Defender 839 Elkridge Landing Road Linthicum Heights, MD 21090	5 years	\$97,751.00 (R)	Computer Hardware	CDW Government Chicago, IL 60675
		Schedule No. 5 Total		\$721,478.56		
		Total 5 Year Leases		\$721,478.56		
		Total Takedown #01 2021 Master Lease		<u>\$3,851,871.88</u>		

(R) – Reimburse the Agency

FORM OF CERTIFICATE OF THE STATE OF MARYLAND
2021 MASTER EQUIPMENT LEASE-PURCHASE AGREEMENT
CERTIFICATE OF THE STATE OF MARYLAND

I HEREBY CERTIFY as of the__ day of ____, 20__, that I am the Chief Deputy Treasurer of Maryland (the "Treasurer"), acting on behalf of the various departments or agencies (the "Agencies") using the Equipment (the "Equipment"), that I hold the office set forth below, and that I hereby execute and deliver this Certificate for the benefit of all persons interested in the execution and delivery of that certain 2021 Master Equipment Lease-Purchase Agreement dated as of _____, 2021 (collectively, the "Master Lease"), Equipment Schedule Nos. __ through __ (the "Equipment Schedule"), and Takedown Schedule No. __ thereto, each dated as of ____20__, by and between _____ and the State of Maryland (the "State"). Terms defined in the Master Lease and the Equipment Schedules are used in this Certificate with the same meanings as used therein. I do further certify as follows:

1. I am the Treasurer of the State, and in such capacity, I am familiar with and have personal knowledge of the matters hereinafter stated.

2. The signature appearing opposite my name is my true and genuine signature:

OFFICE NAME SIGNATURE
Chief Deputy Treasurer Bernadette T. Benik _____

3. The Master Lease, the Equipment Schedules thereto, and all certificates and other documents (collectively, the "Financing Documents"), to which the State is a party, as executed and delivered or as approved, as appropriate, are in compliance with the State's and the Agencies' operating budgets as proposed for the fiscal year ending ____, 20__ (the "Budgets"). The Budgets were a part of the State's overall operating budget, which was validly adopted and is in full force and effect, subject to such changes and revisions therein as may be approved by the representatives of the State and the Agencies executing the same. In making this certification, I have relied upon the representations of the appropriate official or officials of the Department of Budget and Management (the "Department") and the Agencies set forth in Exhibit A attached hereto, and I am personally aware of no fact or other matter that would make my reliance upon the representations of the Department or the Agencies unreasonable.

4. To the best of my knowledge, (i) the representations and warranties of the State in the Financing Documents are true and correct on and as of the date hereof as though made on and as of the date hereof, and (ii) the State has complied with all terms on its part to be performed or satisfied by it under the Lease at or prior to the date hereof.

5. To the best of my knowledge, no litigation is pending or threatened in any court to

restrain or enjoin the execution or delivery of the Financing Documents or the payment of the Lease Payments, or in any way contesting or affecting the Financing Documents, the operating budget, or the Lease, or contesting the powers of the State or contesting the authorization of the Financing Documents.

6. The officials of the Department, the Treasurer, and the Agencies will take all actions necessary to appropriate or otherwise provide for all amounts required to be paid under the Lease and to the best knowledge and belief of the Department, the Treasurer, and the Agencies, there is no reason to believe that the State will not make such appropriation or have sufficient other funds to make such payments as the same become due.

7. The Equipment is personal property and when used by the State should not be or become fixtures under State law currently in effect.

8. The Equipment will be used by the State only for the purpose of performing one or more of its governmental or proprietary functions consistent with the permissible scope of its authority. Except for that portion of the Equipment leased on behalf of any State agency that may involve limited related private business use, no portion of the Equipment will be leased to or operated by any person in connection with a nongovernmental trade or business. Use of the Equipment leased on behalf of a State agency by a nongovernmental trade or business shall not exceed 10% of the total use of such Equipment on a yearly average basis; provided that any such use by a nongovernmental trade or business that is not related or that is disproportionate to the governmental use shall not exceed 5% of the total use of such Equipment on an average yearly basis.

9. The Equipment is essential to the proper, efficient, and economic functioning of the State and to the services that the State provides. The State has an immediate need for and expects to make immediate use of substantially all the Equipment, which use is not temporary or expected to diminish in the foreseeable future.

10. The State will prepare, or cause to be prepared, and will file, or cause to be filed, a Form 8038-G, if applicable, in the manner and within the time provided by Section 149(e) of the Internal Revenue Code of 1986, as amended.

11. The Federal Taxpayer Identification Number of the State Board of Public Works, which approved the Lease, is 35-2384634.

IN WITNESS WHEREOF, I have executed this Certificate as of the day and year first above written.

WITNESS:

Name:
Title: Lease Administrator

Name:
Title: Chief Deputy Treasurer

**Exhibit A to
Certificate of State of Maryland**

CERTIFICATION AS TO APPROPRIATION

THIS ACKNOWLEDGMENT is executed by the _____ (the "Agency") for the purpose of acknowledging that the STATE OF MARYLAND, acting by and through the STATE TREASURER OF MARYLAND (the "Treasurer") and the DEPARTMENT OF BUDGET AND MANAGEMENT, has entered into that certain Equipment Lease-Purchase Agreement dated as of _____, 20__, the related Equipment Schedule No. _____, and Takedown Schedule No. _____ dated _____, 20__, (the "Equipment Schedule") and that the Agency will be responsible for transferring funds to the Treasurer, and hereby agrees to transfer funds, sufficient to make the Lease Payment set forth on Exhibit B to the Equipment Schedule in the amounts and at such times as are set forth therein. The Treasurer, moreover, is hereby authorized to charge such Lease Payments to the Agency's account indicated below.

FURTHERMORE, the Agency certifies that funds are included in the budget in an amount sufficient to cover the lease payments as set forth on Exhibit B to the Equipment Schedule for the current fiscal year, funds are or will be requested to be appropriated for the following fiscal year(s), and appropriations committees of the General Assembly have not disapproved of the procurement of the equipment described in Exhibit A to the Equipment Schedule.

AGENCY _____

By: _____
(Signature)

(Typed name and title)

Date: _____ Phone: _____

Agency Charge Account:

--- Financial Agency	--- PCA	--- Object	--- Index
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Appropriation Account:

--- Financial Agency	--- Appropriation Code	--- Comptroller's Object	--- Appropriated Fund
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If applicable:

--- Agency Object	--- Agency Fund
-------------------------	-----------------------

Budget submission document page number _____

Not in budget - explanation attached _____ (check if attached)

DBM Use Only

Reviewed by: _____
(Budget Analyst)

Date: _____

STO Use Only

Amount _____

FORM OF LEGAL OPINION

[OAG LETTERHEAD]

[Takedown Date]

Ladies & Gentlemen:

I have examined an original of a State of Maryland 2021 Master Equipment Lease-Purchase Agreement dated as of _____, 2021 (the "Lease"), Equipment Schedules No. __ through __ and Takedown Schedule No. __ dated _____, 20__, between the State of Maryland (the "Lessee"), and _____ (the "Lessor"), and certain other documents executed by Lessee in connection with the Lease (the Lease, the Equipment Schedules, and such other documents are collectively referred to herein as the "Lease Documents").

Based upon such examination and upon such other examination of law and fact as I have deemed necessary or appropriate for purposes of the opinions set forth below, and assuming due execution, as appropriate, of the Lease Documents by Lessor, I am of the opinion, that:

1. Lessee is a "State" within the meaning of Section 103 of the Internal Revenue Code of 1986, as amended;

2. Lessee has full legal right, power and authority to authorize, enter into, execute and deliver the Lease Documents and to perform its duties, covenants, obligations and agreements thereunder;

3. Execution and delivery of the Lease Documents by the State Treasurer and Lessee's performance of the Lease Documents in accordance with their terms have been duly authorized by all necessary action on the part of Lessee and the State Treasurer;

4. The Lease Documents are legal, valid, and binding deferred payment obligations of Lessee enforceable against Lessee in accordance with their terms except as such enforceability may be limited by nonappropriation of funds or by applicable bankruptcy, insolvency, moratorium, reorganization, or similar laws from time to time in effect and equitable principles. In the event Lessor obtains a judgment against Lessee for money damages as a result of an event of default under the Lease, Lessee would be obligated to pay such judgment subject to any budget and appropriation limitations imposed pursuant to Article III, § 52 of the Constitution of Maryland and its implementing statutes;

5. The execution and performance of the Lease Documents does not, to my

knowledge, violate any judgment, order, law, or regulation applicable to Lessee or result in any breach of, or constitute a default under, or result in the creation of any lien, charge, security interest, or other encumbrance upon, the Equipment (other than as contemplated by the Lease), or any assets of Lessee pursuant to any indenture, mortgage, deed of trust, bank loan, credit agreement, or other instrument to which Lessee is a party or by which it or its assets may be bound;

6. To the best of my knowledge, there are no actions or proceedings pending or threatened against or affecting Lessee in any court or before any governmental commission, board, or authority, which, if adversely determined, would have a material, adverse effect upon the ability of Lessee to perform its obligations under the Lease Documents;

7. To my knowledge, no further governmental orders, permission, consents, approvals, or authorizations are required to be obtained, and no registrations or declarations are required to be filed in connection with the execution and delivery of the Lease Documents; and

8. To the best of my knowledge, Lessee has complied with all requirements applicable to any of the Lease Documents under the State Finance and Procurement Article of the Annotated Code of Maryland.

This opinion may be relied upon by Lessor's permitted successors and/or assigns as if addressed to them. The opinions given herein: (a) shall not create any attorney-client relationship with any party other than the Lessee; (b) shall not create a duty to supplement or amend or modify opinions given herein; (c) shall be limited to those expressly stated herein; and (d) shall be limited to the facts, laws, and regulations in existence and known and contemplated at the time this opinion is given. This opinion may be relied upon by special tax counsel retained by the State to render an opinion with respect to the federal income tax consequences of this transaction. Except as expressly provided herein, however, I express no opinion as to any Federal or State tax or securities law matters.

Sincerely,

Counsel to the Treasurer

APPENDIX G

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 at: <https://www.dllr.state.md.us/labor/prev/livingwage.shtml>.

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.

**Affidavit of Agreement
Maryland Living Wage Requirements-Service Contracts**

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; or
- 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: _____

**FORM OF 2021 MASTER
EQUIPMENT LEASE - PURCHASE AGREEMENT**

* * * * *

INDEXED RATE PRIVATE PLACEMENT
FINANCING OF UP TO \$35 MILLION

* * * * *

STATE OF MARYLAND

AND

____,2021

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2021 MASTER EQUIPMENT LEASE-PURCHASE AGREEMENT

THIS MASTER EQUIPMENT LEASE-PURCHASE AGREEMENT is dated as of _____, 2021 (the "Lease"), by and between [**LESSOR**] having a principal place of business at [INSERT ADDRESS] (the "Lessor") and the **STATE OF MARYLAND** (the "Lessee" or the "State"), acting by and through the **STATE TREASURER'S OFFICE** (the "Office") acting on behalf of the **BOARD OF PUBLIC WORKS** and certain departments and units of the State (such departments and units shall be collectively referred to herein as the "Agencies"), the Office having a principal place of business at Louis L. Goldstein Treasury Building, Room 109, 80 Calvert Street, Annapolis, Maryland 21401.

WITNESSETH

WHEREAS, Lessee has determined that a present and ongoing need exists for the leasing and acquisition of certain Equipment (hereinafter defined) from the Lessor, and that Lessee is authorized under the Constitution and laws of the State to enter into this Lease for the purposes hereinafter set forth; and

WHEREAS, Lessor has agreed to finance the acquisition of the Equipment and lease such Equipment to Lessee upon the terms and conditions set forth herein.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and in consideration of the premises hereinafter contained, Lessor and Lessee agree as follows:

1. Agreement to Lease. Upon the terms and conditions contained in this Lease and in Appendix A, the Office's Invitation for Bids (the "IFB"), and in Appendix B, Lessor's Bid dated _____, 2021, Lessor agrees to lease and Lessee agrees to lease with the from Lessor for the respective Lease Term (hereinafter defined), the one or more items of Equipment (the "Equipment") described in one or more Equipment Schedules (each an "Equipment Schedule" or "Schedule") in form and substance satisfactory to Lessor, from time to time executed and delivered by Lessor and Lessee in connection herewith, in accordance with the terms and conditions contained in this Lease.

2. Lease Term.

(a) This Lease will become effective upon the execution hereof by Lessee and Lessor as of the date first above written. The Lessor's period of performance for providing lease financing under this Lease shall be from June 16, 2021 to June 30, 2023 (unless earlier terminated in accordance with Section 2(b)), or until \$35 million, or such lesser amount as may be authorized by The Board of Public Works, of Equipment has been lease-financed (the "Funding Period"). The term of this Lease (the "Lease Term") with respect to each item of Equipment will commence on the date the Equipment is accepted pursuant to Section 3 and delivery of the respective Equipment Schedule, and unless earlier terminated as expressly provided for in

this Lease, will continue for the period set forth in the applicable Equipment Schedule. The Lease Term with respect to the Equipment leased under each separate Equipment Schedule will terminate (a) upon the purchase of the Equipment by the Lessee; (b) upon payment by Lessee of the Lease Payments (hereinafter defined) required to be paid by Lessee hereunder with respect to the Equipment; or (c) as otherwise provided in this Lease. Upon termination of the Lease Term as to the Equipment leased under each separate Equipment Schedule as a result of the occurrence of either of the events specified in (a) or (b), above, the Lease will terminate with respect to the Equipment leased under such Equipment Schedule, the security interest, if any, of the Lessor in such Equipment shall terminate, and Lessee will acquire full and unencumbered title to such Equipment free and clear of all liens and encumbrances created by or arising through or under Lessor.

- (b) On each June 30 during the Funding Period, each of the Lessor and the Lessee shall have the right to terminate this Lease by providing at least 120 days prior written notice to the other party.
- (c) The execution and delivery of this Lease shall not obligate the Lessor to execute and deliver any Equipment Schedule or to lease any Equipment unless and until an Equipment Schedule with respect to such Equipment has been executed and delivered between the Lessee and the Lessor and all conditions set forth in this Lease and such Equipment Schedule have been satisfied.

3. Cost of Equipment; Delivery of Equipment; and Payment of Equipment Costs.

- (a) The Agencies on behalf of Lessee have or will enter into certain purchase agreements or purchase orders (the "Purchase Agreements") with one or more vendors (the "Vendors") of various items of Equipment to be purchased from the respective Vendors and leased hereunder. Such Purchase Agreements shall provide for the delivery, installation, and purchase of the Equipment. Lessee does hereby assign to Lessor all of Lessee's rights, but none of its obligations, under the Purchase Agreements, including without limitation, the right to purchase the Equipment in accordance with the terms thereof. When used herein, the term "Equipment Costs" means the net purchase price payable to the respective Vendors under the respective Purchase Agreements, which shall not exceed the amount set forth in the respective Equipment Schedules and up to \$35,000,000 in the aggregate (the "Acquisition Dates") stated on the respective Equipment Schedules. Each Equipment Schedule shall represent equipment costs of no less than \$100,000, unless authorized by special written exception issued by the Office's State Project Coordinator. All equipment will be financed on a tax-exempt basis.
- (b) Lessor agrees to finance all and not less than all of the equipment approved for financing by the Office and the Department of Budget and Management

(“Department”), for such terms (3, 5, 7, 10, 12 or 15 years) as determined by the Office and the Department in their sole discretion.

- (c) The Purchase Agreements shall provide that the Equipment is to be delivered to Lessee at the location (the “Equipment Location”) specified in the applicable Equipment Schedule. Lessee will accept the Equipment as soon as it has been delivered, inspected, installed, tested and is operational, or in the event that the Vendor allows a pre-acceptance test period, as soon as the test period has expired. Lessee will evidence its acceptance of the Equipment by executing and delivering to Lessor an Acceptance Certificate (herein so called).
- (d) Lessor agrees to make moneys available from time to time to pay such Equipment Cost when required and upon execution by the Lessor and Lessee of one or more Takedown Schedules (a form of which is attached hereto as Appendix C) and one or more Equipment Schedules (a form of which is attached hereto as Appendix D) with respect to each draw. Each Takedown Schedule shall reflect an aggregation of the Lease Payments due under one or more Equipment Schedules providing for a similar number of Lease Payments and applicable to a single acquisition date. In the event the Equipment Cost exceeds \$35,000,000 in the aggregate; neither Lessor nor Lessee shall be required to provide additional moneys for this purpose.
- (e) In connection with any Takedown Schedule, Lessor may select a bank (which must be reasonably acceptable to Lessee, a “Paying Agent Bank”) to make payments specified on such Takedown Schedule or the accompanying Equipment Schedule or Schedules and the payment instructions specified therein. The cost of the services of such bank will be borne by Lessor.
- (f) If a Paying Agent Bank is selected by Lessor, Lessor agrees to make moneys available, from time to time, to pay Equipment Costs described in subparagraph (c) by making a single aggregate payment of all Equipment Costs for each Takedown Schedule to the Paying Agent Bank. The Paying Agent Bank shall make all payments required under the Purchase Agreements for each Takedown Schedule, in accordance with the Paying Agent Agreement between Lessor and the Paying Agent Bank and approved by the Lessee.

4. Lease Payments.

- (a) Subject to Section 5 hereof, Lessee agrees to pay to Lessor or its assignee pursuant to Section 20 hereof the Lease Payments (herein so called), equal to the amounts specified in Exhibit B to the applicable Equipment Schedule. A portion of each semi-annual Lease Payment is paid as, and represents payment of interest, all as set forth in the applicable Equipment Schedule. The Lease Payments will be payable without notice or demand, except for the invoices hereinafter provided pursuant to wiring instructions provided by Lessor, and

will commence on the first Lease Payment due date (the “Due Date”) as set forth in Appendix B to the applicable Equipment Schedule. Lessor shall prepare and submit to Lessee semi-annual invoices for the Lease Payments reflected on Appendix B to each Equipment Schedule. Each consolidated invoice submitted for payment shall include on its face the Lessor’s or the Lessor’s assignee’s Federal Tax Identification Number, the Lessor’s complete address, and each takedown number, date and amount that is included in the total invoice. Consolidated payments will be made within thirty (30) days of receipt by the Office of approved invoices or the invoice due date, whichever is later. The Office may make a consolidated payment of any number or all Lease Payments due to Lessor (or to the assignee of Lessor to whom such Lease payments are due) on the same date. Any payments received after the Due Date may bear interest from the Due Date in accordance with Section 15-104 of the State Finance and Procurement Article, Annotated Code of Maryland. Except as specifically provided in Section 5, Section 27, and Section 28 hereof, Lessee’s obligation to pay the Lease Payments will be absolute and unconditional in all events and, except for the provisions of Section 7-222 of the State Finance and Procurement Article, Annotated Code of Maryland, will not be subject to any set-off, defense, abatement, reduction, counterclaim, or recoupment for any reason whatsoever.

- (b) Lessor and Lessee understand and intend that the obligation of Lessee to pay the Lease Payments required hereunder shall constitute a current expense of Lessee, subject to appropriated funds, and shall not in any way be construed to be a debt of Lessee in contravention of any applicable constitutional or statutory limitation or requirement concerning the creation of indebtedness by Lessee, nor shall anything contained herein constitute a pledge of the full faith and credit, the general tax revenues, the taxing powers, funds, or moneys of Lessee beyond those appropriated for the purpose of acquiring the Equipment.
- (c) The Office, the Department through its acknowledgment and acceptance of this Lease, and the Agencies on behalf of Lessee reasonably believe that legally available funds can be obtained sufficient to make all Lease Payments during the Lease Term, and hereby covenant that they will do all things lawfully within their power to obtain, maintain, and pursue funds from which the Lease Payments may be made, including making provision for such payments to the extent necessary in each budget proposed for the purpose of obtaining funding, and that they will use their bona fide best efforts to obtain appropriation of the necessary funds to avoid termination pursuant to Section 5 hereof by taking all appropriate action to seek adequate budgeted funds to maintain this Lease in force. It is the intent of the Office and the Agencies on behalf of Lessee to make the Lease Payments for the full Lease Term if funds are legally available therefore, and in that regard, Lessee represents that the use of the Equipment is essential to its proper, efficient, and economic operation.

5. Non-appropriation of Funds. The obligation of the Lessor to pay the Lease Payments and all other amounts payable by the Lessor hereunder, including (without limitation) any indemnity payments, is subject to the appropriation of money legally available for such purpose by the State. In the event sufficient funds shall not be appropriated by the State for the payment of the Lease Payments required to be paid under this Lease and any Equipment Schedule, the Lessor may terminate such Equipment Schedule at the end of the last fiscal year or earlier date for which an appropriation is available without penalty and the Lessee shall not be obligated to make payment of the Lease Payments and other payments provided for in this Agreement and any such Equipment Schedule beyond the last date for which an appropriation is available. The Lessee shall deliver written notice to Lessor of such termination no later than seven days after the Lessor has knowledge that an appropriation will not be available. The failure to give such notice shall not extend the Term beyond such fiscal year and the Lessee shall have no liability therefor. Upon termination of any Equipment Schedule for non-appropriation, the obligations of the Lessee requiring the expenditure of money will cease so long as all payments previously approved or appropriated have been made, and all title and interest of the Lessee in the Equipment relating to such Equipment Schedule will terminate and be vested in the Lessor.

6. Limitation on Warranties.

- (a) Lessee acknowledges and agrees, and shall confirm its acknowledgment and agreement on each Equipment Schedule, that the Equipment is of a size, design, and capacity selected by the Lessee; that Lessee is satisfied that the Equipment is suitable for its purpose; that Lessor is neither a manufacturer nor a vendor of the Equipment; and that LESSOR HAS NOT MADE, AND DOES NOT HEREBY MAKE, ANY REPRESENTATION, WARRANTY, OR COVENANT, EXPRESS OR IMPLIED, WITH RESPECT TO THE MERCHANTABILITY, CONDITION, QUALITY, DURABILITY, DESIGN, OPERATION, FITNESS FOR USE, OR SUITABILITY OF THE EQUIPMENT IN ANY RESPECT WHATSOEVER OR IN CONNECTION WITH OR FOR THE PURPOSES AND USES OF LESSEE, OR ANY OTHER REPRESENTATION, WARRANTY, OR COVENANT OF ANY KIND OR CHARACTER, EXPRESS OR IMPLIED, WITH RESPECT THERETO, AND LESSOR SHALL NOT BE OBLIGATED OR LIABLE FOR ANY ACTUAL, INCIDENTAL, CONSEQUENTIAL, OR OTHER DAMAGES OF OR TO LESSEE OR ANY OTHER PERSON OR ENTITY ARISING OUT OF OR IN CONNECTION WITH THE USE OR PERFORMANCE OF THE EQUIPMENT AND THE MAINTENANCE THEREOF.
- (b) Lessor hereby assigns to Lessee during the Lease Term, so long as no Event of Default (as hereinafter defined) has occurred and is continuing, all manufacturers' warranties, if any, express or implied, with respect to the Equipment, and Lessor authorizes Lessee to obtain the customary services furnished in connection with such warranties at Lessee's expense, and shall cooperate fully with Lessee with respect to the resolution of any claims against such warranties.

7. Representations and Warranties of Lessee; Tax Covenant.

- (a) The Lessee represents in order to induce the Lessor to enter into the Lease and each Equipment Schedule that the State has been fully authorized to execute and deliver this Lease and each Equipment Schedule *provided* that the principal amount advanced under the Equipment Schedules does not exceed \$35,000,000 all requirements have been met and all procedures have taken place in order to ensure the validity and enforceability of this Lease and each Equipment Schedule in accordance with their terms.
- (b) It is the intention of the parties hereto that the interest portion of the Lease Payments be and remain excludable from gross income for purposes of federal income taxation. The Lessee covenants that (i) it will take any and all actions lawfully within its powers so as to maintain the excludability from gross income for federal income tax purposes of the interest portion of the Lease Payments and (ii) it will not perform any act or enter into any agreement or use or permit the use of the Equipment or any portion thereof in a manner that shall adversely affect the excludability from gross income for federal income tax purposes of the interest portion of the Lease Payments received by the Lessor, including (without limitation) leasing or transferring all or any portion of the Equipment or contracting with a third party for the use or operation of all or any portion of the Equipment if entering into such lease, transfer or contract would have such effect.
- (c) It is the intention of the parties hereto that during the term of this Lease, the Lessee be the sole beneficial and legal owner of the Equipment. The Lessor shall not take any action inconsistent with the Lessee's ownership of the Equipment for federal income tax purposes except pursuant to the exercise of remedies under Section 22.

8. Title. Upon Lessee's acceptance of the Equipment under an Equipment Schedule, title to the Equipment will vest in Lessee subject to the rights of the Lessor hereunder.

9. Security Interest. In order to secure all of its obligations hereunder, Lessee hereby (i) grants to Lessor a first priority security interest in any and all right, title, and interest of Lessee in (a) the Equipment, and in all additions, attachments, and accessions thereto and substitutions thereof; and (b) any proceeds (including the Net Proceeds, as defined in Section 15 below, of any commercial insurance policy) of the foregoing; (ii) agrees that this Lease may be filed, by Lessor at Lessor's expense as a financing statement evidencing such security interests; and, (iii) agrees to execute and deliver all financing statements, certificates of title, and other instruments necessary or appropriate to evidence such security interest.

10. Personal Property. The Equipment is and will remain personal property and will not be deemed to be affixed to, or be a part of, the real estate on which it may be situated notwithstanding that the Equipment or any part thereof may be or hereafter may become in

any manner physically affixed or attached to real estate or any building thereon. If reasonably requested by Lessor, Lessee will, at Lessee's expense, furnish a landlord or mortgagee waiver with respect to the Equipment.

11. Use; Repairs. Lessee will use the Equipment in a careful manner consistent with the use generally contemplated by the manufacturer of the Equipment and will comply with all laws, ordinances, insurance policies, and regulations relating to, and will pay all valid costs, claims, damages, fees, and charges arising out of, the possession, use, or maintenance of the Equipment. Lessee, at its expense, will keep the Equipment in good repair (ordinary wear and tear excepted) and will furnish all parts, mechanisms, and devices required therefor.

12. Alterations. Lessee will not make any alterations or additions to the Equipment that will result in a material reduction in its value without Lessor's prior written consent (which shall not be unreasonably withheld) or unless such alteration or addition may be readily removed without damage to the Equipment.

13. Location; Inspection. The Equipment will not be removed from, or if the Equipment consists of rolling stock, its permanent base will not be changed from, the Equipment Location without Lessor's prior written consent, which consent will not be unreasonably withheld. Lessor will be entitled to enter upon the Equipment Location during normal business hours to inspect the Equipment or observe its use and operation upon reasonable advance notice to the Lessee.

14. Liens and Taxes. Lessee shall keep the Equipment free and clear of all levies, liens, and encumbrances except those created under this Lease. The parties contemplate that the Equipment will be used for a governmental purpose of Lessee and that the Equipment will be exempt from all taxes presently assessed and levied with respect to personal property. In the event that the use, possession, or acquisition of the Equipment is found to be subject to taxation, Lessee shall pay when due during the Lease Term, to the extent of available appropriated funds, all charges and taxes (local, State, and federal), that now or hereafter may be imposed upon the ownership, leasing, rental, sale, purchase, possession, or use of the Equipment, excluding, however, all local, federal and State taxes on or measured by Lessor's or its assignee's income. If Lessee fails to pay said charges and taxes when due, and after delivery of written notice to Lessee, Lessor shall have the right, but shall not be obligated, to pay said charges and taxes. If Lessor pays any charges or taxes for which Lessee is liable under this Lease, Lessee shall reimburse Lessor therefor, subject only to the availability of appropriated funds.

15. Risk of Loss; Damage, Destruction, and Condemnation; Use of Net Proceeds.

- (a) Lessee assumes all risk of loss of, or damage to, the Equipment from any cause whatsoever, and no such loss of, or damage to, the Equipment, defect therein, or unfitness or obsolescence thereof shall relieve Lessee of its obligation to make Lease Payments or to perform any other obligation hereunder.

- (b) If, prior to the termination of the Lease Term, (i) the Equipment or any portion thereof is destroyed (in whole or in part), or is damaged by fire or other casualty; or (ii) title to, or the temporary use of, the Equipment or any part thereof or the estate of Lessee or Lessor in the Equipment or any part thereof shall be taken under the exercise of the power of eminent domain by any governmental body or by any person, firm, or corporation acting under governmental authority; or (iii) for any other reason, the Equipment or any portion thereof is no longer in the possession and control of Lessee; Lessee may, at its option, apply the Net Proceeds (as defined below) in whole or in part to (i) replace, repair, restore, modify or improve such Equipment or any portion thereof, or (ii) exercise its option to purchase such Equipment or provide for the payment of the Lease Payments as provided in Section 18. Any balance of the Net Proceeds remaining after application in accordance with this Section shall be paid to the Lessee.
- (c) If the Net Proceeds received with respect to any Equipment are insufficient to pay in full the cost of any replacement, repair, restoration, modification or improvement referred to in clause (b) of this Section, the Lessee shall either (i) complete the work and pay any cost in excess of the amount of the Net Proceeds, in which event the Lessee shall not be entitled to any reimbursement therefor from the Lessor or to any diminution of the amounts payable under any Equipment Schedule; or (ii) purchase such Equipment or provide for the payment of the Lease Payments as provided in Section 18. The amount of the Net Proceeds in excess of the amount required to purchase such Equipment or provide for the payment of the Lease Payments, if any, may be retained by the Lessee.
- (d) "Net Proceeds" means the amount remaining from the gross proceeds of any insurance claim or condemnation award after deducting all expenses (including, without limitation, reasonable attorneys' fees) incurred in the collection of such claim or award.

16. Insurance. The Equipment leased under each Equipment Schedule shall be insured, at the option of the Lessee, under the Lessee's self-insurance program or under a blanket insurance policy with other property of the State and its agencies during the Term of the Lease against loss or damage due to fire and risks normally included in extended coverage, malicious mischief and vandalism insurance or, at the option of the Lessee, the State shall purchase insurance against such risks up to the full replacement value of the Equipment. The Net Proceeds of the insurance required in this Section shall be applied as provided in Section 15.

17. Indemnification. To the extent allowed by applicable law and subject to available appropriations, Lessee shall indemnify Lessor against, and hold Lessor harmless from, any and all claims, actions, arising in connection with the Equipment unless any such action is based upon the negligence, illegal act, breach of duty, or intentional tort committed by the

Lessor. In no event shall Lessee be liable for any indirect, special or consequential damages suffered by Lessor.

18. Disputes. This Contract shall be subject to the provisions of State Finance and Procurement Article, Title 15, Subtitle 2, Annotated Code of Maryland, and COMAR 21.10 (Administrative and Civil Remedies). Pending resolution of a claim, the Lessor shall proceed diligently with the performance of the contract in accordance with the Procurement Officer's decision.

19. Modifications and Substitutions.

- (a) The Lessee shall have the right, at its own expense, to make alterations, additions, modifications or improvements to the Equipment subject to the provisions of this Section. All such alterations, additions, modifications and improvements shall thereafter comprise part of the Equipment. Such alterations, additions, modifications and improvements shall not in any way damage the Equipment, substantially alter its nature or cause it to be used for purposes other than those authorized under the provisions of State and federal law; and the Equipment, on completion of any alterations, additions, modifications or improvements made pursuant to this Section, shall be of a value which is equal to or greater than the value of the Equipment immediately prior to the making of such alterations, additions, modifications and improvements. The Lessee shall, at its own expense, make such alterations, additions, modifications and improvements to the Equipment as may be required from time to time by applicable law or by any governmental authority during the term of this Lease.
- (b) The Lessee may substitute for all or any portion of the Equipment under any Equipment Schedule property of approximately equal or greater market value and with an equal or greater useful life. In the event of any such substitution, the Lessee shall deliver to Lessor a certification that the property proposed to be substituted has approximately equal or greater market value and an equal or greater useful life as the portion of the Equipment for which such property is substituted, together with an opinion of counsel to the Lessee to the effect that the proposed substitution will not adversely affect the excludability from gross income for federal income tax purposes of the interest components of Lease Payments under such Equipment Schedule under which such Equipment was leased. The Lessee shall be responsible for all costs and expenses of Lessor, including reasonable counsel fees, in connection with any such substitution. The Lessee shall cause all financing statements, fixture filings, certificates of title, affidavits, notices and similar instruments, to be made or filed in a timely manner to secure and perfect the security interest of Lessor in the substituted property.

20. Assignment.

- (a) Without Lessor's prior written consent, Lessee will neither (i) assign, transfer, pledge, hypothecate, grant any security interest in, or otherwise dispose of this Lease, *provided*, however that (a) the Lessor may not assign its obligation to make advances under any Agreement without the prior written consent of the Lessee and (b) no assignment or reassignment of the rights of the Lessor under any Equipment Schedule shall be effective and binding on the Lessee unless and until the Lessee shall have received notice of the assignment or reassignment disclosing the name and address of the assignee or subassignee. The Lessee, at the expense of the Lessor, agrees to execute all documents, including (without limitation) notices of assignment and chattel mortgages or financing statements, which may be reasonably requested by the Lessor or its assignee to protect its interest in the Equipment and the Lease.
- (b) Lessor or its assignees may not sell or distribute, in fractionalized interests or participations, its interest in its rights to receive payment of the aggregate amount of all Equipment Schedules for any given draw hereunder without the prior written consent of the Lessee. The Lessor shall not sell Certificates of Participation in connection with this Lease. If Lessee gives its consent to such sale or distribution of such fractionalized interests or participations, Lessor or its assignee (i) shall limit the number of holders of such interests or participations to thirty-five (35) or fewer "accredited investors" (as defined in Rule 501 of Regulation D); (ii) shall issue any such interest or participation in the amount of \$100,000 or more; (iii) shall maintain, on behalf of the Lessee, registration books or a book entry system with respect to the ownership and transfer of such participations or interests that complies with the requirements of Section 149(a) of the Code; (iv) shall not establish any such participations or interests in a manner that would cause interest payments on this Lease received by owners of such participations or interests to be includable in gross income for federal income tax purposes; and (v) shall provide the Office's legal counsel with a copy of all offering materials thirty (30) days prior to the time any such interests or participations are offered for sale or distribution. Lessor (i) shall be solely responsible for the allocation of payments received from Lessee in accordance with subsection (b) hereof among any such participants as their interests may appear; and (ii) shall be solely responsible for the costs and other financial or other liabilities attendant to the establishment, maintenance, and operation of the aforesaid registration books or book entry system. Lessee shall be given notice of the establishment of any such registration books or book entry system and a full written explanation of how such books or system works, including the right to inspect the same during normal business hours, or, if Lessor is not conveniently located for such inspection, Lessee shall be furnished, upon request, with photocopies of such books and records and/or book entry system. The foregoing to the contrary notwithstanding, Lessee may, at its option and expense, appoint another agent

to establish, maintain, and operate the registration books or book entry system contemplated hereunder.

- (d) Lessor acknowledges and agrees that no offering document, prospectus, offering circular or other disclosure document has been or will be prepared in connection with this Lease and that Lessor was afforded the opportunity to examine information and documents and to make inquiries relating to this Lease and the matters contained herein and has received and reviewed all information it deemed necessary to make an investment decision with respect to this Lease. It is the Lessee's intent that the restrictions contained in this Section 20 preclude the offering of fractionalized interests or participations except in a private placement.

21. Events of Default. With respect to each Equipment Schedule, an Event of Default (herein so called) shall occur upon the happening of an event hereinafter described, but in the case of events described in paragraph (b) below, only if the Lessor shall have given the Office thirty (30) days' prior written notice of the default, unless the Lessor and Lessee shall agree to an extension of such time prior to its expiration:

- (a) Lessee fails to make any Lease Payment as it becomes due in accordance with the terms of this Lease and the respective Equipment Schedule (except as such failure results from nonappropriation by the Lessee of funds for such purposes); or
- (b) Lessee fails to perform or observe any other covenant, condition, or agreement to be performed or observed by it hereunder or under the respective Equipment Schedule *provided* that, if the failure stated in such notice cannot be corrected within such period, Lessor will not unreasonably withhold its consent to an extension of such time if corrective action is instituted by the Lessee within such period and diligently pursued until the default is corrected.

Notwithstanding the foregoing, if by reason of *force majeure* the Lessee is unable in whole or in part to perform its agreements under this Lease or any Equipment Schedule (other than the obligations to pay Lease Payments) the Lessee shall not be in default during the continuance of such inability. The term "*force majeure*" as used herein shall mean any of the following: acts of God; strikes, lockouts or other industrial disturbances; acts of public enemies; orders or restraints of any kind of the government of the United States or of the State or any of their departments, agencies or officials, or any civil or military authority; insurrections, terrorist acts; riots, landslides, earthquakes, fires, storms, droughts, floods, explosions, breakage or accident to machinery, transmission pipes or canals; or any other cause or event not reasonably within the control of the Lessee.

22. Remedies. Upon the occurrence of an Event of Default, and as long as such Event of Default is continuing, Lessor, at its option, may declare this Lease to be in default by written notice to such effect to the Office, and thereafter Lessor may exercise any one or more of the

following remedies:

- (a) by written notice to Lessee, declare an amount equal to all amounts then due or to become due during the then current fiscal year of Lessee under this Lease and the Equipment Schedules to which the Event of Default applies to be immediately due and payable, whereupon the same shall become immediately due and payable;
- (b) to require Lessee to promptly return the Equipment described on the Equipment Schedules to which the Event of Default applies to Lessor;
- (c) sell or lease the Equipment or sublease it for the account of Lessee holding Lessee liable, only for the fiscal year for which appropriated funds are available and only to the extent of those appropriated funds, for all Lease Payments and other payments due on or before the effective date of such selling, leasing, or subleasing, and for the difference between the purchase price, rental, and other amounts paid by the purchaser, lessee, or sublessee pursuant to such sale, lease, or sublease and the amount payable by Lessee hereunder; and
- (d) exercise any other right, remedy, or privilege that may be available to it under applicable laws of the State of Maryland or any other applicable law, or proceed by appropriate legal action to enforce the terms of this Lease or to recover damages for the breach of this Lease, or to rescind this Lease as to the Equipment.

Without limiting the generality of the foregoing, if an Event of Default shall occur under this Lease or any Equipment Schedule, then to the extent permitted by law, the Lessor shall be entitled to retake possession of such Equipment wherever situated, without any court order or other process of law and without liability for entering the premises, and sell any or all of such Equipment at a public or private sale, or otherwise dispose of, hold, use, operate, lease to others or keep idle such Equipment, with 10 days' notice to the Lessee, all free and clear of any rights of the Lessee, *provided* that any and all such actions be taken in a commercially reasonable manner.

Any assignee of Lessor shall only have the right to declare the Lease in default and exercise the remedies described in paragraphs (a) through (d) above to the extent of the Equipment Schedules which Lessor has assigned to such assignee and the Lease Payments and Equipment described thereon.

All of the Lessee's right, title and interest in any Equipment the possession of which is retaken by the Lessor upon the occurrence of an Event of Default (including, without limitation, construction contracts, warranties, guaranties or completion assurances applicable to such Equipment) shall pass to the Lessor, and the Lessee's rights in such Equipment shall terminate immediately upon such repossession.

No remedy herein conferred upon or reserved to Lessor is intended to be exclusive, and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Lease or now or hereafter existing at law or in equity. Lessor's remedies hereunder may be exercised separately with respect to items of Equipment. No delay or omission to exercise any right or power accruing upon the occurrence of any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient.

23. Lessor's Right To Perform for Lessee. Except as provided in Sections 5, 27 and 28, if Lessee fails to perform or comply with any of its covenants contained herein, Lessor shall have the right, but shall not be obligated, to effect such performance or compliance, and the amount of any out-of-pocket expenses or other reasonable expenses of Lessor incurred in connection with the performance of, or compliance with, such covenant, together with interest thereon at the lesser of (i) the highest lawful rate permitted by applicable State law on the date of payment by Lessor; or (ii) the same rate on the underlying Lease Payments shall be payable by Lessee to the extent of then currently available appropriated funds, upon demand. Lessee shall execute, endorse, and deliver to Lessor any conveyance, assignment, or other instrument in writing as may be required to vest in Lessor any right, title, or power that by the terms hereof is intended to be conveyed or conferred upon Lessor, including without limitation, (a) Uniform Commercial Code Financing Statements (including continuation statements); (b) documents and checks or drafts relating to or received in payment for any loss or damage on the insurance required hereunder, but only to the extent that same relates to the Equipment; and (c) at such time of default or non-appropriation, upon any bill of sale, document, instrument, invoice, freight bill, bill of lading, or similar document relating to the Equipment in order to vest title in Lessor and to transfer possession to Lessor within ten (10) days upon receipt of same.

24. Quiet Enjoyment of Equipment. Lessor hereby covenants to provide to Lessee during the term of this Lease quiet use and enjoyment of the Equipment and Lessee shall during the term of this Lease peaceably and quietly have and hold and enjoy the Equipment without suit, trouble, or hindrance from Lessor except upon the occurrence of an Event of Default.

25. Delivery of Related Documents. Lessee will execute or provide, as requested by Lessor, such other documents and information as are reasonably necessary with respect to the transactions contemplated by this Lease. At the request of the Lessor, Lessee will furnish current financial statements of Lessee within 30 days after the date such statements become available to the public. During the Lease Term and upon annual request of the Lessor, Lessee will provide to Lessor the applicable budget, or relevant portions thereof at Lessee's election, with proof of appropriation for the ensuing fiscal year, and such other financial information relating to the ability of Lessee to continue this Lease as reasonably may be requested by Lessor.

26. Lessor's Representations, Warranties and Covenants. Lessor represents, warrants and covenants in order to induce the Lessee to enter into this Lease as follows:

- (a) Lessor has sufficient knowledge and experience in financial and business matters, including (without limitation) purchase and ownership of municipal and other tax-exempt obligations, to be able to evaluate the risks and merits of the investment represented by the Agreements. Lessor is able to bear the economic risks of such investment.
- (b) Lessor understands that no official statement, prospectus, offering circular or other offering statement is being prepared with respect to the Lease or any Equipment Schedule. Lessor has made its own inquiry and analysis with respect to the security for and sources of payment of the Lease and has received all information which it deems necessary or relevant in connection with its evaluation of the credit of the State and the security for the Lease in relation to Lessor's decision to enter into the Lease and any Equipment Schedules.
- (c) Lessor understands that this Lease (i) is not being registered under the Securities Act of 1933, as amended, (ii) is not being registered or otherwise qualified for sale under the "blue sky" laws and regulations of any state, (iii) will not be listed on any stock or other securities exchange or (iv) will carry any rating from any securities rating agency.
- (d) Lessor is entering into the Lease for investment for its own account and it does not have any present intention to resell, dispose of or otherwise distribute the Lease, except as permitted by law and subject to applicable securities laws and regulations thereunder; *provided*, however, that the disposition of Lessor's property shall at all times be within its control. In the event that, in the future, Lessor sells all or any part of the Lease or grants participations therein, Lessor agrees to comply with applicable federal and state securities laws in connection therewith.

27. Termination for Cause. If Lessor (a) fails to fulfill its obligation under this Lease to provide funds sufficient to pay the Equipment Costs as described in Section 3 hereof properly and on time, Lessee may terminate this Lease with respect to any Equipment Schedule for which Lessor has failed to fulfill such payment obligation by written notice to Lessor; or (b) otherwise violates any material provision of the Lease, Lessee may terminate this Lease by written notice to Lessor; *provided*, however, that clauses (a) and (b) shall not be deemed to permit termination by Lessee with respect to Lease Terms for existing, previously financed Equipment Schedules. The notice shall specify the acts or omissions relied upon as cause for termination. Lessor shall pay Lessee the actual amount of damages caused by Lessor's breach. Lessor will remain liable after termination and Lessee can affirmatively collect damages.

28. Termination for Convenience. The performance of this Lease with respect to pending or future Equipment Schedules may be terminated by Lessee in accordance with this Section, in whole or in part, whenever the Lessee shall determine that such termination is in the best interest of Lessee; provided, however, that this clause shall not be deemed to permit termination by Lessee of any Lease Term of existing Equipment Schedules.

29. Contingent Fee Prohibition. Lessor 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 Lessor, to solicit or secure this Lease, 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 Lease.

30. Financial Disclosure. Lessor shall comply with the provisions of State Finance and Procurement Article, § 13-221 Annotated Code of Maryland. That section requires a business to file with the Secretary of State of Maryland certain specified information, including disclosure of beneficial ownership of the business, within 30 days of the time when the aggregate value of any contracts, leases or other agreements that the business enters into with the State of Maryland or its agencies during a calendar year reaches \$200,000.

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

32. Retention of Records. If requested by Lessee, Lessor shall deliver to the Lessee background material prepared or obtained by Lessor incident to the performance of this Lease. “Background Material” shall include, but not be limited to, work papers, notes, completed questionnaires, other printed materials, pamphlets, maps, drawings, and books acquired by Lessor during the term of this Lease and directly related to the services provided under this Lease. Any proprietary computer programs of Lessor are expressly excluded from the definition of “Background Material” as used in this Section. Lessor shall retain and maintain records and documents relating to the performance of this Lease for three years following final payment under any Lease Term or any applicable statute of limitations,

whichever is longer, and shall make such records available for inspection and audit by the authorized representatives of Lessee, including the Procurement Officer or designee, at all reasonable times.

33. Nondiscrimination in Employment. The Lessor 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 Section.

34. Commercial Nondiscrimination Clause

- (a) As a condition of entering into this Lease, Lessor 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, Lessor may not discriminate on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation, sexual identity, genetic information or an individual's refusal to submit to a genetic test or make available the results of a genetic test or on the basis of disability or other unlawful forms of discrimination in the solicitation, selection, hiring, or commercial treatment of subcontractors, vendors, suppliers, or commercial customers, nor shall Lessor retaliate against any person for reporting instances of such discrimination. Lessor 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. Lessor understands that a material violation of this clause shall be considered a material breach of this Agreement and may result in termination of this Agreement, disqualification of Lessor 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.
- (b) As a condition of entering into this Lease, upon the request of the Commission on Civil Rights, and only after the filing of a complaint against Lessor under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland, as amended from time to time, Lessor agrees to provide within 60 days after the request a complete list of the names of all subcontractors, vendors, and suppliers that Lessor has used in the past 4 years on any of its contracts that were undertaken within the State of Maryland, including the total dollar amount paid by Lessor on each

subcontract or supply contract. Lessor 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 are requested by the State. Lessor understands that violation of this clause is a material breach of this Agreement and may result in contract termination, disqualification by the State from participating in State contracts, and other sanctions.

35. Non-Hiring of Officials and Employees. No official or employee of the State of Maryland, as defined under General Provisions Article, §5-101, 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 Lessor or any entity that is a subcontractor on this contract.

36. Compliance with Laws. Lessor 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, may be necessary to remain so qualified;
- (b) it is not in arrears with respect to the payment of any moneys 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 Lease;
- (c) it shall comply with all federal, State, and local laws applicable to its activities and obligations under this Lease; 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 Lease.

37. Living Wage Requirements. A solicitation for services under a State contract valued at \$100,000 or more may be subject to Title 18, State Finance and Procurement Article, Annotated Code of Maryland.

Contractors and Subcontractors subject to the Living Wage Law shall pay each covered employee at least \$14.42 per hour, 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 Offeror shall pay each covered employee at least \$10.83 per hour. 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.

The Lease has been deemed to be a Tier 1 contract.

38. Administration. This Lease shall be performed under the direction of the Contract Office or other designee of the Maryland State Treasurer. All matters relating to administration and performance of this Lease shall be referred to the Contract Officer or other designee of the Maryland State Treasurer for determination.

39. Governing Law. This Lease shall be construed, interpreted, and enforced in accordance with the laws of the State of Maryland, including without limitations the applicable provisions of COMAR Title 21, State Procurement Regulations.

40. Notices. All notices (excluding invoices and communications in the ordinary course of business) to be given under this Lease shall be in writing and mailed by certified mail, return receipt requested, to the other party at its address set forth in the introduction to this Lease, or at such address as the party may provide in writing from time to time.

41. Section Headings. All section headings contained herein are for convenience of reference only and are not intended to define or limit the scope of any provision of this Lease.

42. Entire Agreement; Modification; Severability. This Lease, including the Office's Invitation for Bids and Lessor's Bid, together with all other Lease Documents, constitutes the entire agreement between the parties with respect to the lease of the Equipment, and neither the Lease nor any of the Lease Documents shall be modified, amended, altered, or changed except with the written consent of Lessor and Lessee, subject to any additional approvals required by State law. If any terms contained in any earlier writing, agreement, or proposal conflict with the terms and conditions of this Lease, the terms and conditions of the IFB and this Lease shall control. Any provision of this Lease found to be prohibited by law shall be ineffective to the extent of such prohibition without invalidating the remainder of this Lease. This Lease may be executed in two or more counterparts, each of which shall be deemed to be an original but all of which shall constitute one and the same agreement. This Lease shall become effective when each of the Lessor and the Lessee shall have received counterparts thereof signed by the other party. The exchange of copies of this Lease and of signature pages by electronic or facsimile transmission shall constitute effective execution and delivery of this Lease. Signatures of the parties transmitted by electronic or facsimile transmission shall be deemed to be original signatures for all purposes.

43. Representations. Each party to this Lease represents and warrants to the other that it has full right, power, and authority to execute this Lease.

44. Electronic Signatures. Each party agrees that this Lease and any other documents to be delivered in connection herewith may be electronically signed, and that any electronic signatures appearing on this Agreement or such other documents are the same as handwritten signatures for the purposes of validity, enforceability, and admissibility.

IN WITNESS WHEREOF, the parties hereto have caused this Lease to be executed as of the day and year above first written.

ATTEST:

LESSOR:

By: _____

Name:

Title:

WITNESS:

**LESSEE: STATE OF MARYLAND, acting by
and through the State Treasurer's Office**

By: _____

Bernadette T. Benik

Chief Deputy Treasurer

**ACKNOWLEDGED AND ACCEPTED:
DEPARTMENT OF BUDGET
AND MANAGEMENT**

Approved for form and legal sufficiency:

By: _____

Name:

Title:

By: _____

Catherine Allen

Counsel to the State Treasurer

**APPENDIX A
to 2021 Master Equipment
Lease-Purchase Agreement**

INVITATION FOR BIDS

[To Come]

**APPENDIX B
to 2021 Master Equipment
Lease-Purchase Agreement**

LESSOR'S BID

[To Come]

**APPENDIX C
to 2021 Master Equipment
Lease-Purchase Agreement**

[FORM OF TAKEDOWN SCHEDULE]

TAKEDOWN SCHEDULE NO. __

TO

2021 MASTER EQUIPMENT LEASE-PURCHASE AGREEMENT

THIS TAKEDOWN SCHEDULE NO. __ dated as of ____, 20__ (the "Takedown Schedule") is executed by and between _____ ("Lessor"), and the STATE OF MARYLAND ("Lessee"), acting by and through the STATE TREASURER'S OFFICE (the "Office").

WITNESSETH:

WHEREAS, Lessor and Lessee have previously entered into that certain 2021 Master Equipment Lease-Purchase Agreement dated as of _____, 2021 (collectively, the "Lease") (unless otherwise defined herein all terms having a defined meaning in the Lease shall have the same meaning when used herein), which Lease provides for the execution and delivery of one or more Equipment Schedules for the purpose of identifying the Equipment to be leased and purchased pursuant to the Lease and specifying certain terms and conditions applicable to the lease and purchase of such Equipment.

NOW, THEREFORE, in consideration of the premises, Lessor and Lessee hereby agree as follows:

1. **Funding.** On _____, 20__, Lessor shall provide funds in the aggregate amount of \$_____ (the "Takedown Amount") to permit Lessee's acquisition of Equipment described summarily on Attachment 1A hereto in accordance with the Lease and Equipment Schedule Nos. __ through __ to the Lease.

2. **Restrictions on Resale.** Lessee agrees that the restrictions on resale by Lessor of its interest in its right to receive payment pursuant to the Lease in fractionalized interest or participations as set forth in Section 20(b) of the Lease shall be deemed to apply to the Takedown amount set forth in Section 1 of this Takedown Schedule.

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IN WITNESS WHEREOF, Lessee and Lessor have executed this Takedown Schedule as of the date and year first above written.

ATTEST:

LESSOR:

By: _____

Name:

Title:

WITNESS:

**LESSEE: STATE OF MARYLAND, acting by
and through the State Treasurer's Office**

By: _____

Bernadette T. Benik

Chief Deputy Treasurer

**ACKNOWLEDGED AND ACCEPTED:
DEPARTMENT OF BUDGET
AND MANAGEMENT**

By: _____

Name:

Title:

**Attachment 1A to
Takedown Schedule No. __to
2021 Master Equipment Lease-Purchase Agreement**

SUMMARY OF EQUIPMENT SCHEDULES

<u>Schedule No.</u>	<u>Agency</u>	<u>Location</u>	<u>Term</u>	<u>Amount Financed</u>	<u>Equipment Description</u>	<u>Vendor</u>

**APPENDIX D
to 2021 Master Equipment
Lease-Purchase Agreement**

FORM OF EQUIPMENT SCHEDULE

EQUIPMENT SCHEDULE NO. __

TO

2021 MASTER EQUIPMENT LEASE-PURCHASE AGREEMENT

[Agency Name]

THIS EQUIPMENT SCHEDULE NO. __ dated as of ____, 20__, (the "Equipment Schedule"), is executed by and between _____ ("Lessor"), and the **STATE OF MARYLAND** ("Lessee"), acting by and through the **STATE TREASURER'S OFFICE** (the "Office"), on behalf of _____.

WITNESSETH:

WHEREAS, Lessor and Lessee have previously entered into that certain 2021 Master Equipment Lease-Purchase Agreement dated as of ____, 2021 (the "Lease") (unless otherwise defined herein all terms having a defined meaning in the Lease shall have the same meaning when used herein), which Lease provides for the execution and delivery of one or more Equipment Schedules for the purpose of identifying the Equipment to be leased and purchased pursuant to the Lease and specifying certain terms and conditions applicable to the lease and purchase of such Equipment; and,

WHEREAS, Lessor desires to lease to Lessee, and Lessee desires to lease from Lessor, the items of Equipment herein described on the terms and conditions of the Lease and as herein provided.

NOW, THEREFORE, in consideration of the premises, Lessor and Lessee hereby agree as follows:

- 1. EQUIPMENT**. The items of Equipment described in Exhibit A shall be subject to the terms and conditions of the Lease and this Equipment Schedule.

- 2. LOCATION OF EQUIPMENT**. The Equipment shall be kept at the Equipment Location (herein so called) set forth on Exhibit A.

- 3. LEASE TERM**. The Lease Term (herein so called) with respect to the Equipment

described herein shall commence on the date of acceptance (the "Acceptance Date") as set forth in the Acceptance Certificate (Exhibit C attached hereto), and shall continue for an initial term ending on July 1, 20___. Unless earlier terminated pursuant to the terms of the Lease, the Lease term hereunder shall automatically renew for [insert: numbers of years of lease minus one] annual renewal terms commencing on July 2 of each year and ending on the following July 1.

4. LEASE PAYMENTS. (a) Lessee hereby agrees to make the Lease Payments (herein so called) to Lessor in such amounts and at such times as set forth on Exhibit B.

(b) Upon the exercise by Lessee of any right granted under the Lease to terminate the Lease or this Equipment Schedule prior to the expiration of the term thereof and hereof, Lessee agrees to pay to Lessor the applicable principal balances as shown on Exhibit B for the lease and purchase of the Equipment as of the date of termination.

(c) In the event of a termination or nonrenewal of the Lease Term pursuant to Section 5, Section 27, or Section 28 of the Lease, moneys shall be applied first to the payment of all obligations of Lessee then due and owing hereunder, and then to the payment of the principal balance or Concluding Payment amount as set forth in Exhibit B applicable at the time of such termination or nonrenewal.

(d) The principal components of the Lease Payments bear interest at the interest rates determined in accordance with the procedures outlined in Section 3.4 of the IFB.

5. REPRESENTATIONS AND WARRANTIES. By execution and delivery of this Equipment Schedule, Lessee confirms that all representations and warranties contained in Section 7 of the Lease are true and correct as of the date hereof. Further, Lessee represents and warrants as of the date hereof that the use of the Equipment by Lessee is essential to the Lessee's proper, efficient, and economic operation and will be used for the purposes set forth on Exhibit C.

6. LIMITATIONS ON WARRANTIES. Lessee represents, warrants, acknowledges, and agrees that the Equipment is of a size, design, and capacity selected by the Lessee; that Lessee is satisfied that the Equipment is suitable for its purpose; that Lessor is neither a manufacturer nor a vendor of the Equipment; and that **LESSOR HAS NOT MADE, AND DOES NOT HEREBY MAKE, ANY REPRESENTATION, WARRANTY, OR COVENANT, EXPRESS OR IMPLIED, WITH RESPECT TO THE MERCHANTABILITY, CONDITION, QUALITY, DURABILITY, DESIGN, OPERATION, FITNESS FOR USE, OR SUITABILITY OF THE EQUIPMENT IN ANY RESPECT WHATSOEVER OR IN CONNECTION WITH OR FOR THE PURPOSES AND USES OF LESSEE, OR ANY OTHER REPRESENTATION, WARRANTY, OR COVENANT OF ANY KIND OR CHARACTER, EXPRESS OR IMPLIED, WITH RESPECT THERETO, AND LESSOR SHALL NOT BE OBLIGATED OR LIABLE FOR ANY ACTUAL, INCIDENTAL, CONSEQUENTIAL, OR OTHER DAMAGES OF OR TO LESSEE OR ANY OTHER PERSON OR ENTITY ARISING OUT OF OR IN CONNECTION WITH THE USE OR PERFORMANCE OF THE EQUIPMENT AND THE MAINTENANCE THEREOF.**

7. EQUIPMENT COST. The cost of all items of Equipment described on Exhibit A shall not exceed \$_____ of which the Equipment Cost (herein so called) of \$_____ is financed hereunder, and shall be disbursed in such amounts and no earlier than such dates (the "Acquisition Dates") as are reflected on Exhibit A. To the extent the cost of the Equipment exceeds the amount of the Equipment Cost financed hereunder plus accrued interest, Lessee shall pay such excess cost to Vendor from other available funds.

8. COVENANTS, DELIVERY, AND ACCEPTANCE. (a) Lessee agrees to use its best efforts to, and as of the date hereof, reasonably expects to acquire the Equipment on or before ____, 20__.

(b) Lessee will cause the Equipment to be delivered at the Equipment Location. Lessee will pay all transportation and other costs, if any, incurred in connection with the delivery of the Equipment. Lessee will accept the Equipment as soon as it has been delivered and is operational, or in the event that the manufacturer or vendor allows a pre-acceptance test period, as soon as the test period has expired.

9. REQUEST FOR PAYMENT. Immediately following the Acceptance Date, Lessee will request that payment be made to the Vendor or to reimburse the applicable Agency by executing, if required, and delivering to Lessor the following:

(a) a request that payment be made to the Vendor or to reimburse the applicable Agency;

(b) a true copy of the applicable purchase order and, where applicable, a duplicate original of any change order approved by Lessee increasing the Equipment Cost in an amount in excess of the original purchase order price;

(c) bills of sale for any component of the Equipment for which a bill of sale may be delivered;

(d) a true copy of the Vendor's statement or invoice; and

(e) an Acceptance Certificate and an Equipment Use Certificate as set forth in Exhibits C and D, respectively.

10. PAYMENT. Upon receipt of the items required by Section 9 hereof in a form acceptable to Lessor, Lessor shall make payment to the Vendor and/or Agency and shall certify the fact of such payment to Lessee.

IN WITNESS WHEREOF, Lessee and Lessor have executed this Equipment Schedule as of the date and year first above written.

**STATE OF MARYLAND acting
by and through the State
Treasurer's Office**

By: _____
Bernadette T. Benik
Chief Deputy Treasurer

[LESSOR]

By: _____
Name:
Title:

**Exhibit A to
Equipment Schedule No. __to
2021 Master Equipment Lease-Purchase Agreement**

EQUIPMENT DESCRIPTION

[AGENCY NAME]

Description of Equipment

[To come]

Equipment Location

[To come]

**Exhibit B to
Equipment Schedule No. __to
2021 Master Equipment Lease-Purchase Agreement**

[AGENCY NAME]

LEASE PAYMENTS

[To come]

**Exhibit C to
Equipment Schedule No. __to
2021 Master Equipment Lease-Purchase Agreement**

ACCEPTANCE CERTIFICATE

In accordance with the terms of the Equipment Schedule referenced above, the undersigned official, on behalf of the Lessee, hereby certifies and represents to, and agrees with, Lessor as follows:

A. The Equipment described on Exhibit A to the Equipment Schedule (the "Equipment") has been delivered and installed at the Equipment Location specified in Exhibit A, and such delivery and installation has been completed on or before the date hereof.

B. Lessee has conducted such inspection and/or testing of the Equipment as it deems necessary and appropriate and hereby acknowledges that it accepts the Equipment for all purposes effective the date hereof.

C. The Equipment is essential to the proper, efficient, and economic operations of the above-referenced department or agency of the State of Maryland. The Equipment will be used by Lessee for the purpose of performing one or more of Lessee's governmental functions consistent within the permissible scope of Lessee's authority.

[AGENCY NAME HERE]

By: _____

Name:

Title:

Phone:

Date: _____, 20__

**Exhibit D to
Equipment Schedule No. __to
2021 Master Equipment Lease-Purchase Agreement**

EQUIPMENT USE CERTIFICATE

1. Will all proceeds of this financing of your Agency's Equipment be used to make payment to the vendor(s) of that Equipment?

Yes

No

If your answer to Question 1 is "no", please complete parts (a) and (b); if your answer to Question 1 is "yes", please go to Question 2.

1.(a) What is the amount of proceeds of this financing that will not be used to make payment to the Equipment vendor(s)? _____

1.(b) What is the intended use of financing proceeds that will not be paid to the Equipment vendor(s)? _____

(If multiple uses, identify use and amount. Total amount must equal amount identified in response to Question 1.(a)).

2. Will any item(s) of Equipment to be financed be used by any person or organization other than the State or the Agency? (For purposes of this question, property should be considered "used by any person or organization" if such person or organization owns, leases, occupies, manages, or in any other way uses or receives benefits from the Equipment).

Yes

No

If your answer to Question 2 is "yes", please complete parts (a) through (f); if your answer to Question 2 is "no", please go to Question 3.

2.(a) Please indicate the items(s) of Equipment and cost thereof that will be used by any person or organization other than the State or the Agency: _____

2.(b) Please describe the use: _____

2.(c) Will the person or organization use the item(s) of Equipment on an equal basis with the general public? (For purposes of this question, "general public" would include

an Agency's clients, students, and other similar user classes that are granted use of the Equipment on a nondiscriminatory basis such as first-come-first-served, lottery, etc.)

Yes

No

2.(d) If "yes" to Question 2.(c), please describe:

(i) The user class: _____

(ii) The basis for user selection: _____

2.(e) Will there be any direct or indirect payments by any person or organization (other than the State or the Agency) back to the State, any of its agencies, or any other governmental unit with respect to the use of any item(s) of Equipment to be financed? (Direct or indirect payments may take the form of loan repayments, rental payments for the use of the Equipment, commissions, profit sharing, etc.).

Yes

No

2.(f) If yes to Question 2.(e), please describe the payments: _____

3. Will any proceeds of this financing be used to provide temporary financing in anticipation of the receipt of other moneys (for example, a federal grant) that are expected to be received for the lease or purchase of item(s) of Equipment to be financed by this financing?

Yes

No

3.(a) If yes to Question 3., please describe the other funds that are anticipated, including the expected amount and date of their receipt: _____

4. Will any of the proceeds of this Equipment financing be used to pay the principal of, or interest on, any prior issue of governmental obligations such as bonds, equipment leases, installment sales agreements, or the like?

Yes

No

4.(a) If yes to Question 4, please describe the prior issue(s) of governmental obligations: _____

5. Will any of the proceeds of this Equipment financing be used to replace any proceeds of an earlier issue of governmental obligations, including an earlier equipment lease, that (i) was issued to finance the same item(s) of Equipment, and (ii) the proceeds of which were not expended on the item(s) of Equipment?

Yes

No

5.(a) If yes to Question 5, please describe the prior proceeds to be replaced, the item(s) of Equipment affected, and the cost thereof:_____

I HEREBY CERTIFY that I am responsible for approving or authorizing payments for the items to be financed by this Equipment Schedule.

[AGENCY NAME HERE]

By:_____

Name:

Title:

Phone:

Date:_____, 20__