



**TENNESSEE HOUSING DEVELOPMENT AGENCY**

**REQUEST FOR PROPOSALS  
FOR  
SINGLE FAMILY LOAN OPERATIONS  
LOAN ORIGINATION SYSTEM  
RFP # 31620-00732**

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## 1. INTRODUCTION

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The Tennessee Housing Development Agency, hereinafter referred to as “THDA,” issues this Request for Proposals (RFP) to define minimum contract requirements; solicit responses; detail response requirements; and, outline THDA’s process for evaluating responses and selecting a contractor to provide the needed goods or services.

Through this RFP, THDA seeks to procure necessary goods or services at the most favorable, competitive prices and to give ALL qualified respondents, including those that are owned by minorities, women, service-disabled veterans, persons with disabilities and small business enterprises, an opportunity to do business with THDA as contractors, subcontractors or suppliers.

### 1.1. Statement of Procurement Purpose

Tennessee Housing Development Agency (“THDA”) is seeking proposals from qualified respondents that can provide an advanced technology Loan Origination System (LOS) for approving and purchasing non-delegated mortgage loans from approved correspondent lenders.

THDA’s 2022 mortgage loan production consisted of 2,225 loans, in the amount of \$466,081,000. Government loans consist of 93% of the production, MBS/Freddie Mac loans consist of 5%, and non-Agency loans about 2%. THDA is a new Ginnie Mae Issuer and the intent is to apply for Fannie Mae approval in 2023. MBS production will increase in 2023 and moving forward. THDA anticipates our volume to maintain steady and gradually increase as the market allows. THDA plans to award one contract pursuant to this RFP. THDA intends to select the respondent that best meets the needs and requirements of the agency. This RFP process shall ensure thorough analysis and consideration. THDA advises all prospective respondents to carefully review the requirements of this RFP. Written proposals will serve as the basis for initial selection. The final selection will be based on the scores established from the evaluation criteria as outlined in SECTIONS 5.1 and 6.2., which shall include oral presentations involving software demonstrations. If selected to move forward, the best evaluated respondent should be aware that additional negotiations of the contract will be necessary. THDA expects the effective date of the contract to be on or around April 1, 2023.

### 1.2. Scope of Service, Contract Period, & Required Terms and Conditions

The RFP Attachment 6.6., *Pro Forma* Contract details THDA’s requirements:

- Scope of Services and Deliverables (Section A);
- Contract Period (Section B);
- Payment Terms (Section C);
- Standard Terms and Conditions (Section D); and,
- Special Terms and Conditions (Section E).

The *pro forma* contract substantially represents the contract document that the successful Respondent must sign.

### 1.3. Nondiscrimination

No person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of a Contract pursuant to this RFP or in the employment practices of the Contractor on the grounds of handicap or disability, age, race, creed, color, religion, sex, national origin, or any other classification protected by federal, Tennessee state constitutional, or statutory law. The Contractor pursuant to this RFP shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.

### 1.4. RFP Communications

- 1.4.1. THDA has assigned the following RFP identification number that must be referenced in all communications regarding this RFP:

**RFP # 31620-00732**

- 1.4.2. **Unauthorized contact about this RFP with employees or officials of THDA of Tennessee except as detailed below may result in disqualification from consideration under this procurement process.**

- 1.4.2.1. Prospective Respondents must direct communications concerning this RFP to the following person designated as the Solicitation Coordinator:

**Emily Kelley**  
**Professional Contracts Coordinator III**  
Tennessee Housing Development Agency  
Andrew Jackson Building  
502 Deaderick Street, Third Floor  
Nashville, TN 37243-0900  
Phone: 615-815-2063  
[EKelley@thda.org](mailto:EKelley@thda.org)

- 1.4.2.2. Notwithstanding the foregoing, Prospective Respondents may alternatively contact:

- a. staff of the Governor's Office of Diversity Business Enterprise for assistance available to minority-owned, woman-owned, service-disabled veteran-owned, businesses owned by persons with disabilities, and small businesses as well as general, public information relating to this RFP (visit <https://www.tn.gov/generalservices/procurement/central-procurement-office--cpo-/governor-s-office-of-diversity-business-enterprise--godbe--/godbe-general-contacts.html> for contact information); and
- b. the following individual designated by THDA to coordinate compliance with the nondiscrimination requirements of the State of Tennessee, Title VI of the Civil Rights Act of 1964, the Americans with Disabilities Act of 1990, and associated federal regulations:

**Laura Swanson**  
Tennessee Housing Development Agency  
502 Deaderick Street, Third Floor  
615-815-2127  
[lswanson@thda.org](mailto:lswanson@thda.org)

- 1.4.3. Only THDA's official, written responses and communications with Respondents are binding with regard to this RFP. Oral communications between a State official and one or more Respondents are unofficial and non-binding.
- 1.4.4. Potential Respondents must ensure that THDA receives all written questions and comments, including questions and requests for clarification, no later than the Written Questions & Comments Deadline detailed in the RFP Section 2, Schedule of Events.
- 1.4.5. Respondents must assume the risk of the method of dispatching any communication or response to THDA. THDA assumes no responsibility for delays or delivery failures resulting from the Respondent's method of dispatch. Actual or digital "postmarking" of a communication or response to THDA by a specified deadline is not a substitute for THDA's actual receipt of a communication or response.

- 1.4.6. THDA will convey all official responses and communications related to this RFP to the prospective Respondents from whom THDA has received a Notice of Intent to Respond (refer to RFP Section 1.7.).
- 1.4.7. THDA reserves the right to determine, at its sole discretion, the method of conveying official, written responses and communications related to this RFP. Such written communications may be transmitted by mail, hand-delivery, facsimile, electronic mail, Internet posting, or any other means deemed reasonable by THDA. For internet posting, please refer to the following website: <https://thda.org/search/results?q=rfp>.
- 1.4.8. THDA reserves the right to determine, at its sole discretion, the appropriateness and adequacy of responses to written comments, questions, and requests related to this RFP. THDA's official, written responses will constitute an amendment of this RFP.
- 1.4.9. Any data or factual information provided by THDA (in this RFP, an RFP amendment or any other communication relating to this RFP) is for informational purposes only. THDA will make reasonable efforts to ensure the accuracy of such data or information, however it is the Respondent's obligation to independently verify any data or information provided by THDA. THDA expressly disclaims the accuracy or adequacy of any information or data that it provides to prospective Respondents.

1.5. **Assistance to Respondents With a Handicap or Disability**

Prospective Respondents with a handicap or disability may receive accommodation relating to the communication of this RFP and participating in the RFP process. Prospective Respondents may contact the Solicitation Coordinator to request such reasonable accommodation no later than the Disability Accommodation Request Deadline detailed in the RFP Section 2, Schedule of Events.

1.6. **Respondent Required Review & Waiver of Objections**

- 1.6.1. Each prospective Respondent must carefully review this RFP, including but not limited to, attachments, the RFP Attachment 6.6., *Pro Forma* Contract, and any amendments, for questions, comments, defects, objections, or any other matter requiring clarification or correction (collectively called "questions and comments").
- 1.6.2. Any prospective Respondent having questions and comments concerning this RFP must provide them in writing to THDA no later than the Written Questions & Comments Deadline detailed in the RFP Section 2, Schedule of Events.
- 1.6.3. Protests based on any objection to the RFP shall be considered waived and invalid if the objection has not been brought to the attention of THDA, in writing, by the Written Questions & Comments Deadline.

1.7. **Notice of Intent to Respond**

Before the Notice of Intent to Respond Deadline detailed in the RFP Section 2, Schedule of Events, prospective Respondents should submit to the Solicitation Coordinator a Notice of Intent to Respond (in the form of a simple e-mail or other written communication). Such notice should include the following information:

- the business or individual's name (as appropriate);
- a contact person's name and title; and
- the contact person's mailing address, telephone number, facsimile number, and e-mail address.

**A Notice of Intent to Respond creates no obligation and is not a prerequisite for submitting a response, however, it is necessary to ensure receipt of any RFP amendments or other notices and communications relating to this RFP.**

1.8. **Response Deadline**

A Respondent must ensure that THDA receives a response no later than the Response Deadline time and date detailed in the RFP Section 2, Schedule of Events. THDA will not accept late responses, and a Respondent's failure to submit a response before the deadline will result in disqualification of the response. It is the responsibility of the Respondent to ascertain any additional security requirements with respect to packaging and delivery to THDA. Respondents should be mindful of any potential delays due to security screening procedures, weather, or other filing delays whether foreseeable or unforeseeable.

## 2. RFP SCHEDULE OF EVENTS

2.1. The following RFP Schedule of Events represents THDA's best estimate for this RFP.

EVENT	TIME (central time zone)	DATE
1. RFP Issued		January 24, 2023
2. Disability Accommodation Request Deadline	2:00 p.m.	January 26, 2023
3. Notice of Intent to Respond Deadline	2:00 p.m.	January 31, 2023
4. Written "Questions & Comments" Deadline	2:00 p.m.	February 6, 2023
5. State Response to Written "Questions & Comments"		February 13, 2023
6. Response Deadline	2:00 p.m.	February 27, 2023
7. Scheduling of Respondent Oral Presentation (if applicable)		March 3, 2023
8. Respondent Oral Presentation (if applicable)		March 8-10, 2023
9. State Completion of Technical Response Evaluations		March 17, 2023
10. State Opening & Scoring of Cost Proposals		March 20, 2023
11. State Notice of Intent to Award Released <u>and</u> RFP Files Opened for Public Inspection	4:00 p.m.	March 22, 2023
12. End of Open File Period		April 21, 2023
13. State sends contract to Contractor for signature		March 23, 2023
14. Contractor Signature Deadline	2:00 p.m.	March 31, 2023

2.2. **THDA reserves the right, at its sole discretion, to adjust the RFP Schedule of Events as it deems necessary.** Any adjustment of the Schedule of Events shall constitute an RFP amendment, and THDA will communicate such to prospective Respondents from whom THDA has received a Notice of Intent to Respond (refer to section 1.7.).

### 3. RESPONSE REQUIREMENTS

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#### 3.1. Response Form

A response to this RFP must consist of two parts, a Technical Response and a Cost Proposal.

- 3.1.1. **Technical Response.** RFP Attachment 6.2., Technical Response & Evaluation Guide provides the specific requirements for submitting a response. This guide includes mandatory requirement items, general qualifications and experience items, and technical qualifications, experience, and approach items all of which must be addressed with a written response and, in some instances, additional documentation.

**NOTICE: A technical response must not include any pricing or cost information. If any pricing or cost information amounts of any type (even pricing relating to other projects) is included in any part of the technical response, THDA may deem the response to be non-responsive and reject it.**

- 3.1.1.1. A Respondent must use the RFP Attachment 6.2., Technical Response & Evaluation Guide to organize, reference, and draft the Technical Response by duplicating the attachment, adding appropriate page numbers as required, and using the guide as a table of contents covering the Technical Response.
- 3.1.1.2. A response should be economically prepared, with emphasis on completeness and clarity. A response, as well as any reference material presented, must be written in English and must be written on standard 8 ½" x 11" pages (although oversize exhibits are permissible) and use a 12 point font for text. All response pages must be numbered. Respondent shall complete the Response Summary column as part of its Technical Response.
- 3.1.1.3. All information and documentation included in a Technical Response should correspond to or address a specific requirement detailed in the RFP Attachment 6.2., Technical Response & Evaluation Guide. All information must be incorporated into a response to a specific requirement and clearly referenced. Any information not meeting these criteria will be deemed extraneous and will not contribute to evaluations.
- 3.1.1.4. THDA may determine a response to be non-responsive and reject it if:
- a. the Respondent fails to organize and properly reference the Technical Response as required by this RFP and the RFP Attachment 6.2., Technical Response & Evaluation Guide; or
  - b. the Technical Response document does not appropriately respond to, address, or meet all of the requirements and response items detailed in the RFP Attachment 6.2., Technical Response & Evaluation Guide.
- 3.1.2. **Cost Proposal.** A Cost Proposal must be recorded on an exact duplicate of the RFP Attachment 6.3., Cost Proposal & Scoring Guide.

**NOTICE: If a Respondent fails to submit a cost proposal exactly as required, THDA may deem the response to be non-responsive and reject it.**

- 3.1.2.1. A Respondent must only record the proposed cost exactly as required by the RFP Attachment 6.3., Cost Proposal & Scoring Guide and must NOT record any other rates, amounts, or information.

- 3.1.2.2. The proposed cost shall incorporate ALL costs for services under the contract for the total contract period, including any renewals or extensions.
- 3.1.2.3. A Respondent must sign and date the Cost Proposal. An electronic signature is acceptable.
- 3.1.2.4. A Respondent must submit the Cost Proposal to THDA via email directly to the RFP Solicitation Coordinator as an entirely separate attachment from the Technical Response.

## 3.2. **Response Delivery**

- 3.2.1. A Respondent must ensure that both the original Technical Response and Cost Proposal documents meet all form and content requirements, including all required signatures, as detailed within this RFP, as may be amended.
- 3.2.2. A Respondent must submit original Technical Response and Cost Proposal documents as specified below.
- 3.2.1. A Respondent must submit their response as specified below.
  - 3.2.1.1. Technical Response

The Technical Response document should be in the form of one (1) digital document in “PDF” format and should be clearly identified as the:

**“RFP #31620-00732 TECHNICAL RESPONSE”**

A Respondent must label and email the Technical Response directly to the Solicitation Coordinator. Adding or copying any other THDA contacts on the email will result in immediate disqualification of the Respondent.
  - 3.2.1.2. Cost Proposal

The Cost Proposal should be in the form of one (1) digital document in “PDF” or “XLS” format and clearly labeled:

**“RFP #31620-00732 COST PROPOSAL”**

A Respondent must label and email the Cost Proposal directly to the Solicitation Coordinator. Adding or copying any other THDA contacts on the email will result in immediate disqualification of the Respondent
  - 3.2.1.3. Customer Reference Questionnaire

Customer Reference Questionnaires should be emailed **DIRECTLY** from the Reference themselves to the Solicitation Coordinator. If emailed, the Reference should not add or copy any Respondents on the email transmission. Any Customer Reference Questionnaire emailed directly from the Respondent will be disqualified.

An electronic signature on the Customer Reference Questionnaire is acceptable.
- 3.2.3. Any Respondent wishing to submit a Response in a format other than digital and/or email may do so by contacting the RFP Solicitation Coordinator.



- 3.2.4. A Respondent must ensure that THDA receives a response no later than the Response Deadline time and date detailed in the RFP Section 2, Schedule of Events at the following address:

**Emily Kelley**  
**Professional Contracts Coordinator III**  
Tennessee Housing Development Agency  
Andrew Jackson Building  
502 Deaderick Street, Third Floor  
Nashville, TN 37243-0900  
Phone: 615-815-2063  
[EKelley@thda.org](mailto:EKelley@thda.org)

**THDA is not responsible for any potential mail delays.**

### 3.3. Response & Respondent Prohibitions

- 3.3.1. A response must not include alternate contract terms and conditions. If a response contains such terms and conditions, THDA, at its sole discretion, may determine the response to be a non-responsive counteroffer and reject it.
- 3.3.2. A response must not restrict the rights of THDA or otherwise qualify either the offer to deliver goods or provide services as required by this RFP or the Cost Proposal. If a response restricts the rights of THDA or otherwise qualifies either the offer to deliver goods or provide services as required by this RFP or the Cost Proposal, THDA, at its sole discretion, may determine the response to be a non-responsive counteroffer and reject it.
- 3.3.3. A response must not propose alternative goods or services (*i.e.*, offer services different from those requested and required by this RFP) unless expressly requested in this RFP. THDA may consider a response of alternative goods or services to be non-responsive and reject it.
- 3.3.4. A Cost Proposal must be prepared and arrived at independently and must not involve any collusion between Respondents. THDA will reject any Cost Proposal that involves collusion, consultation, communication, or agreement between Respondents. Regardless of the time of detection, THDA will consider any such actions to be grounds for response rejection or contract termination.
- 3.3.5. A Respondent must not provide, for consideration in this RFP process or subsequent contract negotiations, any information that the Respondent knew or should have known was materially incorrect. If THDA determines that a Respondent has provided such incorrect information, THDA will deem the Response non-responsive and reject it.
- 3.3.6. A Respondent must not submit more than one Technical Response and one Cost Proposal in response to this RFP, except as expressly requested by THDA in this RFP. If a Respondent submits more than one Technical Response or more than one Cost Proposal, THDA will deem all of the responses non-responsive and reject them.
- 3.3.7. A Respondent must not submit a response as a prime contractor while also permitting one or more other Respondents to offer the Respondent as a subcontractor in their own responses. Such may result in the disqualification of all Respondents knowingly involved. This restriction does not, however, prohibit different Respondents from offering the same subcontractor as a part of their responses (provided that the subcontractor does not also submit a response as a prime contractor).
- 3.3.8. THDA shall not consider a response from an individual who is, or within the past six (6) months has been, a State employee. For purposes of this RFP:

- 3.3.8.1. An individual shall be deemed a State employee until such time as all compensation for salary, termination pay, and annual leave has been paid;
- 3.3.8.2. A contract with or a response from a company, corporation, or any other contracting entity in which a controlling interest is held by any State employee shall be considered to be a contract with or proposal from the employee; and
- 3.3.8.3. A contract with or a response from a company, corporation, or any other contracting entity that employs an individual who is, or within the past six (6) months has been, a State employee shall not be considered a contract with or a proposal from the employee and shall not constitute a prohibited conflict of interest.

3.3.9. This RFP is also subject to Tenn. Code Ann. § 12-4-101—105.

#### 3.4. **Response Errors & Revisions**

A Respondent is responsible for any and all response errors or omissions. A Respondent will not be allowed to alter or revise response documents after the Response Deadline time and date detailed in the RFP Section 2, Schedule of Events unless such is formally requested, in writing, by THDA.

#### 3.5. **Response Withdrawal**

A Respondent may withdraw a submitted response at any time before the Response Deadline time and date detailed in the RFP Section 2, Schedule of Events by submitting a written request signed by an authorized Respondent representative. After withdrawing a response, a Respondent may submit another response at any time before the Response Deadline. After the Response Deadline, a Respondent may only withdraw all or a portion of a response where the enforcement of the response would impose an unconscionable hardship on the Respondent.

#### 3.6. **Additional Services**

If a response offers goods or services in addition to those required by and described in this RFP, THDA, at its sole discretion, may add such services to the contract awarded as a result of this RFP. Notwithstanding the foregoing, a Respondent must not propose any additional cost amounts or rates for additional goods or services. Regardless of any additional services offered in a response, the Respondent's Cost Proposal must only record the proposed cost as required in this RFP and must not record any other rates, amounts, or information.

**NOTICE: If a Respondent fails to submit a Cost Proposal exactly as required, THDA may deem the response non-responsive and reject it.**

#### 3.7. **Response Preparation Costs**

THDA will not pay any costs associated with the preparation, submittal, or presentation of any response.

## 4. GENERAL CONTRACTING INFORMATION & REQUIREMENTS

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### 4.1. RFP Amendment

THDA at its sole discretion may amend this RFP, in writing, at any time prior to contract award. However, prior to any such amendment, THDA will consider whether it would negatively impact the ability of potential Respondents to meet the response deadline and revise the RFP Schedule of Events if deemed appropriate. If an RFP amendment is issued, THDA will convey it to potential Respondents who submitted a Notice of Intent to Respond (refer to RFP Section 1.7). A response must address the final RFP (including its attachments) as amended.

### 4.2. RFP Cancellation

THDA reserves the right, at its sole discretion, to cancel the RFP or to cancel and reissue this RFP in accordance with applicable laws and regulations.

### 4.3. State Right of Rejection

4.3.1. Subject to applicable laws and regulations, THDA reserves the right to reject, at its sole discretion, any and all responses.

4.3.2. THDA may deem as non-responsive and reject any response that does not comply with all terms, conditions, and performance requirements of this RFP. Notwithstanding the foregoing, THDA reserves the right to waive, at its sole discretion, minor variances from full compliance with this RFP. If THDA waives variances in a response, such waiver shall not modify the RFP requirements or excuse the Respondent from full compliance, and THDA may hold any resulting Contractor to strict compliance with this RFP.

### 4.4. Assignment & Subcontracting

4.4.1. The Contractor may not subcontract, transfer, or assign any portion of the Contract awarded as a result of this RFP without prior approval of THDA. THDA reserves the right to refuse approval, at its sole discretion, of any subcontract, transfer, or assignment.

4.4.2. If a Respondent intends to use subcontractors, the response to this RFP must specifically identify the scope and portions of the work each subcontractor will perform (refer to RFP Attachment 6.2., Section B, General Qualifications & Experience Item B.14.).

4.4.3. Subcontractors identified within a response to this RFP will be deemed as approved by THDA unless THDA expressly disapproves one or more of the proposed subcontractors prior to signing the Contract.

4.4.4. After contract award, a Contractor may only substitute an approved subcontractor at the discretion of THDA and with THDA's prior, written approval.

4.4.5. Notwithstanding any State approval relating to subcontracts, the Respondent who is awarded a contract pursuant to this RFP will be the prime contractor and will be responsible for all work under the Contract.

### 4.5. Right to Refuse Personnel or Subcontractors

THDA reserves the right to refuse, at its sole discretion and notwithstanding any prior approval, any personnel of the prime contractor or a subcontractor providing goods or services in the performance of a contract resulting from this RFP. THDA will document in writing the reason(s) for any rejection of personnel.

#### 4.6. **Insurance**

THDA will require the awarded Contractor to provide a Certificate of Insurance issued by an insurance company licensed or authorized to provide insurance in the State of Tennessee. Each Certificate of Insurance shall indicate current insurance coverages meeting minimum requirements as may be specified by this RFP. A failure to provide a current, Certificate of Insurance will be considered a material breach and grounds for contract termination.

#### 4.7. **Professional Licensure and Department of Revenue Registration**

- 4.7.1. All persons, agencies, firms, or other entities that provide legal or financial opinions, which a Respondent provides for consideration and evaluation by THDA as a part of a response to this RFP, shall be properly licensed to render such opinions.
- 4.7.2. Before the Contract resulting from this RFP is signed, the apparent successful Respondent (and Respondent employees and subcontractors, as applicable) must hold all necessary or appropriate business or professional licenses to provide the goods or services as required by the contract. THDA may require any Respondent to submit evidence of proper licensure.
- 4.7.3. Before the Contract resulting from this RFP is signed, the apparent successful Respondent must be registered with the Tennessee Department of Revenue for the collection of Tennessee sales and use tax. THDA shall not award a contract unless the Respondent provides proof of such registration or provides documentation from the Department of Revenue that the Contractor is exempt from this registration requirement. The foregoing is a mandatory requirement of an award of a contract pursuant to this solicitation. To register, please visit the Department of Revenue's Tennessee Taxpayer Access Point (TNTAP) website for Online Registration and the Vendor Contract Questionnaire. These resources are available at the following:  
[https://tntap.tn.gov/eservices/\\_/#1](https://tntap.tn.gov/eservices/_/#1)

#### 4.8. **Disclosure of Response Contents**

- 4.8.1. All materials submitted to THDA in response to this RFP shall become the property of THDA. Selection or rejection of a response does not affect this right. By submitting a response, a Respondent acknowledges and accepts that the full response contents and associated documents will become open to public inspection in accordance with the laws of the State of Tennessee.
- 4.8.2. THDA will hold all response information, including both technical and cost information, in confidence during the evaluation process.
- 4.8.3. Upon completion of response evaluations, indicated by public release of a Notice of Intent to Award, the responses and associated materials will be open for review by the public in accordance with Tenn. Code Ann. § 10-7-504(a)(7).

#### 4.9. **Contract Approval and Contract Payments**

- 4.9.1. After contract award, the Contractor who is awarded the contract must submit appropriate documentation with the Department of Finance and Administration, Division of Accounts.
- 4.9.2. This RFP and its contractor selection processes do not obligate THDA and do not create rights, interests, or claims of entitlement in either the Respondent with the apparent best-evaluated response or any other Respondent. State obligations pursuant to a contract award shall commence only after the Contract is signed by the THDA agency head and the Contractor and after the Contract is approved by all other state officials as required by applicable laws and regulations.

- 4.9.3. No payment will be obligated or made until the relevant Contract is approved as required by applicable statutes and rules of the State of Tennessee.
- 4.9.3.1. THDA shall not be liable for payment of any type associated with the Contract resulting from this RFP (or any amendment thereof) or responsible for any goods delivered or services rendered by the Contractor, even goods delivered or services rendered in good faith and even if the Contractor is orally directed to proceed with the delivery of goods or the rendering of services, if it occurs before the Contract Effective Date or after the Contract Term.
- 4.9.3.2. All payments relating to this procurement will be made in accordance with the Payment Terms and Conditions of the Contract resulting from this RFP (refer to RFP Attachment 6.6., *Pro Forma* Contract, Section C).
- 4.9.3.3. If any provision of the Contract provides direct funding or reimbursement for the competitive purchase of goods or services as a component of contract performance or otherwise provides for the reimbursement of specified, actual costs, THDA will employ all reasonable means and will require all such documentation that it deems necessary to ensure that such purchases were competitive and costs were reasonable, necessary, and actual. The Contractor shall provide reasonable assistance and access related to such review. Further, THDA shall not remit, as funding or reimbursement pursuant to such provisions, any amounts that it determines do not represent reasonable, necessary, and actual costs.

#### 4.10. **Contractor Performance**

The Contractor who is awarded a contract will be responsible for the delivery of all acceptable goods or the satisfactory completion of all services set out in this RFP (including attachments) as may be amended. All goods or services are subject to inspection and evaluation by THDA. THDA will employ all reasonable means to ensure that goods delivered or services rendered are in compliance with the Contract, and the Contractor must cooperate with such efforts.

#### 4.11. **Contract Amendment**

After Contract award, THDA may request the Contractor to deliver additional goods or perform additional services within the general scope of the Contract and this RFP, but beyond the specified Scope, and for which the Contractor may be compensated. In such instances, THDA will provide the Contractor a written description of the additional goods or services. The Contractor must respond to THDA with a time schedule for delivering the additional goods or accomplishing the additional services based on the compensable units included in the Contractor's response to this RFP. If THDA and the Contractor reach an agreement regarding the goods or services and associated compensation, such agreement must be effected by means of a contract amendment. Further, any such amendment requiring additional goods or services must be signed by both the THDA agency head and the Contractor and must be approved by other state officials as required by applicable statutes, rules, policies and procedures of the State of Tennessee. The Contractor must not provide additional goods or render additional services until THDA has issued a written contract amendment with all required approvals.

#### 4.12. **Severability**

If any provision of this RFP is declared by a court to be illegal or in conflict with any law, said decision will not affect the validity of the remaining RFP terms and provisions, and the rights and obligations of THDA and Respondents will be construed and enforced as if the RFP did not contain the particular provision held to be invalid.

#### 4.13. **Next Ranked Respondent**

THDA reserves the right to initiate negotiations with the next ranked Respondent should THDA cease doing business with any Respondent selected via this RFP process.

## 5. EVALUATION & CONTRACT AWARD

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### 5.1. Evaluation Categories & Maximum Points

THDA will consider qualifications, experience, technical approach, and cost in the evaluation of responses and award points in each of the categories detailed below (up to the maximum evaluation points indicated) to each response deemed by THDA to be responsive.

EVALUATION CATEGORY	MAXIMUM POINTS POSSIBLE
<b>Mandatory Requirement Items</b> (refer to RFP Attachment 6.2, Section A)	<b>Pass/Fail Only</b>
<b>General Qualifications &amp; Experience</b> (refer to RFP Attachment 6.2., Section B)	<b>30%</b>
<b>Technical Qualifications, Experience &amp; Approach</b> (refer to RFP Attachment 6.2., Section C)	<b>60%</b>
<b>Cost Proposal</b> (refer to RFP Attachment 6.3.)	<b>10%</b>

### 5.2. Evaluation Process

The evaluation process is designed to award the contract resulting from this RFP not necessarily to the Respondent offering the lowest cost, but rather to the Respondent deemed by THDA to be responsive and responsible who offers the best combination of attributes based upon the evaluation criteria. ("Responsive Respondent" is defined as a Respondent that has submitted a response that conforms in all material respects to the RFP. "Responsible Respondent" is defined as a Respondent that has the capacity in all respects to perform fully the contract requirements, and the integrity and reliability which will assure good faith performance.)

5.2.1. **Technical Response Evaluation.** The Solicitation Coordinator and the Proposal Evaluation Team (consisting of three (3) or more State employees) will use the RFP Attachment 6.2., Technical Response & Evaluation Guide to manage the Technical Response Evaluation and maintain evaluation records.

5.2.1.1. THDA reserves the right, at its sole discretion, to request Respondent clarification of a Technical Response or to conduct clarification discussions with any or all Respondents. Any such clarification or discussion will be limited to specific sections of the response identified by THDA. The subject Respondent must put any resulting clarification in writing as may be required and in accordance with any deadline imposed by THDA.

5.2.1.2. The Solicitation Coordinator will review each Technical Response to determine compliance with RFP Attachment 6.2., Technical Response & Evaluation Guide, Section A— Mandatory Requirements. If the Solicitation Coordinator determines that a response failed to meet one or more of the mandatory requirements, the Proposal Evaluation Team will review the response and document the team's determination of whether:

- a. the response adequately meets RFP requirements for further evaluation;
- b. THDA will request clarifications or corrections for consideration prior to further evaluation; or,
- c. THDA will determine the response to be non-responsive to the RFP and reject it.

- 5.2.1.3. Proposal Evaluation Team members will independently evaluate each Technical Response (that is responsive to the RFP) against the evaluation criteria in this RFP, and will score each in accordance with the RFP Attachment 6.2., Technical Response & Evaluation Guide.
- 5.2.1.4. For each response evaluated, the Solicitation Coordinator will calculate the average of the Proposal Evaluation Team member scores for RFP Attachment 6.2., Technical Response & Evaluation Guide, and record each average as the response score for the respective Technical Response section.
- 5.2.1.5. The Solicitation Coordinator will invite each apparently responsive and responsible Respondent to make a(n) Oral Presentation.
  - 5.2.1.5.1. The Oral Presentations are mandatory. The Solicitation Coordinator will schedule Respondent Presentations during the period indicated by the RFP Section 2, Schedule of Events. The Solicitation Coordinator will make every effort to accommodate each Respondent's schedules. When the Respondent Presentation schedule has been determined, the Solicitation Coordinator will contact Respondents with the relevant information as indicated by RFP Section 2, Schedule of Events.
  - 5.2.1.5.2. Respondent Presentations are only open to the invited Respondent, Proposal Evaluation Team members, the Solicitation Coordinator, and any technical consultants who are selected by THDA to provide assistance to the Proposal Evaluation Team.
  - 5.2.1.5.3. Oral Presentations provide an opportunity for Respondents to explain and clarify their responses and for THDA to test to better understand the practical application of the good or service as applicable. Respondents must not materially alter their responses and Presentations will be limited to addressing the items detailed in RFP Attachment 6.2., Technical Response & Evaluation Guide. Use cases will be provided that contain groupings of requirements to be used by the respondents in the demonstration. Evaluators may adjust Respondents' Technical Response scores based on Oral Presentations. **Respondent pricing shall not be discussed or provided during Oral Presentations.**
  - 5.2.1.5.4. THDA will maintain an accurate record of each Respondent's Oral Presentation session. The record of the Respondent's Oral Presentation shall be available for review when THDA opens the procurement files for public inspection.

5.2.2. **Cost Proposal Evaluation.** The Solicitation Coordinator will open for evaluation the Cost Proposal of each Respondent deemed by THDA to be responsive and responsible and calculate and record each Cost Proposal score in accordance with the RFP Attachment 6.3., Cost Proposal & Scoring Guide.

5.2.3. **Total Response Score.** The Solicitation Coordinator will calculate the sum of the Technical Response section scores and the Cost Proposal score and record the resulting number as the total score for the subject Response (refer to RFP Attachment 6.5., Score Summary Matrix).

### 5.3. **Contract Award Process**

5.3.1 The Solicitation Coordinator will submit the Proposal Evaluation Team determinations and scores to the head of the procuring agency for consideration along with any other relevant information that might be available and pertinent to contract award.

- 5.3.2. The procuring agency head will determine the apparent best-evaluated Response. To effect a contract award to a Respondent other than the one receiving the highest evaluation process score, the head of the procuring agency must provide written justification and obtain the written approval of the Chief Procurement Officer and the Comptroller of the Treasury.
- 5.3.3. THDA will issue a Notice of Intent to Award identifying the apparent best-evaluated response and make the RFP files available for public inspection at the time and date specified in the RFP Section 2, Schedule of Events.

**NOTICE: The Notice of Intent to Award shall not create rights, interests, or claims of entitlement in either the apparent best-evaluated Respondent or any other Respondent.**

- 5.3.4. The Respondent identified as offering the apparent best-evaluated response must sign a contract drawn by THDA pursuant to this RFP. The Contract shall be substantially the same as the RFP Attachment 6.6., *Pro Forma* Contract. The Respondent must sign the contract by the Contractor Signature Deadline detailed in the RFP Section 2, Schedule of Events. If the Respondent fails to provide the signed Contract by this deadline, THDA may determine that the Respondent is non-responsive to this RFP and reject the response.
- 5.3.5. Notwithstanding the foregoing, THDA may, at its sole discretion, entertain limited terms and conditions or pricing negotiations prior to Contract signing and, as a result, revise the *pro forma* contract terms and conditions or performance requirements in THDA's best interests, PROVIDED THAT such revision of terms and conditions or performance requirements shall NOT materially affect the basis of response evaluations or negatively impact the competitive nature of the RFP and contractor selection process.
- 5.3.6. If THDA determines that a response is non-responsive and rejects it after opening Cost Proposals, the Solicitation Coordinator will re-calculate scores for each remaining responsive Cost Proposal to determine (or re-determine) the apparent best-evaluated response.



**RFP ATTACHMENT 6.1.****RFP # 31620-00732 STATEMENT OF CERTIFICATIONS AND ASSURANCES**

The Respondent must sign and complete the Statement of Certifications and Assurances below as required, and it must be included in the Technical Response (as required by RFP Attachment 6.2., Technical Response & Evaluation Guide, Section A, Item A.1.).

**The Respondent does, hereby, expressly affirm, declare, confirm, certify, and assure ALL of the following:**

1. The Respondent will comply with all of the provisions and requirements of the RFP.
2. The Respondent will provide all services as defined in the Scope of the RFP Attachment 6.6., *Pro Forma* Contract for the total Contract Term.
3. The Respondent, except as otherwise provided in this RFP, accepts and agrees to all terms and conditions set out in the RFP Attachment 6.6., *Pro Forma* Contract.
4. The Respondent acknowledges and agrees that a contract resulting from the RFP shall incorporate, by reference, all proposal responses as a part of the Contract.
5. The Respondent will comply with:
  - (a) the laws of the State of Tennessee;
  - (b) Title VI of the federal Civil Rights Act of 1964;
  - (c) Title IX of the federal Education Amendments Act of 1972;
  - (d) the Equal Employment Opportunity Act and the regulations issued there under by the federal government; and,
  - (e) the Americans with Disabilities Act of 1990 and the regulations issued there under by the federal government.
6. To the knowledge of the undersigned, the information detailed within the response submitted to this RFP is accurate.
7. The response submitted to this RFP was independently prepared, without collusion, under penalty of perjury.
8. No amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Respondent in connection with this RFP or any resulting contract.
9. Both the Technical Response and the Cost Proposal submitted in response to this RFP shall remain valid for at least 120 days subsequent to the date of the Cost Proposal opening and thereafter in accordance with any contract pursuant to the RFP.
10. The Respondent affirms the following statement, as required by the Iran Divestment Act Tenn. Code Ann. § 12-12-111: "By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief that each bidder is not on the list created pursuant to §12-12-106." For reference purposes, the list is currently available online at: <https://www.tn.gov/generalservices/procurement/central-procurement-office--cpo-/library-public-information-library.html>.

**By signing this Statement of Certifications and Assurances, below, the signatory also certifies legal authority to bind the proposing entity to the provisions of this RFP and any contract awarded pursuant to it. If the signatory is not the Respondent (if an individual) or the Respondent's company *President* or *Chief Executive Officer*, this document must attach evidence showing the individual's authority to bind the Respondent.**

**DO NOT SIGN THIS DOCUMENT IF YOU ARE NOT LEGALLY AUTHORIZED TO BIND THE RESPONDENT**

**SIGNATURE:**

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**PRINTED NAME & TITLE:**

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**DATE:**

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**RESPONDENT LEGAL ENTITY  
NAME:**

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## RFP ATTACHMENT 6.2. — Section A

## TECHNICAL RESPONSE &amp; EVALUATION GUIDE

**SECTION A: MANDATORY REQUIREMENTS.** The Respondent must address all items detailed below and provide, in sequence, the information and documentation as required (referenced with the associated item references). The Respondent must also detail the response page number for each item in the appropriate space below.

The Solicitation Coordinator will review the response to determine if the Mandatory Requirement Items are addressed as required and mark each with pass or fail. For each item that is not addressed as required, the Proposal Evaluation Team must review the response and attach a written determination. In addition to the Mandatory Requirement Items, the Solicitation Coordinator will review each response for compliance with all RFP requirements.

RESPONDENT LEGAL ENTITY NAME:			
Response Page # (Respondent completes)	Item Ref.	Section A— Mandatory Requirement Items	Pass/Fail THDA USE ONLY
		The Response must be delivered to THDA no later than the Response Deadline specified in the RFP Section 2, Schedule of Events.	
		The Technical Response and the Cost Proposal documentation must be packaged separately as required (refer to RFP Section 3.2., <i>et. seq.</i> ).	
		The Technical Response must NOT contain cost or pricing information of any type.	
		The Technical Response must NOT contain any restrictions of the rights of THDA or other qualification of the response.	
		A Respondent must NOT submit alternate responses (refer to RFP Section 3.3.).	
		A Respondent must NOT submit multiple responses in different forms (as a prime and a subcontractor) (refer to RFP Section 3.3.).	
	<b>A.1</b>	Provide the Statement of Certifications and Assurances (RFP Attachment 6.1.) completed and signed by an individual empowered to bind the Respondent to the provisions of this RFP and any resulting contract. The document must be signed without exception or qualification.	
	<b>A.2</b>	Provide a statement, based upon reasonable inquiry, of whether the Respondent or any individual who shall cause to deliver goods or perform services under the contract has a possible conflict of interest ( <i>e.g.</i> , employment by the State of Tennessee) and, if so, the nature of that conflict.  NOTE: Any questions of conflict of interest shall be solely within the discretion of THDA, and THDA reserves the right to cancel any award.	
	<b>A.3</b>	Provide a statement confirming that the system will have a module or integrated solution to track multiple funding sources to include various programs and further confirm that the solution reflects the total amount of funds available in the funding source, the amount of funds allocated against rate locks, the amount of funds unallocated, the amount of funds expended when loans are purchased and the amount of funds unexpended.	
	<b>A.4</b>	Provide a statement confirming that the system will have a rate lock/reservation or integrated solution which rate locks are expended against the bond/warehouse line allocation tracking based upon program parameters on a per loan basis when loan files are locked.	

RESPONDENT LEGAL ENTITY NAME:			
Response Page # (Respondent completes)	Item Ref.	Section A— Mandatory Requirement Items	Pass/Fail THDA USE ONLY
	A.5	Provide a statement confirming that the system has the ability to capture and store daily rates, lender compensation and service release premium.	
	A.6	Provide a statement confirming that the system will have a portal to allow the correspondent lender to submit files to THDA by uploading an XML file or manually entering URLA data.	
	A.7	Provide a statement confirming that the system will include custom fields outside of MISMO standards for collection of specific data for mortgage revenue bonds.	
	A.8	Provide a statement confirming that the system has the ability for the correspondent lender to upload documents with data file submission.	
	A.9	Provide a statement confirming that the system has advanced technology that can be used for document classification, data abstraction, and data verification such as OCR or AI.	
	A.10	Provide a statement confirming that the system has an Application Programming Interface (API) to allow integration with MERS, FHA Connection, Fannie Mae, Freddie Mac and other web based applications.	
	A.11	Provide a statement confirming that the system has an eligibility validation module or similar integrated solution which provides flexibility for updates to manage household income limits, sales price limits, credit scores, debt ratios, and other data driven business rules.	
	A.12	Provide a statement confirming that the system has a configurable workflow and customizable dashboards to accommodate loans for processing, underwriting, post-closing, final documents and purchase as well as corresponding Underwriting Manager, Post-Closing Manager and Administrative level roles.	
	A.13	Provide a statement confirming that the system has email notification capability for both internal user and external user notifications throughout all workflows.	
	A.14	Provide a statement confirming that the system has the ability to generate letters/documents to be electronically delivered to correspondent lenders; letters also must be available for internal view and editable such that they can be modified by IT or business unit personnel without assistance from the vendor.	
	A.15	Provide a statement confirming that the system has the ability to generate ULDD files for Fannie Mae/Freddie Mac and PDD files for Ginnie Mae.	
	A.16	Provide a statement confirming that the system provides a seamless loan onboarding process between the LOS and THDA's servicing system, FICS, that does not require manual intervention on a regular basis.	
	A.17	Provide a statement confirming that the system provides audit tracking for updated fields and loan interactions within the system.	

<b>RESPONDENT LEGAL ENTITY NAME:</b>			
<b>Response Page # (Respondent completes)</b>	<b>Item Ref.</b>	<b>Section A— Mandatory Requirement Items</b>	<b>Pass/Fail  THDA USE ONLY</b>
	<b>A.18</b>	Provide a statement confirming that the system is implemented as a fully web-based and SAAS solution and offers SSO for seamless user login; confirm that no portion of the software must be executed client-side or via any kind of RDP implementation.	
	<b>A.19</b>	Provide a statement confirming that the system has built-in customizable reporting using Power BI or similar and that upon request THDA can request a full data set on a pre-determined schedule.	
<i>State Use – Solicitation Coordinator Signature, Printed Name &amp; Date:</i>			

## RFP ATTACHMENT 6.2. — SECTION B

## TECHNICAL RESPONSE &amp; EVALUATION GUIDE

**6.2. SECTION B: GENERAL QUALIFICATIONS & EXPERIENCE.** The Respondent must address all items (below) and provide, in sequence, the information and documentation as required (referenced with the associated item references). The Respondent must also detail the response page number for each item in the appropriate space below.

A Proposal Evaluation Team, made up of three or more THDA employees, will independently evaluate and score the response to each item. Each evaluator will use the following whole number, raw point scale for scoring each item:

**0 = little value      1 = poor      2 = fair      3 = satisfactory      4 = good      5 = excellent**

The Solicitation Coordinator will multiply the Item Score by the associated Evaluation Factor (indicating the relative emphasis of the item in the overall evaluation). The resulting product will be the item's Raw Weighted Score for purposes of calculating the section score as indicated.

RESPONDENT LEGAL ENTITY NAME:			
Response Page # (Respondent completes)	Item Ref.	Section B— General Qualifications & Experience Items	Item Score (Max 5pts each) <b>THDA USE ONLY</b>
	<b>B.1</b>	Detail the name, e-mail address, mailing address, telephone number, and facsimile number of the person the State should contact regarding the response.	
	<b>B.2</b>	Describe the Respondent's form of business ( <i>i.e.</i> , individual, sole proprietor, corporation, non-profit corporation, partnership, limited liability company) and business location (physical location or domicile).	
	<b>B.3</b>	Detail the number of years the Respondent has been in business.	
	<b>B.4</b>	Briefly describe how long the Respondent has been providing the goods or services required by this RFP.	
	<b>B.5</b>	Describe the Respondent's number of employees, client base, and location of offices.	
	<b>B.6</b>	Provide a statement of whether there have been any mergers, acquisitions, or change of control of the Respondent within the last ten (10) years. If so, include an explanation providing relevant details.	
	<b>B.7</b>	Provide a statement of whether the Respondent or, to the Respondent's knowledge, any of the Respondent's employees, agents, independent contractors, or subcontractors, involved in the delivery of goods or performance of services on a contract pursuant to this RFP, have been convicted of, pled guilty to, or pled <i>nolo contendere</i> to any felony. If so, include an explanation providing relevant details.	
	<b>B.8</b>	Provide a statement of whether, in the last ten (10) years, the Respondent has filed (or had filed against it) any bankruptcy or insolvency proceeding, whether voluntary or involuntary, or undergone the appointment of a receiver, trustee, or assignee for the benefit of creditors. If so, include an explanation providing relevant details.	
	<b>B.9</b>	Provide a statement of whether there is any material, pending litigation against the Respondent that the Respondent should reasonably believe could adversely affect its ability to meet contract	

## RFP ATTACHMENT 6.2. — SECTION B (continued)

RESPONDENT LEGAL ENTITY NAME:			
Response Page # (Respondent completes)	Item Ref.	Section B— General Qualifications & Experience Items	Item Score (Max 5pts each) <b>THDA USE ONLY</b>
		<p>requirements pursuant to this RFP or is likely to have a material adverse effect on the Respondent's financial condition. If such exists, list each separately, explain the relevant details, and attach the opinion of counsel addressing whether and to what extent it would impair the Respondent's performance in a contract pursuant to this RFP.</p> <p>NOTE: All persons, agencies, firms, or other entities that provide legal opinions regarding the Respondent must be properly licensed to render such opinions. THDA may require the Respondent to submit proof of license for each person or entity that renders such opinions.</p>	
	<b>B.10</b>	<p>Provide a statement of whether there are any pending or in progress Securities Exchange Commission investigations involving the Respondent. If such exists, list each separately, explain the relevant details, and attach the opinion of counsel addressing whether and to what extent it will impair the Respondent's performance in a contract pursuant to this RFP.</p> <p>NOTE: All persons, agencies, firms, or other entities that provide legal opinions regarding the Respondent must be properly licensed to render such opinions. THDA may require the Respondent to submit proof of license for each person or entity that renders such opinions.</p>	
	<b>B.11</b>	<p>Provide a brief, descriptive statement detailing evidence of the Respondent's ability to deliver the goods or services sought under this RFP (e.g., prior experience, training, certifications, resources, program and quality management systems, etc.).</p>	
	<b>B.12</b>	<p>Provide a narrative description of the proposed project team, its members, and organizational structure along with an organizational chart identifying the key people who will be assigned to deliver the goods or services required by this RFP.</p>	
	<b>B.13</b>	<p>Provide a personnel roster listing the names of key people who the Respondent will assign to meet the Respondent's requirements under this RFP along with the estimated number of hours that each individual will devote to that performance. Follow the personnel roster with a resume for each of the people listed. The resumes must detail the individual's title, education, current position with the Respondent, and employment history.</p>	
	<b>B.14</b>	<p>Provide a statement of whether the Respondent intends to use subcontractors to meet the Respondent's requirements of any contract awarded pursuant to this RFP, and if so, detail:</p> <ul style="list-style-type: none"> <li>(a) the names of the subcontractors along with the contact person, mailing address, telephone number, and e-mail address for each;</li> <li>(b) a description of the scope and portions of the goods each subcontractor involved in the delivery of goods or performance of the services each subcontractor will perform; <u>and</u></li> <li>(c) a statement specifying that each proposed subcontractor has expressly assented to being proposed as a subcontractor in the Respondent's response to this RFP.</li> </ul>	

## RFP ATTACHMENT 6.2. — SECTION B (continued)

RESPONDENT LEGAL ENTITY NAME:			
Response Page # (Respondent completes)	Item Ref.	Section B— General Qualifications & Experience Items	Item Score (Max 5pts each) <b>THDA USE ONLY</b>
	<b>B.15</b>	<p>Provide documentation of the Respondent's commitment to diversity as represented by the following:</p> <p>(a) <u>Business Strategy</u>. Provide a description of the Respondent's existing programs and procedures designed to encourage and foster commerce with business enterprises owned by minorities, women, service-disabled veterans, persons with disabilities, and small business enterprises. Please also include a list of the Respondent's certifications as a diversity business, if applicable.</p> <p>(b) <u>Business Relationships</u>. Provide a listing of the Respondent's current contracts with business enterprises owned by minorities, women, service-disabled veterans, persons with disabilities, and small business enterprises. Please include the following information:</p> <p>(i) contract description;</p> <p>(ii) contractor name and ownership characteristics (<i>i.e.</i>, ethnicity, gender, service-disabled veteran-owned or persons with disabilities);</p> <p>(iii) contractor contact name and telephone number.</p> <p>(c) <u>Estimated Participation</u>. Provide an estimated level of participation by business enterprises owned by minorities, women, service-disabled veterans, persons with disabilities and small business enterprises if a contract is awarded to the Respondent pursuant to this RFP. Please include the following information:</p> <p>(i) a percentage (%) indicating the participation estimate. (Express the estimated participation number as a percentage of the total estimated contract value that will be dedicated to business with subcontractors and supply contractors having such ownership characteristics only and <b>DO NOT INCLUDE DOLLAR AMOUNTS</b>);</p> <p>(ii) anticipated goods or services contract descriptions;</p> <p>(iii) names and ownership characteristics (<i>i.e.</i>, ethnicity, gender, service-disabled veterans, or disability) of anticipated subcontractors and supply contractors.</p> <p>NOTE: In order to claim status as a Diversity Business Enterprise under this contract, businesses must be certified by the Governor's Office of Diversity Business Enterprise (Go-DBE). Please visit the Go-DBE website at <a href="https://tn.diversitysoftware.com/FrontEnd/StartCertification.asp?TN=tn&amp;XID=9810">https://tn.diversitysoftware.com/FrontEnd/StartCertification.asp?TN=tn&amp;XID=9810</a> for more information.</p> <p>(d) <u>Workforce</u>. Provide the percentage of the Respondent's total current employees by ethnicity and gender.</p> <p>NOTE: Respondents that demonstrate a commitment to diversity will advance State efforts to expand opportunity to do business with THDA as contractors and subcontractors. Response evaluations will recognize the positive qualifications and experience of a Respondent that does business with enterprises owned by minorities, women, service-disabled veterans, persons with disabilities, and small business enterprises and who offer a diverse workforce.</p>	

## RFP ATTACHMENT 6.2. — SECTION B (continued)

RESPONDENT LEGAL ENTITY NAME:			
Response Page # (Respondent completes)	Item Ref.	Section B— General Qualifications & Experience Items	Item Score (Max 5pts each) <b>THDA USE ONLY</b>
	<b>B.16</b>	<p>Provide a statement of whether or not the Respondent has any current contracts with the State of Tennessee or has completed any contracts with the State of Tennessee within the previous five (5) year period. If so, provide the following information for all of the current and completed contracts:</p> <ul style="list-style-type: none"> <li>(a) the name, title, telephone number and e-mail address of the State contact knowledgeable about the contract;</li> <li>(b) the procuring State agency name;</li> <li>(c) a brief description of the contract's scope of services;</li> <li>(d) the contract period; and</li> <li>(e) the contract number.</li> </ul>	
	<b>B.17</b>	<p>Provide customer references from individuals who are <u>not</u> current or former State employees for projects similar to the goods or services sought under this RFP and which represent:</p> <ul style="list-style-type: none"> <li>▪ two (2) accounts Respondent currently services that are similar in size to THDA; <u>and</u></li> <li>▪ three (3) completed projects.</li> </ul> <p>References from at least three (3) different individuals are required to satisfy the requirements above, e.g., an individual may provide a reference about a completed project and another reference about a currently serviced account. The standard reference questionnaire, which <u>must</u> be used and completed, is provided at RFP Attachment 6.4. References that are not completed as required may be deemed non-responsive and may not be considered.</p> <p>The Respondent will be <u>solely</u> responsible for requesting reference questionnaires. In order to obtain and submit the completed reference questionnaires, follow the appropriate process below.</p> <p><b>If by email:</b></p> <ul style="list-style-type: none"> <li>(a) Add the Respondent's name to the standard reference questionnaire at RFP Attachment 6.4. and make a copy for each reference.</li> <li>(b) Email a reference questionnaire to each reference.</li> <li>(c) Instruct the reference to: <ul style="list-style-type: none"> <li>(i) complete the reference questionnaire;</li> <li>(ii) sign and date the completed reference questionnaire (electronic signature is acceptable);</li> <li>(iii) email the reference questionnaire DIRECTLY to the RFP Solicitation Coordinator.</li> </ul> </li> <li>(d) <u>Do NOT add additional THDA email address(es) to the reference questionnaire email.</u></li> </ul> <p><b>NOTES:</b></p> <ul style="list-style-type: none"> <li>▪ THDA will not accept late references and each reference questionnaire submitted must be completed as required.</li> <li>▪ THDA will not review more than the number of required references indicated above.</li> <li>▪ While THDA will base its reference check on the contents of the sealed reference envelopes included in the Technical Response package, THDA reserves the right to confirm and clarify information detailed in the completed reference questionnaires,</li> </ul>	



## RFP ATTACHMENT 6.2. — SECTION B (continued)

RESPONDENT LEGAL ENTITY NAME:			
Response Page # (Respondent completes)	Item Ref.	Section B— General Qualifications & Experience Items	Item Score (Max 5pts each) <b>THDA USE ONLY</b>
		<p>and may consider clarification responses in the evaluation of references.</p> <ul style="list-style-type: none"> <li>▪ THDA is under <u>no</u> obligation to clarify any reference information.</li> </ul>	
	<b>B.18</b>	<p>Provide a statement and any relevant details addressing whether the Respondent is any of the following:</p> <ul style="list-style-type: none"> <li>(a) is presently debarred, suspended, proposed for debarment, or voluntarily excluded from covered transactions by any federal or state department or agency;</li> <li>(b) has within the past three (3) years, been convicted of, or had a civil judgment rendered against the contracting party from commission of fraud, or a criminal offence in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or grant under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;</li> <li>(c) is presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses detailed above; and</li> <li>(d) has within a three (3) year period preceding the contract had one or more public transactions (federal, state, or local) terminated for cause or default.</li> </ul>	
	<b>B.19</b>	Detail whether the system requires complex passwords with a minimum of 12 characters AND the ability to customize the password requirements as needed.	
	<b>B.20</b>	Detail whether the system allows for geo-fencing, preferably that access can be locked down by IP or some other means such that THDA's data cannot be accessed from a generic device in any country or locality.	
	<b>B.21</b>	Detail whether the system offers either SSO for login to the BackOffice module (preferred) OR uses Cisco's DUO Mobile Multifactor Authentication platform.	
	<b>B.22</b>	For cloud-based software, provide a copy of a valid and current SOC 2 Type 2 certification for the system itself, not just the hosting platform such as Azure or AWS.	
	<b>B.23</b>	Detail whether the software executes via a web-based client; Confirm that no client-server locally installed applications or Citrix/RDP implementations are utilized for any module of the system, BackOffice or otherwise.	
	<b>B.24</b>	Describe whether the cloud-based software, i.e. SAAS, includes a custom-reporting module inherit to the system, such as Power BI.	

## RFP ATTACHMENT 6.2. — SECTION B (continued)

RESPONDENT LEGAL ENTITY NAME:			
Response Page # (Respondent completes)	Item Ref.	Section B— General Qualifications & Experience Items	Item Score (Max 5pts each) <b>THDA USE ONLY</b>
	<b>B.25</b>	Describe whether a complete data export can be made available to THDA upon request.	
	<b>B.26</b>	Describe whether the system includes an administrative or “SuperUser” role that is the only one that can perform user assignments and permission changes.	
	<b>B.27</b>	Detail whether the vendor will provide Technical Support hours from 8am CST until 6pm CST, emergency after hours and contact information for support on weekends.	
	<b>B.28</b>	Describe whether an independent, stand-alone demonstration database and corresponding environment for testing and training is provided and kept current with the system at all times.	
	<b>B.29</b>	Describe how vendor will deliver high-level data-flow, application system-flow, and process-flow diagrams.	
	<b>B.30</b>	Describe how the vendor will provide a data element dictionary that will allow the identification of fields.	
	<b>B.31</b>	Detail whether the vendor will have thorough release notes that contain detailed information about all changes made with each software iteration.	
	<b>B.32</b>	Describe whether the system provides a standalone solution that integrates with the application.	
<b>Total Item Score (Sum of all points for Section B) / 160</b> <b>(Maximum Possible Points)</b>  <b>= Raw Weighted Score</b>  <i>Raw Weighted Score X's 30%</i>		<b>Section B Score =</b>	

**RFP ATTACHMENT 6.2. — SECTION C**

**TECHNICAL RESPONSE & EVALUATION GUIDE**

**SECTION C: TECHNICAL QUALIFICATIONS, EXPERIENCE & APPROACH.** The Respondent must address all items (below) and provide, in sequence, the information and documentation as required (referenced with the associated item references). The Respondent must complete the Response Summary column as described in the table below and also detail the response page number for each item in the appropriate space below.

A Proposal Evaluation Team, made up of three or more State employees, will independently evaluate and score the response to each item. Each evaluator will use the following whole number, raw point scale for scoring each item:

**0 = little value                      1 = poor                      2 = fair                      3 = satisfactory                      4 = good                      5 = excellent**

The Solicitation Coordinator will multiply the Item Score by the associated Evaluation Factor (indicating the relative emphasis of the item in the overall evaluation). The resulting product will be the item’s Raw Weighted Score for purposes of calculating the section score as indicated.

Prior to the Oral Presentation, Respondent will be provided use cases which will be workflows designed to demonstrate all requirements listed in this section. **The Item Score may be adjusted by the proposal evaluation team based on Oral Presentations.**

RESPONDENT LEGAL ENTITY NAME:							
Response Page # (Respondent completes)	Item Category	Item Ref.	Section C— Technical Qualifications, Experience & Approach Items Please describe if your product meets the below requirement in separate document and, if applicable, explain how the requirement is met. Provide Response Page #.  In the event Respondent is invited for an Oral Presentation, Respondent will be provided use cases based on the below requirements and asked to demonstrate how Respondent’s product meets the requirements.	Response Summary Respondent shall complete this column as part of its response and respond with the letter D, P, M, or F for each Item:  D- Does Not Meet P- Partially Meets M- Meets (Completely) F- Future Release	Item Score	Evaluation Factor	Raw Weighted Score
	Bond/Funding Allocation Tracking	C.1	The system has the ability to move individual loans between funding sources up until a loan is purchased.			5	
	Bond/Funding Allocation Tracking	C.2	The system has the ability to track denials, withdrawals, and cancellations from allocation to return back to the original funding source.			5	
	Pricing Engine/Rate Locks	C.3	The system has the ability to save daily rate iterations and Service Release Premium for historical purposes or API for comparable system.			5	

## RFP ATTACHMENT 6.2. — SECTION C (continued)

RESPONDENT LEGAL ENTITY NAME:							
Response Page # (Respondent completes)	Item Category	Item Ref.	<p align="center"><b>Section C— Technical Qualifications, Experience &amp; Approach Items</b></p> <p>Please describe if your product meets the below requirement in separate document and, if applicable, explain how the requirement is met. Provide Response Page #.</p> <p>In the event Respondent is invited for an Oral Presentation, Respondent will be provided use cases based on the below requirements and asked to demonstrate how Respondent's product meets the requirements.</p>	<p><b>Response Summary</b></p> <p>Respondent shall complete this column as part of its response and respond with the letter D, P, M, or F for each Item:</p> <p><b>D-</b> Does Not Meet  <b>P-</b> Partially Meets  <b>M-</b> Meets (Completely)  <b>F-</b> Future Release</p>	Item Score	Evaluation Factor	Raw Weighted Score
	Pricing Engine/Rate Locks	<b>C.4</b>	The system has the ability to run a comparison for a repricing based upon interest rate expiration and historical data saved from daily rate iterations or API for comparable system.			2	
	Correspondent Lender Portal	<b>C.5</b>	The system allows different access ability for the different correspondent lender's role, managed by a "Lender Administrator" role.			5	
	Correspondent Lender Portal	<b>C.6</b>	The system has the ability for a correspondent lender to extend rate locks & cancel lock; any action to require reason/comment by lender.			5	
	Correspondent Lender Portal	<b>C.7</b>	The system allows a lender dashboard view of pipeline status.			5	
	Correspondent Lender Portal	<b>C.8</b>	The system allows lender to generate pipeline reports.			2	
	Correspondent Lender Portal	<b>C.9</b>	The system allows for an area for the lender to access guidelines and loan documentation.			4	
	Correspondent Lender Portal	<b>C.10</b>	The system provides the ability to upload documents to specific conditions.			2	
	Correspondent Lender Portal	<b>C.11</b>	The system provides reminders regarding important deadlines for the lenders.			4	
	Rate Locks- Correspondent Portal	<b>C.12</b>	This system has the ability to allow lenders to generate rate locks based upon business rules for locking loans (prevent duplicate locks, non-allowed re-locks, rate shopping).			5	
	Eligibility Validation	<b>C.13</b>	The system has the ability to validate that a property is in a targeted or non-targeted area utilizing census tracts.			2	

## RFP ATTACHMENT 6.2. — SECTION C (continued)

RESPONDENT LEGAL ENTITY NAME:							
Response Page # (Respondent completes)	Item Category	Item Ref.	<p align="center"><b>Section C— Technical Qualifications, Experience &amp; Approach Items</b></p> <p>Please describe if your product meets the below requirement in separate document and, if applicable, explain how the requirement is met. Provide Response Page #.</p> <p>In the event Respondent is invited for an Oral Presentation, Respondent will be provided use cases based on the below requirements and asked to demonstrate how Respondent's product meets the requirements.</p>	<p><b>Response Summary</b></p> <p>Respondent shall complete this column as part of its response and respond with the letter D, P, M, or F for each Item:</p> <p><b>D-</b> Does Not Meet  <b>P-</b> Partially Meets  <b>M-</b> Meets (Completely)  <b>F-</b> Future Release</p>	Item Score	Evaluation Factor	Raw Weighted Score
	Eligibility Validation	<b>C.14</b>	The system has the ability to validate against duplicate Social Security Numbers.			4	
	Eligibility Validation	<b>C.15</b>	The system has the ability to validate only 1 active loan based upon a duplicate Social Security Number.			5	
	Eligibility Validation	<b>C.16</b>	The system has the ability to generate/connect a subordinate lien for the same borrower.			5	
	Images-Internal User	<b>C.17</b>	The system's OCR includes an annotation tool.			5	
	Images-Internal User	<b>C.18</b>	The system has an OCR to identify and automatically add conditions for missing required documents, which also indicates file moving from rate lock to submitted status.			4	
	Images-Internal User	<b>C.19</b>	The system has the ability to identify/capture who uploaded documents from the lender.			4	
	Images-Internal User	<b>C.20</b>	The system has the ability to view multiple documents at the same time.			4	
	Dashboard	<b>C.21</b>	The system has customizable, interactive dashboard based upon the user's role-Processing, Underwriting, Post-Closing, Purchase and Final documents.			5	
	Dashboard	<b>C.22</b>	The system has the ability to identify pipeline follow-up needs to the assigned user.			5	
	Workflow	<b>C.23</b>	The system has "holding" queues for staff to assign loans to themselves based upon action/status.			5	

## RFP ATTACHMENT 6.2. — SECTION C (continued)

RESPONDENT LEGAL ENTITY NAME:							
Response Page # (Respondent completes)	Item Category	Item Ref.	<b>Section C— Technical Qualifications, Experience &amp; Approach Items</b>  Please describe if your product meets the below requirement in separate document and, if applicable, explain how the requirement is met. Provide Response Page #.  In the event Respondent is invited for an Oral Presentation, Respondent will be provided use cases based on the below requirements and asked to demonstrate how Respondent's product meets the requirements.	<b>Response Summary</b> Respondent shall complete this column as part of its response and respond with the letter D, P, M, or F for each Item:  <b>D-</b> Does Not Meet <b>P-</b> Partially Meets <b>M-</b> Meets (Completely) <b>F-</b> Future Release	Item Score	Evaluation Factor	Raw Weighted Score
	Workflow	<b>C.24</b>	The system has a seamless workflow, automatically moving files through the system based upon actions of the user.			5	
	Internal User-Underwriting	<b>C.25</b>	The system has the workflow ability for an underwriting queue to assign loans to themselves.			4	
	Internal User-Underwriting	<b>C.26</b>	The system has a built in income calculator to calculate household income and qualifying income.			4	
	Internal User-Underwriting	<b>C.27</b>	The system has the ability to re-issue updated commitment due to changes by the correspondent lender.			5	
	Internal User-All	<b>C.28</b>	The system has the ability for preset conditions depending on loan type or property type (ex: Mfg home, SFR, etc).			4	
	Internal User-All	<b>C.29</b>	The system has the ability to view lender contact information specifically within a file.			4	
	Internal User-All	<b>C.30</b>	The system has the ability to add comments to the system based on user role and categories.			4	
	Internal User-All	<b>C.31</b>	The system has the ability for additional fields outside of MISMO guidelines.			5	
	Internal User-Underwriting Manager	<b>C.32</b>	The system has a 2nd level review option as well as "Revert" and "Deny" options for loan denials.			5	
	Internal User-Underwriting Manager	<b>C.33</b>	The system allows viewing of internal files for a manager or elevated role.			4	

## RFP ATTACHMENT 6.2. — SECTION C (continued)

RESPONDENT LEGAL ENTITY NAME:							
Response Page # (Respondent completes)	Item Category	Item Ref.	<p align="center"><b>Section C— Technical Qualifications, Experience &amp; Approach Items</b></p> <p>Please describe if your product meets the below requirement in separate document and, if applicable, explain how the requirement is met. Provide Response Page #.</p> <p>In the event Respondent is invited for an Oral Presentation, Respondent will be provided use cases based on the below requirements and asked to demonstrate how Respondent's product meets the requirements.</p>	<p><b>Response Summary</b></p> <p>Respondent shall complete this column as part of its response and respond with the letter D, P, M, or F for each Item:</p> <p><b>D-</b> Does Not Meet  <b>P-</b> Partially Meets  <b>M-</b> Meets (Completely)  <b>F-</b> Future Release</p>	Item Score	Evaluation Factor	Raw Weighted Score
	Internal User-Manager	<b>C.34</b>	The system has the ability to assign and re-assign loans.			5	
	Internal User-Manager	<b>C.35</b>	The system has the ability to delete comments.			4	
	Internal User-Purchase	<b>C.36</b>	The system has the ability to purchase mortgage loans from correspondent lenders in scheduled batches.			5	
	Internal User-Purchase	<b>C.37</b>	The system has the ability to purchase mortgage loans from correspondent lenders to include the payment of lender compensation, reducing purchase amount for initial escrows, principal reductions, curtailments and payments; adjusting for interest.			5	
	Internal User-Purchase	<b>C.38</b>	The system has the ability to electronically send documentation regarding purchase wire to correspondent lenders.			4	
	Internal User-Post closer	<b>C.39</b>	The system has the ability to waive the rate lock extension fee.			4	
	Internal User-Post Closer	<b>C.40</b>	The system has the ability to track mortgage loan closing documents and final loan documents			5	
	Business Unit Administrator	<b>C.41</b>	The system has the ability to update loan program guide and documents (pdf) for the lender portal.			4	
	Business Unit Administrator	<b>C.42</b>	The system has the ability to update the announcement page for the lender portal.			4	
	Business Unit Administrator	<b>C.43</b>	The system has "Email Management" functions to review system generated emails.			2	

## RFP ATTACHMENT 6.2. — SECTION C (continued)

RESPONDENT LEGAL ENTITY NAME:							
Response Page # (Respondent completes)	Item Category	Item Ref.	<b>Section C— Technical Qualifications, Experience &amp; Approach Items</b>  Please describe if your product meets the below requirement in separate document and, if applicable, explain how the requirement is met. Provide Response Page #.  In the event Respondent is invited for an Oral Presentation, Respondent will be provided use cases based on the below requirements and asked to demonstrate how Respondent's product meets the requirements.	<b>Response Summary</b> Respondent shall complete this column as part of its response and respond with the letter D, P, M, or F for each Item:  <b>D-</b> Does Not Meet <b>P-</b> Partially Meets <b>M-</b> Meets (Completely) <b>F-</b> Future Release	Item Score	Evaluation Factor	Raw Weighted Score
	Business Unit Administrator	<b>C.44</b>	The system has the ability to update non-manager internal users/roles. (Need to be able to switch "Underwriters" to a "Processing" role)			5	
	Business Unit Administrator	<b>C.45</b>	The system has the ability to update, add and delete the following at a minimum: lenders, information, contact information, comments, users, and branches.			5	
	Business Unit Administrator	<b>C.46</b>	The system has the capability to capture TPOs for the wholesale lender channels,			4	
	Business Unit Administrator	<b>C.47</b>	The system has the ability to cancel rate locks upon the lender's request.			4	
	Business Unit Administrator	<b>C.48</b>	The system has the ability to add approved "pre-selected" conditions for the internal user.			5	
	Business Unit Administrator	<b>C.49</b>	The system has the ability to control required fields/documents depending on the business needs/process (both internal & external).			4	
	API	<b>C.50</b>	The system has an interface with Secondary Marketing and Risk Management System,			5	
	API	<b>C.51</b>	The system has exclusionary lists.			4	
	QA	<b>C.52</b>	The system has the ability for monitoring/tracking due to deficiencies.			4	
	QA	<b>C.53</b>	The system has the ability to generate score cards that meet Fannie Mae/Freddie Mac Guidelines.			3	



RFP ATTACHMENT 6.2. — SECTION C (continued)

RESPONDENT LEGAL ENTITY NAME:							
Response Page # (Respondent completes)	Item Category	Item Ref.	<b>Section C— Technical Qualifications, Experience &amp; Approach Items</b> Please describe if your product meets the below requirement in separate document and, if applicable, explain how the requirement is met. Provide Response Page #.  In the event Respondent is invited for an Oral Presentation, Respondent will be provided use cases based on the below requirements and asked to demonstrate how Respondent’s product meets the requirements.	<b>Response Summary</b> Respondent shall complete this column as part of its response and respond with the letter D, P, M, or F for each Item:  <b>D-</b> Does Not Meet <b>P-</b> Partially Meets <b>M-</b> Meets (Completely) <b>F-</b> Future Release	Item Score	Evaluation Factor	Raw Weighted Score
	Internal Notification	<b>C.54</b>	The system has Document Upload notifications specific to each loan, status, and condition			4	
	Correspondent Lender Management	<b>C.55</b>	The system has the ability to capture approved lender information including the following: primary contact information, escalation contact information and all LOS system users.			5	
	Miscellaneous	<b>C.56</b>	Provide a statement that the LOS provider has an advanced technology loan servicing system that seamlessly on-boards loans from the LOS system to the servicing system. The servicing system must include but is not limited to: investor reporting requirements, payment processing, customer facing online portal with payment options, escrow administration, default management, document imaging, report writing, statement features and robust analytic capabilities. THDA is not hereby committing to procure or otherwise utilize the Respondent’s servicing system, now or in the future.			5	
<i>The Solicitation Coordinator will use this sum and the formula below to calculate the section score. All calculations will use and result in numbers rounded to two (2) places to the right of the decimal point.</i>				<b>Total Raw Weighted Score =</b>			
<b>Total Raw Weighted Score / Maximum Possible Raw Weighted Score = Raw Weighted Score</b> <b>Raw Weighted Score X 60% = Section C Total Score</b>				<b>Section C Total Score =</b>			
<i>State Use –Evaluator Identification:</i>							

<b>RESPONDENT LEGAL ENTITY NAME:</b>							
<b>Response Page # (Respondent completes)</b>	<b>Item Category</b>	<b>Item Ref.</b>	<p align="center"><b>Section C— Technical Qualifications, Experience &amp; Approach Items</b></p> <p>Please describe if your product meets the below requirement in separate document and, if applicable, explain how the requirement is met. Provide Response Page #.</p> <p>In the event Respondent is invited for an Oral Presentation, Respondent will be provided use cases based on the below requirements and asked to demonstrate how Respondent's product meets the requirements.</p>	<p><b>Response Summary</b></p> <p>Respondent shall complete this column as part of its response and respond with the letter D, P, M, or F for each Item:</p> <p><b>D-</b> Does Not Meet  <b>P-</b> Partially Meets  <b>M-</b> Meets (Completely)  <b>F-</b> Future Release</p>	<b>Item Score</b>	<b>Evaluation Factor</b>	<b>Raw Weighted Score</b>
					<b>THDA USE ONLY</b>		
<p><i>State Use – Solicitation Coordinator Signature, Printed Name &amp; Date:</i></p>							

**COST PROPOSAL & SCORING GUIDE**

*NOTICE: THIS COST PROPOSAL MUST BE COMPLETED EXACTLY AS REQUIRED*

**6.3 COST PROPOSAL SCHEDULE—** The Cost Proposal, detailed below, shall indicate the proposed price for providing goods or services as defined in the Scope of Services of the RFP Attachment 6.6., *Pro Forma* Contract, for the entire contract period. The Cost Proposal shall remain valid for at least 120 days subsequent to the date of the Cost Proposal opening and thereafter in accordance with any contract resulting from this RFP. All monetary amounts shall be in U.S. currency and limited to two (2) places to the right of the decimal point.

**NOTICE:** The Evaluation Factor associated with each compensable unit is for evaluation purposes only. The evaluation factors do NOT and should NOT be construed as any type of volume guarantee or minimum purchase quantity. The evaluation factors shall NOT create rights, interests, or claims of entitlement in the Respondent.

Notwithstanding the cost items herein, pursuant to the second paragraph of the *Pro Forma* Contract, Section C.1. (refer to RFP Attachment 6.6.), “THDA is under no obligation to request any goods or services from the Contractor in any specific dollar amounts or to request any goods or services at all from the Contractor during any period of this Contract.”

This Cost Proposal must be signed, in the space below, by an individual empowered to bind the Respondent to the provisions of this RFP and any contract awarded pursuant to this RFP. If the individual signing this Cost Proposal is not the *President* or *Chief Executive Officer*, the Respondent must attach evidence to the Cost Proposal showing the individual’s authority to legally bind the Respondent.

<b>RESPONDENT SIGNATURE:</b>								
<b>PRINTED NAME &amp; TITLE:</b>								
<b>DATE:</b>								
<b>RESPONDENT LEGAL ENTITY NAME:</b>								
<b>Cost Item Description</b>	<b>Proposed Cost</b>					<b>State Use Only</b>		
	<b>2022</b>	<b>2023</b>	<b>2024</b>	<b>2025</b>	<b>2026</b>	<b>Sum of Cost</b>	<b>Evaluation Factor</b>	<b>Evaluation Cost (cost x factor)</b>
Implementation	\$ / Year						1	
Fee Per Loan	\$ / Fee Per loan						3	
Yearly Licensing	\$ / Year	\$ / Year	\$ / Year	\$ / Year	\$ / Year		1	
Training	\$ / Year	\$ / Year	\$ / Year	\$ / Year	\$ / Year		1	
Annual Maintenance and Support	\$ / Year	\$ / Year	\$ / Year	\$ / Year	\$ / Year		1	

<p><b>EVALUATION COST AMOUNT</b> (sum of evaluation costs above):</p> <p>The Solicitation Coordinator will use this sum and the formula below to calculate the Cost Proposal Score. Numbers rounded to two (2) places to the right of the decimal point will be standard for calculations.</p>	
<p><b>lowest evaluation cost amount from <u>all</u> proposals</b>      <b>x (10%)</b></p> <p><b>evaluation cost amount being evaluated</b>      <b>=</b></p> <p><b>SCORE:</b></p>	
<p><i>State Use – Solicitation Coordinator Signature, Printed Name &amp; Date:</i></p>	

**REFERENCE QUESTIONNAIRE**

**The standard reference questionnaire provided on the following pages of this attachment MUST be completed by all individuals offering a reference for the Respondent.**

The Respondent will be solely responsible for requesting reference questionnaires as required (refer to RFP Attachment 6.2., Technical Response & Evaluation Guide, Section B, Item B.17.), and that they are submitted on time.

## RFP # 31620-00732 REFERENCE QUESTIONNAIRE

## REFERENCE SUBJECT:

The "reference subject" specified above, intends to submit a response to THDA in response to the Request for Proposals (RFP) indicated. As a part of such response, the reference subject must include a number of completed and sealed reference questionnaires (using this form).

Each individual responding to this reference questionnaire is asked to follow these instructions:

- complete this questionnaire (either using the form provided or an exact duplicate of this document);
- sign and date the completed questionnaire; (electronic signature is acceptable)
- Submit the completed questionnaire via email **OR** traditional mail (USPS, UPS, FedEx, etc.)

**If by email:**

- email the reference questionnaire **DIRECTLY** to the RFP Solicitation Coordinator at **ekelley@thda.org**.
- Do NOT add additional THDA email address(es) or Respondent email address(es) to the reference questionnaire email.

**If by traditional mail (USPS, UPS, FedEx):**

- seal the completed, signed, and dated questionnaire in a new standard #10 envelope;
- sign in ink across the sealed portion of the envelope; and
- return the sealed envelope containing the completed questionnaire directly to the reference subject.

(1) **What is the name of the individual, company, organization, or entity responding to this reference questionnaire?**

(2) **Please provide the following information about the individual completing this reference questionnaire on behalf of the above-named individual, company, organization, or entity.**

<b>NAME:</b>	
<b>TITLE:</b>	
<b>TELEPHONE #</b>	
<b>E-MAIL ADDRESS:</b>	

(3) **What goods or services does/did the reference subject provide to your company or organization?**

(4) **What is the level of your overall satisfaction with the reference subject as a vendor of the goods or services described above?**

*Please respond by circling the appropriate number on the scale below.*

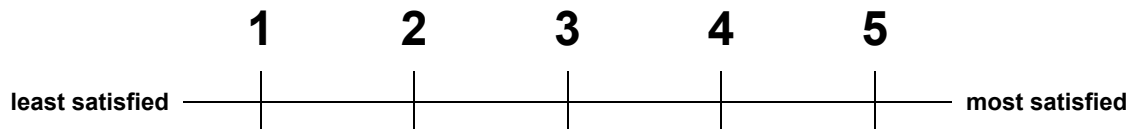
	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	
least satisfied						most satisfied

## RFP # 31620-00732 REFERENCE QUESTIONNAIRE — PAGE 2

If you circled 3 or less above, what could the reference subject have done to improve that rating?

- (5) If the goods or services that the reference subject provided to your company or organization are completed, were the goods or services provided in compliance with the terms of the contract, on time, and within budget? If not, please explain.
- (6) If the reference subject is still providing goods or services to your company or organization, are these goods or services being provided in compliance with the terms of the contract, on time, and within budget? If not, please explain.
- (7) How satisfied are you with the reference subject's ability to perform based on your expectations and according to the contractual arrangements?
- (8) In what areas of goods or service delivery does/did the reference subject excel?
- (9) In what areas of goods or service delivery does/did the reference subject fall short?
- (10) What is the level of your satisfaction with the reference subject's project management structures, processes, and personnel?

*Please respond by circling the appropriate number on the scale below.*



What, if any, comments do you have regarding the score selected above?

## RFP # 31620-00732 REFERENCE QUESTIONNAIRE — PAGE 3

- (11) Considering the staff assigned by the reference subject to deliver the goods or services described in response to question 3 above, how satisfied are you with the technical abilities, professionalism, and interpersonal skills of the individuals assigned?

*Please respond by circling the appropriate number on the scale below.*

	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	
least satisfied						most satisfied

What, if any, comments do you have regarding the score selected above?

- (12) Would you contract again with the reference subject for the same or similar goods or services?

*Please respond by circling the appropriate number on the scale below.*

	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	
least satisfied						most satisfied

What, if any, comments do you have regarding the score selected above?

**REFERENCE SIGNATURE:**

(by the individual completing this request for reference information)

---

(must be the same as the signature across the envelope seal)

**DATE:**



**RFP ATTACHMENT 6.5.**

**SCORE SUMMARY MATRIX**

	<i>RESPONDENT NAME</i>		<i>RESPONDENT NAME</i>		<i>RESPONDENT NAME</i>	
<b>GENERAL QUALIFICATIONS &amp; EXPERIENCE</b> (maximum: § 30)						
<i>EVALUATOR NAME</i>						
<i>EVALUATOR NAME</i>						
<i>REPEAT AS NECESSARY</i>						
	<b>AVERAGE:</b>		<b>AVERAGE:</b>		<b>AVERAGE:</b>	
<b>TECHNICAL QUALIFICATIONS, EXPERIENCE &amp; APPROACH</b> (maximum: § 60)						
<i>EVALUATOR NAME</i>						
<i>EVALUATOR NAME</i>						
<i>REPEAT AS NECESSARY</i>						
	<b>AVERAGE:</b>		<b>AVERAGE:</b>		<b>AVERAGE:</b>	
<b>COST PROPOSAL</b> (maximum: § 10)	<b>SCORE:</b>		<b>SCORE:</b>		<b>SCORE:</b>	
<b>TOTAL RESPONSE EVALUATION SCORE:</b> (maximum: 100)						
<i>Solicitation Coordinator Signature, Printed Name &amp; Date:</i>						

**RFP ATTACHMENT 6.6.**

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**RFP # 31620-00732 *PRO FORMA* CONTRACT**

The *Pro Forma* Contract detailed in following pages of this exhibit contains some “blanks” (signified by descriptions in capital letters) that will be completed with appropriate information in the final contract resulting from the RFP.

**CONTRACT**  
**BETWEEN THE STATE OF TENNESSEE,**  
**TENNESSEE HOUSING DEVELOPMENT AGENCY**  
**AND**  
**CONTRACTOR NAME**

This contract, by and between Tennessee Housing Development Agency (“THDA” or “State”) and **Contractor Legal Entity Name** (“Contractor”), is for the provision of advanced technology Loan Origination System (LOS) software for approving and purchasing non-delegated mortgage loans from approved correspondent lenders, as further defined in the "SCOPE." State and Contractor may be referred to individually as a “Party” or collectively as the “Parties” to this Contract.

The Contractor is **a/an Individual, For-Profit Corporation, Non-Profit Corporation, Special Purpose Corporation Or Association, Partnership, Joint Venture, Or Limited Liability Company.**

Contractor Place of Incorporation or Organization: **Location**

Contractor Cobblestone ID # 7222

**A. SCOPE:**

- A.1. The Contractor shall provide all goods or services and deliverables as required, described, and detailed below and shall meet all service and delivery timelines as specified by this Contract.
- A.2. Definitions. For purposes of this Contract, definitions shall be as follows and as set forth in the Contract:
- a. AI- “Artificial Intelligence” is the simulation of human intelligence processes by computer systems.
  - b. API- “Application Programming Interface” is the process that converts an image of text into a machine-readable text format.
  - c. LOS- “Loan Origination System” is a platform that takes a completed loan application from THDA’s approved lending partners and facilitates the mortgage transaction with the lender to post-closing. The system includes document management, pricing and compliance tools to assist in loan quality and decrease risk.
  - d. OCR- “Optical Character Recognition” is the process that converts an image of text into a machine-readable text format.
  - e. PDD- “Pool Delivery Dataset” is specific to Ginnie Mae’s business model and is a XML file which contains some unique data points needed for pooling loans.
  - f. ULDD- “Uniform Loan Delivery Dataset” is the common set of data elements required by Fannie Mae and Freddie Mac for single-family loan deliveries to Fannie Mae and Freddie Mac.
- A.3. The Contractor shall provide the goods or services detailed below. The Contractor acknowledges that the goods or services detailed below are not comprehensive; complete details and the implementation timeline are included in the Project Plan incorporated by reference into this Contract as Attachment B. The Contractor shall provide a loan origination system that will:
- a. Allow electronic submission of mortgage loan files from approved non-delegated correspondent lenders;
  - b. Provide a module or integrated solution for rate locks and rate lock management;
  - c. Provide an online submission portal for correspondent lenders to lock rates, submit loan files and monitor status of loans;
  - d. Provide an integrated OCR and AI solution for document classification and data verification for electronic documents;
  - e. Provide document classification and data verification and ensure that these features permit the identification of missing documentation in the file;
  - f. Generate letters and documents to be electronically sent to correspondent lenders;
  - g. Provide an integrated workflow process which includes customizable dashboards specific to the user’s role;
  - h. Provide a standalone document storage solution that integrates with the application;

- i. Provide the ability to generate ULDD files for Fannie Mae and Freddie Mac and PDD files for Ginnie Mae;
- j. Provide the ability for eligibility validation to manage/capture income limits and sales price limits;
- k. Generate reports that include, but are not limited to, any entry field in the system;
- l. Provide a module to capture company and user information for correspondent lenders;
- m. Provide a seamless loan onboarding process between the LOS and THDA's servicing system FICS;
- n. Provide an Application Programming Interface to allow integration with other web based applications;
- o. Provide electronic notification internally and externally throughout the workflow; and
- p. Execute via a web-based client; no client-server locally installed applications or Citrix/RDP implementations will be considered.

A.4. Warranty. Contractor represents and warrants that the term of the warranty ("Warranty Period") shall be the greater of the Term of this Contract or any other warranty generally offered by Contractor, its suppliers, or manufacturers to customers of its goods or services. The goods or services provided under this Contract shall conform to the terms and conditions of this Contract throughout the Warranty Period. Any nonconformance of the goods or services to the terms and conditions of this Contract shall constitute a "Defect" and shall be considered "Defective." If Contractor receives notice of a Defect during the Warranty Period, then Contractor shall correct the Defect, at no additional charge.

Contractor represents and warrants that the State is authorized to possess and use all equipment, materials, software, and deliverables provided under this Contract.

Contractor represents and warrants that all goods or services provided under this Contract shall be provided in a timely and professional manner, by qualified and skilled individuals, and in conformity with standards generally accepted in Contractor's industry.

If Contractor fails to provide the goods or services as warranted, then Contractor will re-provide the goods or services at no additional charge. If Contractor is unable or unwilling to re-provide the goods or services as warranted, then the State shall be entitled to recover the fees paid to Contractor for the Defective goods or services. Any exercise of the State's rights under this Section shall not prejudice the State's rights to seek any other remedies available under this Contract or applicable law.

A.5. Inspection and Acceptance. The State shall have the right to inspect all goods or services provided by Contractor under this Contract. If, upon inspection, the State determines that the goods or services are Defective, the State shall notify Contractor, and Contractor shall re-deliver the goods or provide the services at no additional cost to the State. If after a period of thirty (30) days following delivery of goods or performance of services the State does not provide a notice of any Defects, the goods or services shall be deemed to have been accepted by the State.

## **B. TERM OF CONTRACT:**

This Contract shall be effective on **TBD** ("Effective Date") and extend for a period of **sixty (60) months** after the Effective Date ("Term"). The State shall have no obligation for goods or services provided by the Contractor prior to the Effective Date.

## **C. PAYMENT TERMS AND CONDITIONS:**

C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed **DOLLARS (\$TBD)** ("Maximum Liability"). This Contract does not grant the Contractor any exclusive rights. The State does not guarantee that it will buy any minimum quantity of goods or services under this Contract. Subject to the terms and conditions of this Contract, the Contractor will only be paid for goods or services provided under this Contract after a purchase order is issued to Contractor by the State or as otherwise specified by this Contract.

C.2. Compensation Firm. The payment methodology in Section C.3. of this Contract shall constitute the entire compensation due the Contractor for all goods or services provided under this Contract regardless of the difficulty, materials or equipment required. The payment methodology includes all applicable taxes, fees, overhead, and all other direct and indirect costs incurred or to be incurred by the Contractor.

C.3. Payment Methodology. The Contractor shall be compensated based on the payment methodology for goods or services authorized by the State in a total amount as set forth in Section C.1.

a. The Contractor's compensation shall be contingent upon the satisfactory provision of goods or services as set forth in Section A.

b. The Contractor shall be compensated based upon the following payment methodology:

Cost Item Description	Year 1	Year 2	Year 3	Year 4	Year 5
Implementation	\$ / Year				
Fee Per Loan	\$ / Fee Per loan				
Yearly Licensing	\$ / Year	\$ / Year	\$ / Year	\$ / Year	\$ / Year
Training	\$ / Year	\$ / Year	\$ / Year	\$ / Year	\$ / Year
Annual Maintenance and Support	\$ / Year	\$ / Year	\$ / Year	\$ / Year	\$ / Year

C.4. Travel Compensation. The Contractor shall not be compensated or reimbursed for travel time, travel expenses, meals, or lodging.

C.5. Invoice Requirements. The Contractor shall invoice the State only for goods delivered and accepted by the State or services satisfactorily provided at the amounts stipulated in Section C.3., above. Contractor shall submit invoices and necessary supporting documentation, no more frequently than once a month, and no later than thirty (30) days after goods or services have been provided to the following address:

Tennessee Housing Development Agency  
 Andrew Jackson Building  
 502 Deaderick Street, Third Floor  
 Nashville, TN 37243  
 Attn: LeAnn Blankman  
 AP@thda.org

a. Each invoice, on Contractor's letterhead, shall clearly and accurately detail all of the following information (calculations must be extended and totaled correctly):

- (1) Invoice number (assigned by the Contractor);
- (2) Invoice date;
- (3) Contract number (assigned by the State);
- (4) Customer account name: THDA Single Family Loan Operations;
- (5) Customer account number (assigned by the Contractor to the above-referenced Customer);
- (6) Contractor name;
- (7) Contractor Tennessee Edison registration ID number;
- (8) Contractor contact for invoice questions (name, phone, or email);

- (9) Contractor remittance address;
- (10) Description of delivered goods or services provided and invoiced, including identifying information as applicable;
- (11) Number of delivered or completed units, increments, hours, or days as applicable, of each good or service invoiced;
- (12) Applicable payment methodology (as stipulated in Section C.3.) of each good or service invoiced;
- (13) Amount due for each compensable unit of good or service; and
- (14) Total amount due for the invoice period.

b. Contractor's invoices shall:

- (1) Only include charges for goods delivered or services provided as described in Section A and in accordance with payment terms and conditions set forth in Section C;
- (2) Only be submitted for goods delivered or services completed and shall not include any charge for future goods to be delivered or services to be performed;
- (3) Not include Contractor's taxes, which includes without limitation Contractor's sales and use tax, excise taxes, franchise taxes, real or personal property taxes, or income taxes; and
- (4) Include shipping or delivery charges only as authorized in this Contract.

c. The timeframe for payment (or any discounts) begins only when the State is in receipt of an invoice that meets the minimum requirements of this Section C.5.

C.6. Payment of Invoice. A payment by the State shall not prejudice the State's right to object to or question any payment, invoice, or other matter. A payment by the State shall not be construed as acceptance of goods delivered, any part of the services provided, or as approval of any amount invoiced.

C.7. Invoice Reductions. The Contractor's invoice shall be subject to reduction for amounts included in any invoice or payment that is determined by the State, on the basis of audits conducted in accordance with the terms of this Contract, to not constitute proper compensation for goods delivered or services provided.

C.8. Deductions. The State reserves the right to deduct from amounts, which are or shall become due and payable to the Contractor under this or any contract between the Contractor and the State of Tennessee, any amounts that are or shall become due and payable to the State of Tennessee by the Contractor.

C.9. Prerequisite Documentation. The Contractor shall not invoice the State under this Contract until the State has received the following, properly completed documentation.

- a. The Contractor shall complete, sign, and present to the State the "Authorization Agreement for Automatic Deposit Form" provided by the State. By doing so, the Contractor acknowledges and agrees that, once this form is received by the State, payments to the Contractor, under this or any other contract the Contractor has with the State of Tennessee, may be made by ACH; and
- b. The Contractor shall complete, sign, and return to the State the State-provided W-9 form. The taxpayer identification number on the W-9 form must be the same as the Contractor's Federal Employer Identification Number or Social Security Number referenced in the Contractor's Edison registration information.

**D. MANDATORY TERMS AND CONDITIONS:**

D.1. Required Approvals. The State is not bound by this Contract until it is duly approved by the Parties and all appropriate State officials in accordance with applicable Tennessee laws and regulations. Depending upon the specifics of this Contract, this may include approvals by the

Commissioner of Finance and Administration, the Commissioner of Human Resources, the Comptroller of the Treasury, and the Chief Procurement Officer. Approvals shall be evidenced by a signature or electronic approval.

- D.2. Communications and Contacts. All instructions, notices, consents, demands, or other communications required or contemplated by this Contract shall be in writing and shall be made by certified, first class mail, return receipt requested and postage prepaid, by overnight courier service with an asset tracking system, or by email or facsimile transmission with recipient confirmation. All communications, regardless of method of transmission, shall be addressed to the respective Party at the appropriate mailing address, facsimile number, or email address as stated below or any other address provided in writing by a Party.

The State:

Emily Kelley  
Professional Contracts Coordinator III  
Tennessee Housing Development Agency  
502 Deaderick Street, 3<sup>rd</sup> Floor,  
Nashville, TN 37243  
[ekelley@thda.org](mailto:ekelley@thda.org)  
615-815-2063

The Contractor:

TBD

All instructions, notices, consents, demands, or other communications shall be considered effective upon receipt or recipient confirmation as may be required.

- D.3. Modification and Amendment. This Contract may be modified only by a written amendment signed by all Parties and approved by all applicable State officials.
- D.4. Subject to Funds Availability. The Contract is subject to the appropriation and availability of State or federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the State reserves the right to terminate this Contract upon written notice to the Contractor. The State's exercise of its right to terminate this Contract shall not constitute a breach of Contract by the State. Upon receipt of the written notice, the Contractor shall cease all work associated with the Contract. If the State terminates this Contract due to lack of funds availability, the Contractor shall be entitled to compensation for all conforming goods requested and accepted by the State and for all satisfactory and authorized services completed as of the termination date. Should the State exercise its right to terminate this Contract due to unavailability of funds, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages of any description or amount.
- D.5. Termination for Convenience. The State may terminate this Contract for convenience without cause and for any reason. The State shall give the Contractor at least thirty (30) days written notice before the termination date. The Contractor shall be entitled to compensation for all conforming goods delivered and accepted by the State or for satisfactory, authorized services completed as of the termination date. In no event shall the State be liable to the Contractor for compensation for any goods neither requested nor accepted by the State or for any services neither requested by the State nor satisfactorily performed by the Contractor. In no event shall the State's exercise of its right to terminate this Contract for convenience relieve the Contractor of any liability to the State for any damages or claims arising under this Contract.
- D.6. Termination for Cause. If the Contractor fails to properly perform its obligations under this Contract in a timely or proper manner, or if the Contractor materially violates any terms of this Contract ("Breach Condition"), the State shall have the right to immediately terminate the Contract and withhold payments in excess of compensation for completed services or provided goods. Notwithstanding the above, the Contractor shall not be relieved of liability to the State for

damages sustained by virtue of any Breach Condition and the State may seek other remedies allowed at law or in equity for breach of this Contract.

- D.7. Assignment and Subcontracting. The Contractor shall not assign this Contract or enter into a subcontract for any of the goods or services provided under this Contract without the prior written approval of the State. Notwithstanding any use of the approved subcontractors, the Contractor shall be the prime contractor and responsible for compliance with all terms and conditions of this Contract. The State reserves the right to request additional information or impose additional terms and conditions before approving an assignment of this Contract in whole or in part or the use of subcontractors in fulfilling the Contractor's obligations under this Contract.
- D.8. Conflicts of Interest. The Contractor warrants that no part of the Contractor's compensation shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Contractor in connection with any work contemplated or performed under this Contract.

The Contractor acknowledges, understands, and agrees that this Contract shall be null and void if the Contractor is, or within the past six (6) months has been, an employee of the State of Tennessee or if the Contractor is an entity in which a controlling interest is held by an individual who is, or within the past six (6) months has been, an employee of the State of Tennessee.

- D.9. Nondiscrimination. The Contractor hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor on the grounds of handicap or disability, age, race, creed, color, religion, sex, national origin, or any other classification protected by federal or state law. The Contractor shall, upon request, show proof of nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.
- D.10. Prohibition of Illegal Immigrants. The requirements of Tenn. Code Ann. § 12-3-309 addressing the use of illegal immigrants in the performance of any contract to supply goods or services to the state of Tennessee, shall be a material provision of this Contract, a breach of which shall be grounds for monetary and other penalties, up to and including termination of this Contract.
- a. The Contractor agrees that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract. The Contractor shall reaffirm this attestation, in writing, by submitting to the State a completed and signed copy of the document at Attachment A, semi-annually during the Term. If the Contractor is a party to more than one contract with the State, the Contractor may submit one attestation that applies to all contracts with the State. All Contractor attestations shall be maintained by the Contractor and made available to State officials upon request.
  - b. Prior to the use of any subcontractor in the performance of this Contract, and semi-annually thereafter, during the Term, the Contractor shall obtain and retain a current, written attestation that the subcontractor shall not knowingly utilize the services of an illegal immigrant to perform work under this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant to perform work under this Contract. Attestations obtained from subcontractors shall be maintained by the Contractor and made available to State officials upon request.
  - c. The Contractor shall maintain records for all personnel used in the performance of this Contract. Contractor's records shall be subject to review and random inspection at any reasonable time upon reasonable notice by the State.



- d. The Contractor understands and agrees that failure to comply with this section will be subject to the sanctions of Tenn. Code Ann. § 12-3-309 for acts or omissions occurring after its effective date.
  - e. For purposes of this Contract, "illegal immigrant" shall be defined as any person who is not: (i) a United States citizen; (ii) a Lawful Permanent Resident; (iii) a person whose physical presence in the United States is authorized; (iv) allowed by the federal Department of Homeland Security and who, under federal immigration laws or regulations, is authorized to be employed in the U.S.; or (v) is otherwise authorized to provide services under the Contract.
- D.11. Records. The Contractor shall maintain documentation for all charges under this Contract. The books, records, and documents of the Contractor, for work performed or money received under this Contract, shall be maintained for a period of five (5) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the State, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.
- D.12. Monitoring. The Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.
- D.13. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the State as requested.
- D.14. Strict Performance. Failure by any Party to this Contract to require, in any one or more cases, the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the Parties.
- D.15. Independent Contractor. The Parties shall not act as employees, partners, joint venturers, or associates of one another. The Parties are independent contracting entities. Nothing in this Contract shall be construed to create an employer/employee relationship or to allow either Party to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one Party are not employees or agents of the other Party.
- D.16. Patient Protection and Affordable Care Act. The Contractor agrees that it will be responsible for compliance with the Patient Protection and Affordable Care Act ("PPACA") with respect to itself and its employees, including any obligation to report health insurance coverage, provide health insurance coverage, or pay any financial assessment, tax, or penalty for not providing health insurance. The Contractor shall indemnify the State and hold it harmless from any costs to the State arising from Contractor's failure to fulfill its PPACA responsibilities for itself or its employees.
- D.17. Limitation of State's Liability. The State shall have no liability except as specifically provided in this Contract. In no event will the State be liable to the Contractor or any other party for any lost revenues, lost profits, loss of business, decrease in the value of any securities or cash position, time, goodwill, or any indirect, special, incidental, punitive, exemplary or consequential damages of any nature, whether based on warranty, contract, statute, regulation, tort (including but not limited to negligence), or any other legal theory that may arise under this Contract or otherwise. The State's total liability under this Contract (including any exhibits, schedules, amendments or other attachments to the Contract) or otherwise shall under no circumstances exceed the Maximum Liability. This limitation of liability is cumulative and not per incident.
- D.18. Limitation of Contractor's Liability. In accordance with Tenn. Code Ann. § 12-3-701, the Contractor's liability for all claims arising under this Contract shall be limited to an amount equal to two (2) times the Maximum Liability amount detailed in Section C.1. and as may be amended,

PROVIDED THAT in no event shall this Section limit the liability of the Contractor for: (i) intellectual property or any Contractor indemnity obligations for infringement for third-party intellectual property rights; (ii) any claims covered by any specific provision in the Contract providing for liquidated damages; or (iii) any claims for intentional torts, criminal acts, fraudulent conduct, or acts or omissions that result in personal injuries or death. For clarity, except as otherwise expressly set forth in this Section, Contractor's indemnification obligations and other remedies available under this Contract are subject to the limitations on liability set forth in this Section.

- D.19. Hold Harmless. The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims, liabilities, losses, and causes of action which may arise, accrue, or result to any person, firm, corporation, or other entity which may be injured or damaged as a result of acts, omissions, or negligence on the part of the Contractor, its employees, or any person acting for or on its or their behalf relating to this Contract. The Contractor further agrees it shall be liable for the reasonable cost of attorneys' fees, court costs, expert witness fees, and other litigation expenses for the State to enforce the terms of this Contract.

In the event of any suit or claim, the Parties shall give each other immediate notice and provide all necessary assistance to respond. The failure of the State to give notice shall only relieve the Contractor of its obligations under this Section to the extent that the Contractor can demonstrate actual prejudice arising from the failure to give notice. This Section shall not grant the Contractor, through its attorneys, the right to represent the State in any legal matter, as the right to represent the State is governed by Tenn. Code Ann. § 8-6-106.

- D.20. HIPAA Compliance. The State and Contractor shall comply with obligations under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), Health Information Technology for Economic and Clinical Health ("HITECH") Act and any other relevant laws and regulations regarding privacy (collectively the "Privacy Rules"). The obligations set forth in this Section shall survive the termination of this Contract.

- a. Contractor warrants to the State that it is familiar with the requirements of the Privacy Rules, and will comply with all applicable requirements in the course of this Contract.
- b. Contractor warrants that it will cooperate with the State, including cooperation and coordination with State privacy officials and other compliance officers required by the Privacy Rules, in the course of performance of the Contract so that both parties will be in compliance with the Privacy Rules.
- c. The State and the Contractor will sign documents, including but not limited to business associate agreements, as required by the Privacy Rules and that are reasonably necessary to keep the State and Contractor in compliance with the Privacy Rules. This provision shall not apply if information received or delivered by the parties under this Contract is NOT "protected health information" as defined by the Privacy Rules, or if the Privacy Rules permit the parties to receive or deliver the information without entering into a business associate agreement or signing another document.
- d. The Contractor will indemnify the State and hold it harmless for any violation by the Contractor or its subcontractors of the Privacy Rules. This includes the costs of responding to a breach of protected health information, the costs of responding to a government enforcement action related to the breach, and any fines, penalties, or damages paid by the State because of the violation.

- D.21. Tennessee Consolidated Retirement System. Subject to statutory exceptions contained in Tenn. Code Ann. §§ 8-36-801, *et seq.*, the law governing the Tennessee Consolidated Retirement System ("TCRS"), provides that if a retired member of TCRS, or of any superseded system administered by TCRS, or of any local retirement fund established under Tenn. Code Ann. §§ 8-35-101, *et seq.*, accepts State employment, the member's retirement allowance is suspended during the period of the employment. Accordingly and notwithstanding any provision of this

Contract to the contrary, the Contractor agrees that if it is later determined that the true nature of the working relationship between the Contractor and the State under this Contract is that of “employee/employer” and not that of an independent contractor, the Contractor, if a retired member of TCRS, may be required to repay to TCRS the amount of retirement benefits the Contractor received from TCRS during the Term.

- D.22. Tennessee Department of Revenue Registration. The Contractor shall comply with all applicable registration requirements contained in Tenn. Code Ann. §§ 67-6-601 – 608. Compliance with applicable registration requirements is a material requirement of this Contract.
- D.23. Debarment and Suspension. The Contractor certifies, to the best of its knowledge and belief, that it, its current and future principals, its current and future subcontractors and their principals:
- a. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department or agency;
  - b. have not within a three (3) year period preceding this Contract been convicted of, or had a civil judgment rendered against them from commission of fraud, or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or grant under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;
  - c. are not presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses detailed in section b. of this certification; and
  - d. have not within a three (3) year period preceding this Contract had one or more public transactions (federal, state, or local) terminated for cause or default.

The Contractor shall provide immediate written notice to the State if at any time it learns that there was an earlier failure to disclose information or that due to changed circumstances, its principals or the principals of its subcontractors are excluded, disqualified, or presently fall under any of the prohibitions of sections a-d.

- D.24. Force Majeure. “Force Majeure Event” means fire, flood, earthquake, elements of nature or acts of God, wars, riots, civil disorders, rebellions or revolutions, acts of terrorism or any other similar cause beyond the reasonable control of the Party except to the extent that the non-performing Party is at fault in failing to prevent or causing the default or delay, and provided that the default or delay cannot reasonably be circumvented by the non-performing Party through the use of alternate sources, workaround plans or other means. A strike, lockout or labor dispute shall not excuse either Party from its obligations under this Contract. Except as set forth in this Section, any failure or delay by a Party in the performance of its obligations under this Contract arising from a Force Majeure Event is not a default under this Contract or grounds for termination. The non-performing Party will be excused from performing those obligations directly affected by the Force Majeure Event, and only for as long as the Force Majeure Event continues, provided that the Party continues to use diligent, good faith efforts to resume performance without delay. The occurrence of a Force Majeure Event affecting Contractor’s representatives, suppliers, subcontractors, customers or business apart from this Contract is not a Force Majeure Event under this Contract. Contractor will promptly notify the State of any delay caused by a Force Majeure Event (to be confirmed in a written notice to the State within one (1) day of the inception of the delay) that a Force Majeure Event has occurred, and will describe in reasonable detail the nature of the Force Majeure Event. If any Force Majeure Event results in a delay in Contractor’s performance longer than forty-eight (48) hours, the State may, upon notice to Contractor: (a) cease payment of the fees for the affected obligations until Contractor resumes performance of the affected obligations; or (b) immediately terminate this Contract or any purchase order, in whole or in part, without further payment except for fees then due and payable. Contractor will

not increase its charges under this Contract or charge the State any fees other than those provided for in this Contract as the result of a Force Majeure Event.

- D.25. State and Federal Compliance. The Contractor shall comply with all State and federal laws and regulations applicable to Contractor in the Contractor's performance of this Contract.
- D.26. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee, without regard to its conflict or choice of law rules. The Tennessee Claims Commission or the state or federal courts in Tennessee shall be the venue for all claims, disputes, or disagreements arising under this Contract. The Contractor acknowledges and agrees that any rights, claims, or remedies against the State of Tennessee or its employees arising under this Contract shall be subject to and limited to those rights and remedies available under Tenn. Code Ann. §§ 9-8-101 - 408.
- D.27. Entire Agreement. This Contract is complete and contains the entire understanding between the Parties relating to its subject matter, including all the terms and conditions of the Parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the Parties, whether written or oral.
- D.28. Severability. If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions of this Contract shall not be affected and shall remain in full force and effect. The terms and conditions of this Contract are severable.
- D.29. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.
- D.30. Incorporation of Additional Documents. Each of the following documents is included as a part of this Contract by reference. In the event of a discrepancy or ambiguity regarding the Contractor's duties, responsibilities, and performance under this Contract, these items shall govern in order of precedence below:
- a. any amendment to this Contract, with the latter in time controlling over any earlier amendments;
  - b. this Contract with any attachments or exhibits (excluding the items listed at subsections c. through f., below), which includes Attachment A and Attachment B;
  - c. any clarifications of or addenda to the Contractor's proposal seeking this Contract;
  - d. the State solicitation, as may be amended, requesting responses in competition for this Contract;
  - e. any technical specifications provided to proposers during the procurement process to award this Contract; and
  - f. the Contractor's response seeking this Contract.
- D.31. Iran Divestment Act. The requirements of Tenn. Code Ann. § 12-12-101, *et seq.*, addressing contracting with persons as defined at Tenn. Code Ann. §12-12-103(5) that engage in investment activities in Iran, shall be a material provision of this Contract. The Contractor certifies, under penalty of perjury, that to the best of its knowledge and belief that it is not on the list created pursuant to Tenn. Code Ann. § 12-12-106.
- D.32. Insurance. Contractor shall maintain insurance coverage as specified in this Section. The State reserves the right to amend or require additional insurance coverage, coverage amounts, and endorsements required under this Contract. Contractor's failure to maintain or submit evidence of insurance coverage, as required, is a material breach of this Contract. If Contractor loses insurance coverage, fails to renew coverage, or for any reason becomes uninsured during the Term, Contractor shall immediately notify the State. All insurance companies providing coverage must be: (a) acceptable to the State; (b) authorized by the Tennessee Department of Commerce and Insurance ("TDCI"); and (c) rated A- / VII or better by A.M. Best. All coverage must be on a primary basis and noncontributory with any other insurance or self-insurance carried by the State. Contractor agrees to name the State as an additional insured on any insurance policy with the exception of workers' compensation (employer liability) and professional liability (errors and

omissions) insurance. All policies must contain an endorsement for a waiver of subrogation in favor of the State. Any deductible or self insured retention (“SIR”) over fifty thousand dollars (\$50,000) must be approved by the State. The deductible or SIR and any premiums are the Contractor’s sole responsibility. The Contractor agrees that the insurance requirements specified in this Section do not reduce any liability the Contractor has assumed under this Contract including any indemnification or hold harmless requirements.

To achieve the required coverage amounts, a combination of an otherwise deficient specific policy and an umbrella policy with an aggregate meeting or exceeding the required coverage amounts is acceptable. For example: If the required policy limit under this Contract is for two million dollars (\$2,000,000) in coverage, acceptable coverage would include a specific policy covering one million dollars (\$1,000,000) combined with an umbrella policy for an additional one million dollars (\$1,000,000). If the deficient underlying policy is for a coverage area without aggregate limits (generally Automobile Liability and Employers’ Liability Accident), Contractor shall provide a copy of the umbrella insurance policy documents to ensure that no aggregate limit applies to the umbrella policy for that coverage area. In the event that an umbrella policy is being provided to achieve any required coverage amounts, the umbrella policy shall be accompanied by an endorsement at least as broad as the Insurance Services Office, Inc. (also known as “ISO”) “Noncontributory—Other Insurance Condition” endorsement or shall be written on a policy form that addresses both the primary and noncontributory basis of the umbrella policy if the State is otherwise named as an additional insured.

Contractor shall provide the State a certificate of insurance (“COI”) evidencing the coverages and amounts specified in this Section. The COI must be on a form approved by the TDCI (standard ACORD form preferred). The COI must list each insurer’s National Association of Insurance Commissioners (NAIC) number and be signed by an authorized representative of the insurer. The COI must list the State of Tennessee – CPO Risk Manager, 312 Rosa L. Parks Ave., 3<sup>rd</sup> floor Central Procurement Office, Nashville, TN 37243 as the certificate holder. Contractor shall provide the COI ten (10) business days prior to the Effective Date and again thirty (30) calendar days before renewal or replacement of coverage. Contractor shall provide the State evidence that all subcontractors maintain the required insurance or that subcontractors are included under the Contractor’s policy. At any time, the State may require Contractor to provide a valid COI. The Parties agree that failure to provide evidence of insurance coverage as required is a material breach of this Contract. If Contractor self-insures, then a COI will not be required to prove coverage. Instead Contractor shall provide a certificate of self-insurance or a letter, on Contractor’s letterhead, detailing its coverage, policy amounts, and proof of funds to reasonably cover such expenses. The State reserves the right to require complete copies of all required insurance policies, including endorsements required by these specifications, at any time.

The State agrees that it shall give written notice to the Contractor as soon as practicable after the State becomes aware of any claim asserted or made against the State, but in no event later than thirty (30) calendar days after the State becomes aware of such claim. The failure of the State to give notice shall only relieve the Contractor of its obligations under this Section to the extent that the Contractor can demonstrate actual prejudice arising from the failure to give notice. This Section shall not grant the Contractor or its insurer, through its attorneys, the right to represent the State in any legal matter, as the right to represent the State is governed by Tenn. Code Ann. § 8-6-106.

**The insurance obligations under this Contract shall be: (1)—all the insurance coverage and policy limits carried by the Contractor; or (2)—the minimum insurance coverage requirements and policy limits shown in this Contract; whichever is greater. Any insurance proceeds in excess of or broader than the minimum required coverage and minimum required policy limits, which are applicable to a given loss, shall be available to the State. No representation is made that the minimum insurance requirements of the Contract are sufficient to cover the obligations of the Contractor arising under this Contract. The Contractor shall obtain and maintain, at a minimum, the following insurance coverages and policy limits.**

a. Commercial General Liability (“CGL”) Insurance

- 1) The Contractor shall maintain CGL, which shall be written on an ISO Form CG 00 01 occurrence form (or a substitute form providing equivalent coverage) and shall cover liability arising from property damage, premises and operations products and completed operations, bodily injury, personal and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).

The Contractor shall maintain single limits not less than **one million dollars (\$1,000,000)** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this policy or location of occurrence or the general aggregate limit shall be twice the required occurrence limit.

b. Workers’ Compensation and Employer Liability Insurance

- 1) For Contractors statutorily required to carry workers’ compensation and employer liability insurance, the Contractor shall maintain:

- i. Workers’ compensation in an amount not less than **one million dollars (\$1,000,000)** including employer liability of one million dollars (**\$1,000,000**) per accident for bodily injury by accident, **one million dollars (\$1,000,000)** policy limit by disease, and **one million dollars (\$1,000,000)** per employee for bodily injury by disease.

- 2) If the Contractor certifies that it is exempt from the requirements of Tenn. Code Ann. §§ 50-6-101 – 103, then the Contractor shall furnish written proof of such exemption for one or more of the following reasons:

- i. The Contractor employs fewer than five (5) employees;
- ii. The Contractor is a sole proprietor;
- iii. The Contractor is in the construction business or trades with no employees;
- iv. The Contractor is in the coal mining industry with no employees;
- v. The Contractor is a state or local government; or
- vi. The Contractor self-insures its workers’ compensation and is in compliance with the TDCI rules and Tenn. Code Ann. § 50-6-405.

c. Automobile Liability Insurance

- 1) The Contractor shall maintain automobile liability insurance which shall cover liability arising out of any automobile (including owned, leased, hired, and non-owned automobiles).
- 2) The Contractor shall maintain bodily injury/property damage with a limit not less than **one million dollars (\$1,000,000)** per occurrence or combined single limit.

d. Technology Professional Liability (Errors & Omissions)/Cyber Liability Insurance

- 1) The Contractor shall maintain technology professional liability (errors & omissions)/cyber liability insurance appropriate to the Contractor’s profession in an amount not less than **five million dollars (\$5,000,000)** per occurrence or claim and **five million dollars (\$5,000,000)** annual aggregate, covering all acts, claims,

errors, omissions, negligence, infringement of intellectual property (including copyright, patent and trade secret); network security and privacy risks, including but not limited to unauthorized access, failure of security, information theft, damage to destruction of or alteration of electronic information, breach of privacy perils, wrongful disclosure and release of private information, collection, or other negligence in the handling of confidential information, and including coverage for related regulatory fines, defenses, and penalties.

e. Crime Insurance

- 1) The Contractor shall maintain crime insurance, which shall be written on a “loss sustained form” or “loss discovered form” providing coverage for third party fidelity, including cyber theft and extortion. The policy must allow for reporting of circumstances or incidents that may give rise to future claims, include an extended reporting period of no less than two (2) years with respect to events which occurred but were not reported during the term of the policy, and not contain a condition requiring an arrest or conviction.

Any crime insurance policy shall have a limit not less than **one million dollars (\$1,000,000)** per claim and **one million dollars (\$1,000,000)** in the aggregate. Any crime insurance policy shall contain a Social Engineering Fraud Endorsement with a limit of not less than **two hundred and fifty thousand dollars (\$250,000)**. This insurance may be written on a claims-made basis, but in the event that coverage is cancelled or non-renewed, the Contractor shall purchase an extended reporting or “tail coverage” of at least two (2) years after the Term.

- D.33. Major Procurement Contract Sales and Use Tax. Pursuant to Tenn. Code Ann. § 4-39-102 and to the extent applicable, the Contractor and the Contractor’s subcontractors shall remit sales and use taxes on the sales of goods or services that are made by the Contractor or the Contractor’s subcontractors and that are subject to tax.
- D.34. Confidentiality of Records. Strict standards of confidentiality of records and information shall be maintained in accordance with applicable state and federal law. All material and information, regardless of form, medium or method of communication, provided to the Contractor by the State or acquired by the Contractor on behalf of the State that is regarded as confidential under state or federal law shall be regarded as “Confidential Information.” Nothing in this Section shall permit Contractor to disclose any Confidential Information, regardless of whether it has been disclosed or made available to the Contractor due to intentional or negligent actions or inactions of agents of the State or third parties. Confidential Information shall not be disclosed except as required or permitted under state or federal law. Contractor shall take all necessary steps to safeguard the confidentiality of such material or information in conformance with applicable state and federal law.

The obligations set forth in this Section shall survive the termination of this Contract.

- D.35. Boycott of Israel. The Contractor certifies that it is not currently engaged in, and covenants that it will not, for the duration of the Contract, engage in a Boycott of Israel, as that term is defined in Public Chapter No. 775.

**E. SPECIAL TERMS AND CONDITIONS:**

- E.1. Conflicting Terms and Conditions. Should any of these special terms and conditions conflict with any other terms and conditions of this Contract, the special terms and conditions shall be subordinate to the Contract’s other terms and conditions.
- E.2. Contractor Commitment to Diversity. The Contractor shall comply with and make reasonable business efforts to exceed the commitment to diversity represented by the Contractor’s Response to 31620-00732 (Attachment C) and resulting in this Contract.

The Contractor shall assist the State in monitoring the Contractor's performance of this commitment by providing, as requested, a monthly report of participation in the performance of this Contract by small business enterprises and businesses owned by minorities, women, service-disabled veterans, and persons with disabilities. Such reports shall be provided to the State of Tennessee Governor's Office of Diversity Business Enterprise in the TN Diversity Software available online at:

<https://tn.diversitysoftware.com/FrontEnd/StartCertification.asp?TN=tn&XID=9810>.

- E.3. Intellectual Property Indemnity. The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims or suits which may be brought against the State concerning or arising out of any claim of an alleged patent, copyright, trade secret or other intellectual property infringement. In any such claim or action brought against the State, the Contractor shall satisfy and indemnify the State for the amount of any settlement or final judgment, and the Contractor shall be responsible for all legal or other fees or expenses incurred by the State arising from any such claim. The State shall give the Contractor notice of any such claim or suit, however, the failure of the State to give such notice shall only relieve Contractor of its obligations under this Section to the extent Contractor can demonstrate actual prejudice arising from the State's failure to give notice. This Section shall not grant the Contractor, through its attorneys, the right to represent the State of Tennessee in any legal matter, as provided in Tenn. Code Ann. § 8-6-106.

In addition to the above indemnity, if the State's use of any deliverable, or any portion thereof, provided under this Contract, is or is likely to be enjoined by order of a court of competent jurisdiction as such an infringement or unauthorized use, the Contractor, at its expense, shall: (x) procure for the State the continued use of such deliverable; (y) replace such deliverable with a non-infringing counterpart; or (z) modify such deliverable so it becomes non-infringing; provided that, if (y) or (z) is the option chosen by the Contractor, the replacement or modified deliverable must be capable of performing substantially the same function. Notwithstanding the foregoing, the State retains the right to terminate the Contract in accordance with Section D.6 hereunder in the event of such infringement or unauthorized use, and any such exercise of these allowable options by Contractor shall not relieve Contractor of its indemnity obligations under this Section.

The forgoing indemnity does not apply to the extent that the infringement arises from the State's: (i) use of the deliverable not in accordance with instructions, documentations, or specifications ("Misuse"); (ii) alteration, modification or revision of the Deliverables not expressly authorized by the Contractor ("Alteration"); (iii) failure to use or implement corrections or enhancements to the Deliverables made available by the Contractor to the State at no additional cost to the State, except where such failure to use or implement corrections or enhancements is a result of State's termination in accordance with the preceding paragraph; or (iv) combination of the Deliverables with materials not provided, specified, or approved by the Contractor.

- E.4. Partial Takeover of Contract. The State may, at its convenience and without cause, exercise a partial takeover of any service that the Contractor is obligated to perform under this Contract, including any service which is the subject of a subcontract between Contractor and a third party (a "Partial Takeover"). A Partial Takeover of this Contract by the State shall not be deemed a breach of contract. The Contractor shall be given at least thirty (30) days prior written notice of a Partial Takeover. The notice shall specify the areas of service the State will assume and the date the State will be assuming. The State's exercise of a Partial Takeover shall not alter the Contractor's other duties and responsibilities under this Contract. The State reserves the right to withhold from the Contractor any amounts the Contractor would have been paid but for the State's exercise of a Partial Takeover. The amounts shall be withheld effective as of the date the State exercises its right to a Partial Takeover. The State's exercise of its right to a Partial Takeover of this Contract shall not entitle the Contractor to any actual, general, special, incidental, consequential, or any other damages irrespective of any description or amount.



E.5. Contractor Hosted Services Confidential Data, Audit, and Other Requirements

- a. “Confidential THDA Data” is defined as data deemed confidential by State or Federal statute or regulation. The Contractor shall protect Confidential THDA Data as follows:
- (1) The Contractor shall ensure that all Confidential THDA Data is housed in the continental United States, inclusive of backup data.
  - (2) The Contractor shall encrypt Confidential THDA Data at rest and in transit using the current version of Federal Information Processing Standard (“FIPS”) 140-2 validated encryption technologies.
  - (3) The Contractor must annually perform Penetration Tests and Vulnerability Assessments against its Processing Environment. “Processing Environment” shall mean the combination of software and hardware on which the Application runs. “Application” shall mean the computer code that supports and accomplishes the State’s requirements as set forth in this Contract. “Penetration Tests” shall be in the form of attacks on the Contractor’s computer system, with the purpose of discovering security weaknesses which have the potential to gain access to the Processing Environment’s features and data. The “Vulnerability Assessment” shall be designed and executed to define, identify, and classify the security holes (vulnerabilities) in the Processing Environment. The Contractor shall allow the State, at its option, to perform Penetration Tests and Vulnerability Assessments on the Processing Environment.
  - (4) Upon State request, the Contractor shall provide a copy of all Confidential THDA Data it holds. The Contractor shall provide such data on media and in a format determined by the State.
  - (5) Upon termination of this Contract and in consultation with the State, the Contractor shall destroy all Confidential State THDA it holds (including any copies such as backups) in accordance with the current version of National Institute of Standards and Technology (“NIST”) Special Publication 800-88. The Contractor shall provide a written confirmation of destruction to the State within ten (10) business days after destruction.

E.6. Software License Warranty. Contractor grants a license to the State to use all software provided under this Contract in the course of the State’s business and purposes.

E.7. Software Support and Maintenance Warranty. Contractor shall provide to the State all software upgrades, modifications, bug fixes, or other improvements in its software that it makes generally available to its customers.

E.8. Prohibited Advertising or Marketing. The Contractor shall not suggest or imply in advertising or marketing materials that Contractor’s goods or services are endorsed by the State. The restrictions on Contractor advertising or marketing materials under this Section shall survive the termination of this Contract.

E.9. Personally Identifiable Information. While performing its obligations under this Contract, Contractor may have access to Personally Identifiable Information held by the State (“PII”). For the purposes of this Contract, “PII” includes “Nonpublic Personal Information” as that term is defined in Title V of the Gramm-Leach-Bliley Act of 1999 or any successor federal statute, and the rules and regulations thereunder, all as may be amended or supplemented from time to time (“GLBA”) and personally identifiable information and other data protected under any other applicable laws, rule or regulation of any jurisdiction relating to disclosure or use of personal information (“Privacy Laws”). Contractor agrees it shall not do or omit to do anything which would cause the State to be in breach of any Privacy Laws. Contractor shall, and shall cause its

employees, agents and representatives to: (i) keep PII confidential and may use and disclose PII only as necessary to carry out those specific aspects of the purpose for which the PII was disclosed to Contractor and in accordance with this Contract, GLBA and Privacy Laws; and (ii) implement and maintain appropriate technical and organizational measures regarding information security to: (A) ensure the security and confidentiality of PII; (B) protect against any threats or hazards to the security or integrity of PII; and (C) prevent unauthorized access to or use of PII. Contractor shall immediately notify State: (1) of any disclosure or use of any PII by Contractor or any of its employees, agents and representatives in breach of this Contract; and (2) of any disclosure of any PII to Contractor or its employees, agents and representatives where the purpose of such disclosure is not known to Contractor or its employees, agents and representatives. The State reserves the right to review Contractor's policies and procedures used to maintain the security and confidentiality of PII and Contractor shall, and cause its employees, agents and representatives to, comply with all reasonable requests or directions from the State to enable the State to verify or ensure that Contractor is in full compliance with its obligations under this Contract in relation to PII. Upon termination or expiration of the Contract or at the State's direction at any time in its sole discretion, whichever is earlier, Contractor shall immediately return to the State any and all PII which it has received under this Contract and shall destroy all records of such PII.

The Contractor shall report to the State any instances of unauthorized access to or potential disclosure of PII in the custody or control of Contractor ("Unauthorized Disclosure") that come to the Contractor's attention. Any such report shall be made by the Contractor within twenty-four (24) hours after the Unauthorized Disclosure has come to the attention of the Contractor. Contractor shall take all necessary measures to halt any further Unauthorized Disclosures. The Contractor, at the sole discretion of the State, shall provide no cost credit monitoring services for individuals whose PII was affected by the Unauthorized Disclosure. The Contractor shall bear the cost of notification to all individuals affected by the Unauthorized Disclosure, including individual letters and public notice. The remedies set forth in this Section are not exclusive and are in addition to any claims or remedies available to this State under this Contract or otherwise available at law. The obligations set forth in this Section shall survive the termination of this Contract.

- E.10. Survival. The terms, provisions, representations, and warranties contained in this Contract which by their sense and context are intended to survive the performance and termination of this Contract, shall so survive the completion of performance and termination of this Contract.
- E.11. Equal Employment Opportunity. During the performance of this Contract, the Contractor agrees as follows:
- a. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.
  - b. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
  - c. The Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a

part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

- d. The Contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- e. The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- f. The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- g. In the event of the Contractor's non-compliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- h. The Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, That if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry

out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

- E.12. Americans with Disabilities Act. The Contractor must comply with the Americans with Disabilities Act (ADA) of 1990, as amended, including implementing regulations codified at 28 CFR Part 35 "Nondiscrimination on the Basis of Disability in State and Local Government Services" and at 28 CFR Part 36 "Nondiscrimination on the Basis of Disability in Public Accommodations and Commercial Facilities," and any other laws or regulations governing the provision of services to persons with a disability, as applicable. For more information, please visit the ADA website: <http://www.ada.gov>.
- E.13. Additional lines, items, or options. At its sole discretion, the State may make written requests to the Contractor to add lines, items, or options that are needed and within the RFP requirements and/or Scope but were not included in the original Contract. Such lines, items, or options will be added to the Contract through a Memorandum of Understanding ("MOU"), not an amendment.
- a. After the Contractor receives a written request to add lines, items, or options, the Contractor shall have ten (10) business days to respond with a written proposal. The Contractor's written proposal shall include:
    - (1) The effect, if any, of adding the lines, items, or options on the other goods or services required under the Contract;
    - (2) Any pricing related to the new lines, items, or options;
    - (3) The expected effective date for the availability of the new lines, items, or options; and
    - (4) Any additional information requested by the State.
  - b. The State may negotiate the terms of the Contractor's proposal by requesting revisions to the proposal.
  - c. To indicate acceptance of a proposal, the State will sign it. The signed proposal shall constitute a MOU between the Parties, and the lines, items, or options shall be incorporated into the Contract as if set forth verbatim.
  - d. Only after a MOU has been executed shall the Contractor perform or deliver the new lines, items, or options.

**IN WITNESS WHEREOF,**

**TBD.:**

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**CONTRACTOR SIGNATURE**

**DATE**

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**PRINTED NAME AND TITLE OF CONTRACTOR SIGNATORY (above)**

**TENNESSEE HOUSING DEVELOPMENT AGENCY:**

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**RALPH M. PERREY, EXECUTIVE DIRECTOR**

**DATE**

**ATTACHMENT A****ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE**

<b>SUBJECT CONTRACT NUMBER:</b>	
<b>CONTRACTOR LEGAL ENTITY NAME:</b>	TBD
<b>EDISON VENDOR IDENTIFICATION NUMBER:</b>	N/A

**The Contractor, identified above, does hereby attest, certify, warrant, and assure that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract.**

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**CONTRACTOR SIGNATURE**

NOTICE: This attestation MUST be signed by an individual empowered to contractually bind the Contractor. Attach evidence documenting the individual's authority to contractually bind the Contractor, unless the signatory is the Contractor's chief executive or president.

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**PRINTED NAME AND TITLE OF SIGNATORY**


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**DATE OF ATTESTATION**