



STATE OF TENNESSEE
DEPARTMENT OF COMMERCE AND INSURANCE

REQUEST FOR PROPOSALS
FOR
ERRORS AND OMISSIONS INSURANCE COVERAGE
FOR LICENSEES OF
THE TENNESSEE REAL ESTATE COMMISSION

RFP # 33501-179101

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1. INTRODUCTION

The State of Tennessee, Department of Commerce and Insurance, hereinafter referred to as "the State," has issued this Request for Proposals (RFP) to define minimum contract requirements; solicit responses; detail response requirements; and, outline the State's process for evaluating responses and selecting a contractor to provide the needed goods or services.

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

1.1 Statement of Procurement Purpose

The State is seeking a contract for the provision of errors and omissions insurance policy for the following licensees of the Tennessee Real Estate Commission: real estate broker, affiliate broker, real estate firm and time share salesperson. The policy will have a \$1,000 deductible, a per-claim liability limit of \$100,000, and an aggregate annual liability limit of \$300,000. Additional coverage will be made available to licensees under an endorsement increasing the per-claim liability limit of the policy to \$250,000 with an annual aggregate maximum of \$750,000.

Contractor will also provide optional coverage for real estate appraisal activities for real estate brokers, affiliate brokers and time share salespersons also licensed as real estate appraisers.

Contractor will provide all administrative services associated with the insurance coverage provided, as specified in Section A of Attachment 6.6 of this RFP, including, but not limited to: providing certificates of coverage, preparing reports, and sending out mailers and information brochures to licensees.

The applicable statute and rules can be found at the following website:

<http://www.tn.gov/commerce/section/real-estate-commission>

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

The RFP Attachment 6.6., *Pro Forma* Contract details the State'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. The State has assigned the following RFP identification number that must be referenced in all communications regarding this RFP:

RFP # 33501-179101

1.4.2. **Unauthorized contact about this RFP with employees or officials of the State 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:

Stephanie Crenshaw, Assistant General Counsel
Department of Commerce and Insurance
500 James Robertson Parkway
Nashville, Tennessee 37243
ci.procurement@tn.gov
Telephone: (615) 741-9730
Fax: (615) 741-4000

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, Tennessee service-disabled veteran owned, and small businesses as well as general, public information relating to this RFP (visit <http://www.tn.gov/generalservices/article/godbe-general-contacts> for contact information); and
- b. the following individual designated by the State 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:

Maliaka Bass, Deputy General Counsel
Department of Commerce and Insurance
500 James Robertson Parkway
Nashville, Tennessee 37243
maliaka.bass@tn.gov
Telephone (615) 741-2199
Fax: (615) 741-4000

1.4.3. Only the State'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 the State 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 the State. The State 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 the State by a specified deadline is not a substitute for the State's actual receipt of a communication or response.

- 1.4.6. The State will convey all official responses and communications related to this RFP to the prospective Respondents from whom the State has received a Notice of Intent to Respond (refer to RFP Section 1.7).
- 1.4.7. The State 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 the State. For internet posting, please refer to the following website: <http://tn.gov/generalservices/article/request-for-proposals-rfp-opportunities>.
- 1.4.8. The State 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. The State's official, written responses will constitute an amendment of this RFP.
- 1.4.9. Any data or factual information provided by the State (in this RFP, an RFP amendment or any other communication relating to this RFP) is for informational purposes only. The State 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 the State. The State 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 the State 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 the State, 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
- 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 the State receives a response no later than the response Deadline time and date detailed in the RFP Section 2, Schedule of Events. A response must respond, as required, to this RFP (including its attachments) as may be amended. The State 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 the State of Tennessee. 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 the State's best estimate for this RFP.

EVENT	TIME (central time zone)	DATE
1. RFP Issued		August 1, 2016
2. Disability Accommodation Request Deadline	2:00 p.m.	August 5, 2016
3. Notice of Intent to Respond Deadline	2:00 p.m.	August 9, 2016
4. Written "Questions & Comments" Deadline	2:00 p.m.	August 15, 2016
5. State Response to Written "Questions & Comments"		August 19, 2016
6. Response Deadline	2:00 p.m.	August 26, 2016
7. State Completion of Technical Response Evaluations		September 2, 2016
8. State Opening & Scoring of Cost Proposals	2:00 p.m.	September 6, 2016
9. State Notice of Intent to Award Released <u>and</u> RFP Files Opened for Public Inspection	2:00 p.m.	September 9, 2016
10. End of Open File Period		September 16, 2016
11. State sends contract to Contractor for signature		September 19, 2016
12. Contractor Signature Deadline	2:00 p.m.	September 23, 2016

2.2. **The State 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 the State will communicate such to prospective Respondents from whom the State has received a Notice of Intent to Respond (refer to section 1.7).

3. RESPONSE REQUIREMENTS

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, the state 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.
- 3.1.1.3. All information and documentation included in a Technical Response should respond 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. The State may determine a response to be non-responsive and reject it if:
- 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
 - 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, the State 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.
- 3.1.2.4. A Respondent must submit the Cost Proposal to the State in a sealed package separate from the Technical Response (as detailed in RFP Sections 3.2.3., *et seq.*).

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.
- 3.2.2. A Respondent must submit original Technical Response and Cost Proposal documents and copies as specified below.

- 3.2.2.1. One (1) original Technical Response paper document labeled:

“RFP # 33501-179101 TECHNICAL RESPONSE ORIGINAL”

and one (1) digital copy of the Technical Response each in the form of one (1) digital document in “PDF” format properly recorded on its own otherwise blank, standard CD-R recordable disc or USB flash drive labeled:

“RFP # 33501-179101 TECHNICAL RESPONSE COPY”

The digital copies should not include copies of sealed customer references, however any other discrepancy between the paper Technical Response document and any digital copies may result in the State rejecting the proposal as non-responsive.

- 3.2.2.2. One (1) original Cost Proposal paper document labeled:

“RFP # 33501-179101 COST PROPOSAL ORIGINAL”

and one (1) copy in the form of a digital document in “PDF/XLS” format properly recorded on separate, blank, standard CD-R recordable disc or USB flash drive labeled:

“RFP # 33501-179101 COST PROPOSAL COPY”

In the event of a discrepancy between the original Cost Proposal document and the digital copy, the original, signed document will take precedence.

- 3.2.3. A Respondent must separate, seal, package, and label the documents and copies for delivery as follows:

- 3.2.3.1. The Technical Response original document and digital copies must be placed in a sealed package that is clearly labeled:

“DO NOT OPEN... RFP # 33501-179101 TECHNICAL RESPONSE FROM [RESPONDENT LEGAL ENTITY NAME]”

- 3.2.3.2. The Cost Proposal original document and digital copy must be placed in a separate, sealed package that is clearly labeled:

“DO NOT OPEN... RFP # 33501-179101 COST PROPOSAL FROM [RESPONDENT LEGAL ENTITY NAME]”

- 3.2.3.3. The separately, sealed Technical Response and Cost Proposal components may be enclosed in a larger package for mailing or delivery, provided that the outermost package is clearly labeled:

“RFP # 33501-179101 SEALED TECHNICAL RESPONSE & SEALED COST PROPOSAL FROM [RESPONDENT LEGAL ENTITY NAME]”

- 3.2.4. A Respondent must ensure that the State 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:

Stephanie Crenshaw, Assistant General Counsel
Department of Commerce and Insurance
500 James Robertson Parkway
Nashville, Tennessee 37243
ci.procurement@tn.gov
Telephone: (615) 741-9730
Fax: (615) 741-4000

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, the State, 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 the State 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 the State or otherwise qualifies either the offer to deliver goods or provide services as required by this RFP or the Cost Proposal, the State, 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. The State 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. The State will reject any Cost Proposal that involves collusion, consultation, communication, or agreement between Respondents. Regardless of the time of detection, the State 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 the State determines that a Respondent has provided such incorrect information, the State 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 the State in this RFP. If a Respondent submits more than one Technical Response or more than one Cost Proposal, the State 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. The State 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.

3.4. **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 the State.

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, the State, 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, the State may deem the response non-responsive and reject it.

3.7. **Response Preparation Costs**

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

4. GENERAL CONTRACTING INFORMATION & REQUIREMENTS

4.1. RFP Amendment

The State at its sole discretion may amend this RFP, in writing, at any time prior to contract award. However, prior to any such amendment, the State 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, the State 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

The State 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, the State reserves the right to reject, at its sole discretion, any and all responses.

4.3.2. The State 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, the State reserves the right to waive, at its sole discretion, minor variances from full compliance with this RFP. If the State waives variances in a response, such waiver shall not modify the RFP requirements or excuse the Respondent from full compliance, and the State 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 the State. The State 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 the State unless the State 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 the State and with the State'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

The State 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. The State will document in writing the reason(s) for any rejection of personnel.

4.6. Insurance

From time-to-time, the State may 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 the State 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. The State 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. The State 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. For purposes of this registration requirement, the Department of Revenue may be contacted at: TN.Revenue@tn.gov.

4.8. Disclosure of Response Contents

- 4.8.1. All materials submitted to the State in response to this RFP shall become the property of the State of Tennessee. 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. The State will hold all response information, including both technical and cost information, in confidence during the evaluation process. Notwithstanding the foregoing, a list of actual Respondents submitting timely responses may be available to the public, upon request, after technical responses are opened.
- 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 *Tennessee Code Annotated*, Section 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 the State 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 State 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. The State 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 start date or after the Contract end date.

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, the State 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, the State 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 the State. The State 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, the State 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 of service, and for which the Contractor may be compensated. In such instances, the State will provide the Contractor a written description of the additional goods or services. The Contractor must respond to the State 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 the State 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 State 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 the State 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 the State 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**

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

5. EVALUATION & CONTRACT AWARD

5.1. Evaluation Categories & Maximum Points

The State 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 the State to be responsive.

EVALUATION CATEGORY	MAXIMUM POINTS POSSIBLE
General Qualifications & Experience (refer to RFP Attachment 6.2., Section B)	30
Technical Qualifications, Experience & Approach (refer to RFP Attachment 6.2., Section C)	20
Cost Proposal (refer to RFP Attachment 6.3.)	50

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 the State 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. The State 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 the State. The subject Respondent must put any resulting clarification in writing as may be required and in accordance with any deadline imposed by the State.
- 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. the State will request clarifications or corrections for consideration prior to further evaluation; or,
 - c. the State 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. Before Cost Proposals are opened, the Proposal Evaluation Team will review the Technical Response Evaluation record and any other available information pertinent to whether or not each Respondent is responsive and responsible. If the Proposal Evaluation Team identifies any Respondent that does not to meet the responsive and responsible thresholds such that the team would not recommend the Respondent for Cost Proposal Evaluation and potential contract award, the team members will fully document the determination.

5.2.2. **Cost Proposal Evaluation.** The Solicitation Coordinator will open for evaluation the Cost Proposal of each Respondent deemed by the State 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. The State 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 the State 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, the State may determine that the Respondent is non-responsive to this RFP and reject the response.

5.3.5. Notwithstanding the foregoing, the State may, at its sole discretion, entertain limited negotiation prior to contract signing and, as a result, revise the *pro forma* contract terms and conditions or performance requirements in the State'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 the State 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 # 33501-179101 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 Services of the RFP Attachment 6.6., *Pro Forma Contract* for the total contract period.
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.

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:

PRINTED NAME & TITLE:

DATE:

**RESPONDENT LEGAL ENTITY
NAME:**

RESPONDENT FEDERAL EMPLOYER IDENTIFICATION NUMBER (or SSN):

TECHNICAL RESPONSE & 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
		The Response must be delivered to the State 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 the State 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 sub-contractor) (refer to RFP Section 3.3.).	
	A.1.	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.	
	A.2.	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 the State, and the State reserves the right to cancel any award.	
	A.3.	Provide a current bank reference indicating that the Respondent's business relationship with the financial institution is in positive standing. Such reference must be written in the form of a standard business letter, signed, and dated within the past three (3) months.	
	A.4.	Provide two current positive credit references from vendors with which the Respondent has done business written in the form of standard business letters, signed, and dated within the past three (3) months.	

RESPONDENT LEGAL ENTITY NAME:			
Response Page # (Respondent completes)	Item Ref.	Section A— Mandatory Requirement Items	Pass/Fail
	A.5.	Provide an official document or letter from an accredited credit bureau, verified and dated within the last three (3) months and indicating a satisfactory credit rating for the Respondent (NOTE: A credit bureau report number without the full report is insufficient and will <u>not</u> be considered responsive.)	
<i>State Use – Solicitation Coordinator Signature, Printed Name & Date:</i>			

TECHNICAL RESPONSE & EVALUATION GUIDE

SECTION B: GENERAL QUALIFICATIONS & EXPERIENCE. 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. Proposal Evaluation Team members will independently evaluate and assign one score for all responses to Section B— General Qualifications & Experience Items.

RESPONDENT LEGAL ENTITY NAME:		
Response Page # (Respondent completes)	Item Ref.	Section B— General Qualifications & Experience Items
	B.1.	Detail the name, e-mail address, mailing address, telephone number, and facsimile number of the person the State should contact regarding the response.
	B.2.	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.3.	Detail the number of years the Respondent has been in business.
	B.4.	Briefly describe how long the Respondent has been providing the goods or services required by this RFP.
	B.5.	Describe the Respondent's number of employees, client base, and location of offices.
	B.6.	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.7.	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.8.	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.9.	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 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. NOTE: All persons, agencies, firms, or other entities that provide legal opinions regarding the Respondent must be properly licensed to render such opinions. The State may require the Respondent to submit proof of license for each person or entity that renders such opinions.
	B.10.	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.

RFP ATTACHMENT 6.2. — SECTION B (continued)

RESPONDENT LEGAL ENTITY NAME:		
Response Page # (Respondent completes)	Item Ref.	Section B— General Qualifications & Experience Items
		NOTE: All persons, agencies, firms, or other entities that provide legal opinions regarding the Respondent must be properly licensed to render such opinions. The State may require the Respondent to submit proof of license for each person or entity that renders such opinions.
	B.11.	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.).
	B.12.	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.
	B.13.	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.
	B.14.	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: (a) the names of the subcontractors along with the contact person, mailing address, telephone number, and e-mail address for each; (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> (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.
	B.15.	Provide documentation of the Respondent's commitment to diversity as represented by the following: (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, Tennessee service-disabled veterans, and small business enterprises. Please also include a list of the Respondent's certifications as a diversity business, if applicable. (b) <u>Business Relationships</u> . Provide a listing of the Respondent's current contracts with business enterprises owned by minorities, women, Tennessee service-disabled veterans and small business enterprises. Please include the following information: (i) contract description; (ii) contractor name and ownership characteristics (i.e., ethnicity, gender, Tennessee service-disabled); (iii) contractor contact name and telephone number. (c) <u>Estimated Participation</u> . Provide an estimated level of participation by business enterprises owned by minorities, women, Tennessee service-disabled veterans, and small business enterprises if a contract is awarded to the Respondent pursuant to this RFP. Please include the following information: (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 DO NOT INCLUDE DOLLAR AMOUNTS); (ii) anticipated goods or services contract descriptions; (iii) names and ownership characteristics (i.e., ethnicity, gender, Tennessee service-disabled

RFP ATTACHMENT 6.2. — SECTION B (continued)

RESPONDENT LEGAL ENTITY NAME:		
Response Page # (Respondent completes)	Item Ref.	Section B— General Qualifications & Experience Items
		<p>veterans) 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 https://tn.diversitysoftware.com/FrontEnd/StartCertification.asp?TN=tn&XID=9810 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 the State 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, Tennessee service-disabled veterans and small business enterprises and who offer a diverse workforce.</p>
	B.16.	<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> <p>(a) the name, title, telephone number and e-mail address of the State contact knowledgeable about the contract;</p> <p>(b) the procuring State agency name;</p> <p>(c) a brief description of the contract's scope of services;</p> <p>(d) the contract period; and</p> <p>(e) the contract number.</p> <p>NOTES:</p> <ul style="list-style-type: none"> ▪ Current or prior contracts with the State are <u>not</u> a prerequisite and are <u>not</u> required for the maximum evaluation score, and the existence of such contracts with the State will <u>not</u> automatically result in the addition or deduction of evaluation points. ▪ Each evaluator will generally consider the results of inquiries by the State regarding all contracts noted.
	B.17.	<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"> ▪ two (2) accounts Respondent currently services that are similar in size to the State; <u>and</u> ▪ three (3) completed projects. <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 obtaining fully completed reference questionnaires and including them in the sealed Technical Response. In order to obtain and submit the completed reference questionnaires follow the process below.</p> <p>(a) Add the Respondent's name to the standard reference questionnaire at RFP Attachment 6.4. and make a copy for each reference.</p> <p>(b) Send a reference questionnaire and new, standard #10 envelope to each reference.</p> <p>(c) Instruct the reference to:</p> <ol style="list-style-type: none"> (i) complete the reference questionnaire; (ii) sign and date the completed reference questionnaire; (iii) seal the completed, signed, and dated reference questionnaire within the envelope

RFP ATTACHMENT 6.2. — SECTION B (continued)

RESPONDENT LEGAL ENTITY NAME:			
Response Page # (Respondent completes)	Item Ref.	Section B— General Qualifications & Experience Items	
		<p>provided;</p> <p>(iv) sign his or her name in ink across the sealed portion of the envelope; and</p> <p>(v) return the sealed envelope directly to the Respondent (the Respondent may wish to give each reference a deadline, such that the Respondent will be able to collect all required references in time to include them within the sealed Technical Response).</p> <p>(d) <u>Do NOT open the sealed references upon receipt.</u></p> <p>(e) Enclose all <u>sealed</u> reference envelopes within a larger, labeled envelope for inclusion in the Technical Response as required.</p> <p>NOTES:</p> <ul style="list-style-type: none"> ▪ The State will not accept late references or references submitted by any means other than that which is described above, and each reference questionnaire submitted must be completed as required. ▪ The State will not review more than the number of required references indicated above. ▪ While the State will base its reference check on the contents of the sealed reference envelopes included in the Technical Response package, the State reserves the right to confirm and clarify information detailed in the completed reference questionnaires, and may consider clarification responses in the evaluation of references. ▪ The State is under <u>no</u> obligation to clarify any reference information. 	
	B.18.	<p>Provide a statement and any relevant details addressing whether the Respondent is any of the following:</p> <p>(a) is presently debarred, suspended, proposed for debarment, or voluntarily excluded from covered transactions by any federal or state department or agency;</p> <p>(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;</p> <p>(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</p> <p>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.</p>	
		<p>SCORE (for <u>all</u> Section B—Qualifications & Experience Items above): (maximum possible score = 30)</p>	
<p><i>State Use – Evaluator Identification:</i></p>			

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 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.

RESPONDENT LEGAL ENTITY NAME:					
Response Page # (Respondent completes)	Item Ref.	Section C— Technical Qualifications, Experience & Approach Items	Item Score	Evaluation Factor	Raw Weighted Score
	C.1.	Provide a narrative that illustrates the Respondent's understanding of the State's requirements and project schedule.		1	
	C.2.	Provide a narrative that illustrates how the Respondent will complete the scope of services, accomplish required objectives, and meet the State's project schedule.		1	
	C.3.	Provide a narrative that illustrates how the Respondent will manage the project, ensure completion of the scope of services, and accomplish required objectives within the State's project schedule.		1	
	C.4.	Provide a narrative that details the qualifications and experience of those individuals who will be performing services.		1	
<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>					Total Raw Weighted Score: <i>(sum of Raw Weighted Scores above)</i>
Total Raw Weighted Score <hr/> Maximum Possible Raw Weighted Score <i>(i.e., 5 x the sum of item weights above)</i>			X 20 <i>(maximum possible score)</i>	= SCORE:	
<i>State Use – Evaluator Identification:</i>					
<i>State Use – Solicitation Coordinator Signature, Printed Name & Date:</i>					

COST PROPOSAL & SCORING GUIDE

NOTICE: THIS COST PROPOSAL MUST BE COMPLETED EXACTLY AS REQUIRED

COST PROPOSAL SCHEDULE— The Cost Proposal, detailed below, shall indicate the proposed price for goods or services defined in the Scope of Services of the RFP Attachment 6.6., *Pro Forma* Contract and for the entire contract period. The Cost Proposal shall remain valid for at least one hundred twenty (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 cost item 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.), "The State is under no obligation to request work from the Contractor in any specific dollar amounts or to request any work 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 it. If said individual is not the *President* or *Chief Executive Officer*, this document must attach evidence showing the individual's authority to legally bind the Respondent.

RESPONDENT SIGNATURE:			
PRINTED NAME & TITLE:			
DATE:			
RESPONDENT LEGAL ENTITY NAME:			
Cost Item Description	Proposed Cost	State Use Only	
		Evaluation Factor	Evaluation Cost (cost x factor)
Errors and omissions insurance coverage of \$100,000 per individual claim with an annual aggregate liability limit of \$300,000 for real estate brokers, affiliate brokers, real estate firms and time share salespersons licensed by the Tennessee Real Estate Commission. (Section A.2. of the <i>Pro Forma Contract</i> , Attachment 6.6.),	\$ _____ per licensee	18,724	
Optional errors and omissions insurance coverage for real estate appraisal activities for real estate brokers, affiliate brokers, and time share salespersons also licensed as real estate appraisers. (Section A.6. of the <i>Pro Forma contract</i> , Attachment 6.6.)	\$ _____ per licensee	936	
EVALUATION COST AMOUNT (sum of evaluation costs above):			

RFP ATTACHMENT 6.3. (continued)

RESPONDENT LEGAL ENTITY NAME:			
Cost Item Description	Proposed Cost	State Use Only	
		Evaluation Factor	Evaluation Cost (cost x factor)
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.			
$\frac{\text{lowest evaluation cost amount from all proposals}}{\text{evaluation cost amount being evaluated}} \times 50 = \text{SCORE:}$ <p style="text-align: center;">(maximum section score)</p>			
<i>State Use – Solicitation Coordinator Signature, Printed Name & Date:</i>			

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 obtaining completed reference questionnaires as required (refer to RFP Attachment 6.2., Technical Response & Evaluation Guide, Section B, Item B.17.), and for enclosing the sealed reference envelopes within the Respondent's Technical Response.

RFP # 33501-179101 REFERENCE QUESTIONNAIRE

REFERENCE SUBJECT: RESPONDENT NAME (completed by Respondent before reference is requested)

The "reference subject" specified above, intends to submit a response to the State of Tennessee 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;
- 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.

NAME:	
TITLE:	
TELEPHONE #	
E-MAIL ADDRESS:	

(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.



RFP # 33501-179101 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.

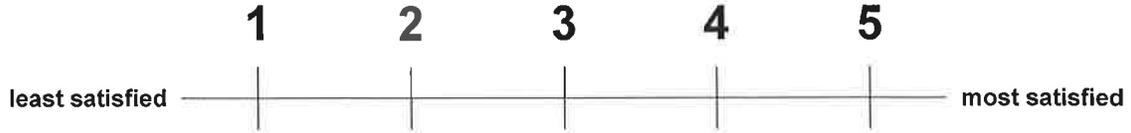


What, if any, comments do you have regarding the score selected above?

RFP # 33501-179101 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?

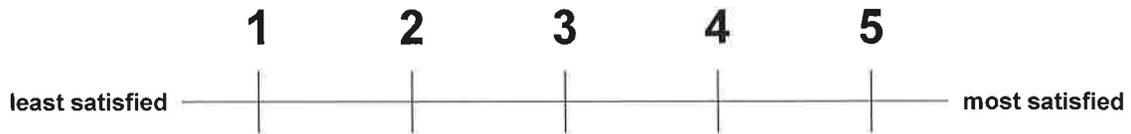
Please respond by circling the appropriate number on the scale below.



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.



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:

SCORE SUMMARY MATRIX

	RESPONDENT NAME		RESPONDENT NAME		RESPONDENT NAME	
GENERAL QUALIFICATIONS & EXPERIENCE (maximum: 30)						
EVALUATOR NAME						
EVALUATOR NAME						
REPEAT AS NECESSARY						
	AVERAGE:		AVERAGE:		AVERAGE:	
TECHNICAL QUALIFICATIONS, EXPERIENCE & APPROACH (maximum: 20)						
EVALUATOR NAME						
EVALUATOR NAME						
REPEAT AS NECESSARY						
	AVERAGE:		AVERAGE:		AVERAGE:	
COST PROPOSAL (maximum: 50)	SCORE:		SCORE:		SCORE:	
TOTAL RESPONSE EVALUATION SCORE: (maximum: 100)						
<i>Solicitation Coordinator Signature, Printed Name & Date:</i>						

RFP # 33501-179101 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 RFP.

CONTRACT
BETWEEN THE STATE OF TENNESSEE,
DEPARTMENT OF COMMERCE AND INSURANCE
AND
CONTRACTOR NAME

This Contract, by and between the State of Tennessee, Department of Commerce and Insurance, hereinafter referred to as the "State" and **Contractor Legal Entity Name**, hereinafter referred to as the "Contractor," is for the provision to obtain a master group errors and omissions insurance policy for persons issued real estate broker, affiliate broker, real estate firm and time share licenses and optional coverage for real estate appraisal activities of real estate brokers, affiliate brokers and time share salespersons also licensed as real estate appraisers, as further defined in the "SCOPE OF SERVICES."

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**

A. SCOPE OF SERVICES:

- A.1. The Contractor shall provide all service and deliverables as required, described, and detailed herein and shall meet all service and delivery timelines as specified by this Contract.
- A.2. The Contractor shall provide a master real estate errors and omissions liability insurance policy (the "Policy") which provides a per claim liability limit of one hundred thousand dollars (\$100,000) per Licensee per claim, with an aggregate annual liability limit of three hundred thousand dollars (\$300,000). The Policy will cover all Licensees electing such coverage by paying to the Contractor the applicable premium specified in Section C.2.
- A.3. The terms, conditions and exclusions of the Policy shall provide coverage which is no less comprehensive as that provided under the errors and omissions policy issued to Licensees for the period January 1, 2015 through January 1, 2017, attached hereto as Exhibit A. The Policy shall, in addition, cover, rather than exclude, the following:
- a. the environmental hazards listed in Exclusions P and Q of the policy issued for the period January 2015 through January 2017, including, but not limited to Licensee's failure to detect, report, or assess the effects of or advise of the existence of toxic chemicals, pollutants, fungi, microbes, nuclear radiation or nuclear contamination; and
 - b. professional services relating to property in which the Licensee has an ownership interest of less than twenty-five percent (25%).

The Policy for the coverage period January 1, 2017 through January 1, 2019, shall be attached as Exhibit B of this Contract.

- A.4. The Policy shall provide a deductible of one thousand dollars (\$1,000.00) that shall only apply to indemnity coverage. Only one deductible shall be applied to all the members of any one real estate firm for any one occurrence.
- A.5. The Contractor shall make available to Licensees additional coverage under an endorsement which, for an additional premium charge, increases the per claim liability limit of the Policy to two hundred fifty thousand dollars (\$250,000) and increases the annual aggregate maximum to seven hundred fifty thousand dollars (~~\$750,000~~).
- A.6. The Contractor shall, for an additional premium charge, also make optional additional errors and omissions coverage available for real estate appraiser activities, for real estate brokers, affiliate

brokers, and time share salespersons that are also licensed as real estate appraisers upon payment of the applicable premium specified in Section C.3.

- A.7. Any insurance policy provided pursuant to this Contract must be issued by an insurance company with an A.M. Best rating of at least "A." The insurer issuing the Policy under this Contract must maintain such rating during the applicable policy period(s).
- A.8. The cost to defend or administer any claim against a Licensee shall not apply against, or reduce, the applicable policy limits specified in Section A.2. (or Section A.5. in the event an increased liability limit endorsement is issued to Licensee).
- A.9. The Contractor shall provide "tail" coverage for Licensees for twelve (12) months from the date their coverage under the Policy ends if they retire, place their licenses on inactive status or allow their licenses to expire. The Policy must provide retroactive coverage for claims for the period of time prior to the policy date if the Licensee can provide proof of continuous prior coverage. Evidence that the person was actively licensed by the Tennessee Real Estate Commission shall be sufficient proof of insurance to establish retroactive coverage for the period.
- A.10. The Contractor shall prepare and send a mailer to each active Licensee to include a billing for the applicable insurance premium and a copy of the Policy. The mailer shall be mailed to each Licensee within thirty (30) days following its approval by the Commission using addresses provided by the State.
- A.11. Contractor shall provide a Certificate of Coverage to each Licensee upon receipt of the applicable premium.
- A.12. The Contractor shall prepare a brochure which provides a general description of the insurance coverage provided under the Policy, the deductible, the optional coverage available and instructions for securing additional information and reporting a claim shall be included in the mailer referenced in Section A.10., above. The brochure will include a toll-free telephone number (other than that of the Commission) for Licensees to obtain information regarding the Policy and instructions for reporting claims from the Contractor.
- A.13. The Contractor shall maintain an office with adequate staff, open from 8:00 a.m. - 4:30 p.m. CST P.M., Monday through Friday, to handle questions from Licensees, process applications for coverage, issue certificates of coverage and process claims. The Contractor shall also ensure that such office has adequate staff available to handle the renewal of coverage and minimize any delay in processing. All coverage applications submitted to the Contractor shall be processed and reported electronically to the State, in a format acceptable to the State, within five (5) business days from the date of receipt by the Contractor. The Contractor shall furnish the office with the toll-free" telephone number(s) required in accordance with Section A.12., above.
- A.14. The Contractor shall provide a report, in a format acceptable to the State, of the claims activity on a quarterly basis. A representative of the Contractor shall meet with the Tennessee Real Estate Commission, quarterly, to discuss the claims report, interpret the data and answer the Tennessee Real Estate Commission's questions at the option of the State. The claim report will include claim numbers, names, dates, complaint type, amount of claims paid, expenses and other information required by the State.
- A.15. The Contractor shall provide at no additional cost to the State all additional reports or electronic files in a format acceptable to the State. The reports or files shall include, but are not limited to, reports necessary for the implementation of and support of the process requiring payment of premiums by Licensees to the Contractor and the Contractor notifying the State of receipt of the

premium payment. The Contractor shall daily provide an electronic report of Licensee names, license numbers, coverage dates, delinquent policy holders and other information required by the State.

- A.16. The Contractor shall conduct at least eighteen (18) educational seminars each calendar year or portion thereof by providing a management level employee to act as a speaker at such seminars. Seminars shall be conducted in each Grand Division in the State of Tennessee based on a schedule and course content determined by the State. Travel costs shall be the sole responsibility of the Contractor.
- A.17. Coverage provided under the Policy shall be available to Licenses for the period January 1, 2017 to January 1, 2019.

B. TERM OF CONTRACT:

- B.1. This Contract shall be effective on **DATE** ("Effective Date"), and extend for a period of twenty-four (24) 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.
- B.2. Renewal Options. This Contract may be renewed upon satisfactory completion of the Term. The State reserves the right to execute up to three (3) renewal options under the same terms and conditions for a period not to exceed twelve (12) months each by the State, at the State's sole option. In no event, however, shall the maximum Term, including all renewals or extensions, exceed a total of sixty (60) months.

C. PAYMENT TERMS AND CONDITIONS:

- C.1. There shall be no cost to the State for the performance of services under this Contract.
- C.2. In consideration of the services and master insurance policy provided by the Contractor, the Contractor shall charge and collect from each active real estate broker, affiliate broker, timeshare salesperson or real estate firm the fee of \$ **[NUMBER]** for each Licensee electing coverage for the period January 1, 2017 through January 1, 2019 prorated for each Licensee obtaining or reactivating a license and electing coverage after the effective date of the Policy. This rate represents the total cost of all services and deliverables detailed in Section A., including, but not limited to, the total cost of real estate errors and omissions liability insurance policy coverage with a liability limit of one hundred thousand dollars (\$100,000.00) per claim per Licensee and an annual aggregate limit of \$300,000.
- C.3. The Contractor shall provide coverage for appraisal activity of real estate brokers or affiliate brokers who are also licensed real estate appraisers and shall collect from such dual licensees who choose such coverage an additional premium of \$**[NUMBER]** for appraisal coverage.
- C.4. The premium collected by the Contractor from Licensees shall constitute the entire compensation due Contractor for any and all obligations and services provided under this Contract , regardless of difficulty, hours worked, or materials or equipment required, and includes, but is not limited to, all applicable taxes, fees, overhead, profit, and all other direct and indirect costs incurred or to be incurred by the Contract. In the event the percentages of bond tax, or surplus lines tax or other taxes increase due to changed legislation, the contractor(s) shall absorb the increases.

D. STANDARD TERMS AND CONDITIONS:

- D.1. Required Approvals. The State is not bound by this Contract until it is signed by the contract parties and approved by appropriate officials in accordance with applicable Tennessee laws and regulations (depending upon the specifics of this contract, said officials may include, but are not limited to, the Commissioner of Finance and Administration, the Commissioner of Human Resources, and the Comptroller of the Treasury).
- D.2. Modification and Amendment. This Contract may be modified only by a written amendment signed by all parties hereto and approved by both the officials who approved the base contract and, depending upon the specifics of the contract as amended, any additional officials required by Tennessee laws and regulations (said officials may include, but are not limited to, the Commissioner of Finance and Administration, the Commissioner of Human Resources, and the Comptroller of the Treasury).
- D.3. Termination for Convenience. The State may terminate this Contract without cause for any reason. Said termination shall not be deemed a Breach of Contract by the State. The State shall give the Contractor at least thirty (30) days written notice before the effective termination date. Upon such termination, the Contractor shall have no right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- D.4. 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 violates any terms of this Contract, the State shall have the right to immediately terminate the Contract. Notwithstanding the above, the Contractor shall not be relieved of liability to the State for damages sustained by virtue of any breach of this Contract by the Contractor.
- D.5. Subcontracting. The Contractor shall not assign this Contract or enter into a subcontract for any of the services performed under this Contract without obtaining the prior written approval of the State. If such subcontracts are approved by the State, each shall contain, at a minimum, sections of this Contract below pertaining to "Conflicts of Interest," "Nondiscrimination," and "Records" (as identified by the section headings). Notwithstanding any use of approved subcontractors, the Contractor shall be the prime contractor and shall be responsible for all work performed.
- D.6. Conflicts of Interest. The Contractor warrants that 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 Contractor in connection with any work contemplated or performed relative to this Contract.
- D.7. 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, color, religion, sex, national origin, or any other classification protected by Federal, Tennessee State constitutional, or statutory law. The Contractor shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.
- D.8. Prohibition of Illegal Immigrants. The requirements of *Tennessee Code Annotated*, Section 12-4-124, *et seq.*, 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 hereby attests, certifies, warrants, and assures 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, hereto, semi-annually during the period of this Contract. Such 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 period of this Contract, 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 relative to this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant to perform work relative to this Contract. Attestations obtained from such 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. Said 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 *Tennessee Code Annotated*, Section 12-4-124, *et seq.* for acts or omissions occurring after its effective date. This law requires the Commissioner of Finance and Administration to prohibit a contractor from contracting with, or submitting an offer, proposal, or bid to contract with the State of Tennessee to supply goods or services for a period of one year after a contractor is discovered to have knowingly used the services of illegal immigrants during the performance of this Contract.
 - e. For purposes of this Contract, "illegal immigrant" shall be defined as any person who is not either a United States citizen, a Lawful Permanent Resident, or a person whose physical presence in the United States is authorized or allowed by the federal Department of Homeland Security and who, under federal immigration laws and/or regulations, is authorized to be employed in the U.S. or is otherwise authorized to provide services under the Contract.
- D.9. Records. The Contractor shall maintain documentation of services rendered under this Contract. The books, records and documents of the Contractor, insofar as they relate to work performed under this Contract, shall be maintained for a period of three (3) full years from the final date of this Contract 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.
- D.10. 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.11. Strict Performance. Failure by any party to this Contract to insist in any one or more cases upon 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 such 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 hereto.
- D.12. Independent Contractor. The parties hereto, in the performance of this Contract, shall not act as employees, partners, joint venturers, or associates of one another. It is expressly acknowledged by the parties hereto that such parties are independent contracting entities and that nothing in this Contract shall be construed to create an employer/employee relationship or to allow either 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 shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.

The Contractor, being an independent contractor and not an employee of the State, agrees to carry adequate public liability and other appropriate forms of insurance, including adequate public liability and other appropriate forms of insurance on the Contractor's employees, and to pay all applicable taxes incident to this Contract.

- D.13. State Liability. The State shall have no liability except as specifically provided in this Contract.
- D.14. Force Majeure. The obligations of the parties to this Contract are subject to prevention by causes beyond the parties' control that could not be avoided by the exercise of due care including, but not limited to, natural disasters, riots, wars, epidemics, or any other similar cause.
- D.15. State and Federal Compliance. The Contractor shall comply with all applicable State and Federal laws and regulations in the performance of this Contract.
- D.16. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Contractor agrees that it will be subject to the exclusive jurisdiction of the courts of the State of Tennessee in actions that may arise under this Contract. The Contractor acknowledges and agrees that any rights or claims against the State of Tennessee or its employees hereunder, and any remedies arising therefrom, shall be subject to and limited to those rights and remedies, if any, available under *Tennessee Code Annotated*, Sections 9-8-101 through 9-8-407.
- D.17. Completeness. This Contract is complete and contains the entire understanding between the parties relating to the subject matter contained herein, 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 relating hereto, whether written or oral.
- D.18. 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 hereof shall not be affected thereby and shall remain in full force and effect. To this end, the terms and conditions of this Contract are declared severable.
- D.19. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.
- 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").
- 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 such information without entering into a business associate agreement or signing another such 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.

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, these special terms and conditions shall control.
- E.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. Any such communications, regardless of method of transmission, shall be addressed to the respective party at the appropriate mailing address, facsimile number, or EMAIL address as set forth below or to that of such other party or address, as may be hereafter specified by written notice.

The State:

Malcolm Young, Executive Director
Tennessee Real Estate Commission
500 James Robertson Parkway
Nashville, TN 37243-1151
Malcolm.Young@tn.gov
Telephone: 615-741-7546
FAX: 615-741-0313

The Contractor:

Contractor Contact Name & Title
Contractor Name
Address
Email Address
Telephone # Number
FAX # Number

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

- E.3. Tennessee Department of Revenue Registration. The Contractor shall be registered with the Department of Revenue for the collection of Tennessee sales and use tax. This registration requirement is a material requirement of this Contract.
- E.4. 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 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;

- 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 or disqualified.

- E.5. 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 shall be regarded as confidential information in accordance with the provisions of applicable state and federal law, state and federal rules and regulations, departmental policy, and ethical standards. Such confidential information shall not be disclosed, and all necessary steps shall be taken by the Contractor to safeguard the confidentiality of such material or information in conformance with applicable state and federal law, state and federal rules and regulations, departmental policy, and ethical standards.

The Contractor's obligations under this section do not apply to information in the public domain; entering the public domain but not from a breach by the Contractor of this Contract; previously possessed by the Contractor without written obligations to the State to protect it; acquired by the Contractor without written restrictions against disclosure from a third party which, to the Contractor's knowledge, is free to disclose the information; independently developed by the Contractor without the use of the State's information; or, disclosed by the State to others without restrictions against disclosure. Nothing in this paragraph shall permit Contractor to disclose any information that is confidential under federal or state law or regulations, 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.

It is expressly understood and agreed the obligations set forth in this section shall survive the termination of this Contract.

- E.6. Incorporation of Additional Documents. Included in this Contract by reference are the following documents:

- a. The Contract document and its attachments
- b. All Clarifications and addenda made to the Contractor's Proposal
- c. The Request for Proposal and its associated amendments
- d. Technical Specifications provided to the Contractor
- e. The Contractor's Proposal

In the event of a discrepancy or ambiguity regarding the Contractor's duties, responsibilities, and performance under this Contract, these documents shall govern in order of precedence detailed above.

E.7. 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 proposal responding to RFP # 33501-179101 (Attachment 6.2, B.15) 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 quarterly report of participation in the performance of this Contract by small business enterprises and businesses owned by minorities, women, and persons with a disability. Such reports shall be provided to the state of Tennessee Governor's Office of Business Diversity Enterprise in form and substance as required by said office.

E.8. Disclosure of Personal Identity Information. The Contractor shall report to the State any instances of unauthorized disclosure of confidential information that come to the attention of the Contractor. Any such report shall be made by the Contractor within twenty-four (24) hours after the instance has come to the attention of the Contractor. The Contractor, at the sole discretion of the State, shall provide no cost credit monitoring services for individuals that are deemed to be part of a potential disclosure. The Contractor shall bear the cost of notification to individuals having personal identity information involved in a potential disclosure event, including individual letters and/or public notice.

IN WITNESS WHEREOF,

CONTRACTOR LEGAL ENTITY NAME:

CONTRACTOR SIGNATURE

DATE

PRINTED NAME AND TITLE OF CONTRACTOR SIGNATORY (above)

DEPARTMENT OF COMMERCE AND INSURANCE:

JULIE MIX MCPEAK, COMMISSIONER

DATE

ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE

SUBJECT CONTRACT NUMBER:	
CONTRACTOR LEGAL ENTITY NAME:	
EDISON VENDOR IDENTIFICATION NUMBER:	

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.

CONTRACTOR SIGNATURE

NOTICE: This attestation MUST be signed by an individual empowered to contractually bind the Contractor. If said individual is not the chief executive or president, this document shall attach evidence showing the individual's authority to contractually bind the Contractor.

PRINTED NAME AND TITLE OF SIGNATORY

DATE OF ATTESTATION

EXHIBIT A

Sample Master Error & Omissions Insurance Policy for January 1, 2015 – January 1, 2017

EXHIBIT B

Master Errors & Omissions Insurance Policy for January 1, 2017 - January 1, 2019

(To be furnished by the Contractor following the execution of the Contract)

ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE

SUBJECT CONTRACT NUMBER:	
CONTRACTOR LEGAL ENTITY NAME:	
EDISON VENDOR IDENTIFICATION NUMBER:	

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.

CONTRACTOR SIGNATURE

NOTICE: This attestation MUST be signed by an individual empowered to contractually bind the Contractor. If said individual is not the chief executive or president, this document shall attach evidence showing the individual's authority to contractually bind the Contractor.

PRINTED NAME AND TITLE OF SIGNATORY

DATE OF ATTESTATION

EXHIBIT A

Sample Master Error & Omissions Insurance Policy for January 1, 2015 – January 1, 2017

REAL ESTATE LICENSEES ERRORS AND OMISSIONS POLICY

NOTICE

THIS INSURANCE IS WRITTEN ON A CLAIMS-MADE AND REPORTED BASIS. EXCEPT TO SUCH EXTENT AS MAY OTHERWISE BE PROVIDED HEREIN, COVERAGE UNDER THIS MASTER POLICY IS LIMITED TO LIABILITY ONLY FOR THOSE **CLAIMS** THAT ARE FIRST MADE AGAINST THE **INSURED** AND REPORTED TO THE COMPANY DURING THE **INDIVIDUAL POLICY PERIOD** OR ANY APPLICABLE EXTENDED REPORTING PERIOD. NO COVERAGE EXISTS FOR **CLAIMS** FIRST MADE AGAINST THE **INSURED** BEFORE THE BEGINNING OR AFTER THE END OF THE **INDIVIDUAL POLICY PERIOD**. PLEASE REVIEW THIS MASTER POLICY CAREFULLY AND DISCUSS THIS COVERAGE WITH YOUR INSURANCE AGENT OR BROKER.

INSURING AGREEMENT

I. **COVERAGE**

The Company will pay **Damages** in excess of the Deductible, which the **Insured** becomes legally obligated to pay as a result or by reason of a **Claim**, so long as the **Claim** is first made against the **Insured** during the **Individual Policy Period** and reported to the Company in writing during the **Individual Policy Period**, unless an Extended Reporting Period applies, provided that:

- A. the negligent act, error, or omission or **Discriminatory Conduct** giving rise to the **Claim** was committed or alleged to have been committed after the **Retroactive Date** and
- B. prior to the inception date of the **Individual Policy Period**, no **Insured** had a basis to believe that any such negligent act, error, or omission; **Discriminatory Conduct**; or **Related Act, Error, or Omission** might reasonably be expected to be the basis of a **Claim** against the **Insured**.

The Company has the right and duty to defend the **Insured** against any **Claim** seeking **Damages** covered by this policy until the applicable Limits of Liability or Sublimits of Liability are exhausted. The Company has the right to select counsel; investigate the circumstances of the **Claim**; and pay judgments, settlements, and **Claim Expenses** as the Company deems necessary. In the event a **Claim** is subject to arbitration or mediation, the Company is entitled to exercise all of the **Insured's** rights in the choice of arbitrators or mediators and in the conduct of any arbitration or mediation proceeding. The Company has no duty to defend any **Claim** not covered by this policy.

The Company will not settle any **Claim** without the consent of the **Insured**, which consent shall not be unreasonably withheld. If the Company recommends a settlement to the **Insured** which is agreeable to the claimant and the **Insured** does not agree to settle, the Company's applicable Limits of Liability or Sublimits of Liability are reduced to the total amount for which the **Claim** could have been settled. The maximum amount the Company will pay in the event of any later settlement or judgment is the amount for which the **Claim** could have been settled plus the amount of **Claim Expenses** incurred up to the time the Company made the recommendation, less any applicable deductible.

II. **LIMITS OF LIABILITY**

The Declarations sets forth the Company's Limits of Liability and Sublimits of Liability for the **Licensee**. The Limits of Liability and Sublimits of Liability are in excess of the Deductible. All other persons or organizations included under the definition of **Insured** share such Limits of Liability and Sublimits of Liability with the **Licensee**. The Limits of Liability and Sublimits of Liability apply regardless of the number of **Claims** made or the number of persons or organizations making **Claims** against the **Insured**. If **Related Claims** are subsequently made against any **Insured** and reported to the Company timely, all such **Related Claims**, whenever made, shall be considered a single **Claim** first made within the **Annual Policy Term** in which the earliest of the **Related Claims** was first made.

- A. Subject to the paragraphs below, the Company's Limits of Liability for **Damages** for each **Claim** shall not exceed the per **Claim** Limit stated in the Declarations.
- B. The Aggregate Limit under Item 3 b of the Declarations applies separately to each consecutive **Annual Policy Term**. Any Extended Reporting Period will be deemed part of the last preceding **Annual Policy Term** for purposes of determining the Limits of Liability.

- C. The Company's Sublimit of Liability for **Damages** for each **Discrimination Claim** per **Licensee** shall not exceed the per **Discrimination Claim** Sublimit stated in the Declarations. The Company's Sublimit of Liability for **Damages** for all **Discrimination Claims** per **Licensee** for each **Annual Policy Term** shall not exceed the Aggregate **Discrimination Claim** Sublimit set forth in the Declarations. **Damages** paid within the **Discrimination Claim** Sublimits of Liability are included within, and not in addition to, the per **Claim** Limit of Liability and the Aggregate Limit of Liability under Item 3 of the Declarations.
- D. The Company's Sublimit of Liability for **Damages** for each **Escrow Claim** per **Licensee** shall not exceed the per **Escrow Claim** Sublimit stated in the Declarations. The Company's Sublimit of Liability for **Damages** for all **Escrow Claims** for each **Annual Policy Term** per **Licensee** shall not exceed the Aggregate **Escrow Claim** Sublimit set forth in the Declarations. **Damages** paid within the **Escrow Claim** Sublimits of Liability are included within, and not in addition to, the per **Claim** Limit of Liability and the Aggregate Limit of Liability under Item 3 of the Declarations.
- E. The Company's Sublimit of Liability for **Damages** for each **Lock Box Claim** per **Licensee** shall not exceed the per **Lock Box Claim** Sublimit stated in the Declarations. The Company's Sublimit of Liability for **Damages** for all **Lock Box Claims** for each **Annual Policy Term** per **Licensee** shall not exceed the Aggregate **Lock Box Claim** Sublimit set forth in the Declarations. **Damages** paid within the **Lock Box Claim** Sublimits of Liability are included within, and not in addition to, the per **Claim** Limit of Liability and the Aggregate Limit of Liability under Item 3 of the Declarations.
- F. The Company's Sublimit of Liability for **Damages** for each **Environmental Claim** per **Licensee** shall not exceed the per **Environmental Claim** Sublimit stated in the Declarations. The Company's Sublimit of Liability for **Damages** for all **Environmental Claims** per **Licensee** shall not exceed the Aggregate **Environmental Claim** Sublimit set forth in the Declarations. **Damages** paid within the **Environmental Claim** Sublimits of Liability are included within, and not in addition to, the per **Claim** Limit of Liability and the Aggregate Limit of Liability under Item 3 of the Declarations.
- G. In addition to the applicable Limits of Liability or Sublimits of Liability, the Company will pay **Claim Expenses** in connection with covered **Claims**. **Claim Expenses** are in addition to the Limits of Liability or Sublimits of Liability and are excess of the **Claim Expenses** Deductible. The Company's payment of the applicable Limits of Liability or Sublimits of Liability ends the Company's duties to defend, pay **Damages**, and pay **Claim Expenses**.
- H. If a **Claim** involves coverage issued to two or more **Licensees**, the amount paid by the Company on behalf of all **Insureds** under each **Licensee's** coverage shall be prorated in relationship to the amount awarded against each such **Insured**, but in no event shall the amount paid by the Company for all **Insureds** under each **Licensee's** coverage exceed the per **Licensee** Limits of Liability shown on the Declarations.
- I. Limits of Liability and Sublimits of Liability are not renewed or increased by virtue of the operation of the Automatic or Optional Extended Reporting Period.

III. DEDUCTIBLE

The **Insured** shall pay the Deductible, as stated in the Declarations, for each **Claim**. However, a **Lock Box Claim** shall be subject to a reduced Deductible of \$250 per **Lock Box Claim**. The Deductible shall apply to the payment of **Damages**. The Company's obligation to pay **Damages** begins only after the **Insured** has paid the Deductible. The Company may pay any part or all of the Deductible to settle, defend, or investigate a **Claim**. In such case, the **Insured** must promptly reimburse the Company any amount of the Deductible paid by the Company. In the event the **Insured** does not reimburse the Company within sixty (60) days, the Company will be entitled to recover reasonable costs and attorney fees incurred in collecting such reimbursement.

If a **Claim** involves two or more **Insureds** or **Licensees** who are affiliated with the same **Real Estate Firm**, only one Deductible applies. If a **Claim** involves two or more **Insureds** or **Licensees** who are affiliated with the same **Real Estate Firm**, the Deductible amount will be shared equally by all such persons. Payment of

the Deductible is the joint and several liability of all such persons, but collection of the Deductible will be the responsibility of the **Real Estate Firm**.

IV. SUPPLEMENTARY PAYMENTS

Payments made under this section are not subject to the Deductible. In addition to the Limits of Liability and Sublimits of Liability, the Company will pay the following:

- A. Premiums on appeal bonds and bonds to release attachments. Premiums are limited to bonds no larger than the Company's remaining Limits of Liability or Sublimits of Liability. Obtaining the bond is not the Company's obligation.
- B. \$250 for each day the **Insured** attends a trial or hearing in a civil lawsuit covered under this policy; however, attendance must be at the Company's request. In no event shall the amount payable under this provision exceed a \$5,000 Aggregate Limit during an **Annual Policy Term**. In addition, the \$5,000 limit is the maximum the Company will pay even if such trial or hearing spans more than one **Annual Policy Term**.
- C. Postjudgment interest on that portion of any judgment to which this insurance applies and which accrues after entry of the judgment and before the Company has paid, offered to pay, or deposited, whether in court or otherwise, that part of the judgment for which the Company is responsible.
- D. If the **Insured** receives a subpoena for documents or testimony arising out of **Professional Services** and would like the Company's assistance in responding to the subpoena, the Company will retain an attorney to provide advice regarding the production of documents, to prepare the **Insured** for sworn testimony, and to represent the **Insured** at the **Insured's** deposition and while providing trial testimony pursuant to the subpoena, provided that:
 1. the **Insured** notifies the Company within 20 days of first receiving such subpoena and provides the Company with a copy of such subpoena;
 2. the subpoena arises out of a lawsuit to which the **Insured** is not a party;
 3. the **Insured** has not been engaged to provide advice or testimony in connection with the lawsuit, nor has the **Insured** provided such advice or testimony in the past;
 4. the underlying lawsuit relates to **Professional Services** and does not involve **Professional Services** to which Exclusion J or Exclusion K would apply; and
 5. the **Professional Services** occurred after the **Licensee's Retroactive Date**.

The amount payable under this provision shall be subject to a \$2,500 Aggregate Limit during an **Annual Policy Term**. In addition, the \$2,500 Aggregate Limit is the maximum the Company will pay even if the subpoena, action requested thereby, or underlying suit spans more than one **Annual Policy Term**. Any written notice to the Company of a subpoena shall be deemed notification of a circumstance under **Section XII. CIRCUMSTANCE REPORTING**.

V. TERRITORY

- A. If the **Licensee** is domiciled in the State of Tennessee, then this policy applies to **Professional Services** performed anywhere in the world, provided that:
 1. the **Licensee** will be covered for **Professional Services** performed outside the State of Tennessee only if the **Licensee** is duly licensed in such jurisdiction and the services performed would require a license pursuant to the laws of Tennessee had the acts been performed in Tennessee and
 2. the **Claim** arising out of the rendering of such **Professional Services** is brought within the United States of America, its territories or possessions.
- B. If the **Licensee** is not domiciled in the State of Tennessee, then this policy and the coverage provided hereunder applies only to **Professional Services** performed in Tennessee. The **Claim** arising out of the rendering of such **Professional Services** must be brought within the United States of America, its territories or possessions.
- C. For purposes of this section, a **Licensee** who is not domiciled in the State of Tennessee shall be treated as domiciled in the State of Tennessee if the **Licensee's Principal Real Estate License** is affiliated with a real estate office located in the State of Tennessee and the **Licensee** resides within fifty (50) miles of the Tennessee state line.

VI. EXCLUSIONS

This insurance does not apply to any **Claim** alleging, arising from, or related to:

- A. Fraudulent or Dishonest Acts

Fraudulent, dishonest, criminal, or malicious acts committed by the **Insured**, at the **Insured's** direction, with the **Insured's** knowledge, or by anyone for whose acts the **Insured** is legally responsible;

B. Insolvency

the insolvency of the **Insured**;

C. Failure to Pay or Collect

the failure to pay, collect, or return insurance premiums, escrow monies, earnest money deposits, security deposits, tax money, or commissions, except that this exclusion shall not apply to an **Escrow Claim** until the **Escrow Claim** Sublimit of Liability has been exhausted;

D. Wrongful Termination

the wrongful termination of employment, breach of an employment contract, or other employment disputes;

E. Bodily Injury

bodily injury, sickness, disease, mental anguish, pain or suffering, emotional distress, or death of any person;

F. Property Damage

physical injury to, destruction, or loss of use of tangible property, except that this exclusion shall not apply to a **Lock Box Claim** until the **Lock Box Claim** Sublimit of Liability has been exhausted;

G. Unfair Competition

unfair competition, piracy, advertising injury, or theft or wrongful taking of concepts or other intellectual property;

H. Libel or Slander

libel, slander, defamation of character, disparagement, detention, humiliation, sexual harassment, false arrest or imprisonment, wrongful entry or eviction, violation of the right to privacy or malicious prosecution, personal injury, or other invasion of rights to private occupancy;

I. Discrimination

discrimination on the basis of race, color, creed, national origin, sex, religion, age, sexual preference, marital status, any mental or physical handicap or disease, or any other unlawful discrimination category, except that this exclusion shall not apply to a **Discrimination Claim** until the **Discrimination Claim** Sublimit of Liability has been exhausted;

J. Owned or Purchased Property

1. **Professional Services** relating to property in which any of the following had more than a 25% ownership or financial interest: an **Insured**; **Insured's** spouse; or any entity, partnership, or trust in which the **Insured** or **Insured's** spouse owned or controlled more than 25% ownership or financial interest or
2. **Professional Services** relating to property purchased or attempted to be purchased by any of the following: an **Insured**; **Insured's** spouse; or any entity, partnership, or trust in which the **Insured** or **Insured's** spouse owned or controlled more than 25% ownership or financial interest;

however, this exclusion does not apply to any **Claim** arising from the sale of property acquired by the **Insured** pursuant to a guaranteed sale listing contract. The guaranteed sale listing contract must be a written agreement between the **Insured** and the seller of a property in which the **Insured** agrees to purchase the property if it is not sold under the listing agreement in a specified time. For coverage to apply, the **Insured** must hold title to the property for less than one (1) year and must continually offer it for sale;

K. Developed/Constructed Property

Professional Services relating to property developed or constructed by any of the following: an **Insured**; **Insured's** spouse; or any entity, partnership, or trust in which the **Insured** or **Insured's** spouse owned or controlled more than 15% financial interest;

L. Statutory Violations

violation of the Employee Retirement Income Security Act of 1974, the Securities Act of 1933, the Securities Exchange Act of 1934, any state Blue Sky or securities laws, or amendments thereto;

M. Maintenance of Insurance

failure by an **Insured** to provide or maintain insurance;

N. Specified Activities

the **Insured's** activities as:

1. a lawyer, title agent, mortgage banker, mortgage broker or correspondent, escrow agent, construction manager, property developer, or insurance agent, except that the escrow agent portion of this exclusion shall not apply to an **Escrow Claim** until the **Escrow Claim** Sublimit of Liability has been exhausted or
2. the **Insured's** activities as an appraiser, if the appraisal activity performed requires licensing or certification other than a real estate license;

O. Real Estate Investment Trusts

activities involving a property syndication, partnership, limited partnership, or real estate investment trust in which any **Insured** has, or had, a direct or indirect interest in the profits or losses;

P. Contractual Liability

liability assumed by any **Insured** under any contract, indemnity agreement, purchase agreement, hold harmless clause, or other similar agreement unless such liability would have attached to the **Insured** in the absence of such contract;

Q. Pollution/Mold/Fungi

whether suddenly or over a long period of time:

1. the actual, alleged, or threatened emission, discharge, dispersal, seepage, release, or escape of **Pollutants**, asbestos, radon, or lead;
2. the actual or alleged failure to detect, disclose, report, test for, monitor, clean, remove, contain, dispose of, treat, detoxify, or neutralize, or in any way respond to, assess the effects of, or advise of the existence of **Pollutants**;
3. any nuclear reaction, nuclear radiation, or radioactive contamination or any act, condition, or pollution incidental to the foregoing; or

4. the actual or alleged:

a. or threatened inhalation of, ingestion of, contact with, exposure to, existence of, growth of, or presence of or

b. failure to detect, report, test for, monitor, clean, remove, contain, dispose of, treat, detoxify, or neutralize, in any way respond to, assess the effects of, or advise of the existence of

any **Fungi** or **Microbes** or of any spores, mycotoxins, odors, or any other substances, products, or byproducts produced by, released by, or arising out of the current or past presence of **Fungi** or **Microbes**.

This exclusion applies regardless of any other cause or event that contributes concurrently or in any sequence to the **Damages** claimed.

As used in this exclusion, pollution includes the actual, alleged, or threatened discharge, dispersal, seepage, migration, release, or escape of **Pollutants**.

Except that this exclusion shall not apply to an **Environmental Claim** until the **Environmental Claim** Sublimit of Liability has been exhausted;

R. Expected or Intended

injury or damage expected or intended by the **Insured** except that this exclusion shall not apply to a **Discrimination Claim** until the **Discrimination Claim** Sublimit of Liability has been exhausted;

S. Commission Disputes

disputes over commissions between real estate brokers, broker associates, salespersons, auctioneers, property managers, and/or residential rental agents or disputes over commissions involving lawsuits initiated by the **Insured**. This exclusion does not apply to disputes over commissions involving counterclaims filed with the approval of the Company;

T. Prior Acts

negligent acts, errors, or omissions or **Discriminatory Conduct** committed or alleged to have been committed either (1) prior to the date the **Insured** received an active real estate license or (2) subsequent to the effective date of suspension, revocation, or inactive status of the **Insured's** real estate license;

U. Fines and Penalties

any fines, penalties, assessments, punitive damages, exemplary damages, multiplied damages, or matters deemed uninsurable under applicable law; or

V. Conversion

conversion, misappropriation, or commingling of funds or other property.

VII. EXTENDED REPORTING PERIODS

In case of cancellation or nonrenewal, a **Licensee** may be eligible for the following Extended Reporting Periods to apply, both subject to Paragraph C below:

A. Automatic Extended Reporting Period: In case of cancellation or nonrenewal because a **Licensee** retires, places his/her/its license on inactive status, or allows his/her/its license to expire, the policy will apply to **Claims** first made against the **Insured** and reported to the Company up to ninety (90) days

after the effective date of cancellation or nonrenewal. Said ninety (90) day period will be hereinafter referred to as the Automatic Extended Reporting Period.

- B. **Optional Extended Reporting Period:** In case of cancellation or nonrenewal for any reason, the **Licensee** shall have the option, upon payment of an additional premium within ninety (90) days after the effective date of the cancellation or nonrenewal, to cause the policy to apply to **Claims** first made against the **Insured** and reported to the Company during the Optional Extended Reporting Period. The Optional Extended Reporting Period will replace the Automatic Extended Reporting Period. The premium for the Optional Extended Reporting Period will be fully earned and is determined as shown below:

<u>Optional Extended Reporting Periods</u>	<u>Optional Extended Reporting Period Premium</u>
One Year	100% expiring premium, including any endorsement premium
Two Years	150% expiring premium, including any endorsement premium
Three Years	200% expiring premium, including any endorsement premium

The Optional Extended Reporting Period cannot be canceled by the Company or the **Insured**.

- C. Coverage afforded by the Automatic and Optional Extended Reporting Periods:
1. Shall apply solely to **Claims** arising from a negligent acts, errors, or omissions or **Discriminatory Conduct**:
 - a. committed or alleged to have been committed after the **Retroactive Date**;
 - b. committed or alleged to have been committed before the effective date of cancellation or nonrenewal; and
 - c. which are otherwise insured under all the other terms, conditions, and exclusions of this policy.
 2. Shall not apply to any **Claim**, which is insured by any other policy of insurance, nor as excess above such other policy of insurance.
 3. Nothing in Paragraph A or B shall serve to increase the Limits of Liability or Sublimits of Liability as provided in Section II. LIMITS OF LIABILITY or Section IV. SUPPLEMENTARY PAYMENTS. The Limits of Liability and Sublimits of Liability for any Extended Reporting Period shall be a part of, and not in addition to, the Limits of Liability and Sublimits of Liability listed on the Declarations.

VIII. DEFINITIONS

Annual Policy Term means each one-year period following the effective date of the **Group Policy Period**.

Claim means:

1. a written demand for money or services received by the **Insured** or
2. service of a lawsuit or institution of arbitration or mediation proceedings against the **Insured** seeking **Damages** and alleging a negligent act, error, or omission in the performance or failure to perform **Professional Services**. A **Claim** also includes a **Discrimination Claim**.

Claim Expenses means:

1. fees, costs, and expenses resulting from the investigation, adjustment, defense, and appeal of a **Claim** if incurred by the Company or by the **Insured** with the Company's written consent and
 2. fees charged by attorneys designated by the Company.
- Costs, fees, or expenses of employees or officials of the Company are not **Claim Expenses**. Nor shall **Claim Expenses** include salaries, loss of earnings, or other remuneration by or to any **Insured**.

Damages means compensatory damages. **Damages** do not include fines; penalties; punitive, exemplary, or multiplied damages; or matters deemed uninsurable under applicable law.

Discrimination Claim means

1. a written demand for money or services received by the **Insured** or
2. service of a lawsuit or institution of arbitration or mediation proceedings against the **Insured** alleging **Discriminatory Conduct**.

Discriminatory Conduct means an act, error, or omission in violation of Title VIII of the Civil Rights Act of 1968, the Fair Housing Amendment Act of 1988, or any similar state or local law or ordinance in the rendering of **Professional Services**.

Domestic Partner means any person qualifying as a "domestic partner" under any federal, state, or local law or under the **Real Estate Firm's** employee benefit plans.

Environmental Claim means a **Claim** alleging the **Insured's** failure to detect, report, assess the effects of, or advise of the existence of **Pollutants, Fungi, or Microbes**.

Escrow Claim means a **Claim** alleging the **Insured's** failure to pay, collect, or return escrow monies or earnest money deposits in connection with the **Licensee's Professional Services**, provided that (i) such **Insured** has met the requirements of Tennessee real estate license law governing client funds and (ii) such funds are held separate from the **Insured's** funds.

Fungi means any form of fungus, including but not limited to yeast, mold, mildew, rust, smut, or mushroom.

Group Policy Period means the period set forth in the Declarations. The **Group Policy Period** may be shortened by cancellation.

Individual Policy Period means the period set forth in the **Licensee's** Certificate of Coverage commencing with the date the **Licensee** obtained coverage under this group policy by paying the appropriate premium and ending with the cancellation or expiration of the **Licensee's** coverage under this group policy. The **Individual Policy Period** must be within the dates of the **Group Policy Period** shown on the Declarations.

Insured means the following:

1. the **Licensee**;
2. the **Licensee's Unlicensed Employees**;
3. the heirs, executors, administrators, or assigns of the **Licensee** in the event of the **Licensee's** death, incapacity, or bankruptcy but only to the extent that such **Licensee** would have been provided coverage under this policy;
4. the spouse or **Domestic Partner** of the **Licensee** but only for **Claims** arising solely out of such status and only if the **Claim** seeks **Damages** from marital community property, jointly held property, or property transferred from the **Insured** to the spouse or **Domestic Partner**. No coverage is provided for any act, error, or omission of a spouse or **Domestic Partner**.

When this policy provides coverage for a **Claim** made against any of the **Insureds** listed in 1, 2, 3, or 4 above, **Insured** will also mean:

5. any **Real Estate Firm** or real estate franchisor that the **Licensee** represents but only for its vicarious liability for the negligent acts, errors, or omissions or **Discriminatory Conduct** arising out of the **Licensee's Professional Services**.

Licensee means the person who holds an active real estate license issued by the **Policyholder** under Tennessee real estate license law and who has paid the required premium.

Lock Box means a device to allow authorized persons without a key to enter a locked door.

Lock Box Claim means a **Claim** alleging property damage or loss of use of property resulting from such property damage in the distribution, operation, or use of a **Lock Box** on property not owned, occupied by, or leased to the **Insured**.

Microbes mean any non-fungal microorganism or non-fungal colony-form organism that causes infection or disease.

Policyholder means the Tennessee Real Estate Commission.

Pollutants means any solid, liquid, gaseous, thermal, biological, or radioactive substance, material, matter, toxin, irritant, or contaminant, including but not limited to radon, asbestos, smoke, vapor, soot, fumes, acids, alkalis, chemicals, and waste. Waste includes materials to be recycled, reconditioned, or reclaimed.

Principal Real Estate License means the state license under which the majority of the **Licensee's** real estate transactions are conducted.

Professional Services means

1. services performed by the **Licensee** as a real estate broker, affiliate broker, or time share salesperson as defined in T.C.A. § 62-13-101, et seq., and for which the **Licensee** is required to have a real estate license, including auctioning real property, provided all necessary licenses are held by the **Licensee** at the time of the act, error, or omission giving rise to the **Claim**;
2. **Issuance of an opinion to a potential seller or third party** as to the recommended listing price of real estate or an opinion to a potential purchaser or third party as to the recommended purchase price of real estate by the **Licensee**, provided all necessary licenses are held by the **Licensee** when the opinion is issued; and
3. services performed or advice given by the **Licensee**, including as a notary public, and as a real estate consultant or counselor in connection with the services as a **Licensee** in 1 or 2, above.

Real Estate Firm means a legal entity with which real estate brokers, affiliate brokers, or time share salespersons, as defined in T.C.A. § 62-13-101, et seq., are affiliated and which employs the **Licensee**.

Related Claims means all **Claims** arising out of a single negligent act, error, or omission or **Discriminatory Conduct** or arising out of **Related Acts, Errors, or Omissions** in the rendering of **Professional Services**.

Related Acts, Errors, or Omissions mean all negligent acts, errors, or omissions or **Discriminatory Conduct** in the rendering of **Professional Services** that are temporally, logically, or causally connected by any common fact, circumstance, situation, transaction, event, advice, or decision.

Retroactive Date means the date when the first real estate errors and omissions coverage was effective insuring the **Licensee** on a claims-made basis and since which time the **Licensee** has been continuously insured by coverage similar to that provided by this policy. The **Retroactive Date** is established separately for each **Licensee**.

Unlicensed Employee means the support staff employed by the **Licensee** and under the real estate **Licensee's** supervision and control who is assisting the **Licensee** in the performance of the **Licensee's Professional Services**, including a personal assistant, clerk, secretary, messenger, and intern but shall not include an owner, officer, director, or any other staff member who is not under the direct supervision of the **Licensee** or assisting the **Licensee** in the performance of the **Licensee's Professional Services**. **Unlicensed Employee** does not include appraisal trainees or anyone who manages property who does not have a real estate license.

IX. PREMIUM

This coverage shall not be effective until and unless the application for coverage has been approved by the Company and the premium has been paid. Each **Insured's** premium shall be fully earned at the policy's commencement without any obligation by the Company to return any portion thereof unless the Company cancels the entire policy.

X. AUDIT

The Company may audit the **Insured's** records to determine the accuracy of pertinent information provided by the **Insured**. The Company will give reasonable notice to the **Insured** of such an audit. The audit will take place during the **Insured's** regular business hours.

XI. THE INSURED'S DUTIES IF THERE IS A CLAIM

- A. The **Insured** shall give written notice by submitting a completed Notice of Claim Form to the Company as soon as possible after the **Claim** is first made but in no event more than ninety (90) days after the **Insured** becomes aware of such **Claim**. Such written notice shall include the name of the **Licensee** and shall include the time, place, and details of the **Claim**. Notice shall be delivered to:

U.S. Mail Delivery

Claims Department
P.O. Box 1234
Anytown, TN 12345

Overnight Delivery

Claims Department
4321 Boulevard St.
Anytown, TN 12345

Electronic Delivery

Fax: (123) 456-7890
Email: claims@insu.com

- B. The **Insured** shall not admit any liability, make any settlement, pay any **Damages**, or assume any duty or obligation for any **Claim** without the prior written consent of the Company. The **Insured** shall not incur any **Claim Expenses** for any **Claim** without the prior written consent of the Company.
- C. The **Insured** shall immediately forward to the Company every demand, notice, summons, or other process about any **Claim** received by the **Insured** or the **Insured's** representative.
- D. The **Insured** shall cooperate with the Company and, at the Company's request, the **Insured** shall assist the Company in responding to the **Claim** and making settlements. The **Insured** shall attend hearings and trials and help in securing and giving evidence at the Company's request.

XII. CIRCUMSTANCE REPORTING

If during the **Individual Policy Period**, the **Insured** becomes aware of any act, error, or omission that may reasonably be expected to be the basis of a **Claim** against the **Insured** and gives written notice to the Company by any of the means listed in **Section XI. THE INSURED'S DUTIES IN THE EVENT OF A CLAIM** of such act, error, or omission and information about the potential **Claim**, including but not limited to:

- 1. the specific act, error, or omission;
 - 2. the dates and persons involved;
 - 3. the identity of the anticipated or possible claimants; and
 - 4. the circumstances by which the **Insured** first became aware of the potential **Claim**,
- then any **Claim**, which arises out of such reported act, error, or omission, subsequently made against the **Insured** and reported to the Company shall be deemed to have been made at the time such written notice was first given to the Company.

XIII. SUBROGATION

If the Company makes any payment under this policy, the Company shall receive all of the **Insured's** rights of recovery against any persons or organizations. The **Insured** shall assist the Company in whatever way is necessary to secure such rights. When a **Claim** is made, the **Insured** shall do nothing to thwart the Company's recovery of amounts paid to other parties who might be responsible for the **Claim**.

XIV. CHANGES

The terms of this policy may not be waived or changed unless the Company issues an Endorsement. All Endorsements become a part of this policy upon the Endorsement's effective date. The **Policyholder** or the **Licensee** and the Company may make changes in the terms of the policy upon mutual consent.

XV. ACTION AGAINST THE COMPANY

The **Insured** may not bring a lawsuit against the Company unless the **Insured** has complied with all the terms and conditions of this policy. Nor shall an action lie against the Company until judgment or trial determines the **Insured's** responsibility to pay.

XVI. BANKRUPTCY

Bankruptcy or insolvency of the **Insured** or the **Insured's** estate will not relieve the Company of its obligations under this policy.

XVII. CANCELLATION

- A. The **Policyholder** may cancel this policy by giving, mailing, or delivering the Company advance written notice of cancellation or surrendering the policy to the Company at least ninety (90) days before the effective date of cancellation. If the **Policyholder** cancels the policy, it is responsible for notifying each **Licensee** of the effective date of cancellation.
- B. The Company may cancel this policy in accordance with the provisions of T.C.A. § 56-7-1801, et seq. Notice of cancellation will state the effective date and hour of cancellation. If notice is mailed, proof of mailing will be sufficient proof of notice. If the policy is canceled, the effective date and hour of cancellation will become the end of the policy period.

XVIII. NONRENEWAL

If the Company elects not to renew this policy, it will provide written notice of nonrenewal to the **Policyholder** at least ninety (90) days before the expiration date of the policy

XIX. CONFORMITY TO STATUTES

If applicable law is in conflict with this policy, the policy is amended to conform to that law.

XX. OTHER INSURANCE

This insurance is excess over any other insurance, whether primary, excess, contingent, or on any other basis, except when purchased specifically to apply in excess of this insurance. When both this insurance and other insurance apply to any **Claim**, whether primary, excess, or contingent, the Company shall not be liable under this policy for a greater proportion of the **Damages** or **Claim Expenses** than the applicable Limits of Liability or Sublimits of Liability under this policy for such **Damages** bears to the total applicable Limits of Liability and Sublimits of Liability of all valid and collectible insurance against such **Claims**.

XXI. LICENSE INACTIVE

In the event a **Licensee's** license is placed on inactive status during a period in which the **Insured** has paid the applicable premium, the policy will remain in effect for the remainder of the **Individual Policy Period** as if the license had not been placed in inactive status, regardless of whether the license is re-activated, except that coverage will not be provided for acts, errors, or omissions of the **Insured**, which occur during the period when the license was in an inactive status.

XXII. AUTHORIZATION CLAUSE

By accepting this policy, the **Insured** agrees that the statements in the application are the **Insured's** agreements and representations. The **Insured** agrees that these statements are true and correct as of the inception of this policy. This policy has been issued relying upon those statements and representations. The **Insured** agrees that the policy and application are the total agreement between the **Insured** and the Company or its agents.

XXIII. TRANSFER

This policy is not transferable.

XXIV. TRADE AND ECONOMIC SANCTIONS

This policy does not provide coverage for **Insureds**, transactions, or that part of **Damages** or **Claim Expenses** that is uninsurable under the laws or regulations of the United States concerning trade or economic sanctions.

IN WITNESS WHEREOF, we have caused this policy to be executed by our Chairperson and Secretary, but this policy shall not be binding upon us unless completed by the attachment of the Certificate of Coverage and executed by our duly authorized representative.

Chairman

Secretary

EXHIBIT B

Master Errors & Omissions Insurance Policy for January 1, 2017 - January 1, 2019

(To be furnished by the Contractor following the execution of the Contract)