

EXHIBIT A –

THIRD PARTY CLAIMS ADMINISTRATION SERVICES CONTRACT

(This is a DRAFT CONTRACT - Do not sign!)

This Third Party Claims Administration Services Contract (Contract) is made by and between the Mississippi Department of Finance and Administration (DFA), acting administratively on behalf of the Board of Trustees (Board) for the Mississippi State Agencies Self-Insured Workers' Compensation Trust (Trust), and _____ (TPA), on the 1st day of July, 2018, under the following terms and conditions under which the TPA agrees to provide services to the Board relating to its self-insured workers' compensation program.

1. Scope of Services

The primary function of the TPA shall be the prompt and accurate adjudication of workers' compensation claims filed by participating member agencies and/or their employees. TPA services shall include claims investigations, compensability determinations, claim and expense payments, litigation management, medical case management, and overall management of claim files to include completion and timely filing of reports required by the Mississippi Workers' Compensation Commission, as well as statistical and management reports to the Trust. The TPA may also be requested to provide safety/risk control services, at the Board's discretion. The Board reserves the right to unbundle specific elements of service associated with medical management and cost containment, including but not limited to medical case management, bill review, utilization review, and pharmacy benefit management. The TPA's duties and responsibilities shall include, but are not limited to, the following:

- A. Provide a dedicated claims unit composed of professionally trained, appropriately licensed claims staff to ensure excellence in all areas of service required under this Contract and meeting the minimum experience requirements specified in the Board's Request for Proposal (RFP) entitled "Mississippi State Agencies Self-Insured Workers' Compensation Trust Request for Proposal for Third Party Claims Administration Services", dated August 29, 2017 (which will be attached to the contract) and the TPA's response to the Request for Proposals (which will likewise be attached to the contract);
- B. Perform a complete and timely implementation of third party claims administration services from the Trust's incumbent third party claims administration vendor, to meet the July 1, 2018, contract effective date;
- C. Agree to cooperate with all other contractors of the Board in the on-going coordination and delivery of services to the Trust, and in any transfer of responsibility;
- D. Provide member agencies with on-line, facsimile, telephonic, and e-mail claim reporting capabilities;
- E. Respond immediately to any inquiry, complaint or request received from a member agency, the Trust, the Mississippi Workers' Compensation Commission, other regulatory agency, a claimant, or other interested party;
- F. Review all incident, claim and loss reports received from member agencies, and process each such claim or loss report to conclusion in accordance with applicable statutory and administrative regulations;

- G. Establish an incident or suspense file for any event of which agency personnel becomes aware that may result in injury or property damage, but for which the employee involved has not claimed injury and/or a claim is not anticipated. This will be for Reporting Purposes Only (RPO);
- H. Establish and reserve a file for each claim and code such claim in accordance with the TPA's standard statistical data requirements;
- I. Maintain a current estimate of expected total cost of each claim or loss, and provide for reserve calculation tracking (including initial reserve establishment and all subsequent changes) within the claim files;
- J. Conduct a thorough investigation of each reported incident, claim or loss to the extent necessary, which may include but not be limited to photographs, diagrams, police reports, statements from involved parties and all witnesses to determine the Trust's liability, etc.;
- K. Process each claim in accordance with rules, regulations, and restrictions of the Mississippi Workers' Compensation Commission and the laws of the State of Mississippi. The Trust shall have the right at its discretion to take over the handling of any claim and to direct the handling of any claim at any time during the life of the Contract and the life of the claim, but with no expense or reduction in claim service fees or allocated claim expense incurred by the TPA with respect to such claims;
- L. Safety/loss personnel must make on-site contact within one business day of the notice to the TPA of the incident, claim, or loss, in the event of notification of an incident, claim, or loss involving death of an employee, or a serious injury with an initial indemnity and medical reserve over \$50,000;
- M. Arrange for independent investigators, medical professionals, or other experts to the extent deemed necessary by the TPA in connection with processing any incident, claim, or loss. If it is mutually deemed necessary to assign an independent, third party claims investigator (fee adjuster) to handle a portion of the investigation of a qualified claim or loss, the fee for services of such fee adjuster will be paid by the TPA, not out of the Trust's funds, if those are services that the TPA staff is equally capable and qualified to handle. The fee adjuster will be mutually agreed upon and determined by geography and the type of claim/injury involved;
- N. Process payment of medical and death benefits, temporary and permanent disability compensation, and other appropriate losses and expenses in accordance with the authority granted herein and the applicable statutes and regulations. The TPA shall have the authority to adjust, resist, and/or compromise or settle any claim or loss up to ten thousand dollars (\$10,000.00). The TPA's authority to compromise or settle any claim or loss may be increased or decreased by the Board through written notification to the TPA at any time during this Contract, such action having been contemplated under this Contract would not require a modification to the Contract. The TPA reserves the right, on any particular claim, to disregard the authority granted in this section and treat said claim as requiring the Trust's approval prior to final disposition. The Trust likewise reserves the right, on any particular claim, and upon written notice to the TPA, to revoke the authority granted in this section and treat said claim as requiring the Trust's approval prior to final disposition;
- O. Perform reasonable and necessary administrative and clerical work in connection with claims or losses including the preparation of checks bearing the name of the Trust and drawn on a claims fund bank account established on behalf of, and used exclusively for the Trust; monthly reconciliation of bank statements on said account, notification to the Board, electronically or as otherwise agreed, of checks issued in excess of ten thousand dollars (\$10,000);

- P. Shall not be liable or obligated to make any payments of any type or character on behalf of the Trust out of its own (TPA's) funds; The Trust shall be required to maintain sufficient balances in the claims fund account to properly and adequately fund daily maintenance and indemnity needs, as well as settlement of claims and allocated loss expenses;
- Q. Cooperate with information and reporting requests from the Trust's actuary to facilitate actuarial analyses of the program;
- R. Comply with any and all claims administrative procedures of the Trust;
- S. Administer the litigation process and assist attorneys in accordance with instructions from any litigation assignment and management plan established by the Trust; The TPA shall in no event be considered as engaged in the practice of law, nor required to give any legal opinion or provide any legal representation to the Trust;
- T. Notify and coordinate with excess insurers of all claims or losses with values that may exceed the Trust's retention and provide such excess insurers with necessary information on the current status of those claims or losses, to include appropriate funds recovery for the Trust on claims made to the excess insurers;
- U. Monitor the treatment programs recommended for employees by physicians, specialists, and other health care providers by reviewing all reports prepared by them and maintaining such contact with these providers as may be appropriate;
- V. Assist in arranging for rehabilitation or retraining of employees as appropriate. Included in this assistance is working with and advising the employee and the member agency in "return to work" efforts;
- W. Maintain a current estimate of expected total cost of each claim or loss, and provide for reserve calculation tracking (including initial reserve establishment and all subsequent changes) within the claim files;
- X. Furnish to the Trust (and to specific member agencies on a limited access basis as directed by the Trust) selected loss and information reports in a format agreed to by the Trust. The TPA will provide the Trust with Internet-based read-only access to the TPA's claims adjudication/reporting system. Included in such access are tools that will allow the Trust the ability to run selected management and statistical reports as needed;
- Y. Provide ad hoc narrative reports of claims as requested by Board;
- Z. Prepare thoroughly documented notes to each claim file with respect to liability, reserve history, expected settlement/closure date, telephone conversations, etc.;
- AA. Provide and utilize medical cost containment services at the fees agreed to in Exhibit - Fee Schedule, to include access and channeling to PPO (services, supplies/equipment, and pharmacy) networks and other preferred providers, medical bill review (fee scheduling & UCR), and provider fee negotiation. This may also include as needed hospital bill review and prompt payment negotiation. Case management services (both telephonic and field) should likewise be available to ensure that appropriate treatment plans are established and followed. The aforementioned services can be provided either directly through the TPA or through contractual arrangements with third party vendors/networks, as approved by the Trust;

- BB. File, or provide the necessary information to the Board to file, all periodic reports and renewal applications required by regulatory agencies;
- CC. Collect, process, and report data in the manner required by the Internal Revenue Service for the purpose of preparing any required IRS Form 1099 filings for any payments that are the subject of this contract;
- DD. Provide additional information, analysis, reports, and/or services as may be requested by the Board, and for which the TPA is qualified and able to provide; Any fees associated with the provision of such services not already contemplated and/or addressed in the bundled rates set forth in Exhibit – Fee Schedule of this Contract shall be mutually agreed upon in advance of the delivery of said services;
- EE. Agree to the performance guarantees specified in Exhibit ___;
- FF. Investigate and pursue all subrogation possibilities on behalf of the Trust. All funds received from such subrogation collections shall be deposited into the Trust's designated account;
- GG. Investigate fraudulent claims and make referrals to appropriate authorities;
- HH. Meet with the Board and/or DFA staff on a regular basis to review claims, settlements, and program strategies;
- II. Participate in the orientation and training of member agency personnel who are directly or indirectly involved in the processing of workers' compensation claims or losses. This orientation includes, but is not limited to, orientation of their personnel in proper claims procedures, statutory requirements, and other matters necessary for the administration of the program. The TPA agrees to work with the Board in conducting or assisting with annual training/educational seminars as well as ad hoc sessions as needed and/or requested by the Board;
- JJ. Conduct annual stewardship meetings to include both a scorecard review, and the presentation of the Trust's' loss run analysis. Such analyses shall include, but not be limited to, normative data for the Trust's industry and locale, loss run trends, and claims causes, and areas to address from a risk management perspective. In addition, such meetings shall include recommendations regarding program improvements;
- KK. Receive a complete claims history for the Trust from the previous TPA in electronic format. The TPA shall be required to load and maintain all Trust claims data for all claims for the period July 1, 1990, through June 30, 2018, including both open and closed claims;
- LL. Receive paper files, documents, audio and video tapes, diskettes, etc. from the previous TPA on all open claims as of July 1, 2018; also, receive the same type of physical and/or electronic files on all closed claims;
- MM. Maintain full and accurate records with respect to all matters covered under this Contract. The TPA agrees to maintain hard copy of all such records until such time as said records have been electronically copied or scanned, saved and adequately safeguarded. The TPA will maintain the Trust's reported claims data electronically to consist of claim file data, payment record data, and adjusters' notes for as long as open claims exist in the contracted year of service. The TPA will store and maintain finalized (closed) claims files indefinitely. The TPA agrees that data contained

on tapes, discs, files, batch files, and other records pertinent to the program or the employees participating in the program, unless otherwise prohibited by law, are the property of the Trust and must be made capable of separate retrieval and distribution. The TPA must provide for the physical security of all such records, including a disaster recovery plan for retrieval of lost data. The TPA agrees not to release, destroy, or otherwise compromise the aforementioned data without the expressed written consent of the Board, or as contemplated by the Contract and/or State or Federal law;

- NN. Provide all services directly related to this Contract from an office(s) located within the State of Mississippi as required by §71-3-125 of the Mississippi Code.
- OO. Assign a dedicated (but not necessarily exclusive) account manager located in the Mississippi service center to participate in activities relative to all aspects of the Contract between the Board and the TPA;
- PP. Maintain a claims office in Mississippi throughout the term of this Contract. This office shall be open for business Monday through Friday between the hours of 8:00 AM and 5:00 PM Central Time each week of the year excluding holidays, unless otherwise agreed to by the Board;
- QQ. Provide and maintain a toll free telephone number and an interactive website for claim reporting and communication with the member agencies of the Trust, providers, claimants, and Trust staff;
- RR. Provide a process for rapid response and communication among the TPA's adjuster, the provider, the claimant, the member agency, the Trust, and other related parties in claims administration. Ensure telephone or written response to inquiries within forty-eight (48) hours of receipt;
- SS. Process all claims or losses transferred from the previous third party claims administrator remaining open at June 30, 2018, as well as any and all subsequently reported claims that were incurred but not reported prior to July 1, 2018. The TPA is also responsible for processing any previously closed claims that are re-opened during the term of the contract;
- TT. Provide the Board access to a safety/risk control consultant to assist and advise the Board as requested in handling the safety and risk management needs of the Trust. Such assistance will be on an "as requested" basis, and may include but is not limited to the following:
 - a. Conduct comprehensive and/or specialized surveys of member agencies' facilities, and provide comprehensive reports and recommendations;
 - b. Develop risk control policies for recommendation to the Board;
 - c. Assist in implementing said risk control policies for the Trust;
 - d. Assist in risk control training, educational workshops and seminars;
 - e. Provide other such services as requested by the Board and for which the safety/risk control consultant is qualified to perform;
- UU. Agree to undergo annual SSAE 16 audits (or equivalent) at the TPA's sole expense, and provide the Board with a copy of the resulting Service Organization Control report(s).

- VV. Secure and maintain throughout the contract period professional liability coverage at a minimum of \$1,000,000 per occurrence, \$5,000,000 aggregate. It is the responsibility of the TPA to annually provide the Board current insurance certificate(s) to document proof of coverage, with the initial proof (certificate of coverage) reflecting the required insurance type and amounts to be submitted to the Board within thirty (30) days of the date the contract is executed.
- WW. Secure and maintain a performance bond or escrow account in the amount of seven hundred and fifty thousand dollars (\$750,000) naming the Trust as exclusive beneficiary to guarantee timely and complete establishment of the contract and related services. Such bond or escrow account must be secured within thirty (30) days of the date the contract is executed. Any failure of the TPA to perform timely and complete establishment of such services shall result in damages recoverable by the Board against the TPA's performance bond or escrow account. Upon the Board's agreement that the TPA has complied with its responsibilities for establishing the contract and related services, the performance bond or escrow account shall be released.
- XX. Secure and maintain a blanket fidelity bond in the amount of One Million Dollars (\$1,000,000) with the Trust named as exclusive beneficiary for the duration of this Contract. Pursuant to such bond, any losses incurred by the Trust due to theft or dishonesty of a TPA employee shall be fully repayable to the Trust. The TPA shall be responsible for procuring any such recovery and reimbursing the Trust accordingly.

2. **Contract Term**

- A. The effective date of this Contract will be February 1, 2017. This Contract's term will be for four (4) years with an option to renew for one (1) year at THE Board's DFA's discretion. Six (6) months prior to January 31, 2021, DFA will notify the TPA, in writing, of DFA's intent as to renewal of the Contract for one (1) additional year.
- B. This Contract may be terminated by either party, with or without cause, upon at least thirty (30) days prior written notice of intent to terminate.
- C. All records and information provided by the Board or through its third party contractors to the TPA are the sole property of the Board and shall be returned to the Board, if so requested, within thirty (30) days of the termination date of this Contract. The TPA shall be entitled to retain and utilize data that have been captured, computed, or stored in the TPA's databases to the extent that such data cannot be identified or linked to the Board, the Trust, or an individual claimant.

3. **Consideration**

- A. The flat fees, and unit rates as applicable, listed in Exhibit ____ "Fee Schedule", of this Contract shall constitute the entire compensation due to the TPA for services and all of the TPA's obligations hereunder regardless of the difficulty, materials, or equipment required. The listed fee or rate includes, but is not limited to, all applicable taxes, fees, general office expense, travel expenses, overhead, profit, and all other direct and indirect costs, incurred or to be incurred, by the TPA. No additional compensation will be provided by DFA for any expense, cost, or fee not specifically authorized by this Contract, or by written authorization from the Board. Reasonable and necessary travel is allowable for Safety/Risk Control consultant and utilization/case management professionals at prevailing Mississippi State employee limits. Unit rates in **Section 5 – Fee Schedule** are to be charged for actual hours worked only and shall not include travel time. No additional compensation will be provided by the Board for any expense, cost, or fee not specifically authorized by the contract, or by written authorization from the Board. Cost containment fees will be charged to the specific claim(s) receiving the services.

- B. The fees and rates listed in Exhibit __, “Fee Schedule”, of this Contract are firm for the duration of this Contract and are not subject to escalation for any reason, unless this Contract is duly amended.
- C. The TPA shall submit all invoices, in a form acceptable to DFA with all of the necessary supporting documentation, prior to any payment of allowable costs.
- D. The payment of an invoice by DFA shall not prejudice DFA’s right to object or question any invoice or matter in relation thereto. Such payment by DFA shall neither be construed as acceptance of any part of the work or service provided nor as an approval of any costs invoiced therein. TPA’s invoice or payment shall be subject to reduction for amounts included in any invoice or payment theretofore made which are determined by DFA, on the basis of audits, not to constitute allowable costs. Any payment shall be reduced for overpayment, or increased for underpayment on subsequent invoices.
- E. DFA reserves the right to deduct from amounts that are or shall become due and payable to the TPA under this Contract between the parties any amounts which are or shall become due and payable to DFA by the TPA. Notwithstanding anything to the contrary herein, any reduction of payments to TPA shall be made only with the prior agreement of both parties. In addition, in the event of termination of this Contract for any reason, TPA shall be paid for services rendered and any allowable expenses incurred up to the effective date of termination.
- F. Unless otherwise agreed to in writing by the Board, DFA agrees to pay for all services in arrears, in either lump sum or incremental amounts, as requested by the TPA. The TPA agrees to accept all payments in United States currency via the State of Mississippi’s electronic payment and remittance vehicle. DFA agrees to make payments in a timely fashion and in accordance with Mississippi law on “Timely Payments for Purchases by Public Bodies,” Section 31-7-301, et seq. Mississippi Code Annotated, as amended, which generally provides for payment of undisputed amounts by the Board within forty-five (45) days of receipt of invoice.

4. E-Payment

TPA agrees to accept all payments in United States currency via the State of Mississippi’s electronic payment and remittance vehicle. The agency agrees to make payment in accordance with Mississippi law on “Timely Payments for Purchases by Public Bodies,” which generally provides for payment of undisputed amounts by the agency within forty-five (45) days of receipt of invoice. Mississippi Code Annotated § 31-7-305.

5. Paymode

Payments by state agencies using the Statewide Accounting System shall be made and remittance information provided electronically as directed by the State. These payments shall be deposited into the bank account of the TPA’s choice. The State, may at its sole discretion, require the TPA to submit invoices and supporting documentation electronically at any time during the term of this Contract. The TPA understands and agrees that the State is exempt from the payment of taxes. All payments shall be in United States currency.

6. Availability of Funds

It is expressly understood and agreed that the obligation of the DFA to proceed under this Contract is conditioned upon the appropriation of funds by the Mississippi State Legislature and the receipt of state and/or federal funds. If the funds anticipated for the continuing fulfillment of the Contract are, at any time, not forthcoming or insufficient, either through the failure of the federal government to provide funds or of the State of Mississippi to appropriate funds or the discontinuance or material alteration of the program under which funds were provided or if funds are not otherwise available

to the DFA, the DFA shall have the right upon ten (10) working days written notice to the TPA, to terminate this Contract without damage, penalty, cost or expenses to the DFA of any kind whatsoever. The effective date of termination shall be as specified in the notice of termination.

7. Record Retention and Access to Records

Provided TPA is given reasonable advance written notice and such inspection is made during normal business hours of TPA, the TPA agrees that the DFA or any of its duly authorized representatives shall have unimpeded, prompt access to any of TPA's books, documents, papers, and/or records which are maintained or produced as a result of the project for the purpose of making audits, examinations, excerpts, and transcriptions. All records related to this Contract shall be kept by the TPA for a period of three (3) years after final payment under this Contract and all pending matters are closed; however, if any audit, litigation or other action arising out of or related in any way to this project is commenced before the end of the three (3) year period, the records shall be retained for one (1) year after all issues arising out of the action are finally resolved or until the end of the three (3) year period, whichever is later.

8. *Applicable Law*

The contract shall be governed by and construed in accordance with the laws of the State of Mississippi, excluding its conflicts of laws, provisions, and any litigation with respect thereto shall be brought in the courts of said state. The TPA shall comply with applicable federal, state, and local laws and regulations.

9. Anti-Assignment/Subcontracting

TPA acknowledges that it was selected by the State to perform the services required hereunder based, in part, upon TPA's special skills and expertise. The TPA shall not assign, subcontract or otherwise transfer in whole or in part, its right or obligations under this Contract without prior written consent of the DFA, which DFA may, in its sole discretion, approve or deny without reason. Any attempted assignment or transfer without said consent shall be null and void. No such approval by DFA of any subcontract shall be deemed in any way to provide for the incurrence of any obligation of DFA in addition to the total fixed price agreed upon in this Contract. Subcontracts shall be subject to the terms and conditions of this Contract and to any conditions of approval that the State may deem necessary. Subject to the foregoing, this Contract shall be binding upon the respective successors and assigns of the parties.

10. *Compliance with Laws*

The TPA understands that the DFA is an equal opportunity employer and therefore maintains a policy which prohibits unlawful discrimination based on race, color, creed, sex, age, national origin, physical handicap, disability, genetic information, or any other consideration made unlawful by federal, state, or local laws. All such discrimination is unlawful and the TPA agrees during the term of the Contract that the TPA will strictly adhere to this policy in its employment practices and provision of services. The TPA shall comply with, and all activities under this Contract shall be subject to, all applicable federal, State of Mississippi, and local laws and regulations, as now existing and as may be amended or modified.

11. *Transparency*

This Contract, including any accompanying exhibits, attachments, and appendices, is subject to the "Mississippi Public Records Act of 1983," and its exceptions. See Mississippi Code Annotated §§ 25-61-1 et seq. and Mississippi Code Annotated § 79-23-1. In addition, this Contract is subject to provisions of the Mississippi Accountability and Transparency Act of 2008. Mississippi Code Annotated §§ 27-104-151 et seq. Unless exempted from disclosure due to a court-issued protective order, a copy of this executed contract is required to be posted to the Department of Finance and

Administration's independent agency contract website for public access at <http://www.transparency.mississippi.gov>. Information identified by TPA as trade secrets, or other proprietary information, including confidential vendor information or any other information which is required confidential by state or federal law or outside the applicable freedom of information statutes, will be redacted.

12. E-Verification

If applicable, TPA represents and warrants that it will ensure its compliance with the Mississippi Employment Protection Act of 2008, and will register and participate in the status verification system for all newly hired employees. Mississippi Code Annotated §§ 71-11-1 et seq. The term "employee" as used herein means any person that is hired to perform work within the State of Mississippi. As used herein, "status verification system" means the Illegal Immigration Reform and Immigration Responsibility Act of 1996 that is operated by the United States Department of Homeland Security, also known as the E-Verify Program, or any other successor electronic verification system replacing the E-Verify Program. TPA agrees to maintain records of such compliance. Upon request of the State and after approval of the Social Security Administration or Department of Homeland Security when required, TPA agrees to provide a copy of each such verification. TPA further represents and warrants that any person assigned to perform services hereafter meets the employment eligibility requirements of all immigration laws. The breach of this Contract may subject TPA to the following:

- (1) termination of this contract for services and ineligibility for any state or public contract in Mississippi for up to three (3) years with notice of such cancellation/termination being made public;*
- (2) the loss of any license, permit, certification or other document granted to TPA by an agency, department or governmental entity for the right to do business in Mississippi for up to one (1) year; or,*
- (3) both. In the event of such cancellations/termination, TPA would also be liable for any additional costs incurred by the State due to Contract cancellation or loss of license or permit to do business in the State.*

13. Independent Contractor Status

The TPA shall, at all times, be regarded as and shall be legally considered an Independent Contractor and shall at no time act as an agent for the DFA. Nothing contained herein shall be deemed or construed by DFA, TPA, or any third party as creating the relationship of principal and agent, master and servant, partners, joint ventures, employer and employee, or any similar such relationship between DFA and TPA. Neither the method of computation of fees or other charges, nor any other provision contained herein, nor any acts of DFA or TPA hereunder creates, or shall be deemed to create a relationship other than the independent relationship of DFA and TPA. TPA's personnel shall not be deemed in any way, directly or indirectly, expressly or by implication, to be employees of DFA. No act performed or representation made, whether oral or written, by the TPA with respect to third parties shall be binding on the DFA. Neither the TPA nor its employees shall, under any circumstances, be considered servants, agents, or employees of the DFA; and the DFA shall at no time be legally responsible for any negligence or other wrongdoing by the TPA, its servants, agents, or employees. DFA shall not withhold from the contract payments to TPA any federal or state unemployment taxes, federal or state income taxes, Social Security tax, or any other amounts for benefits to TPA. Further, DFA shall not provide to TPA any insurance coverage or other benefits, including Worker's Compensation, normally provided by DFA for its employees.

14. Modification or Renegotiation

This Contract may be modified only by written Contract signed by the parties hereto. The parties agree to renegotiate the Contract if federal, state and/or the DFA revisions of any applicable laws or regulations make changes in this Contract necessary.

15. Procurement Regulations

The contract shall be governed by the applicable provisions of the Mississippi Personal Service Contract Review Board Rules and Regulations, a copy of which is available at 210 East Capitol, Suite 800, Jackson, Mississippi 39201 for inspection, or downloadable at <http://www.msp.ms.gov>. Subsequent to the scheduled January 1, 2018 abolishment of the Personal Service Contract Review Board, the contract will be under the purview of the Public Procurement Review Board (PPRB).

16. Representation Regarding Contingent Fees

The TPA represents that it has not retained a person to solicit or secure a DFA contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee.

17. Representation Regarding Gratuities

The TPA represents that it has not violated, is not violating, and promises that it will not violate the prohibition against gratuities set forth in Section 6-204 (Gratuities) of the Mississippi Personal Service Contract Review Board Rules and Regulations.

18. Termination for Convenience

(a) *Termination. The DFA may, when the interests of the DFA so require, terminate this contract in whole or in part, for the convenience of the DFA. The DFA shall give written notification of the termination to the TPA specifying the part of the contract terminated and when the termination becomes effective.*

(b) *TPA's Obligations. The TPA shall incur no further obligations in connection with the terminated work and on the date set in the notice of termination the TPA will stop work to the extent specified. The TPA shall also terminate outstanding orders and subcontracts as they relate to the terminated work. The TPA shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated work. The DFA may direct the TPA to assign the TPA's right, title, and interest under terminated orders or subcontracts to the DFA. The TPA must still complete the work not terminated by the notice of termination and may incur obligations as are necessary to do so.*

19. Termination for Default

(a) *Default. If the TPA refuses or fails to perform any of the provisions of this contract with such diligence as will ensure its completion within the time specified within this contract, or any extension thereof, otherwise fails to timely satisfy the contract provisions, or commits any other substantial breach of this contract, the DFA may notify the TPA in writing of the delay or nonperformance and if not cured within ten (10) days or any longer time specified in writing by the DFA, the DFA may terminate the TPA's right to proceed with the contract or such part of the contract as to which there has been delay or failure to properly perform. In the event of termination in whole or in part, the DFA may procure similar supplies or services in a manner and upon terms deemed appropriate by the DFA. The TPA shall continue performance of the contract to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods or services.*

- (b) *TPA's Duties. Notwithstanding termination of the contract and subject to any directions from the DFA, the TPA shall take timely, reasonable, and necessary action to protect and preserve property in the possession of the TPA in which the DFA has an interest.*
- (c) *Compensation. Payment for completed services delivered and accepted by the DFA shall be at the contract price. The DFA may withhold from amounts due the TPA such sums as the DFA deems to be necessary to protect the DFA against loss because of outstanding liens or claims of former lien holders and to reimburse the DFA for the excess costs incurred in procuring similar goods and services.*
- (e) *Excuse for Nonperformance or Delayed Performance. Except with respect to defaults of Subcontractors, the TPA shall not be in default by reason of any failure in performance of this contract in accordance with its terms (including any failure by the TPA to make progress in the prosecution of the work hereunder which endangers such performance) if the TPA has notified the DFA within 15 days after the cause of the delay and the failure arises out of causes such as: acts of God; acts of the public enemy; acts of the State and any other governmental entity in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather. If the failure to perform is caused by the failure of a subcontractor to perform or make progress, and if such failure arises out of causes similar to those set forth above, the TPA shall not be deemed to be in default, unless the services to be furnished by the Subcontractor were reasonably obtainable from other sources in sufficient time to permit the TPA to meet the contract requirements. Upon request of the TPA, the DFA shall ascertain the facts and extent of such failure, and, if such officer determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, the TPA's progress and performance would have met the terms of the contract, the delivery schedule shall be revised accordingly, subject to the rights of the DFA under the clause entitled (in fixed-price contracts, "Termination for Convenience," in cost-reimbursement contracts, "Termination"). (As used in this Paragraph of this clause, the term "subcontractor" means subcontractor at any tier).*
- (f) *Erroneous Termination for Default. If, after notice of termination of the TPA's right to proceed under the provisions of this clause, it is determined for any reason that the contract was not in default under the provisions of this clause, or that the delay was excusable under the provisions of this clause, or that the delay was excusable under the provisions of Paragraph (4) (Excuse for Nonperformance or Delayed Performance) of this clause, the rights and obligations of the parties shall, if the contract contains a clause providing for termination for convenience of the DFA, be the same as if the notice of termination had been issued pursuant to such clause.*
- (g) *Additional Rights and Remedies. The rights and remedies provided under this clause are in addition to any other rights and remedies provided by law or under this contract.*

20. Termination upon Bankruptcy

This contract may be terminated in whole or in part by DFA upon written notice to TPA, if TPA should become the subject of bankruptcy or receivership proceedings, whether voluntary or involuntary, or upon the execution by TPA of an assignment for the benefit of its creditors. In the event of such termination, TPA shall be entitled to recover just and equitable compensation for satisfactory work performed under this contract, but in no case shall said compensation exceed the total contract price.

21. Stop Work Order

(a) *Order to stop work. The DFA, may by written order to the TPA at any time, and without notice to any surety, require the TPA to stop all or any part of the work called for by this contract. This order shall be for a specified period not exceeding 90 days after the order is delivered to the TPA, unless the parties agree to any further period. Any such order shall be identified specifically as a stop work order issued pursuant to this clause. Upon receipt of such an order, the TPA shall forthwith comply with its terms and take all reasonable steps to minimize the occurrence of costs allocable to work covered by the order during the period of work stoppage. Before the stop work order expires, or within any further period to which the parties shall have agreed, the DFA shall either:*

- i. cancel the stop work order; or*
- ii. terminate the work covered by such order as provided in the "Termination for Default" clause or the "Termination for Convenience" clause of this contract.*

(b) *Cancellation or Expiration of the Order. If a stop work order issued under this clause is cancelled at any time during the period specified in the order, or if the period of the order or any extension thereof expires, the TPA shall have the right to resume work. An appropriate adjustment shall be made in the delivery schedule or TPA price, or both, and the contract shall be modified in writing accordingly, if:*

- i. the stop work order results in an increase in the time required for, or in the TPA's cost properly allocable to, the performance of any part of this contract; and,*
- ii. the TPA asserts a claim for such an adjustment within 30 days after the end of the period of work stoppage; provided that, if the DFA decides that the facts justify such action, any such claim asserted may be received and acted upon at any time prior to final payment under this contract.*

(c) *Termination of Stopped Work. If a stop work order is not cancelled and the work covered by such order is terminated for default or convenience, the reasonable costs resulting from the stop work order shall be allowed by adjustment or otherwise.*

22. Oral Statements

No oral statement of any person shall modify or otherwise affect the terms, conditions, or specifications stated in this contract. All modifications to the contract must be made in writing by the DFA and agreed to by the TPA.

23. Ownership of Documents and Work Papers

The DFA shall own all documents, files, reports, work papers and working documentation, electronic or otherwise, created in connection with the Contract which is the subject of this Contract, except for the TPA's internal administrative and quality assurance files and internal project correspondence. The TPA shall deliver such documents and work papers to the DFA upon termination or completion of the Contract. The foregoing notwithstanding, the TPA shall be entitled to retain a set of such work papers for its files. The TPA shall be entitled to use such work papers only after receiving written permission from the DFA and subject to any copyright protections.

24. Indemnification

To the fullest extent allowed by law, TPA shall indemnify, defend, save and hold harmless, protect, and exonerate DFA, the State of Mississippi, its Commissioners, Board Members, officers,

employees, agents, and representatives from and against all claims, demands, liabilities, suits, actions, damages, losses, and costs of every kind and nature whatsoever, including, without limitation, court costs, investigative fees and expenses, and attorneys' fees, arising out of or caused by TPA's and/or its partners, principals, agents, employees, and/or subcontractors in the performance of or failure to perform this Contract. In the State's sole discretion, TPA may be allowed to control the defense of any such claim, suit, etc. In the event TPA defends said claim, suit, etc., TPA shall use legal counsel acceptable to the State. TPA shall be solely liable for all reasonable costs and/or expenses associated with such defense and the State shall be entitled to participate in said defense. TPA shall not settle any claim, suit, etc., without the State's concurrence, which the State shall not unreasonably withhold.

25. Third-Party Action Notification

The TPA shall give the DFA prompt notice in writing of any action or suit filed, and prompt notice of any claim made against the TPA by any entity that may result in litigation related in any way to this Contract.

26. Notices

All notices required or permitted to be given under this Contract must be in writing and personally delivered or sent by certified United States mail postage prepaid, return receipt requested, to the party to whom the notice should be given at the address set forth below. Notice shall be deemed given when actually received or when refused. The parties agree to promptly notify each other in writing of any change of address.

For the TPA:

Name

Address

For the DFA and/or the Board:

Executive Director

Post Office Box 267

Jackson, Mississippi 39205-0267

With a copy of any notice to:

Trust Administrator

DFA - Office of Insurance

Post Office Box 24208

Jackson, Mississippi 39225-4208

27. Approval

It is understood that this Contract requires approval by the Personal Service Contract Review Board. If this contract is not approved, it is void and no payment shall be made hereunder.

28. Change in Scope of Work

The DFA may order changes in the work consisting of additions, deletions, or other revisions within the general scope of the contract. No claims may be made by TPA that the scope of the project or of TPA's services has been changed, requiring changes to the amount of compensation to the TPA or other adjustments to the contract, unless such changes or adjustments have been made by written amendment to the contract signed by the DFA and the TPA. If the TPA believes that any particular work is not within the scope of the project, is a material change, or will otherwise require more compensation to the TPA, the TPA must immediately notify the DFA in writing of this belief. If the DFA believes that the particular work is within the scope of the contract as written, the TPA will be ordered to and shall continue with the work as changed and at the cost stated for the work within the contract.

29. Contractor Personnel

The DFA shall, throughout the life of the contract, have the right of reasonable rejection and approval of staff or Subcontractors assigned to the work by the TPA. If the DFA reasonably rejects staff or Subcontractors, the TPA must provide replacement staff or Subcontractors satisfactory to the DFA in a timely manner and at no additional cost to the DFA. The day-to-day supervision and control of the TPA's employees and Subcontractors is the sole responsibility of the TPA.

30. Recovery of Money

Whenever, under the contract, any sum of money shall be recoverable from or payable by the TPA to the DFA, the same amount may be deducted from any sum due to the TPA under the contract or under any other contract between the TPA and the DFA. The rights of the DFA are in addition and without prejudice to any other right the DFA may have to claim the amount of any loss or damage suffered by the DFA on account of the acts or omissions of the TPA.

31. Insurance

The TPA shall be required to maintain, throughout the term of this Contract, at its own expense, professional general liability insurance. Such policy of insurance including excess insurance shall provide a minimum coverage in the amount of One Million Dollars (\$1,000,000) per occurrence and Five Million Dollars (\$5,000,000) annual aggregate through an insurance company licensed by the Mississippi Department of Insurance. The initial certificate should be submitted within thirty (30) days of the date the contract is executed. The TPA shall annually provide the Board a current Certificate of Insurance.

32. Performance Bond

The TPA shall provide an implementation performance guarantee in the amount of seven hundred fifty thousand (\$750,000) to ensure timely and complete establishment of third party claims administration services. Such bond or escrow account must be secured within thirty (30) days of the date the contract is executed. Any failure of the TPA to perform timely and complete establishment of such services shall result in damages recoverable by the Board against the TPA's performance bond or escrow account. Upon the Board's agreement that the TPA has complied with its responsibilities for establishing the contract and related services, the performance bond or escrow account shall be released. Failure by the TPA to perform timely and complete implementation of the third party claims administration services may result in damages recoverable by the Board, in accordance with, and as described in Exhibit C, "Implementation Performance Guarantee".

33. Fidelity Bond

The TPA will maintain a blanket fidelity bond in the amount of at least one million dollars (\$1,000,000) with the Board named as exclusive beneficiary for the duration of this Contract. Pursuant to such bond, any losses incurred by the Board due to theft or dishonesty of a TPA employee shall be fully repayable to the Board. The TPA shall be responsible for promptly procuring any such recovery and reimbursing the Board accordingly.

34. Failure to Enforce

Failure by the DFA at any time to enforce the provisions of the contract shall not be construed as a waiver of any such provisions. Such failure to enforce shall not affect the validity of the contract or any part thereof or the right of the DFA to enforce any provision at any time in accordance with its terms.

35. Trade Secrets, Commercial and Financial Information

It is expressly understood that Mississippi law requires that the provisions of this contract which contain the commodities purchased or the personal or professional services provided, the price to

be paid, and the term of the contract shall not be deemed to be a trade secret or confidential commercial or financial information and shall be available for examination, copying, or reproduction.

36. Priority

The Contract consists of this Contract, the Request for Proposals [number] (hereinafter “RFP” and attached as Exhibit ____), and the proposal by [TPA] dated [date] (hereinafter “Proposal” and attached as Exhibit ____). Any ambiguities, conflicts or questions of interpretation of this contract shall be resolved by first, reference to this Contract and, if still unresolved, by reference to the RFP and, if still unresolved, by reference to the proposal. Omission of any term or obligation from this agreement or attached Schedules [] or [] shall not be deemed an omission from this Contract if such term or obligation is provided for elsewhere in this Contract.

Witness our signatures, on the date first written.

(Insert TPA)

Mississippi Department of Finance and Administration

By: _____
Name
Title

By: _____
Name
Executive Director

EXHIBIT ____
FEE SCHEDULE

The following bundled claims administration fees are guaranteed for the entire term of the Contract and assume the TPA selected will administer all claims still open as of 6/30/18, as well as any run-out claims (IBNR) incurred prior to 6/30/18. Claims administration fees will be paid monthly in arrears.

SERVICE	Year 1	Year 2	Year 3	Year 4	Year 5 (Optional)
Claims Administration	\$ Per Month	\$ Per Month	\$ Per Month	\$ Per Month	\$ Per Month
<u>Includes:</u>					

The following bundled safety/risk control fees are guaranteed for the entire term of the Contract. Safety/risk control fees will be paid monthly in arrears.

SERVICE	Year 1	Year 2	Year 3	Year 4	Year 5 (Optional)
Safety/Risk Control					
<u>Includes:</u>					

The following medical cost containment fees, MSA fees, and CMS investigation fees are guaranteed for the entire term of the Contract. The applicable fee(s) will be allocated to the specific claim file based on the actual services provided.

SERVICE	Year 1	Year 2	Year 3	Year 4	Year 5 (Optional)
Comprehensive Bill Review and Audit (Physician Services, Inpatient Services, Outpatient, DME, etc.)					
Treatment Authorization (pre-certification and retrospective review)					
Utilization/Case Management					
Pharmacy Benefit Management					
PPO and Other Network Services					
MSA Preparation					
CMS Lien Investigation					
Other					

EXHIBIT ____
PERFORMANCE GUARANTEES

The following performance standards and discount guarantees will apply separately to each year of the Contract:

Performance Standard Topic	Description of Standard	Guarantee	Amount at risk

As indicated in the aforementioned table, compliance with the performance standards __ through __ will be measured and determined based on an annual claims and performance review to be conducted by an independent professional contracted with and compensated by the Board, while compliance with standards __ through __ will be measured by performance reports provided by the TPA.

For the purpose of determining performance compliance with the standards __ through __, the claims and performance review will utilize statistically valid, random samples, and will be conducted no more frequently than once per Contract year. The TPA agrees to cooperate with this process and make available the requested records and the necessary system access to the reviewer at no cost to the Board. The reviewer will make his work papers available to the TPA, and the TPA will have the opportunity to respond to the review report before it is finalized. Unless the TPA can demonstrate that the results of the review are incorrect, such results will be accepted and will become the basis for determining if liquidated damages should apply. The maximum amount of fees at risk for noncompliance with the performance standards __ through __ is __% in any single Contract year, regardless of the number of standards impacted.

The TPA's reports and/or any data supporting the TPA's reports relative to the performance standards ____ through ____ herein may also be reviewed by the Board's contracted claims and performance review professional. If so reviewed, the report and determination of the claims and performance review professional shall be final, binding and conclusive; provided however, that before a final report and determination is issued, the Board and the TPA shall each have a reasonable opportunity to review the non-proprietary supporting documentation and proposed report and to provide any comments to the claims and performance review professional.

Any liquidated damages assessed as the result of documented noncompliance with any of the aforementioned performance standards and/or discount guarantees will become due and payable within 30 days after the TPA receives written notification of same. Any such payments that become due may be made directly to the Trust by the TPA or offset by the Trust against the next monthly claims administration service fee, as mutually agreed.

Should unforeseen changes beyond the control of the TPA occur in the MWCC Fee Schedule, the PPO contract(s), and/or AWP, which materially impact the TPA's ability to achieve the aforementioned discounts, the Board agrees to consider in good faith any request by the TPA to renegotiate the affected guarantees on a prospective basis.

EXHIBIT ____
IMPLEMENTATION PERFORMANCE GUARANTEE

The TPA agrees to provide an implementation performance guarantee in the amount of seven hundred fifty thousand (\$750,000) to ensure timely and complete establishment of third party claims administration services. Failure by the TPA to perform timely and complete implementation of the third party claims administration services may result in damages recoverable by the Board as described in the table below:

Performance Standard Topic	Description of Standard	Deliverable Date	Amount at risk

TPA will provide appropriate documentation to the Board to substantiate compliance with the aforementioned implementation guarantees. In addition, the Board reserves the right to perform one or more site visits to the TPA to verify compliance.

In the event the TPA fails to successfully complete a task by the stated deliverable date due to the action or inaction of the Board, or one or more of the Board's other vendors, the TPA can request that the associated liquidated damage(s) be waived. Reasonable approval of such a request by the Board will not be withheld. It is the TPA's responsibility to promptly notify the Board of any such third party action or inaction that is reasonably expected to impact the TPA's ability to successfully complete an implementation task.