

STATE OF MISSISSIPPI



MS TORT CLAIMS BOARD

Request for Proposal

Tort Third Party Claims Administration Services

May 4, 2023

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TABLE OF CONTENTS

SECTION 1. INTRODUCTION 4

 1.1 Background, Authority, and Purpose..... 4

SECTION 2. SCOPE OF SERVICES 6

 2.1 Account Management 6

 2.2 Third Party Claims Administration Services 6

 2.3 Data Management: 10

 2.4 Claims and Performance Reviews: 11

 2.5 Standard/Ad Hoc Reporting..... 11

 2.6 Cooperation with Other Board Vendors 11

 2.7 Loss Control Services – Optional, meaning at the request and discretion of the Board.... 11

SECTION 3. MINIMUM VENDOR REQUIREMENTS 13

SECTION 4. PERFORMANCE STANDARDS 17

SECTION 5. STATEMENT OF COMPLIANCE AND EXCEPTION(S) FORM 21

SECTION 6. GENERAL QUESTIONNAIRE..... 23

SECTION 7. TECHNICAL QUESTIONNAIRE..... 24

 7.1 Account Management 24

 7.2 Third Party Claims Administration Services 25

 7.3 Data Management 26

 7.4 Implementation 27

 7.5 Audit 27

 7.6 Performance Standards 28

 7.7 Loss Control Services - Optional, meaning at the request and discretion of the Board 28

SECTION 8. FEE SCHEDULE..... 29

SECTION 9. RFP PROCESS OVERVIEW FOR VENDORS 31

 9.1 Instructions to Vendors 31

 9.2 Important Dates and Deadlines..... 35

 9.3 Contact, Questions/Requests for Clarification, and Acknowledgment of Responses/RFP
 Amendments 35

 9.4 Corrections and Clarifications 36

 9.5 Modification, Withdrawal, or Rejection of a Proposal 36

 9.6 Right to Consider Historical Information 37

 9.7 Right to Reject, Cancel and/or Issue Another RFP..... 37

 9.8 Cost of Proposal Preparation 38

 9.9 Registration with Mississippi Secretary of State 38

9.10	Vendor Investigations and Certifications.....	38
9.11	State Approval	38
9.12	Proposal Evaluation and Basis for Award	39
9.13	Post-Award Vendor Debriefing	42
9.14	Protest	42
9.15	Required Contract Terms and Conditions.....	42
9.16	Agency Website	42
9.17	Attachments	43
Appendix A	44	
	<i>Draft Tort Third Party Claims Administration Services Contract</i>	<i>44</i>
Appendix B	45	
	<i>Tort Third Party Claims Administration Services Vendor Reports</i>	<i>45</i>

SECTION 1. INTRODUCTION

1.1 Background, Authority, and Purpose

The Mississippi Tort Claims Board (Board) seeks a qualified, experienced third-party administrator (TPA) for administration for its self-insured tort liability program. The primary function of the selected vendor will be the prompt and accurate adjudication of tort claims filed against the State to determine liability exposures and to evaluate and negotiate claim settlements. These TPA services will include claims investigation, claim payment administration, compensability determinations, liability litigation management, settlement negotiation, data analytics and reports, and compliance reporting. The selected TPA will also be required to provide safety/risk control services, at the Board's discretion. The required services are described in **Request for Proposals (RFP) Section 2, Scope of Services.**

The Board was established on July 1, 1993, by the Mississippi Legislature to ensure equitable settlement and payment of claims for injury or damage arising out of the torts of governmental entities and their employees while acting within the course and scope of their employment. Per Mississippi Code Annotate § 11-46-18, Mississippi Department of Finance and Administration (MDFFA) is responsible for the Board's administrative functions. The Board provides a depository for the funds collected from participating state agencies to discharge their legal liabilities under the Mississippi Tort Claims Act, and administers, through its Board, such assets in accordance with such law. Mississippi has currently waived sovereign immunity subject to the provisions and limitations of the Mississippi Tort Claims Act provided for in Mississippi Code Annotated § 11-46-1 *et seq.* With technical assistance from its consulting actuary, the MDFFA Office of Insurance (OI) calculates each member's assessment and manages all such assessment billing and collection activities internally.

Currently, the liability claims are divided into the following three (3) severity classifications: S1, S2, and S3. S1 is defined as minor property damage and minor glass damage claims. S2 is defined as more complex property damage and bodily injury claims. S3 is defined as emergency glass breakage claims.

The chart below provides a five (5) year history of Mississippi Tort Claims Act liability:

Fiscal Year	Total # Severity 1	Total # Severity 2	Total # Severity 3
2018	810	171	38
2019	726	137	10
2020	705	141	17
2021	822	94	10
2022	634	164	10

The Board's current third-party administration services contract with Cannon Cochran Management Services, Inc. (CCMSI) is scheduled to expire on September 30, 2023, necessitating the need for this RFP. The effective date for this contract will be October 1, 2023. Implementation and/or transition services provided by the selected vendor prior to October 1, 2023, are not compensable; as such, any costs incurred by the Vendor prior to October 1, 2023 may not be invoiced to the Board.

The OI provides administrative support to the Board with the State Insurance Administrator serving as the Administrator of the Board. The OI is coordinating this RFP. The Board seeks to enter into a multi-term, fixed price, indefinite quantity contract for the aforementioned services. A draft contract has been included as **Appendix A** of this RFP for your review and comment. This RFP, any amendment thereto, such as Questions and Answer document(s), if any were issued, as well as the awarded vendor's proposal(s), and any requested best and final offer shall constitute the Contract. The Contract will be for four (4) years with an option to renew for one (1) additional year at the Board's discretion. This procurement and any resulting contract shall be governed by the applicable provisions of the *Mississippi Public Procurement Review Board (PPRB) Office of Personal Service Contract Review (OPSCR) Rules and Regulations*, a copy of which is available at 501 N. West Street, Suite 701E, Jackson, Mississippi 39201 for inspection or at <https://www.dfa.ms.gov/personal-service-contract-review>.

A copy of this RFP, including any subsequent amendments, along with a copy of all questions from vendors and responses to those questions, will be posted on MDFA's website under the heading "Solicitations" at <https://www.dfa.ms.gov/bids-and-rfps-notices>. Before the award of any contract, the Vendor will be required to document to the Board that it has the necessary capabilities to provide the services specified in this RFP. The Vendor may also be required to provide additional client references, as well as related project experience detail, for OI to determine if the Vendor is qualified. The OI may make reasonable investigations, as it deems necessary and proper, to determine the ability of the Vendor to perform the work, and vendor shall be required to furnish all information that may be requested for this purpose. The OI reserves the right to reject any proposal if the Vendor fails to provide the requested information and/or fails to demonstrate the Vendor is properly qualified to carry out the obligations of the Contract and to complete the work described within this RFP.

SECTION 2. SCOPE OF SERVICES

This section contains information on services and procedures the selected vendor must provide, or adhere to, in servicing the Board's account, either directly or through identified subcontractors. **The descriptions are not all-inclusive** but are provided to alert you to services or procedures that may require additional planning or programming on your part. The following is a list of services the Board expects the successful vendor to provide.

Please respond by restating each service listed below, including the number, and confirm your intention to provide the service as described by stating "*Confirmed*". If your company can provide the service, but not exactly as described, respond by stating "*Confirmed, but with exceptions*", and state the specific exceptions. If your company intends to provide a listed service through a subcontractor, respond, "*Confirmed, service will be provided through subcontractor*", and name the subcontractor. If your company is currently unable to provide a listed service, respond by stating "*Unable to provide this service*". Any additional details regarding these services should be provided in your responses to the questionnaire, or as additional information included as an appendix to your proposal.

The selected vendor is expected to provide the following services:

2.1 Account Management

- 2.1.1 Maintain throughout the term of this contract a claims office within the borders of the State of Mississippi. This office shall be open for business Monday through Friday between the hours of 8:00 AM and 5:00 PM CST each week of the year excluding holidays, unless otherwise agreed to by the Board. Authority to issue checks to pay claims shall be vested in personnel located within the State of Mississippi.
- 2.1.2 Must comply with staffing minimum requirements provided in **RFP Section 3.2 through 3.5**.
- 2.1.3 All other services directly related to this contract must be provided from an office located within the United States.

2.2 Third Party Claims Administration Services

The TPA's duties and responsibilities shall include, but are not limited to, the following:

- 2.2.1 As needed, receive a complete claims history from the Board and TPA in electronic format. The TPA shall be required to load and maintain all claims data for all claims for the period July 1, 1993, through September 30, 2023, including both open and closed claims;
- 2.2.2 Receive paper files, documents, audio and video tapes, diskettes, etc. from the Board and TPA on all open claims as of October 1, 2023; also, receive the same type of physical and/or electronic files on all closed claims, as needed;
- 2.2.3 Process all claims or losses transferred from previous third-party claims administrators remaining open on September 30, 2023, as well as any and all subsequently reported claims that were incurred but not reported prior to October 1, 2023. The TPA is also responsible

for processing any previously closed claims that are re-opened during the term of the Contract;

- 2.2.4 Process each claim in accordance with applicable statutory and administrative regulations. The Board 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;
- 2.2.5 Comply with any and all claims administrative procedures of the Board;
- 2.2.6 Comply with mutually agreed service performance guarantees. Refer to **RFP Section 4, Performance Standards**, and **Exhibit B, Performance Standards and Discount Guarantees**, of the proposed contract;
- 2.2.7 Maintain full and accurate records (data) with respect to all matters covered under this contract. The TPA will permanently maintain and store data in electronic format in a safe, secure, and monitored location(s) or security site(s). All data remains the property of the Board and shall be accessible by the Board at all times. Data will not be released or destroyed for any reason unless expressly requested by the Board or required under State or Federal law.
- 2.2.8 Prepare thoroughly documented notes to each claim file with respect to liability, reserve history, expected settlement/closure date, telephone conversations, etc.;
- 2.2.9 Perform reasonable and necessary administrative and clerical work in connection with claims or losses including the preparation of checks bearing the name of the Board; monthly reconciliation of bank statements on said account if requested, notification to the Board, electronically or as otherwise agreed, of checks issued in excess of Twenty Thousand Dollars (\$20,000.00);
- 2.2.10 Administer the litigation process and assist attorneys in accordance with directives from the Tort Claims Manager;
- 2.2.11 Investigate fraudulent claims and make referrals to appropriate authorities;
- 2.2.12 Meet with the Board and/or MDFA staff on a regular basis to review claims, settlements, and program strategies;
- 2.2.13 Will submit any received incident, notice of claim, or loss report to the OI for review and the OI will determine the claim assignment, set initial reserves, and provide the necessary instructions;
- 2.2.14 Furnish to the Board selected loss and information reports in a format agreed to by the Board. The TPA will provide the Board with internet-based full access to the TPA's claims adjudication/reporting system. Included in such access are tools that will allow the Board the ability to run selected management and statistical reports as needed;

- 2.2.15** Cooperate with information and reporting requests from the Board’s actuary, its’ auditors, and compliance with administrative procedures of the Board to facilitate actuarial analyses of the program and auditors;
- 2.2.16** Collect, process, and report data in the manner required by the Internal Revenue Service (IRS) for the purpose of preparing any required IRS Form 1099 filings for any payments that are the subject of this contract;
- 2.2.17** TPA shall undergo and submit a System and Organizational Control report annually at the TPA’s sole expense and provide annually to the OI.

2.2.18 Claims Handling:

- a. Shall review and investigate assigned tort claims filed against the State to determine liability exposures, evaluate and negotiate claims settlements, and process each such assigned claims from assignment to conclusion in accordance with applicable statutory and administrative regulations.
- b. Shall keep the Board and/or OI fully informed of all significant developments in assigned matters.
- c. Begin the file review and initial investigation within twenty-four (24) hours of receipt of the claim.
- d. Maintain on a consistent basis all claim files and records necessary for processing claims and legal defense for liability claims or litigation.
- e. Maintain a current estimate of expected total cost of each claim or loss and provide for reserve tracking and reporting; While the Board staff sets reserves on assignment, the TPA may make recommendations in the course of their reporting for routine reserve adjustments as the incident, claim, or loss is investigated and as the case matures. Any TPA recommended reserve change must be timely communicated to the Board staff.
- f. Provide forms appropriate for the efficient operation of the program. There shall be online reporting capability. If requested by the Board, Vendor shall provide to the Board an Agency Incident Report Form and any other form(s) appropriate for the efficient operation of the program.
- g. For any assigned incident or claim with a single reserve, or more, claimant contact is required within two (2) business days of assignment.
- h. All funds relative to salvage collections must be issued to the Mississippi Tort Claims funds and not the Vendor. The Vendor must make good faith effort to obtain a minimum of three (3) salvage quotes for any property it acquires through settlement in the event the salvage has monetary value. The Vendor will take the necessary steps required to take legal possession of that salvage (often times a vehicle title) and sell it to the highest bidder. All salvage proceeds will be deposited into the Board’s account. If no bids can be obtained and no value can be established the State may still have the legal responsibility of disposing of the salvage since they are the new owner. The TPA shall resolve this to conclusion. Salvage is often held in storage (salvage facility) and there are daily fees associated with this and those fees add up quickly. The Vendor must address this issue early to avoid unnecessary expense. Also, if the claimant wants to keep the salvage, they must be willing to pay up to the highest bid and that amount is to be deducted from the settlement proceeds.

2.2.19 Settlement of Claims:

- a. 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) for bodily injury and property damage claims. The TPA's delegated 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 Board's approval prior to final disposition. The Board 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 Board's approval prior to final disposition.
- b. Settlements of more than Ten Thousand Dollars (\$10,000.00) require preapproval and must be submitted to and approved by the Tort Claims Manager, the Tort Claims Administrator, and/or the Board depending on the settlement amount. The TPA will prepare the settlement agreement.
- c. Shall pay losses and expenses timely.
- d. Will perform all necessary work in connection with paying claims, including the preparation of checks bearing the name of the Board and drawn on the account established and maintained by the Board.
- e. Shall settle bodily injury and property damage aspects of a claim as one (1) "global" settlement, unless authorized differently by the Board.
- f. Coordinate Medicare and Medicaid set aside agreements in compliance with all applicable laws and reporting requirements including Section 111 of the Medicare, Medicaid, and SCHIP Extension Act ("MMSEA").

2.2.20 Investigations:

- a. Routine investigation is part of the TPA services herein and shall be provided without additional charges to the Board. Vendor shall fully investigate all liability claims, incidents, or losses assigned by the Board. Such thorough investigation shall include obtaining recorded statements from all claimants involved in a claim whenever possible, all witnesses when appropriate and as directed; accident scene investigations, including taking necessary photos, diagrams, plats, etc.; necessary medical reports and bills to evaluate claims; and to provide any other investigation requested by the Board. Charges for professional photos, police reports, medical reports, etc. shall be paid by Vendor from the Board's TPA banking account.
- b. Conduct thorough on-site liability and damage investigations for third party injury claims, incidents, or losses. Items required to complete any given file may include, but are not limited to, the following items: Scene photos; Diagrams; Statements from claimants; Statements from involved parties; Statements from witnesses; Determining liability; Negotiating settlements; Issuing correspondence at the request of the OI claims representative; Other investigation as requested.
- c. Provide quality color photographs and obtain all known accident reports, vehicle crash data, any related medical reports, records, and any other related material, all as directed by the Tort Claims Manager.

- d. Arrange for independent investigators, appraisers, medical professionals, or other specialized experts to the extent deemed necessary in connection with processing any incident, claim, or loss, only when doing so is customary and requested by the Board. These outside investigations, appraisers, and experts will be paid from the claim file as an expense. If it is mutually deemed necessary to assign an independent, third-party claims investigator (fee/property 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 Board's funds, if those are services that the TPA staff is equally capable and qualified to handle. The fee/property adjuster will be mutually agreed upon and determined by geography and the type of claim/injury involved.

2.2.21 Liability Litigation Management:

- a. Manage the litigation process and communicate with outside counsel and OI.
- b. Review legal bills to ensure bills are correct based upon the MDFA's legal services contracts.
- c. Provide assistance to in-house and outside counsel and monitor case developments.
- d. Fully cooperate with in-house and outside counsel to resolve claims and subsequent litigation.
- e. Maintain pleadings and communication related to cases in its files.
- f. Must cooperate or consult with outside counsel to the Board, as directed by the Board. The Board will have the sole right to engage or discharge attorneys or law firms, and under no circumstances may the TPA engage or discharge attorneys or law firms on the State's behalf. As soon as the Board has retained outside counsel to defend the State with respect to a particular incident or claim, the Tort counsel will notify the TPA. If outside counsel or Tort counsel wishes the TPA's investigators to interview or refrain from taking statements, or to prepare or to refrain from preparing certain reports, counsel will make this known to the TPA, and the TPA must follow the direction of Tort counsel. The TPA must be available at all reasonable times for consultation with the Tort counsel or outside counsel with respect to claims and incidents covered by the Contract.
- g. Must obtain a litigation status report from attorney every 120 days for the Board.

2.3 Data Management:

- 2.3.1** Provide, at no additional cost to the Board, the OI staff direct online (electronic) access to the TPA's automated claims management system or Risk Management System (RMS) that includes necessary software. Access shall include, but is not limited to, access by claim to the claim historical data, supervisory and adjuster notes screen, payment detail, defense and plaintiff attorney identification, all liability litigation management support documents, and notes confirming file review frequency. The Tort Claims Manager must have complete access to all claim file documentation and have the ability to run management reports as needed. Upon expiration or termination of the Contract, the State will maintain the rights to all data and hard copy files and information secured as a result of this Contract. The system must provide monthly statements of loss which contain the following data elements: claimant, claim number, location, date of incident, type of incident, claim status (open, closed without payment, declines), multiple claimants, amount paid by coverage line (bodily injury and property damage), expenses, reserves and total incurred. The TPA is

responsible for any and all expenses incurred for the updating and compliance of the automated claims management system.

2.4 Claims and Performance Reviews:

The Board, at its own expense, contracts with an independent third-party vendor to conduct claims and performance reviews of the TPA. The TPA agrees that upon at least two (2) business days' notice by the Board to the TPA, the Board has the right to audit all records maintained by the TPA relative to the TPA's performance. The Board maintains the right to perform financial, performance and other special audits on records maintained by the TPA during regular business hours. The TPA will make available all records, as defined by the selected auditor, for review at no cost to the Board. This does not preclude the auditing of other services or additional claims. Any errors detected via the audit will be addressed and corrected in a timely manner by the TPA. Any claim processing error will be adjusted to the proper account.

2.5 Standard/Ad Hoc Reporting

The Vendor must furnish standard reports in a form and content approved by the Board. These reports will be provided, at the Board's request, in electronic media format, as well as hard copy if requested by the Board. The Vendor shall provide web-based reporting tools that allow the Board to view, print, and download reports to spreadsheet software. All reports must include report parameters and definitions. Report parameters/definitions must be revised as appropriate when revisions to the report scope occur.

Additionally, the Vendor will provide ad hoc reports at the Board's request. The Vendor shall provide the Board, for the Board's approval, the time and cost for the development of ad hoc reports prior to the development of the report.

All other reports are to be performed and provided as stated in **Exhibit B, Tort Third Party Claims Administration Services Vendor Reports**.

2.6 Cooperation with Other Board Vendors

The Vendor will cooperate as required with the Board's other contracted vendors and will work with other vendors to facilitate the provision of the on-going coordination and delivery of services, and in any transfer of responsibility.

2.7 Loss Control Services – Optional, meaning at the request and discretion of the Board

Assign experienced safety/risk control consultants to assist and advise the Board as requested in handling the safety and risk management needs of the Board. These services 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. Recognize, evaluate, assess, analyze and report potential liability, property, casualty, and automobile loss exposures;
- c. Develop, implement, and monitor safety programs;
- d. Develop safety/risk control policies recommendations;

- e. Assist in implementing said safety/risk control policies;
- f. Assist in safety/risk control training, educational workshops and seminars; and
- g. Provide other such services as requested by the Board and for which the safety/risk control consultant is qualified to perform.

SECTION 3. MINIMUM VENDOR REQUIREMENTS

The following minimum vendor requirements are mandatory. Failure to meet any of these requirements will result in disqualification of the proposal submitted by your company. Please respond by restating each minimum requirement, including the number listed below with documentation that proves specifically how your company meets that minimum criterion. **Note that for the purposes of fulfilling the minimum vendor requirements, except as otherwise indicated, “TPA” refers to the primary contracting vendor only, not including any proposed subcontractors.** Please include in your responses the total number of years and types of experience of your company. If, in the opinion of the procurement team, you fail to prove that your company meets any of these minimum requirements, the proposal will be disqualified from further evaluation. If this happens, you will be notified of the decision and will have an opportunity to provide additional information to prove your company does meet the minimum requirements. It is incumbent upon the disqualified vendor to respond timely and completely to any such notice as unreasonable delays and/or non-responsive submissions may result in the disqualification being upheld without further review.

3.1 References: References provided by the company must be familiar with the Vendor’s abilities in the areas involved with this solicitation. MDFA staff will use these references to determine the Vendor’s ability to perform the services. It is the responsibility of the Vendor to ensure that the reference contact information is correct and current. MDFA staff will not track down references. Vendors should verify before submitting their proposal that the contact information provided is correct for each reference. Client references that cannot be contacted for verification will not be considered. The determination of the length of time an entity has provided these services will be based upon the initial date the Vendor established a contractual relationship to provide such services.

For each client provided pursuant to **Subsections 3.1.1 through 3.1.5**, please specify:

- a. Client contact information, including the name, title, address, email address, and phone number of a person whom we may contact to confirm as needed,
- b. The specific type of work your company provided to the client,
- c. The number of claims received annually and/or size of the account,
- d. Contract effective dates (beginning and end dates) for the time period(s) your company provided services to the client.

If two or more of the following reference requirements are met by the same client, list additional clients so there are at least three (3) clients listed for each section. If you are unable to provide three (3) clients for each reference, provide as many as you have and indicate in the response additional references meeting this requirement are not available.

3.1.1 The proposing vendor must possess at least ten (10) years’ experience **as of May 1, 2023**, as an organization providing the equivalent or similar in type, requirements, and scale to those required in this RFP. The proposing vendor must provide sufficient detail to demonstrate it has the minimum required experience in working with programs similar in type, size, and complexity to the Board by providing client reference(s).

3.1.2 The proposing vendor must currently provide tort claims third-party administration services to at least one large client, individual employer or group, with 5,000 or more employees.

3.1.3 List at least three (3) tort claims TPA clients who can serve as references, consisting of at least one (1) client from the public sector.

3.2 The proposing vendor must provide a dedicated (but not necessarily exclusive) account manager, located in the TPA's Mississippi service center to participate in activities relative to all aspects of the Contract between the Board and the TPA. The individual who will serve in this role must have a minimum of ten (10) years of casualty claims maintenance experience. This position will supervise all aspects of the resulting contract with the Board. The proposing organization must provide sufficient detail to demonstrate the proposed individual meets this requirement via resumes as an appendix to your proposal in Section 10. Please confirm.

3.3 The proposing vendor must provide a dedicated (but not necessarily exclusive) tort claims manager/supervisor, located in the Mississippi service center, who must be licensed as a valid Mississippi liability adjuster and be a resident of Mississippi pursuant to Mississippi Code Annotated § 83-17-401 *et seq.* The individual who will serve in this role must have a minimum of seven (7) years of third-party liability, property, casualty, and automobile claims investigation, evaluation, and settlement negotiation experience, five (5) years of liability claims management/supervisory experience, three (3) years liability litigation management experience and public agency experience, either possess or attain a valid Mississippi liability adjuster license prior to the start of any resulting contract, be located in the TPA's Mississippi service center, and be or become a resident of Mississippi. The tort claims manager/supervisor will oversee all aspects of the services required herein and be responsible for the quality of work product of personnel performing all required services outlined herein. This individual will regularly review a minimum of ten percent (10%) of the work product of the claims adjusters. In addition, this position shall conduct monthly review of all open liability claims with reserves in excess of \$25,000.00 and must meet at least quarterly with the OI to evaluate open liability claims, including litigated cases. The proposing organization must provide sufficient detail to demonstrate the proposed individual meets this requirement via resumes as an appendix to your proposal in Section 10. Please confirm.

3.4 The proposing vendor must provide dedicated claims adjusters, who must have a minimum of three (3) years of experience in third-party liability, property, casualty, and automobile claims investigation, evaluation, and settlement negotiation pursuant to Mississippi Code Annotated § 83-17-401 *et seq.* The individuals who will serve in these roles must also have a minimum of one (1) year liability litigation management experience, either possess or attain a valid Mississippi liability adjuster license, and be or become residents of Mississippi pursuant to Mississippi Code Annotated § 83-17-401 *et seq.* The proposing organization must provide sufficient detail to demonstrate the proposed individual meets these requirements. Each adjuster shall have an average caseload not to exceed a total of 200 open liability claim cases at any time during the resulting contract. The proposing organization must provide sufficient detail to demonstrate the proposed individual meets this requirement via resumes as an appendix to your proposal in Section 10. Please confirm.

3.5 **Optional Loss Control Services:** The proposing vendor must provide dedicated safety/risk control consultant(s). The individual(s) who will serve in this(ese) role(s) must have a minimum of ten (10) years of experience in recognition, evaluation, assessment, analysis and reporting of potential liability, property, casualty, and automobile loss exposures; in development, implementation, and monitoring of safety programs; and in conducting safety/risk control training, educational workshops, and seminars. The proposing organization must provide sufficient detail

to demonstrate the proposed individual(s) meet(s) this(ese) requirement(s) via resumes as an appendix to your proposal in Section 10. Please confirm.

- 3.6** The proposing vendor must agree that all services performed must be provided within the United States. Please confirm.
- 3.7** The proposing vendor must currently have, or if selected, open within three (3) months of the award of this Contract a claims office within the borders of the State of Mississippi. Please confirm.
- 3.8** The proposing vendor/adjuster must be licensed by the Mississippi Insurance Department to adjust property and casualty claims. Please confirm.
- 3.9** The proposing vendor must comply with Mississippi Code Annotated § 79-4-15.01 regarding authorization to transact business in Mississippi. Please confirm.
- 3.10** The proposing vendor must agree to place at least ten percent (10%) of all administrative fees at-risk for compliance with mutually agreed upon performance standards. Please confirm.
- 3.11** **Implementation Guarantee:** The proposing vendor must agree to provide a One Million Dollars (\$1,000,000.00) **Performance Bond or Escrow Account**, naming the Board as exclusive beneficiary, to guarantee timely and complete establishment of the Contract and related services. Such bond or escrow account must be obtained or established within thirty (30) days of contract award. The bond shall be a corporate surety bond issued by a surety company authorized to do business in the State of Mississippi; while an escrow account is subject to approval by agency legal counsel. Any failure of the TPA to perform timely and complete establishment of such services shall result in damages recoverable by the Board against the implementation bond or escrow account. This requirement will not apply if the incumbent TPA Vendor with services established under the current contract is selected through this procurement process to enter negotiations for the new contract. Upon the agreement by the Board that the TPA has complied with its implementation responsibilities, the implementation bond shall be released. Please confirm.
- 3.12** The proposing vendor must agree to provide and maintain, throughout the term of the Contract, at its own expense, **Professional Liability** insurance that covers any damages caused by an error, omission or any negligent acts related to the services to be provided under this Contract. Such policy of insurance shall provide a minimum coverage in the amount of One Million Dollars (\$1,000,000.00) per occurrence and Three Million Dollars (\$3,000,000.00) annual aggregate issued by an insurance company authorized to do business under the laws of the State of Mississippi, meaning the insurance carrier must be licensed or hold a Certificate of Authority from the Mississippi Insurance Department. The Board must be named as Certificate Holder on the policy. The TPA shall annually provide the Board a current Certificate of Insurance. Please confirm.
- 3.13** The proposing vendor must agree to provide and maintain, throughout the term of the Contract, at its own expense, **Cyber Liability** insurance. Such policy of insurance shall provide a minimum coverage in the amount of Two Million Dollars (\$2,000,000.00). Coverages must include security and privacy liability, incident response expenses, business interruption, business interruption waiting period, data recovery, regulatory proceedings, and cyber extortion. Please confirm.

3.14 The proposing vendor must agree to perform all services required in this RFP in accordance with customary and reasonable industry standards as well as in strict conformance to all laws, statutes, and ordinances and the applicable rules, regulations, methods and procedures of all government boards, bureaus, offices, and other agents whether currently in place, updated and replaced, or newly created. The proposing vendor shall be responsible for the complete performance of all work; for the methods, means, and equipment used; and for furnishing all materials, tools, apparatus, and property of every description used in connection therewith. No statement within this RFP shall negate compliance with any applicable governing regulation. The absence of detail specifications or the omission of detail description shall be recognized as meaning that only the best commercial practices are to prevail, and that only first quality materials and workmanship are to be used. Please confirm.

SECTION 4. PERFORMANCE STANDARDS

Please respond by restating each performance standard listed and confirm your agreement to be bound by this standard by stating, “*Confirmed*”. If your company has exceptions to the standard, respond by stating, “*Confirmed, but with exceptions*” and include your exceptions in **Section 5, Statement of Compliance and Exception(s) form**. If your company cannot agree to the standard, respond by stating, “*Do Not Agree*” and include your reason for not agreeing in **Section 5, Statement of Compliance and Exception(s) form**.

The TPA must agree to the following minimum performance standards and applicable liquidated damages. At the Board’s discretion, an audit of the accuracy of the TPA’s results will be performed via a randomly selected, statistically verifiable sample of claims by a qualified, independent third party. The results of the audit after appropriate review and comment by the TPA will be the final determinant of performance standard compliance. When sampling methods are used to estimate performance for the universe of claims, audit samples will be large enough to ensure a confidence interval whose deviation is no greater than plus or minus three percent (3%) and whose confidence level is at least ninety-five percent (95%). The Board will consider the point estimate for the sample as the TPA’s performance level in calculating liquidated damages.

The Board reserves the right to reduce or waive any fees at risk if, in the Board’s sole discretion, failure to meet a performance standard was due to extraordinary circumstances.

All payments made on behalf of the Board for approved services, shall be in accordance with rules, regulations, and restrictions of the Mississippi Tort Claims Board and the laws of the State of Mississippi. The TPA shall identify claims that have been incorrectly processed and initiate appropriate action to correct processing outcomes. The TPA shall notify OI in writing immediately upon discovery of any systems problem that has caused multiple overpayments, duplicate payments, or incorrect payments, irrespective of cause, prior to initiating recovery or corrective action. The TPA shall notify OI by letter of any system errors that result in a potential overpayment or other incorrect payment and describe in detail the plan and deadlines for corrective action.

PERFORMANCE GUARANTEES

It is the intent of the Board to assess liquidated damages to any TPA vendor who fails to meet the minimum performance standards listed below. The final contract between the Board and the TPA vendor will incorporate the specific terms and conditions under which such damages may be assessed, including the measurement methodology, amounts, and recovery provisions. Unless otherwise agreed to in writing, an independent claim reviewer/performance auditor contracted by the Board will evaluate the TPA vendor’s compliance with these standards. Any objections, suggestions, or proposed conditions you have to these standards and this process should be included in your signed Statement of Compliance and Exception(s) form (Section 5).

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

Performance Standard Topic	Description of Standard	Guarantee	Amount at risk
1. Adjuster Claims Load	<ul style="list-style-type: none"> • Limit the number of open liability claim cases/files at any given time during the resulting contract to a maximum of 200 per adjuster 	≥ 95%	5% of Claims Administration Fees
2. Claimant Contact & Initial Investigation	<ul style="list-style-type: none"> • Begin the file review and initial investigation within two (2) business days of receipt of the claim. • Telephone or written documented contact attempt with claimant(s) and the State Agency (Member) contact within two (2) business days of claim assignment. 	≥ 95%	5% of Claims Administration Fees

As indicated in the aforementioned table, compliance with the performance standards will be measured and determined based on a claims and performance review to be conducted by an independent professional contracted with and compensated by the Board. For the purpose of determining performance compliance, 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 workpapers 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 TPA's reports and/or any data supporting the TPA's reports relative to the performance 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 fund by the TPA or offset by the fund against the next monthly claims administration service fee, as mutually agreed. Should unforeseen changes beyond the control of the TPA occur in the Fee Schedule, 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 One Million Dollars (\$1,000,000.00) 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.

SAMPLE IMPLEMENTATION GUARANTEE

Task	Task & Objective	Deliverable Date	Liquidated Damage
Implementation Plan	TPA to submit detailed implementation plan outlining all action items required for successful “go live” on October 1, 2023, in accordance with the Scope of Services.	Implementation plan is due within five (5) working days of contract execution.	\$150,000.00
Historical Claim Data Migration	TPA to test and load historical claim data into their claim system.	TPA testing and loading of historical data through July 31, 2023 is to be completed by August 15, 2023 (assumes TPA receives client hierarchy and complete, accurate claim data by July 31, 2023)	\$75,000.00

Communication and Agency Training	TPA to successfully train client, including field agency personnel, on their system.	To be completed before September 14, 2023	\$75,000.00
Staff Hiring	TPA to fill all positions as required in Scope of Services	Staff to be in place by September 14, 2023	\$75,000.00
Staff Training	TPA to train all positions as required in Scope of Services	Training of all positions completed by September 28, 2023	\$75,000.00
Go-Live*	TPA to be fully operational to perform all items in Scope of Services	October 1, 2023 - All components fully operational and functioning.	October 1, 2023 - \$100,000.00; Each calendar day after October 1 - \$25,000.00

*Penalty will be assessed at \$25,000.00 per calendar day for failure to meet this task.

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 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.

SECTION 5. STATEMENT OF COMPLIANCE AND EXCEPTION(S) FORM

If a vendor objects to any terms, conditions, or requirements listed in the *MDFA OI's Request for Proposal for Tort Third Party Claims Administration Services, dated May 4, 2023*, including all RFP attachments and amendments, the Vendor must list and explain the exceptions taken. If no exceptions are taken, then the Vendor shall state on the form "No Exceptions Taken." Failure to indicate any exception will be interpreted as the Vendor's intent to comply fully with the requirements as written. Failure to complete and/or sign may result in vendor being determined nonresponsive. Please carefully review the information located in **RFP Section 5, Statement of Compliance and Exception(s) Form**, and include a copy **signed by an officer, principal, or owner** of your company with your completed proposal. Failure to submit a signed Statement of Compliance and Exception(s) form may result in your proposal being eliminated from further consideration. If you object to any of the terms and conditions included in the *Draft Tort Third Party Claims Administration Services Contract* (refer to **RFP Appendix A**), or any requirements listed in this RFP, please note and explain your objection(s) on the Statement of Compliance and Exception(s) form. Clauses in **blue** type in the *Draft Contract* are deemed mandatory and are nonnegotiable.

Conditional or qualified proposals, unless specifically allowed, shall be subject to rejection in whole or in part. The proposal must contain a high degree of acceptance of contract terms and conditions listed in the draft contract provided as **Appendix A** of this RFP. Refer to **RFP Section 9.15**.

A proposal response that includes terms and conditions that do not conform to the terms and conditions in the RFP and the draft contract is subject to rejection as non-responsive. The MDFA reserves the right to permit the Vendor to withdraw nonconforming terms and conditions from its proposal response prior to a determination by the MDFA of non-responsiveness based on the submission of nonconforming terms and conditions. As a precondition to proposal acceptance, the MDFA may request the Vendor to withdraw or modify those portions of the proposal deemed non-responsive that do not affect the quality, quantity, price, or delivery of the service.

Statement of Compliance and Exception(s) Form

Vendor taking exception to any part or section of the solicitation shall indicate such exceptions on the table below. If no exceptions are taken, then the Vendor shall state in this section “No Exceptions Taken.” Failure to indicate any exception will be interpreted as the Vendor’s intent to comply fully with the requirements as written. Conditional or qualified proposals, unless specifically allowed, shall be subject to rejection in whole or in part.

We agree to adhere to all terms, conditions, and requirements as set forth in the *M DFA OI’s Request for Proposal for Tort Third Party Claims Administration Services, dated May 4, 2023*, including all RFP amendments, and the conditions contained in the draft contract included as **RFP Appendix A, Draft Tort Third Party Claims Administration Services Contract**, except as listed below:

Procurement Section and Page Number	Original Language	Requested Change/Exception	M DFA Decision
1.			
2.			
3.			

An original signature is required below. This statement must be signed by an appropriate vendor officer, principal, or owner and returned as part of your proposal.

Company Name: _____

Printed Name of Representative, Title: _____

Date: _____

Signature: _____

Note: Failure to sign this form may result in the proposal being rejected as non-responsive. Modifications or additions to any portion of this proposal document may be cause for rejection of the proposal.

SECTION 6. GENERAL QUESTIONNAIRE

Failure to answer the following general questionnaire completely will result in Vendor being determined nonresponsive. In preparing your written response to the narrative questionnaire below, you are required to repeat each question, including the number, or requirement followed by your response. Please provide complete answers and explain all issues in a concise, direct manner. If you cannot provide a direct response for some reason (e.g., your company does not collect or furnish certain information), please indicate the reason rather than providing general information that fails to answer the question. “Will discuss” and “will consider” are not appropriate answers.

- 6.1** Provide the name, title, mailing address, email address, and telephone number of the contact person for this proposal.
- 6.2** Provide the physical location and mailing address of your company’s home office, principal place of business, and place of incorporation.
- 6.3** State the full legal name of your company, and provide the web address, address, and telephone number of your principal place of business.
- 6.4** List the office in Mississippi that will service the Board. If it is located at a different address than the home office, provide the complete address, phone number, and facsimile number for this office.
- 6.5** List any services that will not be provided at the above Mississippi location.
- 6.6** Describe your organizational structure. Indicate whether your company operates as a corporation, partnership, individual, etc. If it is incorporated, include the state in which it is incorporated, and list the names and occupations of those individuals serving on your company’s Board of Directors.
- 6.7** How long has the company been providing the equivalent or similar services in requirements and scale to those TPA services described within this RFP? Indicate the month and year in which your company was established.
- 6.8** State if the proposed account manager, any officers or principals and/or their immediate families are or have been within the preceding twelve (12) months, employees of the State of Mississippi.
- 6.9** Provide a brief description of any outside vendors or subcontractors that will be involved in providing key services detailed within your proposal. Please include the term of your current contract with each vendor or subcontractor. Describe the nature of the relationship with the subcontractor, including any ownership interest.
- 6.10** Has your company ever been involved in a lawsuit involving any area covered by this RFP? If the answer is yes, please provide details including dates and outcomes.
- 6.11** During the past five (5) years, has your company, related entities, principals, or officers ever been a party in any material criminal litigation, whether directly related to this RFP or not? If the answer is yes, please provide details including dates and outcomes.
- 6.12** Confirm the proposal is valid for one (1) year after the date of submission.

SECTION 7. TECHNICAL QUESTIONNAIRE

Failure to answer the following questionnaire completely will result in Vendor being determined nonresponsive. In preparing your written response to the narrative questionnaire below, you are required to repeat each question, including the number, or requirement followed by your response. Please provide complete answers and explain all issues in a concise, direct manner. If you cannot provide a direct response for some reason (e.g., your company does not collect or furnish certain information), please indicate the reason rather than providing general information that fails to answer the question. “Will discuss” and “will consider” are not appropriate answers.

7.1 Account Management

- 7.1.1** Describe the team dedicated to providing the requested scope of services for the Board. Specifically,
- a. Identify the dedicated account manager who will serve as the primary contact for the Board and OI.
 - b. Provide a job description including experience requirements of the claims manager/supervisor, claims adjusters, and any supervisory and/or support personnel who will be assigned to this contract, and include resumes as an appendix to your proposal in Section 10.
 - c. Provide the name(s) and resumes of all key personnel who will oversee and provide the services rendered to the Board, a brief statement as to why each person is qualified relative to this work and identify area(s) of expertise for each key person, detailed information on any special training or designation, and each person’s respective total number of years of experience related to the services being requested in this RFP. Specifically identify the account manager who will serve as the primary contact for the Board, tort claims manager/supervisor, claims adjusters, and the optional loss control consultants. Include all resumes as an appendix to your proposal in Section 10.
- 7.1.2** How many additional clients will the dedicated account manager assigned to this account routinely handle and what is the average size (in participants covered) of the accounts?
- 7.1.3** Please provide a brief description of the level of service support available for legal services for disputed claims/litigation.
- 7.1.4** The Board and OI must have prompt and direct access to the TPA throughout the contract period. Describe in detail how your organization will provide this access.
- 7.1.5** Describe within their proposed staffing structure how the following tasks will be delivered:
- a. Outside Claims Adjustment Services
 - b. Inside Claims Specialization Services
 - c. General Claims Administration Services
 - d. Reporting Services
 - e. Litigation Services
- 7.1.6** Provide a copy of the current training program(s), particularly for the claims manager, adjusters, and others as applicable to performing claims administration services for the State. Include

sample training modules, manuals, and course work as applicable. Also, include certification designations offered by the Vendor such as CPCU, ARM, and AIC.

- 7.1.7 Will the claims adjusters/supervisor on this account also be handling claims for other client accounts? If yes, will their claims count exceed 200 open claims at any given time?

7.2 Third Party Claims Administration Services

- 7.2.1 For claim services provided by the administrative office that will service the Board, provide the following tort liability claims data and how your system captures this data on all clients (in total, not client specific), for the 2022 calendar year:
- Average number of days from assignment to when claimant was contacted
 - Average number of days files closed after securing release of all claims
 - Average response time of claims inquiry from time of receipt
 - Average number of open liability claims files handled by an adjuster
 - Number of times your organization was reported to the Mississippi Insurance Commission in the last five (5) years
 - Average frequency your organization performs reviews of reserves for claim adjustment purposes
- 7.2.2 Describe your organization's reserve management philosophy and process. How often are reserves reviewed and by whom?
- 7.2.3 Provide your written procedures documenting the security and off-site storage of all data contained on tapes, discs, files, batch files, and other records pertinent to the TPA services to be provided to and on behalf of the Board. Include a brief description of your disaster recovery plan to demonstrate how you will recover lost data and utilize alternate resources to operate in the event of such an occurrence.
- 7.2.4 Provide examples of management reports your system is capable of producing. Indicate which reports can be electronically accessed directly by OI.
- 7.2.5 Describe your organizations' confidentiality standards.
- 7.2.6 What are your organizational hiring standards/guidelines for claims adjusters?
- 7.2.7 What methods of claim reporting are available to the client for liability claims?
- 7.2.8 Explain your current policies regarding the assignment of claims to each claims manager/supervisor and claims adjuster, including the number and types of claims assigned to each position.
- 7.2.9 Discuss your organization's interaction with clients in reporting on account management or claims related issues. Explain how frequently you expect supervisors and/or adjusters to initiate contact with the Board's staff. Also, explain your protocol regarding returning telephone and/or email messages.

- 7.2.10** Describe your organization’s liability litigation management program and how legal expenses are monitored. Do you require budgets from defense counsel? Provide an example of the format your adjusters follow when providing instructions to defense counsel prior to a hearing.
- 7.2.11** Will customized handling instructions be available at no extra cost? Will the client have the ability to review and discuss reserves, settlements, and potential denials with the adjusters prior to the adjusters taking action?
- 7.2.12** Are claim estimates/reserves automated or are they based upon adjuster experience?

7.3 Data Management

- 7.3.1** Describe in detail your Risk Management Information Systems (RMIS) access and level of reporting capabilities, any claim intake system, and responsiveness to special needs.
- 7.3.2** Describe in detail your claims processing system, including any related file documentation process and system. Discuss in detail and provide sample screenshots of file documentation pertaining the key claims administration functions of:
- a. Daily activity notes
 - b. Scanning of documents and correspondence (e.g., medical reports, written letters, email communications, etc.)
 - c. Case reserve maintenance
 - d. Supervisory instructional correspondence to the handling adjuster
 - e. Periodic status reports to the client
 - f. Other electronic documentation capabilities
- 7.3.3** Describe the type of management information system proposed for this contract. Discuss your experience in using the system, whether the system is owned and operated in-house or through an agreement with another provider, the general capabilities of this system, compatibility with other existing systems for continuity of data and transferring of historical data, and any projected upgrades or changes during the resulting contract period.
- 7.3.4** Does your RMIS system provide access to adjuster file notes and have the ability to run reports/generate loss runs? Are there any charges for the client to access this system? Do you provide training to use this system for no additional charge? Please describe your RMIS and its attributes.
- 7.3.5** Is your claims processing system paperless?
- 7.3.6** Include in your proposal whether you are scanning all paper in your information system, or whether this is a goal for your organization and the anticipated timeline.
- 7.3.7** Describe how defense counsel secures the claim file from you.
- 7.3.8** Comment on your ability to allow OI to review and interact in adjuster claim notes and any associated fees.

- 7.3.9 TPA must include in their proposal all terms and conditions pertaining to the State's use of the automated claims management system. This should include but is not limited to technical specifications pertaining to system set-up and utilization, licensing conditions, maintenance and back-up/secondary operational provisions in the event of downed systems.

7.4 Implementation

- 7.4.1 Describe in detail how you propose to load, as needed, and maintain all the Board's claims data from prior TPAs for all claims, open and closed, in a manner to ensure consistency in claims data reporting. This shall include your plan, as needed, to re-number/re-catalog all claim files or maintain the current claim file numbers on transferred open and closed claims.
- 7.4.2 Confirm you have provided a copy of your implementation project plan that indicates a service start date of October 1, 2023. Identify tasks/actions, critical events, timelines, and the responsible parties during each phase.
- 7.4.3 Confirm that if your organization is selected by the Board and the Contract is executed by September 6, 2023, you will be fully operational and have all contractual processes and procedures in place by October 1, 2023.
- 7.4.4 Would you be willing to assign a dedicated (not necessarily exclusive) team to assist with the implementation process? How many dedicated (not necessarily exclusive) service representatives would be assigned for the initial implementation, as well as ongoing servicing of the program?
- 7.4.5 Describe the most frequent problems you have encountered during previous transitions for plans of this size. How were these resolved?
- 7.4.6 Please confirm that your cost proposal (fee schedule) includes all costs associated with implementation services.
- 7.4.7 Address the time commitment to transfer data should the Contract be awarded to you. Describe the role you will take should data not be transferred in a timely fashion by the incumbent. Additionally, describe your policy and responsibility to ensure that data is transferred appropriately.

7.5 Audit

- 7.5.1 The Board reserves the right to audit all records maintained by the TPA and/or its affiliates relative to the TPA's performance under this Contract. At least two (2) business days' notice by the Board will be given to the TPA of the intent to audit. The Board shall have the right to perform financial, performance, and other special audits on such records maintained by the TPA during regular business hours throughout the contract period. The TPA agrees that confidential information including, but not limited to, medical and other pertinent information relative to third party claimants, shall not be disclosed to any person or organization for any purpose without the expressed, written authority from the Board. The selected TPA will make available all records, as defined by the selected auditor, for review at no cost to the Board. Indicate your acceptance of this proposal requirement and willingness to cooperate. Any ancillary fees that

may be assessed to the Board for onsite audits should be included in your proposed fee for administrative services. For the purposes of this section, the term “audits” refers to financial, performance, and other special audits on such records maintained by the TPA and/or its affiliates relative to the TPA’s performance under this Contract. Confirm you will comply with this requirement.

7.5.2 What auditing standards does your organization adhere to?

7.5.3 Does your company routinely undergo SOC audits? If yes, when was the last such audit completed, and were there any material findings? Provide a copy of your most recent audit. Indicate how often these audits are performed.

7.6 Performance Standards

7.6.1 The Board requires guarantees of performance.

- a. Please review the performance standards included in **Section 4, Performance Standards**, of this RFP and confirm your willingness to accept the performance standards.
- b. If you are not agreeable to the provided performance standards, please detail your objections and propose recommendations in **Section 5, Statement of Compliance and Exception(s) form**, of this RFP.

7.7 Loss Control Services - Optional, meaning at the request and discretion of the Board

7.7.1 Provide a job description, including experience requirements, of the safety/risk control consultants who will be assigned to this Contract. If you have already identified specific safety/risk control consultants, include their name(s) and resumes, a brief statement as to why each person is qualified relative to this work and identify area(s) of expertise for each key person, detailed information on any special training or designation, and each person’s respective total number of years of experience related to the services being requested in this RFP. Include all resumes as an appendix to your proposal in Section 10.

7.7.2 Provide the criteria your organization uses to measure the effectiveness of risk control efforts.

7.7.3 List any “value-added” items or resources that will be provided with the proposed risk control services, such as online resources, newsletters, video library, etc.

7.7.4 Provide sanitized samples of risk control reports, recommendations, and results from previous services performed by the safety/risk control consultant proposed herein.

SECTION 8. FEE SCHEDULE

The Fee Schedule must be submitted as described herein. Modification or addition to any portion of the Fee Schedule may be cause for rejection of the proposal. The pricing quoted shall be inclusive of, but not limited to the following: all required labor; all required equipment/material; all required insurance, bond, or other surety; all required overhead/profit; all required applicable taxes; all required vehicles; all required fuel and mileage; all required travel; all required labor and supervision; all required training; all required business and professional certifications, licenses, permits, or fees; and, any and all other direct or indirect costs, incurred or to be incurred. All pricing shall include all associated costs with no additional or hidden fees. All expenses except independent auto appraisals, official photographs, medical reports and records, vehicle crash data collection, indexing fees, police reports, attorney fees, and other specialized services (upon written approval) shall be inclusive. The pricing quoted shall constitute the entire compensation due to the Vendor for services rendered. Pricing must be firm, flat dollar amounts, as percentage of other variable amounts will not be accepted. The fees/rates for each of the five (5) years must be included.

ANNUAL ADMINISTRATIVE SERVICES: The Board requires a guaranteed annual flat “bundled” administrative fee for Claims Administration Services. The Board will not accept a fee based on a percentage of payroll, number of claims, or any other variable statistic. Your proposed fee for Claims Administration Services should assume the following conditions: (1) the TPA selected will administer all claims open as of June 30, 2023, as well as any run-out claims incurred prior to September 30, 2023.					
Service	Year 1	Year 2	Year 3	Year 4	Year 5*
Claims Administration Services					
Loss Control (Optional Service)					

* *Optional Renewal Year*

The pricing quoted above shall constitute the entire compensation due to the selected vendor for services and all of the selected vendor’s obligations hereunder regardless of the difficulty, materials, or equipment required. No additional compensation will be provided by the Board for any expense, cost, or fee not specifically authorized by the resulting contract. The Board shall not provide any prepayments or initial deposits in advance of services being rendered. Fees for services provided by the selected vendor shall be billable to the Board in arrears on a monthly basis. Only those services agreed to by contract shall be considered for reimbursement/compensation by the Board. Payment for any and all services provided by the selected vendor to the Board shall be made only after said services have been duly performed and properly invoiced. The fees listed above are firm for the duration of resulting contract and are not subject to escalation for any reason unless resulting contract is duly amended.

The TPA shall submit all invoices in a form acceptable to the Board with all of the necessary supporting documentation prior to the payment of allowable costs. Such invoices will, at a minimum, include the appropriate descriptions of the services being billed or other bases for charges included in **RFP Section 9, Fee Schedule**. Details will be determined during contract negotiations.

The payment of an invoice by the Board shall not prejudice the Board's right to object or question any invoice or matter in relation thereto. Such payment by the Board 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 the Board, on the basis of audits, not to constitute allowable costs. Any payment shall be reduced for overpayment or increased for underpayment on subsequent invoices. For any amounts which are or shall become due and payable to the Board and/or the Board by the TPA, the Board reserves the right to (1) deduct from amounts which are or shall become due and payable to the Board under contract between the parties; or (2) request and receive payment directly from the TPA within fifteen (15) days of such request, at the Board's sole discretion.

The Board reserves the right to deduct from amounts which are or shall become due and payable to the TPA under the Contract between the parties. Notwithstanding anything to the contrary herein, any reduction of payments to shall be made only with the prior agreement of both parties. In addition, in the event of termination of the Contract for any reason, the TPA shall be paid for services rendered and allowable expenses incurred up to the effective date of termination.

SECTION 9. RFP PROCESS OVERVIEW FOR VENDORS

9.1 Instructions to Vendors

- Proposals must be submitted by **2:00 PM CST on June 6, 2023**.
- Proposals may be submitted in a paper format via the two address options below or electronically via the State of Mississippi's Accountability System for Governmental Information and Collaboration (MAGIC). Registering as a supplier with the State of Mississippi allows businesses to register for upcoming RFX opportunity notifications by the products or services they supply, search the system for upcoming RFXs, respond to RFXs electronically, and receive purchase orders by email. In order to register, please go to the following website: <https://www.dfa.ms.gov/vendor-information>. Electronic proposals submitted through MAGIC shall follow the same format as specified within this section.
- **Paper Format** - To prevent opening by unauthorized individuals, all proposal submissions must be sealed in an envelope or package and marked, "**SEALED PROPOSAL – DO NOT OPEN**". The sealed envelope or package shall be marked with the Proposal opening time and date, and the number of the RFP. Proposals are subject to rejection unless submitted with the information included on the outside the sealed proposal envelope or package.

Sealed proposals should be mailed or hand-delivered to and labeled as follows:

Address if mailing proposals:

RFP RFX Number 3120002650 for Tort Third Party Claims Administration Services
Opening Date: 3:00 PM CST, June 6, 2023
Mississippi Department of Finance & Administration, Office of Insurance
Attention: Alicia Coleman, MDFA OI Procurement and Contracts Director
P.O. Box 24208
Jackson, Mississippi 39225-4208
SEALED PROPOSAL – DO NOT OPEN

Address if hand delivering proposals:

RFP RFX Number 3120002650 for Tort Third Party Claims Administration Services
Opening Date: 3:00 PM CST, June 6, 2023
Mississippi Department of Finance & Administration, Office of Insurance
Attention: Alicia Coleman, MDFA OI Procurement and Contracts Director
501 North West Street, Suite 901-B Woolfolk Building
Jackson, Mississippi 39201
SEALED PROPOSAL – DO NOT OPEN

The time and date of receipt will be indicated on the sealed proposal envelope or package by Agency staff. The only acceptable evidence to establish the time of receipt at the office identified for proposal opening is the time and date stamp of that office on the proposal wrapper or other documentary evidence of receipt used by that office.

If submitted in a paper format, the original written proposal shall be signed with two identical copies of the original each submitted in a three-ring binder. The three (3) file versions of their proposal described below (Complete, Blind and Redacted) must be clearly labeled/identified. One electronic copy must be included with the three (3) separate/distinct files in a searchable Microsoft Office® format, preferably in Word® or Portable Document Format (PDF®) on flash drive or compact disk.

- Proposals submitted by facsimile (fax) machine will not be accepted/considered.
- All vendors are urged to take the possibility of delay into account when submitting a proposal. Timely submission of the proposal package is the responsibility of the Vendor. Proposals received after the specified time will not be considered. It is suggested that if a proposal is mailed to MDFA, it should be posted in certified mail with a return receipt requested. MDFA will not be responsible for mail delays or lost mail. All risk of late arrival due to unanticipated delay – whether delivered by hand, U.S. Postal Service, courier or other delivery service or method – is entirely on the Vendor.
- Proposals received after the specified time will be rejected and maintained unopened in the procurement file. A proposal received at the place designated in the solicitation for receipt of proposals after the exact time specified for receipt will not be considered unless it has been determined by the Agency that the late receipt was due solely to mishandling by the Agency after receipt at the specified address.
- **Submission Format** – Each vendor must submit their proposal in the style and format outlined herein.

The proposal shall consist of three (3) separate units: Cost, Technical, and Management. Pursuant to Mississippi Code Annotated §§ 27-104-7 and 31-7-401 through 31-7-423, the State of Mississippi requires a blind evaluation of certain factors not requiring knowledge of the name of the Vendor. All vendor-identifying information shall be removed and/or redacted. Identifying information includes, but is not limited to, any prior, current, and future names or addresses of the Vendor, any names of incumbent staff, any prior, current and future logos, watermarks, and company colors, any information which identifies the Vendor as an incumbent, and any other information, which would affect the blind evaluation of technical factors. The Technical Unit shall have no identifying information, while the Cost and Management Units will be allowed to have identifying information. Any proposals that do not adhere to these requirements within the “Blind” copy described below will be deemed non-responsive and may be rejected on that basis.

The three units of the proposal shall be comprised of the following eleven (11) sections. It is the Vendor’s responsibility to organize and separate the information into units and sections accordingly. **Cost Unit is Section 8; Technical Unit consists of Section 7; and Management Unit consists of Sections 1-6 and 9-11.**

The proposal should be labeled and submitted as applicable per file version:

Section 1 – Introduction/Signed Proposal Cover Letter

Section 2 – Scope of Services Confirmation

Section 3 – Minimum Vendor Requirements Confirmation

Section 4 – Performance Standards

Section 5 – Signed Statement of Compliance and Exception(s) form

Section 6 – General Questionnaire

Section 7 – Technical Questionnaire

Section 8 – Fee Schedule

Section 9 – Signed Acknowledgement of RFP Amendments (if any)

Section 10 – Résumés for Key Staff: Provide a complete résumé of key vendor staff who will be assigned to render services to the Board, including detailed information on any special training or designations and each person’s respective total number of years of experience related to the services being requested in this RFP.

Section 11 – Any Additional Information Not Specifically Requested: If you have additional information you would like to provide, include it as Section 11 of your proposal. It is the Vendor’s sole responsibility to submit information relative to the evaluation of its proposal and the MDFA is under no obligation to solicit such information if it is not included in the proposal.

- Each page of the proposal should be numbered. Multiple page attachments and samples should be numbered internally within each document, and not necessarily numbered in the overall page number sequence of the entire proposal. The intent of this requirement is for the Vendor to submit all information in a manner that is clearly referenced and easily located.
- Vendors shall submit the following three (3) versions of their proposal as separate/distinct files:
 1. **Complete Proposal File** - Provide one (1) electronic copy of the complete proposal including all attachments in a searchable Microsoft Office[®] format, preferably in Word[®] or Portable Document Format (PDF[®]);
 2. **Blind Proposal File** - Provide one (1) electronic “blind” technical proposal (Section 7 or Technical Unit) in a searchable Microsoft Office[®] format, preferably in Word[®] or PDF[®]. The Vendor is responsible for ensuring that the “blind” copy shall have no identifying information, specifically within the technical proposal. This requirement is necessary to help ensure the anonymity of the vendors from the evaluation committee that will review proposals. **Blind proposals containing vendor-identifying information may be disqualified;** and
 3. **Redacted Proposal File** - Provide one (1) “redacted” electronic copy of the complete proposal including all attachments and referenced documents in a searchable Microsoft Office[®] format, preferably in Word[®] or PDF[®], if the proposal contains confidential information, as described below. If any portion of the proposal is considered confidential or proprietary, the Vendor shall also include an additional electronic “redacted” copy in PDF[®] of the complete proposal, including all appendices and exhibits, with all trade secrets or confidential commercial or financial information redacted. If the proposal does not contain any confidential information to be redacted, please state such in your Introduction/Signed Proposal Cover Letter. Failure to submit an

electronic “redacted” copy of your proposal or include a statement that no information will be redacted may cause your proposal to be considered incomplete and it may be rejected from consideration.

Any vendor claiming that its response contains information exempt from the Mississippi Public Records Act (Mississippi Code Annotated §§ 25-61-1 *et seq.* and 79-23-1), shall segregate and mark the information as confidential and provide the specific statutory authority for the exemption. If the proposal contains confidential information, one (1) redacted electronic copy of the complete proposal including all attachments shall be submitted in a searchable Microsoft Office® format, preferably in Word® or PDF®.

If a redacted copy is not submitted, OI shall consider the entire Proposal to be public record.

The redacted copy should identify which section or information has been redacted and the Vendor shall provide the specific statutory authority for the exemption. Per Mississippi Code Annotated § 25-61-9(7), the type of service to be provided, the price to be paid, and the term of the Contract cannot be deemed confidential.

The redacted copy shall be considered public record and immediately released, without notification to the Vendor, pursuant to any request under the Mississippi Public Records Act, Mississippi Code Annotated §§ 25-61-1 *et seq.* and 79-23-1. Redacted copies shall also be used/released for any reason deemed necessary by OI, including but not limited to, submission to the PPRB, posting to the Transparency Mississippi website, etc.

In accordance with *PPRB OPSCR Rules and Regulations Section 1-301*, “Any party seeking a protective order on a procurement contract awarded by state agencies shall give notice to and provide the reasons for the protective order to the party requesting the information in accordance with the Mississippi Rules of Civil Procedure. The notice and reasons for the protective order must also be posted on the Mississippi Procurement Portal for a minimum of seven (7) days before filing the petition seeking the protective order in a chancery court. Any party seeking a protective order in violation of this subsection may be barred by a state agency from submitting bids, proposals or qualifications for state procurements for a period not to exceed five (5) years.” Any records requested through a public records request shall be released no later than twenty-one (21) days from the date the third parties are given notice by the public body unless the third parties have followed the notification requirements and also filed in chancery court a petition seeking a protective order on or before the expiration of the twenty-one (21) daytime period.

- All documentation submitted in response to this RFP and any additional information submitted in response to subsequent requests for information pertaining to this RFP shall become the property of OI and will not be returned to the Vendor.
- All information requested is considered important. Failure to provide all requested information and in the required format may result in disqualification of the Proposal. OI has no obligation to locate or acknowledge any information in the proposal that is not presented under the appropriate outline and in the proper location according to the instructions herein.
- If determined that the Vendor has altered any language in the original RFP, the Board may, at its sole discretion, disqualify the Vendor from further consideration. The RFP issued by the Board is the official version and will supersede any conflicting language subsequently submitted in proposals.

9.2 Important Dates and Deadlines

May 4, 2023	Request for Proposal released
May 18, 2023, 5:00 PM CST	Questions and Requests for Clarification due to OI
May 23, 2023, 5:00 PM CST	Anticipated responses to vendor questions to be posted
June 6, 2023, 2:00 PM CST	Proposals submission deadline
June 6, 2023, 3:00 PM CST	Proposal Opening
July 7, 2023	Anticipated Finalists selected
July 13-14, 2023	Anticipated Presentations by finalists*
July 2023 Board Meeting	Anticipated Notice of Intent to Award distributed
2 Days following Board Meeting	Anticipated Notice of Contract Award published
3 Business Days of Notice of Intent to Award	Anticipated Post-Award Debriefing Request Due Date
3 Business Days of Debriefing Request	Anticipated Post-Award Debriefing Held by Date
7 Calendar Days of Notice of Intent to Award	Anticipated Protest Deadline Date
October 1, 2023	Contract(s) Effective Date/Services Begin

* Adjustments to the schedule may be made as deemed necessary by OI. The Board anticipates vendors selected as finalists will make presentations (possibly virtual) in Jackson, Mississippi. **Due to the constraints of the RFP timeline and the relative importance of presentations in the evaluation process, interested vendors are encouraged to be prepared to accommodate this schedule.**

9.3 Contact, Questions/Requests for Clarification, and Acknowledgment of Responses/RFP Amendments

Vendors must carefully review this solicitation, the Contract, risk management provisions, and all attachments for defects, questionable, or objectionable material. Following review, vendors may have questions to clarify or interpret the RFP to submit the best proposal possible. To accommodate the questions and requests for clarifications, vendors shall submit any such question via email by the deadline reflected in **RFP Section 9.2**. All questions and requests for clarifications must be directed by email to:

Alicia Coleman, MDFA OI Procurement and Contracts Director
Email: InsuranceRFP@dfa.ms.gov

Vendors should enter “**RFP Rfx Number 3120002650 - Questions**” as the subject for the email. Question submittals should include a reference to the applicable RFP section and be submitted in the format shown below:

	RFP Section, Page Number	Vendor Question/Request for Clarification
1.		

Official responses will be provided only for questions submitted as described above and only to clarify information already included in the RFP. The identity of the organization submitting the question(s) will not be revealed. All questions and answers will be published on the Mississippi Contract/Procurement Opportunity Search Portal website and the MDFA's website as an amendment to the RFP by the date and time reflected in **RFP Section 9.2**.

The MDFA will not be bound by any verbal or written information that is not contained within this RFP unless formally noticed and issued by the contact person as an RFP amendment. Vendors are cautioned that any statements made by MDFA personnel that materially change any portion of the proposal document shall not be relied upon unless subsequently ratified by a formal written amendment to the proposal document.

All vendor communications regarding this RFP must be directed to the Proposal Coordinator, Alicia Coleman. Unauthorized contact regarding the RFP with other employees of the MDFA may result in the Vendor being disqualified, and the Vendor may also be suspended, disbarred, or removed from consideration for award of contracts with the State of Mississippi for a period of two (2) years. At no time shall any vendor or its personnel contact, or attempt to contact, any MDFA staff regarding this RFP except the contact person as set forth and, in the manner, prescribed herein.

No pre-proposal conference will be held for this RFP.

OI reserves the right to amend this RFP at any time. Should an amendment to the RFP be issued, it will be posted on the Mississippi Contract/Procurement Opportunity Search Portal website and the MDFA's website under the heading "Solicitations" in a manner that all vendors will be able to view. Vendors must acknowledge receipt of any amendment to the solicitation by signing and returning the amendment with the proposal package, by identifying the amendment number and date in the space provided for this purpose on the RFP amendment, or by letter. The acknowledgment should be received by the MDFA by the time, date, and at the place specified for receipt of proposals. It is the Vendor's sole responsibility to monitor the websites for any updates or amendments to the RFP. Questions and Answer document(s), if any are issued/posted on the Mississippi Contract/Procurement Opportunity Search Portal website and the MDFA's website, must be treated the same as an RFP Amendment, meaning they will require acknowledgement.

The RFP is comprised of the base RFP document, any attachments, any amendments issued prior to the submission deadline, and any other documents released before contract award.

9.4 Corrections and Clarifications

OI reserves the right to request clarifications or corrections to proposals. Any proposal received which does not meet any of the requirements of this RFP, including clarification or correction requests, may be considered non-responsive and eliminated from further consideration.

9.5 Modification, Withdrawal, or Rejection of a Proposal

Modifications or additions to any portion of the procurement document may be cause for rejection of the Proposal. OI reserves the right to decide, on a case-by-case basis, whether to reject a proposal with modifications or additions as non-responsive. As a precondition to proposal acceptance, OI may request the Vendor to withdraw or modify those portions of the proposal deemed non-responsive that do not affect

quality, quantity, price, or delivery of the service. The RFP issued by OI is the official version and will supersede any conflicting RFP language subsequently submitted in proposals.

A vendor may withdraw a submitted proposal by submitting a written notification for its withdrawal to OI, signed by the Vendor, and emailed, or mailed to the addresses provided **within RFP Section 9.1** prior to the time and date set for proposal opening. OI shall not accept any amendments, revisions, or alterations to proposals after the due date unless requested by OI. Late proposals shall not be considered for award and the Vendor shall be notified as soon as practicable.

If the price bid/offered is substantially lower than those of other vendors, a mistake may have been made. A vendor may withdraw its proposal from consideration if certain conditions are met:

1. The proposal is submitted in good faith;
2. The price bid/offered is substantially lower than those of other vendors because of a mistake;
3. The mistake is a clerical error, not an error of judgment; and,
4. Objective evidence drawn from original work papers, documents, and other materials used in the preparation of the proposal demonstrates clearly that the mistake was an unintentional error in arithmetic or an unintentional omission of a quantity of labor or material.

To withdraw a proposal that includes a clerical error after proposal opening, the Vendor must give notice in writing to OI of claim of right to withdraw a proposal. Within two (2) business days after the proposal opening, the Vendor requesting withdrawal must provide to OI all original work papers, documents, and other materials used in the preparation of the bid/offer.

A vendor may also withdraw a bid/offer, prior to the time set for the opening of proposals, by simply making a request in writing to OI. No explanation is required.

No vendor who is permitted to withdraw a proposal shall, for compensation, supply any material or labor to or perform any subcontract or other work for the person to whom the Contract is awarded, or otherwise benefit from the Contract.

No partial withdrawals of a proposal are permitted after the time and date set for the proposal opening; only complete withdrawals are permitted.

A proposal that includes terms and conditions that do not conform to the terms and conditions in the RFP document is subject to rejection as non-responsive. Further, submission of a proposal that is not complete and/or signed is subject to rejection as non-responsive. OI reserves the right to permit the Vendor to withdraw nonconforming terms and conditions from its proposal prior to a determination by OI staff of non-responsiveness based on the submission of nonconforming terms and conditions.

9.6 Right to Consider Historical Information

OI reserves the right to consider historical information regarding the Vendor, whether gained from the Vendor's proposal, conferences with the Vendor, references, or any other source during the evaluation process. This may include, but is not limited to, information from any state or federal regulatory entity.

9.7 Right to Reject, Cancel and/or Issue Another RFP

OI specifically reserves the right to reject any or all proposals received in response to the RFP, cancel the RFP in its entirety, or issue another RFP.

9.8 Cost of Proposal Preparation

All costs incurred by the Vendor in preparing and delivering its proposal, making presentations, and any subsequent time and travel to meet with the Board regarding its proposal shall be borne exclusively by the Vendor.

9.9 Registration with Mississippi Secretary of State

By submitting a proposal, the Vendor certifies that it is registered to do business in the State of Mississippi as prescribed by Mississippi law and the Mississippi Secretary of State or, if not already registered, that it will do so within seven (7) business days of being notified by the MDFA that it has been selected for contract award. Sole proprietors are not required to register with the Mississippi Secretary of State.

9.10 Vendor Investigations and Certifications

Before submitting a proposal, each vendor shall make all investigations and examinations necessary to ascertain all site conditions and requirements affecting the full performance of the Contract and to verify any representations made by the MDFA upon which the Vendor will rely. If the Vendor receives an award because of its proposal submission, failure to have made such investigations and examinations will in no way relieve the Vendor from its obligation to comply in every detail with all provisions and requirements of the Contract documents, nor will a plea of ignorance of such conditions and requirements be accepted as a basis for any claim whatsoever for additional compensation.

By submitting a proposal, the Vendor certifies the following:

1. That he/she has thoroughly read and understands the RFP and all attachments thereto;
2. That the company meets all requirements and acknowledges all certifications contained in the RFP and attachments thereto;
3. That it is not currently debarred from submitting proposals for contracts issued by any political subdivision or agency of the State of Mississippi and that it is not an agent of a person or entity that is currently debarred from submitting proposals for contracts issued by any political subdivision or agency of the State of Mississippi;
4. That the prices submitted in response to the solicitation have been arrived at independently and without, for the purpose of restricting competition, any consultation, communication, or agreement with any other vendor or competitor relating to those prices, the intention to submit a proposal, or the methods or factors used to calculate the prices bid/offered; and,
5. That such vendor has not retained any person or agency on a percentage, commission, or other contingent arrangement to secure this Contract.

The Vendor agrees that submission of a signed proposal, fee schedule, and best and final offer (BAFO) (if requested), is certification that the Vendor will accept an award made to it because of the submission. Under no circumstances, shall the maximum time for proposal acceptance by the State extend beyond one (1) year from the date of opening.

9.11 State Approval

It is understood that the resulting contract may require approval by the PPRB. If required and if this contract is not approved, it is void and no payment shall be made hereunder. Every effort shall be made by OI to facilitate rapid approval and a start date consistent with the proposed schedule.

9.12 Proposal Evaluation and Basis for Award

All proposals received in response to this RFP by the stated deadline will receive a comprehensive, fair, and impartial evaluation. A formal scoring methodology comprised of three phases – compliance, analysis, and finalist, will be utilized with each proposal required to pass the previous phase to qualify for further evaluation in the next phase. MDFA will use an evaluation committee to review and evaluate the proposals using a 100-point scale as well as consensus scoring. Consensus scoring involves a solidarity or general agreement of opinion among evaluators, based on information and data contained in the RFP proposals. The evaluation of any proposal may be suspended and/or terminated at the OI's discretion at any point during the evaluation process at which time OI determines that said proposal and/or vendor fails to meet any of the mandatory requirements as stated in this RFP, the proposal is determined to contain fatal deficiencies to the extent that the likelihood of selection for contract negotiations is minimal, or OI receives reliable information that would make contracting with the Vendor impractical or otherwise not in the best interests of the Board and/or the State of Mississippi.

Compliance Phase - In this initial phase of the evaluation process, all proposals received are reviewed by the MDFA OI Procurement and Contracts Director and/or designee to determine if mandatory RFP requirements have been satisfied, meaning whether a proposal/vendor is responsive, responsible, and/or acceptable. Compliance requirements are not assigned a point percentage or score but are simply recorded as Pass or Fail.

- Every statement containing “must,” “shall,” “will,” etc., is a mandatory requirement. Failure to respond leads to mandatory proposal disqualification. Such mandatory requirements are to be clear and (preferably) standing alone.
- Every statement containing “may,” “can,” “should,” etc., is a desirable requirement. Vendors may ignore these if they wish. The only penalty for doing so is a possible loss of scoring points if the requirement has scoring points tied to it.

A Pass score is assigned to each factor for which the response to the question(s) defined is “Yes.” If any factor receives a Fail score or for some reason cannot be evaluated, an explanation of the problem or concern and the corresponding question must be evaluated and made part of the record, to include any allowable waivers.

Proposals with errors that do not alter the substance of the proposal can be accepted, and the MDFA OI Procurement and Contracts Director may allow the Vendor to correct the problem prior to review if the irregularities are insignificant mistakes that can be waived or corrected without prejudice to other vendors. MDFA has the right to waive minor defects or variations of a proposal from the exact requirements of the specifications that do not affect the price, quality, quantity, delivery, or performance time of the services being procured. If insufficient information is submitted by a vendor with the proposal for the MDFA to properly evaluate the proposal, the MDFA has the right to require such additional information as it may deem necessary after the time set for receipt of proposals, provided that the information requested does not change the price, quality, quantity, delivery, or performance time of the services being procured. Discussions may be conducted with vendors who submit proposals determined to be reasonably

susceptible of being selected for the award, but proposals may also be accepted without such discussions. If any component received a Fail score (a “No” response) on any item or contains an item which for some reason cannot be evaluated, it shall be deemed as non-responsive and/or non-responsible. Failure to comply with these RFP requirements may result in the proposal being eliminated from further consideration. All proposals which are determined to be responsive, responsible, and/or acceptable will continue to next phase.

Analysis Phase - In this phase of the evaluation process, the evaluation committee will utilize consensus scoring to determine numerical scores for each proposal. The evaluation factors are listed in order of their relative importance and weight:

1. **Cost (Weight/Value of 36%/Points)** – Cost is reviewed by the MDFA OI Procurement and Contracts Director and/or designee as it is objectively scored based on the competitiveness of the proposed fees, rates, price, or cost offered. The lowest cost proposed will receive a maximum of 36 points allocated to cost. The point allocations for cost on the other offers will be evaluated according to the following formula: Price of the lowest responsive and responsible offer divided by the price of the responsive and responsible offer being rated times the maximum 36 points allocated for cost equals the awarded points.
2. **Technical (Weight/Value of 34%/Points)** – Technical factors are scored by the evaluation committee without knowledge of the identity of the Vendor (blind) and generally aid in determining the Vendor’s technical ability to perform the service or provide the commodity. The evaluation committee will provide consensus scores of the quality and completeness of the Vendor’s solutions and action plans for providing the services identified, demonstrating understanding, responsiveness, effectiveness, efficiency, and value to the Board in proposed approach.
3. **Management (Weight/Value of 25%/Points)** – Management factors are scored with knowledge of the identity of the Vendor and generally aid in determining the Vendor’s past performance of the service or provision of the commodity. The evaluation committee will provide consensus scores of the personnel, equipment, and facilities to provide timely access to third party claims administration services for a plan of comparable size; the ability to technically implement and maintain the structure and resources for providing all services listed in this RFP, demonstrating where applicable the ability to perform the service reflected by technical training, education and general experience of staff and a documented record of past performance of providing services required in this RFP.

Finalist Phase - Upon completion of the Analysis Phase, the evaluation committee reviews and compares the numerical scores from among the vendors to determine finalists. The top scoring vendor, as well as all other vendors with scores within ten (10) points of the top scoring vendor, will be named as finalists and will be further evaluated. In the finalist phase of the evaluation process, the evaluation committee will seek to determine from among the finalists whose proposal is the most advantageous to the Board. This phase consists of the following components:

1. **Record of Past Performance of Similar Work (Experience and Qualifications)** – From among the finalists, client references will be contacted to verify a demonstration of an acceptable level of past performance for programs of a similar size and complexity to this program.
Weight/Value – This component of the evaluation is considered pass/fail.

2. **Finalist Presentations and Site Visits (Weight/Value of 5%/Points)** – At the OI’s discretion, all finalists may be required to make a presentation to the evaluation committee. If scheduled, individual finalist presentations shall be held either in Jackson, Mississippi, or virtually, to allow the evaluation committee the opportunity to conduct technical interviews of the finalists, and to confirm/clarify information provided in the submitted proposals or otherwise gathered during the evaluation process. Any substantial oral clarification shall be reduced to writing by the Vendor. The Board may also determine the need to conduct site visits as a component of the evaluation process. The Board will provide at least five (5) days advance notice to the impacted vendors. At the Board’s discretion, site visits may be conducted for each finalist to allow the evaluation committee the opportunity to observe, confirm, and evaluate the Vendor’s operations, systems, and respective resources as described in the response to the RFP. The Board may require access to the Vendor’s claims data to confirm the accuracy of information provided in its proposal, and to evaluate the quality of service provided. Due to the constraints of the RFP timeline and the relative importance of presentations and site visits in the evaluation process, interested vendors are encouraged to be prepared to accommodate this schedule.

3. **Best and Final Offer (BAFO)** – At the OI’s discretion, all finalists may be given the opportunity to provide a BAFO relative to their cost proposal. OI will notify finalists if a BAFO may be submitted and will establish a date and time for submission. Although a finalist is under no obligation to submit such an offer, any such BAFO should include any applicable revised financial exhibits and must be signed by an appropriate representative of your company. If a finalist chooses to not make a BAFO, the financial proposal included in your company’s response to the RFP will be considered as the BAFO. NOTE: Unsolicited BAFO, including but not limited to such offers submitted by non-finalists, will not be accepted. **Weight/Value – The numerical scores for the Cost factor from the Analysis Phase will be adjusted for any BAFO received from a finalist.**

Upon completion of the evaluation of proposals, the evaluation committee will determine the top scoring proposal and provide a recommendation to the Board. The Board will decide as to the proposal deemed most advantageous to the Board and will authorize the issuance of (an) intent to award the contract(s) to the selected vendor(s) and authorize contract negotiations with selected vendor(s). After such authorization by the Board, all participating vendors will be notified in writing of the contract award(s) and will be afforded the opportunity to participate in a post-award debriefing.

The MDFA intends to award one contract to provide the services described within this RFP to a responsible and responsive vendor whose proposal is determined in writing to be the most advantageous to the State taking into consideration the price and the evaluation factors set forth in this RFP. No other factors or criteria shall be used in the evaluation. Award for this procurement will be posted on the Mississippi Contract/Procurement Opportunity Search Portal website and the agency website at <https://www.dfa.ms.gov/bids-and-rfps-notice>. Vendors will be notified via email of the awards.

OI reserves the right to further clarify and/or negotiate with selected vendor(s) evaluated best following completion of the evaluation of proposals but prior to contract execution if deemed necessary. OI reserves the right to further clarify and/or negotiate with selected vendor(s) on any matter submitted to facilitate arriving at contract(s). OI also reserves the right to move to the next best vendor if negotiations do not lead to executed contract(s) with the best vendor(s).

9.13 Post-Award Vendor Debriefing

A vendor, successful or unsuccessful, may request a post-award vendor debriefing, in writing, by email (InsuranceRFP@dfa.ms.gov). Vendors should enter “**RFP RFX Number 3120002650 – Debriefings**” as the subject for the email. The written request must be received by Alicia Coleman, MDFA OI Procurement and Contracts Director, within three (3) business days of notification of contract award(s). A post-award vendor debriefing is a meeting and not a hearing; therefore, legal representation is not required. A debriefing typically occurs within three (3) business days of receipt of the request. If a vendor prefers to have legal representation present, the Vendor must notify Alicia Coleman, MDFA OI Procurement and Contracts Director, in writing and identify its attorney by name, address, and telephone number. The MDFA will schedule and/or suspend and reschedule the meeting at a time when a Representative of the Office of the Mississippi Attorney General can be present.

For additional information regarding Post-Award Vendor Debriefing, as well as the information that may be provided and excluded, please see Section 7-113 through 7-113.07, Post-Award Vendor Debriefing, of the *PPRB OPSCR Rules and Regulations* as updated and replaced by PPRB.

9.14 Protest

Any actual or prospective vendor who is aggrieved in connection with this solicitation or the outcome of this RFP may file a protest with Alicia Coleman, MDFA OI Procurement and Contracts Director. The protest shall be submitted within seven (7) calendar days of notification of contract award(s) or on or **before 5:00 PM CST, July 28, 2023**, in writing after such aggrieved person or entity knows or should have known of the facts giving rise thereto. The written protest letter shall contain an explanation of the specific basis for the protest. All protests must be in writing, dated, signed by the Vendor or an individual authorized to sign contracts on behalf of the protesting vendor, and contain a statement of the reason(s) for protest, citing the law(s), rule(s) and regulation(s) or procedure(s) on which the protest is based. The protesting vendor must provide facts and evidence to support the protest. A protest is considered filed when received by Alicia Coleman, MDFA OI Procurement and Contracts Director, via either U.S. mail, postage prepaid, or by personal delivery. Protests filed **after 5:00 PM CST, July 28, 2023**, will not be considered.

9.15 Required Contract Terms and Conditions

A draft contract has been included as Appendix A to this RFP for your review and comment. Any contract entered into with the MDFA pursuant to this RFP shall have the clauses in **blue** font as these are required pursuant to the PPRB OPSCR Rules and Regulations as updated and replaced by PPRB. These required clauses are mandatory and are non-negotiable. MDFA discourages exceptions from the draft contract content, regardless of content being required or not. Such exceptions may cause a proposal to be rejected as non-responsive. Proposals which condition the proposal based upon the State accepting other terms and conditions not found in the RFP, or which take exception to the State’s terms and conditions, may be found non-responsive, and no further consideration of the proposal will be given.

9.16 Agency Website

This RFP, any amendment thereto, such as Questions and Answer document(s) and Summary of Pre-Proposal Conference, Tour, or Site Visit, if any were issued, the Notice of Intent To Award, and the Evaluation Report will be posted on the agency website at <https://www.dfa.ms.gov/bids-and-rfps-notices>

and on the Mississippi Contract/Procurement Opportunity Search Portal website at https://www.ms.gov/dfa/contract_bid_search.

9.17 Attachments

The attachments to this RFP are made a part of this RFP as if copied herein in words and figures.

Appendix A

Draft Tort Third Party Claims Administration Services Contract

TORT THIRD-PARTY CLAIMS ADMINISTRATION SERVICES CONTRACT

This Third-Party Claims Administration Services Contract (Contract) is made by and between the Mississippi Department of Finance and Administration (MDFA), acting administratively on behalf of the Mississippi Tort Claims Board (Board), and [Insert Company Name] (Contractor), effective October 1, 2023, under the following terms and conditions under which the Contractor agrees to provide tort third party claims administration services to the Board.

1. Scope of Services

The primary function of the Contractor will be the prompt and accurate adjudication of workers' compensation claims filed by participating member agencies and/or their employees. These third-party administrator (TPA) services will include claims investigations, compensability determinations, claims 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 Board.

The Contractor will provide all services and otherwise do all things necessary for or incidental to the performance of work, as set forth below:

A. Account Management

- i. Maintain throughout the term of this Contract a claims office within the borders of the State of Mississippi. This office shall be open for business Monday through Friday between the hours of 8:00 AM and 5:00 PM CST each week of the year excluding holidays, unless otherwise agreed to by the Board. Authority to issue checks to pay claims shall be vested in personnel located within the State of Mississippi.
- ii. Assign a dedicated (but not necessarily exclusive) account manager with at least (10) years of casualty claims maintenance experience, located in the TPA's Mississippi service center to participate in activities relative to all aspects of the Contract between the Board and the TPA. This individual will supervise all aspects of this contract with the Board.
- iii. Provide a dedicated (but not necessarily exclusive) tort claims manager/supervisor, which must have a minimum of seven (7) years of third-party liability, property, casualty, and automobile claims investigation, evaluation, and settlement negotiation experience, five (5) years of liability claims management/supervisory experience, three (3) years liability litigation management experience and public agency experience, either possess or attain a valid Mississippi liability adjuster license prior to the start of any resulting contract pursuant to Mississippi Code Annotated § 83-17-401 *et seq.*, be located in the TPA's Mississippi service center, and be or become a resident of Mississippi. This individual will oversee all aspects of the services required herein and be responsible for the quality of work product

of personnel performing all required services outlined herein. This individual will regularly review a minimum of ten percent (10%) of the work product of the claims adjusters. In addition, this position shall conduct monthly review of all open liability claims with reserves in excess of \$25,000.00 and must meet at least quarterly with the OI to evaluate open liability claims, including litigated cases.

- iv. Provide dedicated claims adjusters, who must have a minimum of three (3) years of experience in third-party liability, property, casualty, and automobile claims investigation, evaluation, and settlement negotiation pursuant to Mississippi Code Annotated § 83-17-401 *et seq.* The individuals who will serve in these roles must also have a minimum of one (1) year liability litigation management experience, either possess or attain a valid Mississippi liability adjuster license, and be or become residents of Mississippi pursuant to Mississippi Code Annotated § 83-17-401 *et seq.*
- v. Provide a dedicated claims adjusters unit composed of professionally trained, statutorily compliant 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 RFP. Each adjuster shall have an average caseload not to exceed a total of 200 open liability claim cases at any time during the resulting contract.
- vi. **Optional Loss Control Services:** Provide dedicated safety/risk control consultant(s) with a minimum of ten (10) years of experience in recognition, evaluation, assessment, analysis and reporting of potential liability, property, casualty, and automobile loss exposures; in development, implementation, and monitoring of safety programs; and in conducting safety/risk control training, educational workshops, and seminars.
- vii. All other services directly related to this contract must be provided from an office located within the United States.

B. Third Party Claims Administration Services

- i. As needed, receive a complete claims history from the Board and TPA in electronic format. The TPA shall be required to load and maintain all claims data for all claims for the period July 1, 1993, through September 30, 2023, including both open and closed claims;
- ii. Receive paper files, documents, audio and video tapes, diskettes, etc. from the Board and TPA on all open claims as of October 1, 2023; also, receive the same type of physical and/or electronic files on all closed claims, as needed;
- iii. Process all claims or losses transferred from previous third-party claims administrators remaining open on September 30, 2023, as well as any and all subsequently reported claims that were incurred but not reported prior to October

1, 2023. The TPA is also responsible for processing any previously closed claims that are re-opened during the term of the Contract;

- iv. Process each claim in accordance with applicable statutory and administrative regulations. The Board 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;
- v. Comply with any and all claims administrative procedures of the Board;
- vi. Comply with mutually agreed service performance guarantees. Refer to **RFP Section 4, Performance Standards**, and **Exhibit B, Performance Standards and Discount Guarantees**, of this Contract;
- vii. Maintain full and accurate records (data) with respect to all matters covered under this contract. The TPA will permanently maintain and store data in electronic format in a safe, secure, and monitored locations(s) or security site(s). All data remains the property of the Board and shall be accessible by the Board at all times. Data will not be released or destroyed for any reason unless expressly requested by the Board or required under State or Federal law.
- viii. Prepare thoroughly documented notes to each claim file with respect to liability, reserve history, expected settlement/closure date, telephone conversations, etc.;
- ix. Perform reasonable and necessary administrative and clerical work in connection with claims or losses including the preparation of checks bearing the name of the Board; monthly reconciliation of bank statements on said account if requested, notification to the Board, electronically or as otherwise agreed, of checks issued in excess of Twenty Thousand Dollars (\$20,000.00);
- x. Administer the litigation process and assist attorneys in accordance with directives from the Tort Claims Manager;
- xi. Investigate fraudulent claims and make referrals to appropriate authorities;
- xii. Meet with the Board and/or MDFA staff on a regular basis to review claims, settlements, and program strategies;
- xiii. Will submit any received incident, notice of claim, or loss report to the OI for review and the OI will determine the claim assignment, set initial reserves, and provide the necessary instructions;
- xiv. Furnish to the Board selected loss and information reports in a format agreed to by the Board. The TPA will provide the Board with internet-based full access to the

TPA's claims adjudication/reporting system. Included in such access are tools that will allow the Board the ability to run selected management and statistical reports as needed;

- xv. Cooperate with information and reporting requests from the Board's actuary, its' auditors, and compliance with administrative procedures of the Board to facilitate actuarial analyses of the program and auditors;
- xvi. Collect, process, and report data in the manner required by the Internal Revenue Service (IRS) for the purpose of preparing any required IRS Form 1099 filings for any payments that are the subject of this Contract;
- xvii. Claims Handling:**
 - a. Shall review and investigate assigned tort claims filed against the State to determine liability exposures, evaluate and negotiate claims settlements, and process each such assigned claims from assignment to conclusion in accordance with applicable statutory and administrative regulations.
 - b. Shall keep the Board and/or OI fully informed of all significant developments in assigned matters.
 - c. Begin the file review and initial investigation within twenty-four (24) hours of receipt of the claim.
 - d. Maintain on a consistent basis all claim files and records necessary for processing claims and legal defense for liability claims or litigation.
 - e. Maintain a current estimate of expected total cost of each claim or loss and provide for reserve tracking and reporting; While the Board staff sets reserves on assignment, the TPA may make recommendations in the course of their reporting for routine reserve adjustments as the incident, claim, or loss is investigated and as the case matures. Any TPA recommended reserve change must be timely communicated to the Board staff.
 - f. Provide forms appropriate for the efficient operation of the program. There shall be online reporting capability. If requested by the Board, Vendor shall provide to the Board an Agency Incident Report Form and any other form(s) appropriate for the efficient operation of the program.
 - g. For any assigned incident or claim with a single reserve, or more, claimant contact is required within two (2) business days of assignment.
 - h. All funds relative to salvage collections must be issued to the Mississippi Tort Claims funds and not the Vendor. The Vendor must make good faith effort to obtain a minimum of three (3) salvage quotes for any property it acquires through settlement in the event the salvage has monetary value. The Vendor will take the necessary steps required to take legal possession of that salvage (often times a vehicle title) and sell it to the highest bidder. All salvage proceeds will be deposited into the Board's account. If no bids can be obtained and no value can be established the State may still have the legal responsibility of disposing of the salvage since they are the new owner. The TPA shall resolve this to conclusion. Salvage is often held in storage (salvage facility) and there

are daily fees associated with this and those fees add up quickly. The Vendor must address this issue early to avoid unnecessary expense. Also, if the claimant wants to keep the salvage, they must be willing to pay up to the highest bid and that amount is to be deducted from the settlement proceeds.

xviii. Settlement of Claims:

- a. 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) for bodily injury and property damage claims. The TPA's delegated 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 Board's approval prior to final disposition. The Board 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 Board's approval prior to final disposition.
- b. Settlements of more than Ten Thousand Dollars (\$10,000.00) require preapproval and must be submitted to and approved by the Tort Claims Manager, the Tort Claims Administrator, and/or the Board depending on the settlement amount. The TPA will prepare the settlement agreement.
- c. Shall pay losses and expenses timely.
- d. Will perform all necessary work in connection with paying claims, including the preparation of checks bearing the name of the Board and drawn on the account established and maintained by the Board.
- e. Shall settle bodily injury and property damage aspects of a claim as one (1) "global" settlement, unless authorized differently by the Board.
- f. Coordinate Medicare and Medicaid set aside agreements in compliance with all applicable laws and reporting requirements including Section 111 of the Medicare, Medicaid, and SCHIP Extension Act ("MMSEA").

xix. Investigations:

- a. Routine investigation is part of the TPA services herein and shall be provided without additional charges to the Board. Vendor shall fully investigate all liability claims, incidents, or losses assigned by the Board. Such thorough investigation shall include obtaining recorded statements from all claimants involved in a claim whenever possible, all witnesses when appropriate and as directed; accident scene investigations, including taking necessary photos, diagrams, plats, etc.; necessary medical reports and bills to evaluate claims; and to provide any other investigation requested by the Board. Charges for professional photos, police reports, medical reports, etc. shall be paid by Vendor from the Board's TPA banking account.

- b. Conduct thorough on-site liability and damage investigations for third party injury claims, incidents, or losses. Items required to complete any given file may include, but are not limited to, the following items: Scene photos; Diagrams; Statements from claimants; Statements from involved parties; Statements from witnesses; Determining liability; Negotiating settlements; Issuing correspondence at the request of the OI claims representative; Other investigation as requested.
- c. Provide quality color photographs and obtain all known accident reports, vehicle crash data, any related medical reports, records, and any other related material, all as directed by the Tort Claims Manager.
- d. Arrange for independent investigators, appraisers, medical professionals, or other specialized experts to the extent deemed necessary in connection with processing any incident, claim, or loss, only when doing so is customary and requested by the Board. These outside investigations, appraisers, and experts will be paid from the claim file as an expense. If it is mutually deemed necessary to assign an independent, third-party claims investigator (fee/property 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 Board's funds, if those are services that the TPA staff is equally capable and qualified to handle. The fee/property adjuster will be mutually agreed upon and determined by geography and the type of claim/injury involved.

xx. Liability Litigation Management:

- a. Manage the litigation process and communicate with outside counsel and OI.
- b. Review legal bills to ensure bills are correct based upon the MDFA's legal services contracts.
- c. Provide assistance to in-house and outside counsel and monitor case developments.
- d. Fully cooperate with in-house and outside counsel to resolve claims and subsequent litigation.
- e. Maintain pleadings and communication related to cases in its files.
- f. Must cooperate or consult with outside counsel to the Board, as directed by the Board. The Board will have the sole right to engage or discharge attorneys or law firms, and under no circumstances may the TPA engage or discharge attorneys or law firms on the State's behalf. As soon as the Board has retained outside counsel to defend the State with respect to a particular incident or claim, the Tort counsel will notify the TPA. If outside counsel or Tort counsel wishes the TPA's investigators to interview or refrain from taking statements, or to prepare or to refrain from preparing certain reports, counsel will make this known to the TPA, and the TPA must follow the direction of Tort counsel. The TPA must be available at all reasonable times for consultation with the Tort counsel or outside counsel with respect to claims and incidents covered by the Contract.
- g. Must obtain a litigation status report from attorney every 120 days for the Board.

C. Data Management

The Contractor will provide, at no additional cost to the Board, the OI staff direct online (electronic) access to the TPA's automated claims management system or Risk Management System (RMS) that includes necessary software. Said access shall include, but is not limited to, access by claim to the claim historical data, supervisory and adjuster notes screen, payment detail, defense and plaintiff attorney identification, all liability litigation management support documents, and notes confirming file review frequency. The Tort Claims Manager must have complete access to all claim file documentation and have the ability to run management reports as needed. Upon expiration or termination of the Contract, the State will maintain the rights to all data and hard copy files and information secured as a result of this Contract. The system must provide monthly statements of loss which contain the following data elements: claimant, claim number, location, date of incident, type of incident, claim status (open, closed without payment, declines), multiple claimants, amount paid by coverage line (bodily injury and property damage), expenses, reserves and total incurred. The Contractor is responsible for any and all expenses incurred for the updating and compliance of the automated claims management system.

D. Claims and Performance Reviews

The Board, at its own expense, contracts with an independent third-party vendor to conduct claims and performance reviews of the Contractor. The Contractor agrees that upon at least two (2) business days' notice by the Board to the Contractor, the Board has the right to audit all records maintained by the Contractor relative to the Contractor's performance. The Board maintains the right to perform financial, performance and other special audits on records maintained by the Contractor during regular business hours. The Contractor will make available all records, as defined by the selected auditor, for review at no cost to the Board. This does not preclude the auditing of other services or additional claims. Any errors detected via the audit will be addressed and corrected in a timely manner by the Contractor. Any claim processing error will be adjusted to the proper account.

E. Standard/Ad Hoc Reporting

The Contractor must furnish standard reports in a form and content approved by the Board. These reports will be provided, at the Board's request, in electronic media format, as well as hard copy if requested by the Board. The Contractor shall provide web-based reporting tools that allow the Board to view, print, and download reports to spreadsheet software. All reports must include report parameters and definitions. Report parameters/definitions must be revised as appropriate when revisions to the report scope occur.

Additionally, the Contractor will provide ad hoc reports at the Board's request. The Contractor shall provide the Board, for the Board's approval, the time and cost for the development of ad hoc reports prior to the development of the report.

All other reports are to be performed and provided as stated in *Exhibit C, Workers' Compensation Third Party Claims Administration Services Vendor Reports*.

F. Cooperation with Other Board Vendors

The Contractor will cooperate as required with the Board's other contracted vendors and will work with other vendors to facilitate the provision of the on-going coordination and delivery of services, and in any transfer of responsibility.

G. Loss Control Services – Optional, meaning at the request and discretion of the Board

The Contractor will assign experienced safety/risk control consultants to assist and advise the Board as requested in handling the safety and risk management needs of the Board. These services may include, but is not limited to the following:

- i. Conduct comprehensive and/or specialized surveys of member agencies' facilities, and provide comprehensive reports and recommendations;
- ii. Recognize, evaluate, assess, analyze and report potential liability, property, casualty, and automobile loss exposures;
- iii. Develop, implement, and monitor safety programs;
- iv. Develop safety/risk control policies recommendations;
- v. Assist in implementing said safety/risk control policies;
- vi. Assist in safety/risk control training, educational workshops and seminars; and
- vii. Provide other such services as requested by the Board and for which the safety/risk control consultant is qualified to perform.

H. Perform all services required in the RFP in accordance with customary and reasonable industry standards as well as in strict conformance to all laws, statutes, and ordinances and the applicable rules, regulations, methods and procedures of all government boards, bureaus, offices, and other agents whether currently in place, updated and replaced, or newly created. The Contractor shall be responsible for the complete performance of all work; for the methods, means, and equipment used; and for furnishing all materials, tools, apparatus, and property of every description used in connection therewith. No statement within the RFP shall negate compliance with any applicable governing regulation. The absence of detailed specifications or the omission of detailed description shall be recognized as meaning that only the best commercial practices are to prevail, and that only first quality materials and workmanship are to be used.

2. Contract Term

- A.** The term of the Contract will be for four (4) years, effective October 1, 2023 through September 30, 2027. MDFA reserves the right to renew the Contract for up to one (1) additional year at the sole discretion of MDFA. By January 1, 2027, MDFA will notify the Contractor, in writing, of MDFA's intent to renew the Contract for the additional year.
- B.** This Contract may be terminated by either party, with or without cause, upon at least ninety (90) days prior written notice of intent to terminate provided to the other party.

- C. All records and information provided by MDFA or through its vendors to the Contractor are the sole property of the MDFA and will be returned to the MDFA within thirty (30) days of the termination date of this Contract. The Contractor will be entitled to retain and utilize data that have been captured, computed, or stored in the Contractor's databases to the extent that such data cannot be identified or linked to the Board, MDFA, or an individual claimant.
- D. Upon termination of this Contract, the Contractor shall cooperate with the Board and the new TPA vendor during the transition of the Board's business to the new TPA vendor. Upon request of the Board, the Contractor shall provide all Board information maintained by the Contractor in relation in a time frame specified by the Board. Information provided shall be in a format designated by the Board and shall include, but not be limited to, where applicable, file layouts and legends. The Contractor shall provide such explanation of the information provided to facilitate a smooth transition.

3. Consideration

MDFA agrees to compensate the Contractor for services approved by the MDFA and performed by the Contractor under the terms of this Contract in an amount not to exceed **Insert Amount**, as follows:

- A. The flat fees and unit rates as applicable, listed in **Exhibit A, Fee Schedule for Tort Third Party Claims Administration Services**, of this Contract will constitute the entire compensation due to the Contractor for services and all the Contractor's obligations hereunder regardless of the difficulty, materials, or equipment required. The fees include all associated costs with no additional or hidden fees. The fees include, but are not limited to, all required labor; all required equipment/material; all required insurance, bond, or other surety; all required overhead/profit; all required applicable taxes, fees, and general office expense; all required vehicles; all required fuel and mileage; all required travel; all required labor and supervision; all required training; all required business and professional certifications, licenses, permits, or fees; and any and all other direct and indirect costs, incurred or to be incurred, by the Contractor. All expenses except independent auto appraisals, official photographs, medical reports and records, vehicle crash data collection, indexing fees, police reports, attorney fees, and other specialized services (upon written approval) shall be inclusive. The fees and rates listed in **Exhibit A, Fee Schedule for Tort Third Party Claims Administration Services**, of this Contract are firm for the duration of this Contract and are not subject to escalation for any reason, unless otherwise provided for within this Contract, or unless this Contract is duly amended.
- B. The Contractor will submit all invoices, in a form acceptable to the MDFA (provided that such acceptance will not be unreasonably withheld) with all the necessary supporting documentation, prior to any payment to the Contractor of any allowable fees. Fees will be invoiced in sufficient detail and format as determined by the MDFA. Such invoices will include, at a minimum, a description of the service(s) provided, the compensation rate, the time period in which services were provided, and total fees requested for the period being

invoiced. The Board shall not provide any prepayments or initial deposits in advance of services being rendered. Fees for services provided by the Contractor shall be billable to the Board in arrears on a monthly basis. Payment for any and all services provided by the Contractor to the Board shall be made only after said services have been duly performed and properly invoiced. Only those services agreed to by contract shall be considered for reimbursement/compensation by the Board. No additional compensation will be provided by the MDFA for any expense, cost, or fee not specifically authorized by this Contract, or by written authorization from the MDFA.

- C. The payment of an invoice by the MDFA shall not prejudice the MDFA's right to object or question any invoice or matter in relation thereto. Such payment by the MDFA shall neither be construed as acceptance of any part of the work or service provided nor as an approval of any costs invoiced therein. The Contractor's invoice or payment shall be subject to reduction for amounts included in any invoice or payment theretofore made which are determined by the MDFA, on the basis of audits, not to constitute allowable costs. Any payment shall be reduced for overpayment or increased for underpayment on subsequent invoices. For any amounts which are or shall become due and payable to the MDFA by the Contractor, including but not limited to any liquidated damages resulting from the Contractor's failure to satisfy any performance standards described in Exhibit B, Performance Standards and Discount Guarantees, the Board reserves the right to (1) deduct from amounts which are or shall become due and payable to the Contractor under Contract between the parties any amounts which are or shall become due and payable to the MDFA by the Contractor; or (2) request and receive payment directly from the Contractor within fifteen (15) days of such request, at the MDFA's sole discretion.
- D. Upon the effective date of termination of this Contract, the Contractor will remain liable for any obligations arising hereunder prior to the effective date of such termination. In addition, in the event of termination of the Contract for any reason, the TPA shall be paid for services rendered and allowable expenses incurred up to the effective date of termination.

4. Anti-Assignment/Subcontracting

Contractor acknowledges that it was selected by the State to perform the services required hereunder based, in part, upon Contractor's special skills and expertise. The Contractor shall not assign, subcontract, or otherwise transfer this Contract, in whole or in part, without the prior written consent of the State, which the State may, in its sole discretion, approve or deny without reason. Any attempted assignment or transfer without such consent shall be null and void. No such approval by the State of any subcontract shall be deemed in any way to provide for the incurrence of any obligation of the State 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.

5. Applicable Law

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

6. Approval

It is understood that if this Contract requires approval by the Public Procurement Review Board (PPRB) and/or the MDFA Office of Personal Service Contract Review (OPSCR), and this Contract is not approved by the PPRB and/or OPSCR, it is void and no payment shall be made hereunder.

7. Attorney's Fees and Expenses

Subject to other terms and conditions of this agreement, in the event Contractor defaults in any obligations under this agreement, Contractor shall pay to the State all costs and expenses (including, without limitation, investigative fees, court costs, and attorney's fees) incurred by the State in enforcing this agreement or otherwise reasonably related thereto. Contractor agrees that under no circumstances shall the customer be obligated to pay any attorney's fees or costs of legal action to Contractor.

8. Authority to Contract

Contractor warrants: (a) that it is a validly organized business with valid authority to enter into this Contract; (b) that it is qualified to do business and in good standing in the State of Mississippi; (c) that entry into and performance under this Contract is not restricted or prohibited by any loan, security, financing, contractual, or other contract of any kind; and, (d) notwithstanding any other provision of this Contract to the contrary, that there are no existing legal proceedings or prospective legal proceedings, either voluntary or otherwise, which may adversely affect its ability to perform its obligations under this Contract.

9. Availability of Funds

It is expressly understood and agreed that the obligation of the MDFA 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 time 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 MDFA, the MDFA shall have the right upon ten (10) working days written notice to the Contractor, to terminate this Contract without damage, penalty, cost or expenses to the MDFA of any kind whatsoever. The effective date of termination shall be as specified in the notice of termination.

10. Change in Scope of Work

The MDFA 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 the Contractor that the scope of the project or of the Contractor's services have been changed, requiring changes to the amount of compensation to the Contractor or other adjustments to the Contract, unless such changes or adjustments have been made by written amendment to the Contract signed by the MDFA and the Contractor. If the Contractor believes that any particular work is not within the scope of the project, is a material change, or shall otherwise require more compensation to the Contractor, the Contractor shall immediately notify the MDFA in writing of this belief. If the MDFA believes that the particular work is within the scope of the Contract as written, the Contractor shall be ordered to and shall continue the work as changed and at the cost stated for the work within the Contract.

11. Compliance with Laws

The Contractor understands that the MDFA 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 Contractor agrees during the term of the Contract that the Contractor shall strictly adhere to this policy in its employment practices and provision of services. The Contractor 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.

12. Confidentiality

Notwithstanding any provision to the contrary contained herein, it is recognized that MDFA is a public agency of the State of Mississippi and is subject to the Mississippi Public Records Act. Mississippi Code Annotated § 25-61-1 *et seq.* If a public records request is made for any information provided to MDFA pursuant to the Contract and designated by the Contractor in writing as trade secrets or other proprietary confidential information, MDFA shall follow the provisions of Mississippi Code Annotated §§ 25-61-9 and 79-23-1 before disclosing such information. The MDFA shall not be liable to the Contractor for disclosure of information required by court order or required by law.

13. Contractor Personnel

The MDFA 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 Contractor. If the MDFA reasonably rejects staff or subcontractors, the Contractor shall provide replacement staff or subcontractors satisfactory to the MDFA in a timely manner and at no additional cost to the MDFA. The day-to-day supervision and control of the Contractor's employees and subcontractors is the sole responsibility of the Contractor.

14. Debarment and Suspension

The Contractor certifies to the best of its knowledge and belief, that it: (i) Is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transaction by any federal department or agency or any political subdivision or agency of the State of Mississippi; (ii) Has not, within a three-year period preceding this proposal, been convicted of or had a civil judgment rendered against it for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction; (iii) Has not, within a three-year period preceding this proposal, been convicted of or had a civil judgment rendered against it for a 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; (iv) Is not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any of these offenses enumerated in paragraphs two (ii) and three (iii) of this certification; and, (v) Has not, within a three-year period preceding this proposal, had one or more public transactions (federal, state, or local) terminated for cause or default.

15. Disclosure of Confidential Information

In the event that either party to this Contract receives notice that a third party requests divulgence of confidential or otherwise protected information and/or has served upon it a subpoena or other validly issued administrative or judicial process ordering divulgence of confidential or otherwise protected information that party shall promptly inform the other party and thereafter respond in conformity with such subpoena to the extent mandated by law. This section shall survive the termination or completion of this Contract. The parties agree that this section is subject to and superseded by Mississippi Code Annotated § 25-61-1 *et seq.*

16. Disputes

Any dispute concerning the Contract which is not disposed of by agreement shall be decided by the Chair of the Board who shall reduce such decision to writing and mail or otherwise furnish a copy thereof to the Contractor. The decision of the Chair of the Board shall be final and conclusive. Nothing in this paragraph shall be construed to relieve the Contractor of full and diligent performance of the Contract.

17. E-Payment

The Contractor agrees to accept all payments in United States currency via the State of Mississippi's electronic payment and remittance vehicle. The MDFA 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 the invoice. Mississippi Code Annotated § 31-7-301, *et seq.*

18. E-Verification

If applicable, the Contractor represents and warrants that it shall ensure its compliance with the Mississippi Employment Protection Act of 2008, and shall 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. The Contractor 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, the Contractor agrees to provide a copy of each such verification. The Contractor 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 agreement may subject the Contractor to the following:

- A. 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; or
- B. the loss of any license, permit, certification, or other document granted to the Contractor by an agency, department, or governmental entity for the right to do business in Mississippi for up to one (1) year; or
- C. both.

In the event of such cancellation/termination, the Contractor 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.

19. Failure to Deliver

Failure by the MDFA 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 MDFA to enforce any provision at any time in accordance with its terms.

20. Failure to Enforce

Failure by the MDFA 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 MDFA to enforce any provision at any time in accordance with its terms.

21. Force Majeure

Each party shall be excused from performance for any period and to the extent that it is prevented from performing any obligation or service, in whole or in part, as a result of causes beyond the reasonable control and without the fault or negligence of such party and/or its subcontractors. Such acts shall include without limitation acts of God, strikes, lockouts, riots, acts of war, epidemics, governmental regulations superimposed after the fact, fire, earthquakes, floods, or other natural disasters (“force majeure events”). When such a cause arises, the Contractor shall notify the MDFA immediately in writing of the cause of its inability to

perform, how it affects its performance, and the anticipated duration of the inability to perform. Delays in delivery or in meeting completion dates due to force majeure events shall automatically extend such dates for a period equal to the duration of the delay caused by such events, unless MDFA determines it to be in its best interest to terminate the Contract.

22. Indemnification

To the fullest extent allowed by law, the Contractor shall indemnify, defend, save and hold harmless, protect, and exonerate the MDFA, its Commissioners, Board Members, officers, employees, agents, and representatives and the State of Mississippi 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 Contractor 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, upon approval of the Office of the Mississippi Attorney General, the Contractor may be allowed to control the defense of any such claim, suit, etc. In the event the Contractor defends said claim, suit, etc., the Contractor shall use legal counsel acceptable to the Office of the Mississippi Attorney General. The Contractor shall be solely responsible for all costs and/or expenses associated with such defense, and the State shall be entitled to participate in said defense. The Contractor shall not settle any claim, suit, etc., without the concurrence of the Office of the Mississippi Attorney General, which shall not be unreasonably withheld.

23. Independent Contractor Status

The Contractor 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 State. Nothing contained herein shall be deemed or construed by the State, the Contractor, 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 the State and the Contractor. Neither the method of computation of fees or other charges, nor any other provision contained herein, nor any acts of the State or the Contractor hereunder creates, or shall be deemed to create a relationship other than the independent relationship of the State and Contractor. The Contractor's personnel shall not be deemed in any way, directly or indirectly, expressly or by implication, to be employees of the State. Neither the Contractor nor its employees shall, under any circumstances, be considered servants, agents, or employees of the MDFA, and the MDFA shall be at no time be legally responsible for any negligence or other wrongdoing by the Contractor, its servants, agents, or employees. The MDFA shall not withhold from the Contract payments to the Contractor any federal or state unemployment taxes, federal or state income taxes, Social Security tax, or any other amounts for benefits to the Contractor. Further, the MDFA shall not provide to the Contractor any insurance coverage or other benefits, including Worker's Compensation, normally provided by the State for its employees.

24. Information Designated by Contractor as Confidential

Any disclosure of those materials, documents, data, and other information which Contractor has designated in writing as proprietary and confidential shall be subject to the provisions of Mississippi Code Annotated §§ 25-61-9 and 79-23-1. As provided in the Contract, the personal or professional services to be 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.

Any liability resulting from the wrongful disclosure of confidential information on the part of the Contractor or its subcontractor shall rest with Contractor. Disclosure of any confidential information by the Contractor or its subcontractor without the express written approval of the MDFA shall result in the immediate termination of this Contract.

25. Implementation Bond

The Contractor must agree to provide a One Million Dollars (\$1,000,000.00) **Performance Bond or Escrow Account**, naming the Board as exclusive beneficiary, to guarantee timely and complete establishment of the Contract and related services. Such bond or escrow account must be obtained or established within thirty (30) days of contract award. The bond shall be a corporate surety bond issued by a surety company authorized to do business in the State of Mississippi; while an escrow account is subject to approval by agency legal counsel. Any failure of the Contractor to perform timely and complete establishment of such services shall result in damages recoverable by the Board against the implementation bond or escrow account. This requirement will not apply if the incumbent TPA Vendor with services established under the current contract is selected through this procurement process to enter into negotiations for the new contract. Upon the agreement by the Board that the Contractor has complied with its implementation responsibilities, the implementation bond shall be released.

26. Insurance

The Contractor shall maintain, throughout the term of this Contract, at its own expense, **workers' compensation coverage** as required by the State of Mississippi, **professional liability coverage** in an amount no less than One Million Dollars (\$1,000,000.00) per occurrence and Three Million Dollars (\$3,000,000.00) annual aggregate that covers any damages caused by an error, omission or any negligent acts related to the services to be provided under this Contract, and **cyber liability coverage** in an amount no less than Two Million Dollars (\$2,000,000.00) that includes security and privacy liability, incident response expenses, business interruption, business interruption waiting period, data recovery, regulatory proceedings, and cyber extortion. The State of Mississippi will be listed as certificate holder on the professional liability and the cyber liability insurance policies and shall be issued by insurance companies authorized to do business under the laws of the State of Mississippi, meaning insurance carriers must be licensed or hold a Certificate of Authority from the Mississippi Insurance Department. Contractor shall not commence work under this Contract until it obtains all insurances required under this provision and furnishes certificate(s) or other form(s) showing proof of current coverage to the MDFA. After work commences, the Contractor shall maintain in force all required insurance until the Contract is terminated or expires. Contractor shall submit renewal certificates as appropriate during the term of the Contract. Contractor shall ensure that should any of the above-described policies be cancelled

before the expiration date thereof, or if there is a material change, potential exhaustion of aggregate limits or intent not to renew insurance coverage(s), that written notice will be delivered to the MDFA. There shall be no cancellation, material change, potential exhaustion of aggregate limits or non-renewal of insurance coverage(s) to MDFA. Any failure to comply with the reporting provisions of this clause shall constitute a material breach of Contract and shall be grounds for immediate termination of this Contract by MDFA.

27. Integrated Agreement/Merger

This Contract, including all contract documents, represents the entire and integrated agreement between the parties hereto and supersedes all prior negotiations, representations or agreements, irrespective of whether written or oral. This Contract may be altered, amended, or modified only by a written document executed by the State and Contractor. Contractor acknowledges that it has thoroughly read all contract documents and has had the opportunity to receive competent advice and counsel necessary for it to form a full and complete understanding of all rights and obligations herein. Accordingly, this Contract shall not be construed or interpreted in favor of or against the State or Contractor on the basis of draftsmanship or preparation hereof.

28. Modification or Renegotiation

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

29. 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 shall be made in writing by the MDFA and agreed to by the Contractor.

30. Ownership of Documents and Work Papers

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

31. Paymode

Payments by state agencies using the State's 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 Contractor's choice. The State may, at its sole discretion, require the Contractor to submit invoices and supporting documentation electronically at any time during the term of this Contract. The Contractor understands and agrees that the State is exempt from the payment of taxes. All payments shall be in United States currency.

32. Procurement Regulations

The Contract shall be governed by the applicable provisions of the *Mississippi Public Procurement Review Board Office of Personal Service Contract Review Rules and Regulations*, a copy of which is available at 501 North West Street, Suite 701E, Jackson, Mississippi 39201 for inspection, or downloadable at <http://www.dfa.ms.gov/dfa-offices/personal-service-contract-review/opscr>.

33. Record Retention and Access to Records

The Contractor agrees that the MDFA or any of its duly authorized representatives at any time during the term of this Contract shall have unimpeded, prompt access to and the right to audit and examine any pertinent books, documents, papers, and/or records of the Contractor related to the Contractor's charges and performance under this Contract. The MDFA agrees to provide the Contractor with reasonable advance notice for any standard audits or reviews, with the expectation that such reviews shall be made during normal business hours of the Contractor. The parties shall cooperate to schedule and conduct such audit or inspection to prevent disruption to Contractor's performance of the services hereunder and for Contractor's other customers. All records related to this Contract shall be retained by the Contractor for a period of three (3) years after final payment under this Contract and all pending matters are closed. However, if any litigation, claim, negotiation, audit or other action arising out of or related in any way to this Contract has been started before the expiration 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. The Contractor agrees to refund to the MDFA any overpayment disclosed by any such audit arising out of or related in any way to this Contract.

34. Recovery of Money

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

35. Representation Regarding Contingent Fees

The Contractor represents that it has not retained a person to solicit or secure a State Contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee except as disclosed in the Contractor's bid.

36. Representation Regarding Gratuities

The Contractor 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 Public Procurement Review Board Office of Personal Service Contract Review Rules and Regulations*.

37. Right to Audit

Contractor shall maintain such financial records and other records as may be prescribed by MDFA or by applicable federal and state laws, rules, and regulations. Contractor shall retain these records for a period of three years after final payment, or until they are audited by MDFA, whichever event occurs first. These records shall be made available for inspection during regular business hours and with reasonable advance notice during the term of the Contract and the subsequent three-year period for examination, transcription, and audit by the Mississippi Office of the State Auditor, its designees, or other authorized bodies.

38. Right to Inspect

MDFA, the Mississippi Office of the State Auditor, or any other auditing agency prior-approved by MDFA, or their authorized representative shall, at all reasonable times, have the right to enter onto the Contractor's premises, or such other places where duties under this Contract are being performed, to inspect, monitor, or otherwise evaluate the work being performed. The Contractor shall provide access to all facilities and assistance for MDFA and Mississippi Office of the State Auditor's representatives. All inspections and evaluations shall be performed in such a manner as to not delay work. Refusal by the Contractor to allow access to all documents, papers, letters or other materials, shall constitute a breach of Contract. All audits performed by persons other than MDFA staff shall be coordinated through MDFA and its staff.

39. Severability

If any part of this Contract is declared to be invalid or unenforceable, such invalidity or unenforceability shall not affect any other provision of the Contract that can be given effect without the invalid or unenforceable provision, and to this end the provisions hereof are severable. In such event, the parties shall amend the Contract as necessary to reflect the original intent of the parties and to bring any invalid or unenforceable provisions in compliance with applicable law.

40. Standards of Care/Remedies

The Contractor shall exercise reasonable care and due diligence consistent with standards in the industry in the performance of its obligations under this Contract.

41. Stop Work Order

- A. *Order to Stop Work.*** The MDFA, may, by written order to the Contractor at any time, and without notice to any surety, require the Contractor 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 Contractor, 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 Contractor 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 MDFA shall either:
1. cancel the stop work order; or,
 2. 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 canceled at any time during the period specified in the order, or if the period of the order or any extension thereof expires, the Contractor shall have the right to resume work. An appropriate adjustment shall be made in the delivery schedule or Contractor price, or both, and the Contract shall be modified in writing accordingly, if:
1. the stop work order results in an increase in the time required for, or in the Contractor's costs properly allocable to, the performance of any part of this Contract; and,
 2. the Contractor asserts a claim for such an adjustment within 30 days after the end of the period of work stoppage; provided that, if the MDFA 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 canceled 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.

42. Termination for Convenience

- A. *Termination.*** The MDFA may, when the interests of the State so require, terminate this Contract in whole or in part, for the convenience of the State. The MDFA shall give written notification of the termination to the Contractor specifying the part of the Contract terminated and when the termination becomes effective.
- B. *Contractor's Obligations.*** The Contractor shall incur no further obligations in connection with the terminated work, and on the date set in the notice of termination, the Contractor shall stop work to the extent specified. The Contractor shall also terminate outstanding orders and subcontracts as they relate to the terminated work. The Contractor shall settle the liabilities and claims arising out of the termination of subcontractors and orders connected with the terminated work. The MDFA may direct the Contractor to assign the Contractor's right, title, and interest under terminated orders or subcontracts to the State. The Contractor shall still complete the work not terminated by the notice of termination and may incur obligations as are necessary to do so.

43. Termination for Default

- A. *Default.* If the Contractor refuses or fails to perform any of the provisions of this Contract with such diligence as shall ensure its completion within the time specified within this Contract, or any extension thereof or, otherwise fails to timely satisfy the Contract provisions, or commits any other substantial breach of this Contract, the MDFA may notify the Contractor in writing of the delay or nonperformance and if not cured within ten (10) days or any longer time specified in writing by the MDFA, the MDFA may terminate the Contractor'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 MDFA may procure similar supplies or services in a manner and upon terms deemed appropriate by the MDFA. The Contractor 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. *Contractor's Duties.* Notwithstanding termination of the Contract and subject to any directions from the MDFA, the Contractor shall take timely, reasonable, and necessary action to protect and preserve property in the possession of the Contractor in which the State has an interest.
- C. *Compensation.* Payment for completed services delivered and accepted by the State shall be at the Contract price. The State may withhold from amounts due the Contractor such sums as the MDFA deems to be necessary to protect the State against loss because of outstanding lien holders or claims of former lien holders and to reimburse the State for the excess costs incurred in procuring similar goods and services.
- D. *Excuse for Nonperformance or Delayed Performance.* Except with respect to defaults of subcontractors, the Contractor 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 Contractor to make progress in the prosecution of the work hereunder which endangers performance) if the Contractor has notified the MDFA 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 Contractor 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 Contractor to meet the Contract requirements. Upon request of the Contractor, the MDFA shall ascertain the facts and extent of such failure, and, if the MDFA 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 Contractor'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 State under the clause of this Contract entitled "Termination for Convenience". (As used in this Paragraph of this clause,

the term “subcontractor” means subcontractor at any tier).

E. *Erroneous Termination for Default.* If, after notice of termination of the Contractor'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 Paragraph D (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 State, be the same as if the notice of termination had been issued pursuant to a termination for convenience.

F. *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.

44. Termination Upon Bankruptcy

This Contract may be terminated in whole or in part by the MDFA upon written notice to the Contractor, if the Contractor should become the subject of bankruptcy or receivership proceedings, whether voluntary or involuntary, or upon the execution by Contractor of an assignment for the benefit of its creditors. In the event of such termination, Contractor 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.

45. Third Party Action Notification

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

46. 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.

47. 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 79-23-1. In addition, this Contract is subject to the 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 MDFA’s independent agency contract website for public access at <http://www.transparency.mississippi.gov>. Information identified by Contractor 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, shall be redacted.

48. Waiver

No delay or omission by either party to this agreement in exercising any right, power, or remedy hereunder or otherwise afforded by contract, at law, or in equity shall constitute an acquiescence therein, impair any other right, power or remedy hereunder or otherwise afforded by any means, or operate as a waiver of such right, power, or remedy. No waiver by either party to this agreement shall be valid unless set forth in writing by the party making said waiver. No waiver of or modification to any term or condition of this agreement will void, waive, or change any other term or condition. No waiver by one party to this agreement of a default by the other party will imply, be construed as or require waiver of future or other defaults.

49. Notices

All notices required or permitted to be given under this Contract shall 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.

If to MDFA and/or the Board: Attention: Executive Director
Mississippi Department of Finance and Administration
501 N. West St., Suite 1301 Woolfolk Building
Post Office Box 267
Jackson, Mississippi 39205-0267

With copy of any notice to: Tort Claims Administrator
Office of Insurance
Mississippi Department of Finance and Administration
501 N. West St., Suite 901-B Woolfolk Building
Post Office Box 24208
Jackson, Mississippi 39225-4208

If to the Contractor: [Name, Title]
[Contractor Name]
[Address]
[City, State, Zip]

50. Incorporation of Documents

This Contract consists of and precedence is hereby established by the order of the following documents incorporated herein:

- A. This Contract signed by the parties including *Exhibit A - Fee Schedule for Tort Third Party Claims Administration Services, Exhibit B - Performance Standards and Discount Guarantees, and Exhibit C - Tort Third Party Claims Administration Services Vendor Reports;*
- B. The *Mississippi Department of Finance and Administration's Request for Proposals for Tort Third Party Claims Administration Services, dated May 3, 2023,* and attached hereto as *Exhibit D* and incorporated fully herein by reference; and
- C. The *Contractor's Response to the Mississippi Department of Finance and Administration's Request for Proposals for Tort Third Party Claims Administration Services, dated May 31, 2023,* attached hereto as *Exhibit E* and incorporated fully herein by reference.

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IN WITNESS WHEREOF, the parties hereto have caused this Contract to be executed on the date shown below:

[Contractor Name]

Mississippi Department of Finance and Administration

By: _____

By: _____

Name: _____

Name: Liz Welch

Title: _____

Title: Executive Director

Date: _____

Date: _____

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Exhibit A. Fee Schedule for Tort Third Party Claims Administration Services

The Contractor’s pricing for the Tort Third Party Claims Administration Services listed below for each of the five (5) years of the Contract are as follows:

ANNUAL ADMINISTRATIVE SERVICES					
Service	Year 1	Year 2	Year 3	Year 4	Year 5*
Claims Administration Services					
Loss Control (Optional Service)					

*Applicable in the event the optional one-year contract renewal is exercised by the Board/M DFA.

All fees/rates listed are guaranteed through the term of the Contract.

Exhibit B. *Performance Standards and Discount Guarantees*

The Contractor agrees to the following minimum performance standards and the assessment of liquidated damages for failure to meet these standards. At the Board's discretion, an audit of the accuracy of the Contractor's results will be performed via a randomly selected, statistically verifiable sample of claims by a qualified, independent third party. The results of the audit, after appropriate review and comment by the Contractor, will be the final determinant of performance standard compliance. When sampling methods are used to estimate performance for the universe of claims, audit samples will be large enough to ensure a confidence interval whose deviation is no greater than plus or minus three percent (3%) and whose confidence level is at least ninety-five percent (95%). The Board will consider the point estimate for the sample as the Contractor's performance level in calculating liquidated damages. The Contractor will be provided the opportunity to review and discuss the audit results before the application of liquidated damages. The Board reserves the right to reduce or waive any fees at risk if, in the Board's sole discretion, failure to meet a performance standard was due to extraordinary circumstances.

The Contractor shall identify claims that have been incorrectly processed and initiate appropriate action to correct processing outcomes. The Contractor shall notify the OI in writing immediately upon discovery of any systems problem that has caused multiple overpayments, duplicate payments or incorrect payments, irrespective of cause, prior to initiating recovery or corrective action. The Contractor shall notify the OI by letter of any system errors that result in a potential provider or participant overpayment or other incorrect payment and describe in detail the plan and deadlines for corrective action.

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

Insert

Any liquidated damage 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 Contractor receives written notification of same. Any such payments that become due may be made directly to the Board by the Contractor or offset by the Board against the next monthly claims administration service fee, as mutually agreed.

Exhibit C. Tort Third Party Claims Administration Services Vendor Reports

The Contractor will provide reporting which will reflect transactional (monthly) elements as well as the overall success of the program (quarterly and semi-annual) elements. All reports must include report parameters and definitions. Reports and frequency may be modified upon mutual agreement. The report list and frequency will be as follows:

Deliverable	Ongoing Frequency	Description
Closed Claims Reports	Quarterly	Detailed summary of closed claims for property damage and personal injury within the base rate as well as for windshield/broken glass and minor property damage.
Closed Claims Report	Annually at the end of the fiscal year (June 30 th)	Detailed printout of all closed claims for property damage and personal injury claimants per file assigned to the Vendor by the Board.
Section 111 Mandatory Medicare, Medicaid, and SCHIP Extension Act of 2007 Secondary Payer Report	Quarterly	Detailed summary of all Tort Claims where Medicare, Medicaid, or SCHIP are secondary payers to tort liability payments provided electronically to the Centers for Medicare and Medicaid Services.
Index Bureau Bodily Injury Claims Report	Monthly	Detailed summary of all bodily injury claims.
Check Registry	Daily	Detailed report of daily payments
Billing Report	Quarterly	Detailed summary of quarterly TPA services invoice
Open Claims Report	Monthly	Detailed summary of all open claims.
Outstanding Total Reserve	Monthly	Detailed summary of all total reserves.
New Claims Report	Monthly	Detailed summary of all new claims by month
Performance Guarantee Tracking Log	Quarterly	Detailed report of performance guarantee tracking to include scores/percentages per quarter and any missed guarantees and associated penalty assessment.
Reserve Alert Report	Quarterly	Detailed reserve report by claimant showing all claim information and events.
Standard/Ad Hoc Reporting	Per Board request	Detailed report will be provided at the Board's request in a hard copy and/or electronic media format. The Vendor shall provide web-based reporting tools that allow the Board to view, print and download reports to spreadsheet software.

Exhibit D. *Mississippi Department of Finance and Administration's Request for Proposals for Tort Third Party Claims Administration Services, dated May 3, 2023*

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Exhibit E. *Contractor's Response to the Mississippi Department of Finance and Administration's Request for Proposals for Tort Third Party Claims Administration Services, dated May 31, 2023*

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Appendix B

Tort Third Party Claims Administration Services Vendor Reports

The selected vendor will provide reporting which will reflect transactional (monthly) elements as well as the overall success of the program (quarterly and semi-annual) elements. Reports and frequency may be modified upon mutual agreement. The report list and frequency will be as follows:

Deliverable	Ongoing Frequency	Description
Closed Claims Reports	Quarterly	Detailed summary of closed claims for property damage and personal injury within the base rate as well as for windshield/broken glass and minor property damage.
Closed Claims Report	Annually at the end of the fiscal year (June 30 th)	Detailed printout of all closed claims for property damage and personal injury claimants per file assigned to the Vendor by the Board.
Section 111 Mandatory Medicare, Medicaid, and SCHIP Extension Act of 2007 Secondary Payer Report	Quarterly	Detailed summary of all Tort Claims where Medicare, Medicaid, or SCHIP are secondary payers to tort liability payments provided electronically to the Centers for Medicare and Medicaid Services.
Index Bureau Bodily Injury Claims Report	Monthly	Detailed summary of all bodily injury claims.
Check Registry	Daily	Detailed report of daily payments
Billing Report	Quarterly	Detailed summary of quarterly TPA services invoice
Open Claims Report	Monthly	Detailed summary of all open claims.
Outstanding Total Reserve	Monthly	Detailed summary of all total reserves.
New Claims Report	Monthly	Detailed summary of all new claims by month
Performance Guarantee Tracking Log	Quarterly	Detailed report of performance guarantee tracking to include scores/percentages per quarter and any missed guarantees and associated penalty assessment.
Reserve Alert Report	Quarterly	Detailed reserve report by claimant showing all claim information and events.
Standard/Ad Hoc Reporting	Per Board request	Detailed report will be provided at the Board's request in a hard copy and/or electronic media format. The Vendor shall provide web-based reporting tools that allow the Board to view, print and download reports to spreadsheet software.