**ACTUARIAL CONSULTING SERVICES CONTRACT**

This Actuarial Consulting Services Contract (Contract) is made by and between the Mississippi Department of Finance and Administration (DFA), and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (Consulting Actuary) conditions under which the Consulting Actuary agrees to provide services to the Mississippi State Agencies Self-Insured Workers’ Compensation Trust (Trust) and to DFA with regard to the Mississippi State Agencies Employment Compensation (Unemployment Self-Insurance) Revolving Fund (Fund) beginning May 10, 2019, subject to the following terms and conditions:

1. **Scope of Services**

The Consulting Actuary agrees, at the request of the DFA, to assist the Trust and the staff of DFA by providing the following services:

**For the Mississippi State Agencies Self-Insured Workers’ Compensation Trust:**

* 1. Provide an annual actuarial analysis of the Trust. This analysis should include, but not necessarily be limited to, an estimate of claims liability including incurred but not reported claims, as well as recommendations for future funding.
  2. Provide premium rate evaluations, including annually updating the rates and the rating base amounts. Rather than using NCCI rates, the Trust has adopted a premium methodology which utilizes its members’ actual loss experience in establishing premium rates each year. Using actual claims data from the Trust’s twenty-nine years of experience, the Consulting Actuary will be expected to annually perform the necessary analysis and provide the Trust with recommended individual composite rates for each participating agency.
  3. As requested by DFA on behalf of the Trust, provide assistance in preparation of a Request for Proposals (RFP) for procuring the third party claims administration contract, loss control contract, and other necessary contracts.
  4. As requested by DFA on behalf of the Trust, review various reports submitted by the third party claims administrator and make suggestions on the format and content of the reports, with the overall purpose of making the reports useful and meaningful to the Trust.
  5. As requested by DFA on behalf of the Trust, provide testimony to the Mississippi State Agencies Self-Insured Workers’ Compensation Board of Trustees, the Mississippi Workers' Compensation Commission, the State Legislature, and Trust members as needed.
  6. Maintain full and accurate records with respect to all matters covered under this Contract. Additionally, upon request by DFA, the Consulting Actuary shall provide copies of all spreadsheets, assumptions, and calculations upon completion of any project approved by the DFA in a format acceptable to DFA.
  7. As requested by DFA on behalf of the Trust, provide such advice and consultative services regarding issues and matters of impact or interest to the Trust, and for which the Consulting Actuary has the technical capability to render.

**For the State Agencies Employment Compensation Revolving Fund:**

1. Provide an annual actuarial analysis of the State Agencies Employment Compensation Revolving Fund. This analysis should include, but not necessarily be limited to, an estimate of claims liability, as well as recommendations for future funding.
2. As requested by DFA, provide premium rate evaluations and recommendations. Using claims and financial data provided by DFA, the Consulting Actuary may be expected to annually perform the necessary analysis and provide funding recommendations.
3. As requested by DFA, provide testimony to the Mississippi State Legislature or other regulatory committees as needed.
4. Maintain full and accurate records with respect to all matters covered under this Contract. Additionally, upon request, the Actuary shall provide DFA all spreadsheets, assumptions, and calculations upon completion of any project approved by DFA in a format acceptable to DFA.
5. As requested by DFA, provide such advice and consultative services regarding issues and matters of impact or interest to the Fund, and for which the Consulting Actuary has the technical capability to render.

It is mutually understood and agreed by both parties that this is not an exclusive contract. DFA is free to contract with other professionals to perform similar and like services as those contained in this Contract. Payment for work performed by the Consulting Actuary shall not be affected by this provision.

1. **Contract Term**

The term of this Contract will be from May 10, 2019 through June 30, 2023, with an option to renew for one (1) year at DFA’s discretion. By November 1, 2022, DFA will notify the Consulting Actuary, in writing, of the DFA’s intent as to renewal of the Contract for one (1) additional year.

1. **Consideration**

The Board agrees to compensate the Consulting Actuary for services approved by the Board and performed by the Consulting Actuary under the terms of this Contract as follows:

1. The fees listed in Section 7 – ***Fee Schedule for Actuarial Consulting Services***, shall constitute the entire compensation due to the Consulting Actuary for services and all of the Consulting Actuary’s obligations hereunder regardless of the difficulty, materials, or equipment required. The fees include, but are not limited to, all applicable taxes, fees, general office expense, travel, overhead, profit, and all other direct and indirect costs, incurred or to be incurred, by the Consulting Actuary. Neither the Board nor DFA shall provide any prepayments or initial deposits in advance of services being rendered. Fees for services provided by the Consulting Actuary 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 or DFA. Payment for any and all services provided by the Consulting Actuary to the Board and/or DFA shall be made only after said services have been duly performed and properly invoiced. The hourly rates and maximum project fees listed in ***Fee Schedule for Actuarial Consulting Services*** are firm for the duration of this contract and are not subject to escalation for any reason, unless this contract is duly amended.
2. The Consulting Actuary must submit all invoices, in a form acceptable to DFA (provided that such acceptance will not be unreasonably withheld) with all the necessary supporting documentation, prior to any payment to the Consulting Actuary of any administrative fees. Administrative fees must be invoiced on a monthly basis, in sufficient detail and format as determined by DFA. Such invoices shall include, at a minimum, a description of the service(s) provided, the quantity or number of hours billed, the compensation rate, the time period in which services were provided, total compensation requested for each individual service being billed, and total administrative fees requested for the period being invoiced. The Board and/or DFA agree to make payment to the Consulting Actuary on any undisputed amounts within thirty (30) days from the date services were rendered or the date of receipt of the invoice, whichever comes last. Upon the effective date of termination of this contract, the Consulting Actuary’s obligation to provide any further services under this contract shall cease. The Consulting Actuary shall, however, remain liable for any obligations arising hereunder prior to the effective date of such termination. No additional compensation will be provided by the Board or DFA for any expense, cost, or fee not specifically authorized by this contract, or by written authorization from the Board and/or DFA.
3. The payment of an invoice by the Board or DFA shall not prejudice the Board’s nor DFA’s right to object or question any invoice or matter in relation thereto. Such payment by the Board or DFA shall neither be construed as acceptance of any part of the work or service provided nor as an approval of any costs invoiced therein. Consulting Actuary’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 or DFA, on the basis of audits, not to constitute allowable costs. Any payment shall be reduced for overpayment, or increased for underpayment on subsequent invoices. For any amounts which are or shall become due and payable to the Board and/or DFA by the Consulting Actuary, the Board and DFA reserve the right to (1) deduct from amounts which are or shall become due and payable to the Board or DFA under contract between the parties; or (2) request and receive payment directly from the Consulting Actuary within fifteen (15) days of such request, at the Board’s and/or DFA’s sole discretion.
4. DFA reserves the right to deduct from amounts which are or shall become due and payable to the Consulting Actuary under this Contract between the parties any amounts which are or shall become due and payable to DFA by the Consulting Actuary. Notwithstanding anything to the contrary herein, any reduction of payments to Consulting Actuary shall be made only with the prior agreement of both parties. In addition, in the event of termination of this Contract for any reason, Consulting Actuary shall be paid for services rendered and allowable expenses incurred up to the effective date of termination.
5. Compensation to the Consulting Actuary for travel must be approved in advance by DFA, and shall be subject to the following criteria:
   * 1. In order to be compensable, travel expenses must be reasonable and necessary for the fulfillment of the project and contractual obligations;
     2. Air travel reimbursement will be limited to “Coach” or “Tourist” class rates, and must be supported by a copy of an original invoice;
     3. Meals and lodging expenses will be reimbursed in the amount of actual costs, subject to the maximum per diem as defined in the Federal Register. A copy of all hotel receipts must be provided. A copy of meal receipts is not necessary;
     4. Taxi fares, reasonable rental car expenses, and airport parking expenses will be reimbursed in the amount of actual costs, and must be supported by a copy of an original receipt/invoice;
     5. Personal automobile mileage and related costs are not compensable expenses;
     6. Time spent in “travel status” is not compensable. Hourly rates in ***Fee Schedule for Actuarial Consulting Services*** are to be charged for actual hours worked only and shall not include travel time.
6. ***Availability of Funds***

*It is expressly understood and agreed that the obligation of the DFA to proceed under this Contract is conditioned upon the appropriation of funds by the Mississippi State Legislature and the receipt of state and/or federal funds. If the funds anticipated for the continuing fulfillment of the Contract are, at any time, not forthcoming or insufficient, either through the failure of the federal government to provide funds or of the State of Mississippi to appropriate funds or the discontinuance or material alteration of the program under which funds were provided or if funds are not otherwise available to the DFA, the DFA shall have the right upon ten (10) working days written notice to the Consulting Actuary, to terminate this Contract without damage, penalty, cost or expenses to the DFA of any kind whatsoever. The effective date of termination shall be as specified in the notice of termination.*

1. ***E-Payment***

*Consulting Actuary agrees to accept all payments in United States currency via the State of Mississippi’s electronic payment and remittance vehicle. The agency agrees to make payment in accordance with Mississippi law on “Timely Payments for Purchases by Public Bodies,” which generally provides for payment of undisputed amounts by the agency within forty-five (45) days of receipt of invoice. Mississippi Code Annotated § 31-7-301 et seq.*

1. ***Paymode***

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

1. **Recovery of Money**

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

1. **Record Retention and Access to Records**

The Board reserves the right to audit all records maintained by the Consulting Actuary and/or its affiliates relative to the Consulting Actuary’s performance under this Contract. At least forty-eight (48) hours’ notice by the Board will be given to the Consulting Actuary 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 Consulting Actuary during regular business hours throughout the Contract period. Provided Consulting Actuary is given reasonable advance written notice and such inspection is made during normal business hours of Consulting Actuary, the Consulting Actuary agrees that the DFA or any of its duly authorized representatives shall have unimpeded, prompt access to any of Consulting Actuary’s books, documents, papers, and/or records which are maintained or produced as a result of the project for the purpose of making audits, examinations, excerpts, and transcriptions. All financial records related to this Contract shall be kept by the Consulting Actuary for a minimum period of three (3) years after final payment under this Contract and all pending matters are closed; however, if any audit, litigation or other action arising out of or related in any way to this project is commenced before the end of the three (3) year period, the records shall be retained for one (1) year after all issues arising out of the action are finally resolved or until the end of the three (3) year period, whichever is later. It is understood and agreed that all claims-related records shall be maintained electronically until such time as the Board and Consulting Actuary agree that they are no longer needed.

1. ***Applicable Law***

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

1. ***Compliance with Laws***

*The Consulting Actuary understands that the DFA is an equal opportunity employer and therefore maintains a policy which prohibits unlawful discrimination based on race, color, creed, sex, age, national origin, physical handicap, disability, genetic information, or any other consideration made unlawful by federal, state, or local laws. All such discrimination is unlawful and the Consulting Actuary agrees during the term of the Contract that the Consulting Actuary will strictly adhere to this policy in its employment practices and provision of services. The Consulting Actuary 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.*

1. **Anti-Assignment/Subcontracting**

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

1. **Confidential Information**

“Confidential Information” shall mean: (a) those materials, documents, data, and other information which the Consulting Actuary has designated in writing as proprietary and confidential; and (b) all data and information which the Consulting Actuary acquires as a result of its contact with and efforts on behalf of the Board and any other information designated in writing as confidential by the Board. Each party to this Contract agrees to the following: (i) To protect all confidential information provided by one party to the other; (ii) To treat all such confidential information as confidential to the extent that confidential treatment is allowed under State and/or federal law; and (iii) Except as otherwise required by law, not to publish or disclose such information to any third party without the other party’s written permission; and, (iv) To do so by using those methods and procedures normally used to protect the party’s own confidential information. Any liability resulting from the wrongful disclosure of confidential information on the part of the Consulting Actuary or its subcontractor shall rest with Consulting Actuary. Disclosure of any confidential information by the Consulting Actuary or its subcontractors without the express written approval of the Board may result in the termination of this Contract.

1. **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 (unless prohibited by law or governmental authority from providing such notice) 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.

1. ***Transparency***

*This Contract, including any accompanying exhibits, attachments, and appendices, is subject to the “Mississippi Public Records Act of 1983,” and its exceptions. See Mississippi Code Annotated §§ 25-61-1 et seq. and Mississippi Code Annotated § 79-23-1. In addition, this Contract is subject to provisions of the Mississippi Accountability and Transparency Act of 2008. Mississippi Code Annotated §§ 27-104-151 et seq. Unless exempted from disclosure due to a court-issued protective order, a copy of this executed Contract is required to be posted to the Department of Finance and Administration’s independent agency Contract website for public access at* [*http://www.transparency.mississippi.gov*](http://www.transparency.mississippi.gov)*. Information identified by the Consulting Actuary as trade secrets, or other proprietary information, including confidential vendor information or any other information which is required confidential by state or federal law or outside the applicable freedom of information statutes, will be redacted.*

1. **Contractor Personnel**

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

1. **Independent Contractor**

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

1. ***E-Verification***

*If applicable, Consulting Actuary represents and warrants that it will ensure its compliance with the Mississippi Employment Protection Act of 2008, and will register and participate in the status verification system for all newly hired employees. Mississippi Code Annotated §§ 71-11-1 et seq. The term “employee” as used herein means any person that is hired to perform work within the State of Mississippi. As used herein, “status verification system” means the Illegal Immigration Reform and Immigration Responsibility Act of 1996 that is operated by the United States Department of Homeland Security, also known as the E-Verify Program, or any other successor electronic verification system replacing the E-Verify Program. Consulting Actuary 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, Consulting Actuary agrees to provide a copy of each such verification. Consulting Actuary further represents and warrants that any person assigned to perform services hereafter meets the employment eligibility requirements of all immigration laws. The breach of this Contract may subject Consulting Actuary to the following: (i) 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; (ii) the loss of any license, permit, certification or other document granted to Consulting Actuary by an agency, department or governmental entity for the right to do business in Mississippi for up to one (1) year; or, (iii) both. In the event of such cancellations/termination, Consulting Actuary 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.*

1. **Authority to Contract**

Actuary 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.

1. **Debarment and Suspension**

The Consulting Actuary 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 (2) and three (3) 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.

1. **Modification or Renegotiation**

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

1. ***Procurement Regulations***

*This 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/pscrb-rules-regulations/>.

1. ***Representation Regarding Contingent Fees***

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

1. ***Representation Regarding Gratuities***

*The Consulting Actuary 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.*

1. ***Termination upon Bankruptcy***

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

1. ***Termination for Convenience***
2. *Termination. This Contract may be terminated by either party, with or without cause, upon at least thirty (30) days prior written notice of intent to terminate. The Board may, when the interests of the Board so require, terminate this Contract in whole or in part for the convenience of the Board. The Board shall give written notification of the termination to the Consulting Actuary specifying the part of this Contract terminated and when termination becomes effective.*
3. *Consulting Actuary’s Obligations. The Consulting Actuary shall incur no further obligations in connection with the terminated work and on the date set in the notice of termination, the Consulting Actuary will stop work to the extent specified. The Consulting Actuary shall also terminate outstanding orders and subcontracts as they relate to the terminated work. The Consulting Actuary shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated work. The Board may direct the Consulting Actuary to assign the Consulting Actuary’s right, title and interest under terminated orders or subcontracts to the Board. The Consulting Actuary must still complete the work not terminated by the notice of termination and may incur obligations as are necessary to do so.*
4. *Consulting Actuary’s Duties. Notwithstanding termination of this Contract and subject to any directions from the Board, the Consulting Actuary shall take timely, reasonable, and necessary actions to protect and preserve property in the possession of the Consulting Actuary in which the DFA has an interest. Upon termination of this Contract, the Consulting Actuary shall fully cooperate with the Board and the new Consulting Actuary during the transition of the Plan to the new Consulting Actuary. The Board and the Consulting Actuary will work together in good faith to determine the Consulting Actuary’s scope of responsibilities and deliverables. Upon request of the Board, the Consulting Actuary shall provide all information maintained by the Consulting Actuary in relation to the Plan in a reasonable time frame specified by the Board. Information provided shall be in a usable format, as mutually agreed by the Board and the Consulting Actuary. The Consulting Actuary shall provide such explanation of the information provided as to facilitate a smooth transition.*
5. *Records Upon Termination. All records and information provided by the Board or through its third party contractors to the Consulting Actuary are the sole property of the Board and shall be returned, to the Board within thirty (30) days of the termination date of this Contract. Notwithstanding anything herein, the Board acknowledge and agrees that the Consulting Actuary may retain an archival copy of all records and information provided to the Consulting Actuary by the Board or its agents to support the Consulting Actuary’s work under this Contract and to comply with the Consulting Actuary’s business continuity and document retention policies, subject to the Consulting Actuary’s continued compliance with its confidentiality obligations under this Contract.*
6. ***Termination for Default***
7. *Default. If the Consulting Actuary refuses or fails to perform any of the provisions of this Contract with such diligence as will ensure its completion within the time specified within this Contract, or any extension thereof; otherwise fails to timely satisfy the Contract provisions, or commits any other substantial breach of Contract, the Board may notify the Consulting Actuary in writing of the delay or nonperformance, and if not cured in ten (10) days or any longer time specified in writing by the Board, the Board may terminate the Consulting Actuary’s right to proceed with this Contract or such part of this Contract as to which there has been delay or failure to properly perform. In the event of termination in whole or in part, the Board may procure similar supplies or services in a manner and upon the terms deemed appropriate by the Board. The Consulting Actuary 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.*
8. *Consulting Actuary’s Duties. Notwithstanding termination of this Contract and subject to any directions from the Board, the Consulting Actuary shall take timely, reasonable, and necessary actions to protect and preserve property in the possession of the Consulting Actuary in which the DFA has an interest. Upon termination of this Contract, the Consulting Actuary shall fully cooperate with the Board and the new Consulting Actuary during the transition of the Plan to the new Consulting Actuary. The Board and the Consulting Actuary will work together in good faith to determine the Consulting Actuary’s scope of responsibilities and deliverables. Upon request of the Board, the Consulting Actuary shall provide all information maintained by the Consulting Actuary in relation to the Plan in a reasonable time frame specified by the Board. Information provided shall be in a usable format, as mutually agreed by the Board and the Consulting Actuary. The Consulting Actuary shall provide such explanation of the information provided as to facilitate a smooth transition.*
9. *Compensation. Payment for completed services delivered and accepted by the Board shall be at the Contract price. The Board may withhold from amounts due the Consulting Actuary such sums as the Board deems to be necessary to protect the Board against loss because of outstanding liens or claims of former lien holders and to reimburse the DFA for the excess costs incurred in procuring similar goods and services.*
10. *Records Upon Termination. All records and information provided by the Board or through its third party contractors to the Consulting Actuary are the sole property of the Board and shall be returned, to the Board within thirty (30) days of the termination date of this Contract. Notwithstanding anything herein, the Board acknowledge and agrees that the Consulting Actuary may retain an archival copy of all records and information provided to the Consulting Actuary by the Board or its agents to support the Consulting Actuary’s work under this Contract and to comply with the Consulting Actuary’s business continuity and document retention policies, subject to the Consulting Actuary’s continued compliance with its confidentiality obligations under this Contract.*
11. *Excuse for Nonperformance or Delayed Performance. Except with respect to defaults of subcontractors, the Consulting Actuary 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 Consulting Actuary to make progress in the prosecution of the work hereunder which endangers performance) if the Consulting Actuary has notified the Board within fifteen (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 or other causes beyond the Consulting Actuary’s reasonable control. 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 Consulting Actuary shall not be deemed to be in default, unless the services to be furnished by the subcontractor were reasonably obtained from other sources in sufficient time to permit the Consulting Actuary to meet the Contract requirements. Upon request of the Consulting Actuary, the Board shall ascertain the facts and extent of such failure, and if the Board determines that any failure to perform was occasioned by any one or more of the excusable clauses, and that but for the excusable cause, the Consulting Actuary’s progress and performance would have met the terms of the Contract, the delivery schedule shall be revised accordingly, subject to the rights of the DFA under the clause entitled “Termination for Convenience”.(As used in this paragraph, the term “subcontractor” means subcontractor as any tier.)*
12. *Erroneous Termination for Default. If, after notice of termination of the Consulting Actuary’s right to proceed under the provisions of this clause, it is determined for any reason that the Contract was not in default under the provisions of this clause, or that the delay was excusable under the provisions of this clause, or that the delay was excusable under the provisions of Paragraph (D) of this clause, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to the clause of this Contract entitled “Termination for Convenience”.*
13. *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.*
14. ***Stop Work Order***
15. *Order to stop work. The DFA may by written order to the Consulting Actuary at any time, and without notice to any surety, require the Consulting Actuary 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 Consulting Actuary, 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 Consulting Actuary shall forthwith comply with its terms and take all reasonable steps to minimize the occurrence of costs allocable to work covered by the order during the period of work stoppage. Before the stop work order expires, or within any further period to which the parties shall have agreed, the DFA shall either (i) cancel the stop work order; or (ii) terminate the work covered by such order as provided in the "Termination for Default" clause or the "Termination for Convenience" clause of this Contract.*
16. *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 Consulting Actuary shall have the right to resume work. An appropriate adjustment shall be made in the delivery schedule or Consulting Actuary price, or both, and the Contract shall be modified in writing accordingly, if: (i) The stop work order results in an increase in the in the time required for, or in the Consulting Actuary’s cost properly allocable to, the performance of any part of this Contract; and, (ii) The Consulting Actuary asserts a claim for such an adjustment within 30 days after the end of the period of work stoppage; provided that, if the DFA decides that the facts justify such action, any such claim asserted may be received and acted upon at any time prior to final payment under this Contract.*
17. *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.*
18. **Oral Statements**

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

1. **Ownership of Documents and Work Papers**

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

1. ***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.*

1. **Third-Party Action Notification**

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

1. ***Indemnification***

*To the fullest extent allowed by law, the Contractor shall indemnify, defend, save and hold harmless, protect, and exonerate the DFA, 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 the Contractor and/or its partners, principals, agents, employees, and/or subcontractors in the performance of or failure to perform this Agreement. In the State’s sole discretion, 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 State. 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 State’s concurrence, which the State shall not unreasonably withhold. Subject to the limitations of the Mississippi Tort Claims Act, DFA agrees that it is responsible for the actions of its agents and employees and will defend the same to the fullest extent allowed by law.  Nothing in this agreement shall have the effect of changing or altering or of eliminating any defense available to the State under the Tort Claims Act.*

1. ***Approval Clause***

*It is understood that if it is determined that this Contract requires approval by the Public Procurement Review Board and/or the Office of Personal Service Contract Review, and should such approval not be granted, the Contract shall be deemed void and no payment shall be made hereunder.*

1. **Change in Scope of Work**

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

1. **Failure to Enforce**

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

1. **Standards of Care/Remedies**

The Consulting Actuary shall exercise reasonable care and due diligence consistent with standards in the industry in the performance of its obligations under this Contract. Each party shall have available to it all remedies available at law or equity.

1. **Right to Audit**

Actuary shall maintain such financial records and other records as may be prescribed by the DFA or by applicable federal and state laws, rules, and regulations. Actuary shall retain these records for a period of three years after final payment, or until they are audited by the DFA, 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 State Auditor’s Office, its designees, or other authorized bodies.

1. **Severability**

If any part of this Contract is declared to be invalid or unenforceable, such invalidity or unenforceability shall not affect any other 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.

1. **Ownership of Documents and Work Papers**

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

1. **Insurance**

Maintain, throughout the term of the Contract, at its own expense, professional liability insurance. Such policy of insurance shall provide a minimum coverage in the amount of One Million Dollars ($1,000,000) per occurrence and Three Million Dollars ($3,000,000) annual aggregate through an insurance company licensed by the Mississippi Department of Insurance. The Consulting Actuary shall annually provide the Board a current Certificate of Insurance.

1. **Notices**

All notices required or permitted to be given under this Contract must be in writing and personally delivered or sent by certified United States mail postage prepaid, return receipt requested, to the party to whom the notice should be given at the address set forth in this section. 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 DFA and/or the Board: Attention: Executive Director

Department of Finance and Administration

Post Office Box 267

Jackson, Mississippi 39205-0267

With a copy of any notice to: State Insurance Administrator

DFA - Office of Insurance

Post Office Box 24208

Jackson, Mississippi 39225-4208

If to the Consulting Actuary: Attention: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

1. **Incorporation of Documents**

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

1. This Contract signed by the parties including Exhibit A, “Fee Schedule for Actuarial Consulting Services”; and
2. The Consulting Actuary’s response to the State of Mississippi Request for Proposal for Actuarial Consulting Services dated \_\_\_\_\_\_\_\_\_\_, attached hereto as Exhibit B and incorporated fully herein by reference;
3. The State of Mississippi Request for Proposal for Actuarial Consulting Services dated March 13, 2019, attached hereto as Exhibit C and incorporated fully herein by reference; and

This Contract, including the Exhibits referenced herein, constitutes the entire Contract of the parties with respect to the subject matter contained herein and supersedes and replaces any and all prior negotiations, understandings and Contracts, written or oral, between the parties relating thereto. Any ambiguities, conflicts, or questions of interpretation of this Contract shall be resolved by first reference to this Contract including Exhibit A, and if still unresolved, by reference to Exhibit B, and if still unresolved, by reference to Exhibit C. Omission of any term or obligation from this Contract or the attached Exhibits shall not be deemed an omission from this Contract if such term or obligation is provided for elsewhere.

**Witness our signatures, on the date first written.**

Consulting Actuary Mississippi Department of Finance and Administration

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_ Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_ Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**EXHIBT A - FEE SCHEDULE FOR ACTUARIAL CONSULTING SERVICES**

**For Actuarial Consulting Services rendered under this Contract, the following hourly rates are all-inclusive and include any expenses such as printing, binding, photocopy, and any travel:**

**Hourly Rates By Position:**

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **Personnel** | **Year 1**  (5/10/19 – 6/30/20) | **Year 2**  (7/1/20 – 6/30/21) | **Year 3**  (7/1/21 – 6/30/22 | **Year 4**  (7/1/22 – 6/30/23) | **Year 5\***  (7/1/23 – 6/30/24) |
| Senior Consulting Actuary |  |  |  |  |  |
| Associate Actuary |  |  |  |  |  |
| Administrative/Clerical |  |  |  |  |  |
| Other\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |  |  |  |  |  |

**\*** *Optional Renewal Year*

The hourly rates listed above are firm for the duration of the Contract and are not subject to escalation for any reason unless the Contract is duly amended. No additional compensation shall be provided by the Board for any expense, cost, or fee not specifically authorized by this Contract. The Board will not pay any fees incurred prior to the May 10, 2019 Contract effective date. All fees or charges related to any service to be provided must be identified.

**Maximum Fees by Project**

Maximum project fees are not to be construed as the annual fees to be paid for each project. The amount paid each year for the specified annual project will be the lesser of the total fees based on the fee schedule above, or the stated maximum project cost listed below. Maximum project fees include any and all necessary expenses, unless otherwise approved by the Board or DFA.

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **Project** | **Year 1**  (5/10/19 – 6/30/20) | **Year 2**  (7/1/20 – 6/30/21) | **Year 3**  (7/1/21 – 6/30/22 | **Year 4**  (7/1/22 – 6/30/23) | **Year 5\***  (7/1/23 – 6/30/24) |
| Actuarial Analysis – Workers’ Compensation |  |  |  |  |  |
| Premium Development – Workers’ Compensation |  |  |  |  |  |
| Actuarial Analysis – Unemployment Fund |  |  |  |  |  |

*\*Optional Renewal Year*

**EXHIBIT B**

**THE CONSULTING ACTUARY’S RESPONSE TO THE STATE OF MISSISSIPPI REQUEST FOR PROPOSAL FOR ACTUARIAL CONSULTING SERVICES DATED \_\_\_\_\_\_\_\_\_\_**

**EXHIBIT C**

**THE STATE OF MISSISSIPPI REQUEST FOR PROPOSAL FOR ACTUARIAL CONSULTING SERVICES DATED MARCH 13, 2019**