

CONTRACT TO PERFORM PROFESSIONAL SERVICES

This agreement is made and entered into on this 1<sup>ST</sup> day of August, 2018, in Jackson, Mississippi, by and between Economists Incorporated (Expert Witness), on the one hand, and the Mississippi Department of Mental Health (DMH), the Mississippi Division of Medicaid (DOM), and the Mississippi Attorney General's Office (Attorney General), on the other hand.

WHEREAS, DMH, DOM, and the Attorney General are in need of the services of an expert witness to advise and present expert testimony as to issues in a lawsuit styled *United States of America v. State of Mississippi*, 3:16-cv-622-CWR-FKB, which is pending in the United States District Court for the Southern District of Mississippi, Northern Division (Lawsuit);

WHEREAS, Dr. Lona Fowdur, a Senior Vice President employed by Expert Witness will serve as the testifying expert and supervise the work of additional staff employed by Expert Witness in connection with this Agreement;

WHEREAS, the Expert Witness has the type of expertise needed for this matter;

WHEREAS, the Expert Witness represents that he/she and his/her staff are free of ethical conflicts which would adversely impact their ability to perform the services contemplated by this Agreement;

WHEREAS, DMH, DOM, and the Attorney General have the authority to contract with the Expert Witness to undertake and perform such service;

NOW, THEREFORE, in consideration of these premises, the mutual covenants contained herein, and subject to the terms and conditions hereinafter stated, it is hereby understood and agreed by the parties hereto as follows:

**A. WORK TO BE PERFORMED**

Dr. Lona Fowdur, on behalf of Expert Witness shall review and advise DMH, DOM, and the Attorney General, pursuant to the requests and instructions of the Attorney General and/or its outside counsel Phelps Dunbar, on matters and issues of fact and policy raised in the Lawsuit.

Dr. Lona Fowdur, on behalf of Expert Witness shall, at the request and instruction of the Attorney General and/or its outside counsel Phelps Dunbar, prepare one expert report which meets the requirements of Fed. R. Civ. P. 26(a)(2)(B) by the end of September 2018, and provide in-person testimony in the Lawsuit. The Expert Witness shall coordinate the performance of services to be provided hereunder through the Attorney General and/or its outside counsel Phelps Dunbar.

In connection with this engagement, Expert Witness has agreed to provide one expert report by the end of September 2018, and expects to spend up to 40 hours in connection with preparing for and providing a deposition and trial testimony. Should the scope of the work required by Expert Witness involve additional work, payment for which exceeds the agreed upon amount stipulated in this contract, Expert Witness reserves the right to renegotiate the terms of the contract prior to conducting additional work.

**B. TERM OF THE AGREEMENT/TERMINATION**

The term of the agreement shall commence as of the day and year first written above and continue for a period of one year from that date, unless earlier terminated by either party upon thirty (30) days written notice. Any and all documents prepared or developed by the Expert Witness are the sole property of the Attorney General and in the event of termination of this Agreement, all finished and unfinished data, analysis, reports, documents, and other materials prepared by or in the possession of Expert Witness shall promptly be delivered to the Attorney

General by Expert Witness. If Expert Witness breaches any of its material representations, warranties or agreements set forth herein and fails to cure such breach within a reasonable time, as determined by the circumstances, but in no event less than forty-eight (48) hours, or if Expert Witness fails to perform all duties to the satisfaction of the Attorney General according to the sole determination of the Attorney General, or if Expert Witness fails to fulfill its obligations under this Agreement in a professional and timely manner, then the Attorney General shall have the right, in addition to all of its other rights and remedies at law or in equity under Mississippi law, to terminate this Agreement effective immediately upon the Attorney General giving written notice thereof to Expert Witness, such notice may be oral if the circumstances so require. The State of Mississippi will provide the agreed-to compensation to Expert Witness for all work completed to the satisfaction of the Attorney General prior to the termination of this Agreement. Nothing contained in this Agreement shall the Attorney General to utilize the services of Expert Witness.

### **C. PAYMENT**

Expert witness shall be compensated at the respective hourly rates of each staff member who provides services in connection with this Agreement. The agreed upon hourly rates of each staff member are appended to this Agreement as Exhibit 1. In no event will the total compensation to be paid under this Agreement exceed the specified amount of \$250,000 during the term of this Agreement. For the purposes of determining the amount of compensation or qualified reimbursement, Expert Witness shall keep complete and accurate records of the services performed pursuant to this Agreement.

All reasonable and necessary expenses incurred by the Expert Witness in furtherance of this Agreement shall, if authorized by law, be paid by the State, on the condition that written or

oral authorization shall be secured by the Expert Witness prior to such expenditures. Air travel expenses will be limited to coach air fare with airline ticket receipts attached. Expert Witness's travel expenses will be reimbursed according to Mississippi Department of Finance and Administration's travel policy rules and regulations (<http://www.dfa.ms.gov/media/6573/travel-manual-0418.pdf>) unless otherwise authorized in advance and in writing by the State.

Expert Witness shall invoice the Attorney General monthly for actual services rendered and pre-approved, reimbursable expenses incurred. The invoice shall set forth the amount of work performed on all matters. The invoice shall be submitted to the attention of Assistant Attorney General Harold Pizzetta at the Attorney General's regular mailing address for approval. The State of Mississippi will remit payments directly to Expert Witness. The parties expressly agree and acknowledge that The State of Mississippi may defer all payments in excess of \$50,000 until the Legislature enacts a deficit appropriation for The State of Mississippi in the 2019 legislative session.

#### **D. STATUS OF EXPERT WITNESS**

At all times during the term of this Agreement, the Expert Witness shall be an independent contractor. Nothing in this Agreement is intended, nor shall it be construed, to establish an employer-employee relationship or joint venture relationship. The Expert Witness agrees not to pursue any claims with or against the State of Mississippi or Internal Revenue Service or other judicial or administrative authority relating to the status of Expert Witness as an independent contractor. Expert Witness is solely responsible for social security and income tax withholding payments and other related requirements as DOM, DMH, and the Attorney General will not withhold any such deductions from payments to the Expert Witness.

**E. JURISDICTION AND VENUE**

Each and every term, provision or condition herein is subject to and shall be construed in accordance with the provisions of the laws of the State of Mississippi, without regard to any conflicts of law provisions. Venue for any action arising hereunder shall be in Hinds County, Mississippi.

**F. NON-ASSIGNMENT AND SUBCONTRACTING**

The Attorney General, DMH, and DOM are not obligated or liable under this Agreement to any party other than Expert Witness named herein. Expert Witness understands and agrees that it shall not assign, transfer, delegate or subcontract with respect to any of its rights, benefits, obligations, interests or duties under this Agreement except as explicitly set forth in this Agreement.

**G. INTEGRATION**

This Agreement is intended as the complete integration of all understandings between the parties. No prior or contemporaneous addition, deletion or other amendment hereto shall have any force or affect whatsoever, unless embodied herein in writing. All amendments to this Agreement shall be in writing and signed by all parties hereto. All whereas clauses contained in the preface of this Agreement are understood to be restated in full herein.

**H. CONFIDENTIALITY**

The Expert Witness and his/her staff agree that confidential or private information regarding the Lawsuit and DMH, DOM, and the Attorney General will be kept strictly confidential. The Expert Witness and his/her staff are prohibited from using any such

confidential or private information obtained pursuant to this Agreement without the express written consent of the Attorney General, DMH, or DOM.

**I. FAILURE OF LEGISLATURE TO APPROPRIATE**


If any party's performance under this contract depends upon the appropriation of funds by the Mississippi legislature, and if the legislature fails to appropriate the funds necessary for performance, then the affected party may provide written notice of such non-appropriation and cancel this contract without further obligation.

**J. FORCE MAJEURE**


In the event that any party is unable to fulfill their obligations under this contract by act or event outside of their control, the affected party is relieved of their obligations under this contract.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first written above.

**ECONOMISTS INCORPORATED**

BY:   
Lora Fowdur  
Senior Vice President

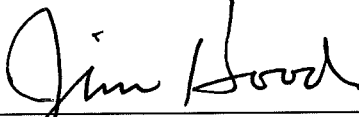
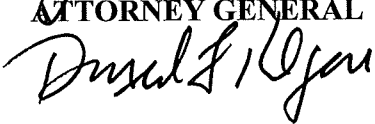
**MISSISSIPPI DEPARTMENT OF MENTAL HEALTH**

BY:   
**DIANA MIKULA**  
**EXECUTIVE DIRECTOR**

MISSISSIPPI DIVISION OF MEDICAID

BY:   
DREW SNYDER  
EXECUTIVE DIRECTOR

MISSISSIPPI ATTORNEY GENERAL'S OFFICE

BY:   
JAMES M. HOOD, III OR HIS DESIGNEE  
ATTORNEY GENERAL By  
 ASSISTANT ATTORNEY GENERAL

July 16, 2018

# Economists INCORPORATED

Washington DC • San Francisco • Tallahassee

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## Principal

David A. Argue - \$725  
William P. Hall - \$825  
Barry C. Harris - \$1010  
Allan T. Ingraham - \$600  
John R. Morris - \$695

William C. Myslinski - \$925  
Philip B. Nelson - \$750  
Jonathan Neuberger - \$645  
Bruce M. Owen - \$1100  
Hal J. Singer - \$715

Stephen E. Siwek - \$630  
Robert B. Speakman - \$545  
Robert D. Stoner - \$595  
Jonathan L. Walker - \$675  
Matthew B. Wright - \$620

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## Senior Vice President:

Michael G. Baumann - \$600  
J. Michael DuMond - \$495  
Lona Fowdur - \$620

Kent W Mikkelsen - \$595  
Eric J. Mitchem - \$495

Amparo Nieto - \$525  
Wayne E. Strayer - \$495

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## Vice President / Senior Economist: \$570

James W. Bono  
Kevin W. Caves - \$600  
John M. Gale  
Erica E. Greulich  
Sudip Gupta

Stuart D. Gurrea  
Alison I. Holt  
Laura A. Malowane  
Henry B. McFarland  
Stephanie M. Mirrow

Gale Mosteller  
Benjamin S. Shippen - \$495  
Su Sun  
Clarissa A. Yeap

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## Economist:

Keith Everhart - \$450  
Kate J. Fricker - \$350  
Omer G. Gold - \$455

Robert G. Schmalfuss - \$350  
Eric C. Vento - \$350

Jonathan Vidales - \$390  
Royal Yu - \$350

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## Senior Analysts:

Chris Sojourner - \$350  
Augustus H. Urschel - \$395

Kathryn K. Karasek - \$395

Shreyas Ravi - \$375

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## Software Engineer/Auction Manager

Shreyas Ravi - \$375

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## Senior Auction Analysts: \$350

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## Auction Analysts: \$325

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## Analysts: \$320\*

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## Research Associates: \$280\*

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## Information Specialists: \$375    Computer Specialists: \$350

\* Analysts and Research Associates are subject to a \$50 surcharge for overtime work.

EXHIBIT

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STATE OF MISSISSIPPI



**JIM HOOD**  
ATTORNEY GENERAL

September 5, 2018

Ms. Catoria Martin, Director  
Office of Personal Service Contract Review  
501 North West Street, Suite 700E  
Jackson, Mississippi 39201

Re: Emergency Contract for Expert Witness Lona Fowdur, PH.D.

Dear Ms. Martin:

As authorized by Public Procurement Review Board (PPRB) regulation 3-207, please accept this letter as my approval of an emergency procurement for the Mississippi Attorney General's Office to contract with Lona Fowdur, Ph.D. at Economists Incorporated for the purposes of serving as a testifying expert witness in the case styled *United States of America v. State of Mississippi*, 3:16-cv-622-CWR-FKB pending in the United States District Court for the Southern District of Mississippi. The United States of American, represented by the Department of Justice, has filed suit against the State of Mississippi alleging that the State has violated federal law by failing to provide appropriate community-based mental health services, programs, and treatment to thousands of Mississippians as allegedly required by the United State Supreme Court's decision in *Olmstead v. L.C.* The Department of Justice has asked the federal court to order the State to create additional mental health services and programs which are estimated to cost the State tens of millions of dollars annually. If the Department of Justice is successful in this litigation, the federal district court will exercise considerable authority over the operation and costs of the State's mental health care programs for the foreseeable future. The outcome of this litigation is exceptionally important to State's programmatic and budgetary autonomy.

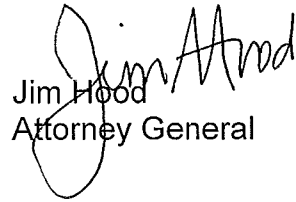
As part of the litigation, the federal court ordered the Department of Justice to identify its expert witnesses for trial and to provide full-reports on that testimony to the State by July 31, 2018. On that day, the Department of Justice identified nine experts who will testify for the United States. The federal court ordered the State of Mississippi to identify its rebuttal expert witnesses by October 12, 2018. In order to meet that deadline, the State must digest the hundreds of pages of expert reports submitted by the Department of Justice, identify nationally recognized experts in those fields, and retain those experts sufficiently in advance to permit the State's experts to complete their own reports by October 12, 2018.

Ms. Catoria Martin, Director  
September 5, 2018  
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It is clear that the complexity of the work and the short amount of time to complete the expert reports create an emergency as that term is defined in Mississippi Code Section 31-7-1(f). A failure to timely provide high-quality expert reports pursuant to deadlines set by the federal court could cause a significant "adverse impact" to the State by prejudicing the State's litigation defense of this exceptionally important litigation.

The Attorney General's Office, in connection with the Mississippi Department of Mental Health and the Division of Medicaid have identified Lona Fowdur, PH.D. as one of several expert witnesses the State will need to rebut the contentions of the Department of Justice's experts. Dr. Fowdur serves as an Executive Vice President at Economists Incorporated and has extensive experience in competition studies in healthcare markets. The emergency contract with Dr. Fowdur will be limited to a term of one-year, consistent with state law.

Sincerely yours,



Jim Hood  
Attorney General