

DESIGN, PRINT, AND DIRECT MAIL SERVICES CONTRACT

This Design, Print, and Direct Mail Services Contract (Contract) is made by and between the Mississippi Department of Finance and Administration (MDFA) and _____ (Contractor), effective _____, under which the Contractor agrees to provide design, print, and direct mail services subject to the following terms and conditions:

1. Scope of Service/Specifications

Contractor shall provide the following services/projects, and otherwise do all things necessary for or incidental to the performance of work, as set forth below:

- A. Newsletter** - Two to four times per year, the MDFA produces a newsletter to be mailed to the homes of participants in the Mississippi's State and School Employees' Health Insurance Plan's (Plan). Each newsletter consists of four or six printed 8.5" x 11" pages, two-color or four-color, bi-folded down to 5.5" x 8.5" or tri-folded down to 3.625" x 8.5", 80 lb. gloss text paper and tabbed to be a self-mailer ½", printed, labeled and delivered to an appropriate United States Postal Service (USPS) postal facility for bulk mailing. Estimated Quantity: 136,000
- B. Plan Document booklet** - The MDFA produces a new Plan Document booklet in the fall of each year and distributes these booklets on request to the aforementioned Plan Participants. A copy of the 2021 Plan Document is available on the State and School Employees' Life and Health Insurance Plan's website available at <https://knowyourbenefits.dfa.ms.gov/publications/> for your reference. The booklet is traditionally designed to be a self-mailer document containing from 100 to 120 printed 8.5" x 11" pages, one-color (with two-color cover) consisting of 20 lb. bond paper for inside pages and 80 lb. uncoated cover with perfect bound/binding spine either saddled-stitched or glue bound, to be printed, boxed and stored until distribution, and mailed as requested. Estimated Quantity: 5,500
- C. One Plan Document Letter** - A single sided 8.5"x 11" two-color or four-color 60 lb. offset letter to be bi-folded down to 5.5" x 8.5" or tri-folded down to 3.625" x 8.5", inserted into Business No. 10 24 lb. envelopes, printed, labeled and delivered to an appropriate USPS postal facility for bulk mailing. Estimated Quantity: 136,000
- D. One Plan Document Request Letter** – A double sided 8.5"x 11" two-color or four-color 60 lb. offset letter to be bi-folded down to 5.5" x 8.5" or tri-folded down to 3.625" x 8.5", and tabbed, designed to MDFA's specifications, inserted into Business No. 10 24 lb. envelopes, printed, labeled and delivered to an appropriate USPS postal facility for bulk mailing. Estimated Quantity: 136,000
- E. Plan Document Request Fulfillment** – Plan Document requests are returned to Office of Insurance (OI). OI logs participant name and address into a spreadsheet that is shared periodically with Contractor. Contractor will use spreadsheet to mail a Plan Document to participants requesting a hardcopy within five (5) days of receipt of file from OI. Estimated Quantity: 1,200
- F. Post Card** – 8.5" x 5.5" standard size post card; 100 lb. matte finish. Estimated Quantity: 136,000

- G. Other ad hoc material** – MDFA may also produce certain ad hoc materials to be distributed to some or all of the Plan and/or Mississippi State Agencies Self-Insured Workers' Compensation Trust (Trust) participants. Ad hoc projects typically consist of one or more printed pages bi-folded down to 5.5" x 8.5" or tri-folded down to 3.625" x 8.5", and inserted into Business No. 10 24 lb. envelopes, printed, labeled and delivered to an appropriate USPS postal facility for bulk mailing. Estimated Quantity: 136,000
- H. Print Design** - For each project, copy and any preferred design concepts will be provided by the MDFA to the Contractor in Microsoft Word® or similar format. The Contractor will be responsible for designing each project, incorporating all copy and any preferred design concepts provided by the MDFA.
- I.** The Contractor will be responsible for accepting raw copy, designing the documents to the client's specifications, producing the documents, affixing name and address information on each piece of mail described, and for transporting same to an appropriate USPS postal facility in the appropriate format and sorting to ensure that the documents are deliverable and qualify for maximum postal discounts. As all bulk mailing will use the MDFA's bulk (presorted Standard) mailing permit number, postage costs are not to be included as the MDFA has its own bulk (presorted Standard) mail permit number. All discounts, savings, and/or rebates relative to postal charges for the aforementioned mailings will inure to the MDFA and not the Contractor.
- J.** All quantities referenced are estimates, and can be expected to increase or decrease slightly throughout the term of the Contract. Material changes to project specifications may be subject to negotiated pricing adjustments. The MDFA reserves the right to modify or cancel any of the aforementioned projects without penalty.
- K.** For the projects listed above, sufficient advance notice will be provided to the Contractor in order to facilitate scheduling. All design, printing, labeling and mailing of documents should be according to MDFA's specifications and schedule.
- L.** Prior to each mailing project, OI will provide a current updated mailing list of approximately 136,000 records, using a Secure File Transfer (SFT) system or other appropriate storage media.
- M.** The Contractor must have the capacity to edit the mailing list in order to correct or eliminate undeliverable addresses, identify and remove duplications, and shall be responsible for Coding Accuracy Support System (CASS) certification of the addresses on each mailing list and all other applicable postal regulations, and perform appropriate formatting, merging, purging, and sorting to the mailing list to qualify mail pieces for maximum postal discounts and deliverability.
- N.** Various bulk plan documents are to be delivered to approximately 330 employer units, to OI, Blue Cross Blue Shield of Mississippi (BCBSMS), and some stored for individual mailing to Plan Participants.
- O.** The Contractor shall maintain, in a secure environment, printed material to be processed for mailings and must have sufficient equipment and available space to accept large shipments of printed documents. The Contractor shall be responsible for the safekeeping of such material until delivered to an appropriate USPS postal facility or to MDFA, as directed.

- P.** The Contractor is responsible for delivery of sorted, labeled items to an appropriate USPS postal facility, within the deadlines agreed upon by the Contractor and MDFA before each project begins.
- Q.** MDFA anticipates possible additional mail-outs consisting of post cards, pre-stuffed envelopes, as well as items to be folded and/or inserted into envelopes (or tabbed to be processed as a self-mailer). Specifications for any additional projects will be determined as needed by MDFA.
- R.** The Contractor must cooperate with the MDFA and with all other vendors of the Board with respect to ongoing coordination and delivery of health plan services and in any transition of responsibilities.

Contractor shall:

- A.** Assign a Contractor Account Representative to work directly with the MDFA Representative.
- B.** Perform all services provided in the contract between the Contractor and the MDFA 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. 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 this Contract 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.

2. Contract Term

- A.** The initial period of performance of this Contract will be four years. MDFA reserves the right to renew the contract for up to one additional year at the sole discretion of the MDFA. Within nine (9) months of the end of the original term, MDFA will notify the Contractor, in writing, of MDFA's intent to renew the Contract for one (1) additional year.
- B.** This Contract may be terminated by either party, with or without cause, upon at least thirty (30) days prior written notice of intent to terminate 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 shall be returned to the MDFA within thirty (30) days of the termination date of this Contract if so required by the MDFA.
- D.** Upon termination of this Contract, the Contractor shall reasonably cooperate with the MDFA and the new Contractor during the transition of the Plan to the new Contractor. Upon request from the MDFA, the Contractor shall provide all MDFA information maintained by the Contractor in a time frame specified by the MDFA. Information provided shall be in a format designated by the OI and shall include, but not be limited to, where applicable, file layouts and legends at a mutually agreeable cost. The Contractor shall provide such explanation of the information provided as 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 fees listed in Exhibit A, Fee Schedule for Design, Print, and Mail Services, of this Contract are firm for the duration of this Contract and are not subject to escalation for any reason, unless this Contract is duly amended. Said fees shall constitute the entire compensation due to the Contractor for services and all of the Contractor'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 Contractor. The MDFA 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 MDFA in arrears on a monthly basis. Only those services agreed to under this Contract shall be considered for reimbursement/compensation by the MDFA. Payment for any and all services provided by the Contractor to the MDFA and/or the Plan/Trust shall be made only after said services have been duly performed and properly invoiced.
- B.** The Contractor must 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 fees. Fees must be invoiced in sufficient detail and format as determined by the MDFA. Such invoices shall include, at a minimum, a description of the service(s) provided, the quantity or number of units billed, the compensation rate, the time period in which services were provided, total compensation requested for each individual service being billed, and total fees requested for the period being invoiced. Upon the effective date of termination of this Contract, the Contractor shall remain liable for any obligations arising hereunder prior to the effective date of such termination. 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 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 and/or the Plan by the Contractor, the MDFA reserves the right to (1) deduct from amounts which are or shall become due and payable to the Contractor under Contract between the parties; or (2) request and receive payment directly from the Contractor within fifteen (15) days of such request, at the MDFA's sole discretion.
- D.** The MDFA reserves the right to deduct from amounts which are or shall become due and payable to the Contractor under this Contract between the parties any amounts which are or shall become due and payable to the MDFA by the Contractor. Notwithstanding anything to the contrary herein, any reduction of payments to the Contractor shall be made only with the prior agreement of both parties. In addition, in the event of termination of this Contract for any reason, the Contractor 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 MDFA to perform the services required hereunder based, in part, upon Contractor's special skills and expertise. Contractor shall not assign, subcontract, or otherwise transfer this Contract, in whole or in part, without the prior written consent of the MDFA, which the MDFA may, in its sole discretion, approve or deny without reason. Any attempted assignment or transfer of its obligations without such consent shall be null and void. No such approval by the MDFA 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 MDFA 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, excluding its conflicts of laws provisions, and any litigation with respect thereto shall be brought in the courts of the State. 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 and/or the Mississippi Department of Finance and Administration Office of Purchasing, Travel and Fleet Management and this contract is not approved by the PPRB and/or OPTFM, 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 agreement; (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 agreement is not restricted or prohibited by any loan, security, financing, contractual, or other agreement of any kind; and, (d) notwithstanding any other provision of this agreement 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 agreement.

9. Availability of Funds

It is expressly understood and agreed that the obligation of the MDFA to proceed under this agreement 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 agreement 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 Contractor, to terminate this agreement 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

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 Contractor that the scope of the project or of Contractor's services has been changed, requiring changes to the amount of compensation to 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 Contractor. If Contractor believes that any particular work is not within the scope of the project, is a material change, or will otherwise require more compensation to Contractor, Contractor must 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, Contractor will be ordered to and shall continue with the work as changed and at the cost stated for the work within the contract.

11. Compliance with Laws

Contractor understands that the State of Mississippi 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 Contractor agrees during the term of the agreement that Contractor will strictly adhere to this policy in its employment practices and provision of services. Contractor shall comply with, and all activities under this agreement 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. 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 Contractor. If the MDFA reasonably rejects staff or subcontractors, Contractor must 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 Contractor's employees and subcontractors is the sole responsibility of Contractor.

13. Debarment and Suspension

Contractor certifies to the best of its knowledge and belief, that it:

- A. 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;

- B. 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;
- C. 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;
- D. 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 (b) and (c) of this certification; and,
- E. 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.

14. E-Payment

Contractor agrees to accept all payments in United States currency via the State of Mississippi's electronic payment and remittance vehicle. 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 MDFA within forty-five (45) days of receipt of invoice. Mississippi Code Annotated § 31-7-301 *et seq.*

15. E-Verification

If applicable, Contractor 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. 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, Contractor agrees to provide a copy of each such verification. 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 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;
- B. the loss of any license, permit, certification or other document granted to 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, 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.

16. Failure to Deliver

In the event of failure of the Contractor to deliver services in accordance with the contract terms and conditions, MDFA, after due oral or written notice, may procure the services from other sources and hold Contractor responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies that the MDFA may have.

17. 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.

18. 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, Contractor shall notify the State 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 the State determines it to be in its best interest to terminate the agreement.

19. Indemnification

To the fullest extent allowed by law, 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 attorney's 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 agreement. In the State's sole discretion upon approval of the Office of the Mississippi Attorney General, Contractor may be allowed to control the defense of any such claim, suit, etc. In the event Contractor defends said claim, suit, etc., Contractor shall use legal counsel acceptable to the Office of the Mississippi Attorney General. 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. 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.

20. Independent Contractor Status

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, 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 Contractor. Neither the method of computation of fees or other charges, nor any other provision contained herein, nor any acts of the State or Contractor hereunder creates, or shall be deemed to create a relationship other than the independent relationship of the State and Contractor. Contractor's personnel shall not be deemed in any way, directly or indirectly, expressly or by implication, to be employees of the State. Neither 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 legally responsible for any negligence or other wrongdoing by Contractor, its servants, agents, or employees. The MDFA shall not withhold from the contract payments to Contractor any federal or state unemployment taxes, federal or state income taxes, Social Security tax, or any other amounts for benefits to Contractor. Further, the MDFA shall not provide to Contractor any insurance coverage or other benefits, including Worker's Compensation, normally provided by the State for its employees.

21. Confidential Information

"Confidential Information" shall mean: (a) those materials, documents, data, and other information which the Contractor has designated in writing as proprietary and confidential; and (b) all data and information which the Contractor 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 agreement agrees to the following:

- A. To protect all confidential information provided by one party to the other to the extent allowed under State and/or federal law;
- B. To treat all such confidential information as confidential to the extent that confidential treatment is allowed under State and/or federal law; and
- C. 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 Contractor or its subcontractor shall rest with Contractor. Disclosure of any confidential information by Contractor or its subcontractor without the express written approval of the MDFA shall result in the immediate termination of this agreement.

22. Insurance

The Contractor shall, at its own expense, obtain and maintain insurance, which shall include Workers Compensation coverage as required by the State of Mississippi with coverage for all states of operation that apply to the performance of scope of work and Comprehensive General or Commercial Liability with at least \$1,000,000.00 each occurrence to protect the property, goods and material of the MDFA while in the Contractor's possession. The Contractor is responsible for ensuring that any subcontractors provide adequate insurance and/or bond coverage for the activities

arising out of subcontracts. In no event shall the requirement for an insurance, bond, or other surety be waived. All insurance policies will list the State of Mississippi as an additional insured. All insurance policies shall be issued by 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 Department of Insurance. The Contractor shall not commence work under this Contract until it obtains all insurance and/or bond required under this provision and furnishes a certificate or other form showing proof of current coverage to the State. After work commences, the Contractor will keep in force all required insurance and/or bond until the contract is terminated or expires. The Contractor shall submit renewal certificates as appropriate during the term of the contract. The 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 and/or bond 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 and/or bond 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.

23. Modification or Renegotiation

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

24. 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 MDFA and agreed to by Contractor.

25. 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 Contractor's internal administrative and quality assurance files and internal project correspondence. Contractor shall deliver such documents and work papers to MDFA upon termination or completion of the Contract. The foregoing notwithstanding, Contractor shall be entitled to retain a set of such work papers for its files. Contractor shall be entitled to use such work papers only after receiving written permission from MDFA and subject to any copyright protections.

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

27. Procurement Regulations

The contract shall be governed by the applicable provisions of the *State of Mississippi Procurement Manual*, a copy of which is available at 501 North West Street, Jackson, Mississippi 39201 for inspection, or downloadable at <https://www.dfa.ms.gov/dfa-offices/purchasing-travel-and-fleet-management/bureau-of-purchasing-and-contracting/procurement-manual/>.

28. Record Retention and Access to Records

Provided Contractor is given reasonable advance written notice and such inspection is made during normal business hours of Contractor, the State or any duly authorized representatives shall have unimpeded, prompt access to any of Contractor's books, documents, papers, and/or records which are maintained or produced related to the Contractor's charges or as a result of the project for the purpose of making audits, examinations, excerpts, and transcriptions. All records related to this Contract shall be retained by Contractor for three (3) years after final payment is made 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. 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.

29. Recovery of Money

Whenever, under the Contract, any sum of money shall be recoverable from or payable by Contractor to the MDFA, the same amount may be deducted from any sum due to Contractor under the Contract or under any other contract between 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 Contractor.

30. Representation Regarding Contingent Fees

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 Contractor's bid.

31. 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 9.105 (Gratuities) of the *State of Mississippi Procurement Manual*.

32. Requirements Contract

During the period of the contract, Contractor shall provide all the service described in the contract. Contractor understands and agrees that this is a requirements contract and that the MDFA shall have no obligation to Contractor if no services are required. Any quantities that are included in the scope of work reflect the current expectations of the MDFA for the period of the contract. The amount is only an estimate and Contractor understands and agrees that the MDFA is under no obligation to Contractor to buy any amount of the services as a result of having provided this estimate or of having any typical or measurable requirement in the past. Contractor further understands and agrees that the MDFA may require services in an amount less than or in excess of the estimated annual contract

amount and that the quantity actually used, whether in excess of the estimate or less than the estimate, shall not give rise to any claim for compensation other than the total of the unit prices in the contract for the quantity actually used.

33. Stop Work Order

A. Order to Stop Work. The OI, may, by written order to Contractor at any time, and without notice to any surety, require 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 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, Contractor shall forthwith comply with its terms and take all reasonable steps to minimize the occurrence of costs allocable to the 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 OI 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, 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 Contractor's cost properly allocable to, the performance of any part of this contract; and,
2. Contractor asserts a claim for such an adjustment within 30 days after the end of the period of work stoppage; provided that, if the OI 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.

34. Termination for Convenience

A. Termination. The Agency Head or designee may, when the interests of the State so require, terminate this contract in whole or in part, for the convenience of the State. The Agency Head or designee shall give written notice of the termination to Contractor specifying the part of the contract terminated and when termination becomes effective.

B. Contractor's Obligations. Contractor shall incur no further obligations in connection with the terminated work and on the date set in the notice of termination Contractor will stop work to the extent specified. Contractor shall also terminate outstanding orders and subcontracts as they relate to the terminated work. Contractor shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated work. The Agency

Head or designee may direct Contractor to assign Contractor's right, title, and interest under terminated orders or subcontracts to the State. Contractor must still complete the work not terminated by the notice of termination and may incur obligations as are necessary to do so.

35. Termination for Default

- A. Default.** If Contractor refuses or fails to perform any of the provisions of this contract with such diligence as will ensure its completion within the time specified in 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 Agency Head or designee may notify Contractor in writing of the delay or nonperformance and if not cured in ten (10) days or any longer time specified in writing by the Agency Head or designee, such officer may terminate Contractor's right to proceed with the contract or such part of the contract as to which there has been delay or a failure to properly perform. In the event of termination in whole or in part, the Agency Head or designee may procure similar supplies or services in a manner and upon terms deemed appropriate by the Agency Head or designee. 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 OI, Contractor shall take timely, reasonable, and necessary action to protect and preserve property in the possession of 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 Contractor such sums as the Agency Head or designee deems to be necessary to protect the State against loss because of outstanding liens 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, 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 Contractor to make progress in the prosecution of the work hereunder which endangers such performance) if Contractor has notified the Agency Head or designee 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 to make progress, and if such failure arises out of causes similar to those set forth above, 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 Contractor to meet the contract requirements. Upon request of Contractor, the Agency Head or designee shall ascertain the facts and extent of such failure, and, if such officer determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, 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 entitled (in fixed-price contracts, "Termination for Convenience," in cost-reimbursement contracts, "Termination"). (As used in this Paragraph of this clause, the term "subcontractor" means subcontractor at any tier).

- E. **Erroneous Termination for Default.** If, after notice of termination of 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 such clause.
- F. **Additional Rights and Remedies.** The rights and remedies provided in this clause are in addition to any other rights and remedies provided by law or under this contract.

36. Termination Upon Bankruptcy

This contract may be terminated in whole or in part by MDFA upon written notice to Contractor, if 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.

37. Third-Party Action Notification

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

38. 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.

39. 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 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 Mississippi Department of Finance and Administration'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, will be redacted.

40. Unsatisfactory Work

If, at any time during the contract term, the service performed or work done by Contractor is considered by the MDFA to create a condition that threatens the health, safety, or welfare of the citizens and/or employees of the State of Mississippi, Contractor shall, on being notified by the MDFA, immediately correct such deficient service or work. In the event Contractor fails, after notice, to correct the deficient service or work immediately, the MDFA shall have the right to order the correction of the deficiency by separate contract or with its own resources at the expense of Contractor.

41. 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.

42. Notices

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

If to the MDFA:

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 a copy of any notice to:

State Insurance Administrator
Mississippi Department of Finance and Administration
Office of Insurance
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]

43. 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 Design, Print, and Mail Services*;
- B. The *Contractor's Response to the Mississippi Department of Finance and Administration's Request for Proposals for Design, Print, and Mail Services dated July 16, 2021*, and attached hereto as *Exhibit B* and incorporated fully herein by reference; and
- C. The *Mississippi Department of Finance and Administration's Request for Proposals for Design, Print, and Mail Services dated June 16, 2021*, attached hereto as *Exhibit C* and incorporated fully herein by reference.

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: _____

Title: _____

Title: MDFA Executive Director

Date: _____

Date: _____

Exhibit A. *Fee Schedule for Design, Print, and Mail Services*

[Insert fees contained within the awarded Contractor's Proposal or BAFO]

All rates are guaranteed through the term of the Contract

Exhibit B. *Contractor's Response to the Mississippi Department of Finance and Administration's Request for Proposals for Design, Print, and Mail Services dated July 16, 2021*

Exhibit C. *Mississippi Department of Finance and Administration's Request for Proposals for Design, Print, and Mail Services dated June 16, 2021*