

**AMENDMENT TWO**  
**FINANCIAL AUDIT SERVICES CONTRACT**

**WHEREAS**, the Mississippi Department of Finance and Administration (DFA), the Office of the State Auditor (OSA), and Harper, Rains, Knight & Company, P.A. (Auditor) entered into a Financial Audit Services Contract (Contract) on the 9<sup>th</sup> day of August, 2019;

**WHEREAS**, the term of this Contract is for two (2) years with an option to renew for an additional two (2) year period, and is set to expire on August 8, 2021 and new or replacement contracts have not been entered into;

**WHEREAS**, in accordance with **Item 3, Contract Term**, of the Contract, the parties are desirous of and in agreement to exercise the Contract's two-year renewal option and to extend the term of the Contract through August 8, 2023, under the same terms, conditions, and guaranteed fees found in the original Contract except as herein noted; and

**WHEREAS**, the parties are in agreement to revise the following terms of the Contract:

- Add the following as Item **4.E.** to the existing **Consideration** clause language:

**4.E.** The total amount reimbursable to the Auditor under this Contract for the renewal term shall not exceed twenty-seven thousand two hundred and zero cents (\$27,200.00); while the total contract value for the term of this Contract shall not exceed fifty-two thousand seven hundred and zero cents (\$52,700.00).

- Delete Item **10 Applicable Law** in its entirety and replace with the following:

**10. 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 Auditor shall comply with applicable federal, state, and local laws and regulations.

- Delete Item **22 Procurement Regulations** in its entirety and replace with the following:

**22. 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>.

- Delete Item **33. Indemnification** in its entirety and replace with the following:

### **33. Indemnification**

To the fullest extent allowed by law, the Auditor 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 Auditor 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 Mississippi Attorney General, the Auditor may be allowed to control the defense of any such claim, suit, etc. In the event the Auditor defends said claim, suit, etc., the Auditor shall use legal counsel acceptable to the Office of the Mississippi Attorney General. The Auditor 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 Auditor shall not settle any claim, suit, etc. without the concurrence of the Office of the Mississippi Attorney General, which shall not be unreasonably withheld.

- Delete Item **43. Incorporation of Documents** in its entirety and replace with the following:

### **43. Incorporation of Documents**

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

- A. Amendment Two signed by the parties;
- B. Amendment One signed by the parties;
- C. This Contract signed by the parties including ***Exhibit A – Fee Schedule for Financial Audit Services***;
- D. The Auditor's response to the Mississippi State Agencies Self-Insured Workers' Compensation Trust's Request for Proposal for Financial Audit Services dated July 12, 2019, attached hereto as **Exhibit B** and incorporated fully herein by reference; and
- E. The Mississippi State Agencies Self-Insured Workers' Compensation Trust's Request for Proposal for Financial Audit Services dated June 11, 2019 attached hereto as **Exhibit C** and incorporated fully herein by reference.

**NOW THEREFORE**, the parties covenant and agree, each to the other, the Contract shall be and hereby is amended as set forth hereinabove as through originally contained therein.

**EXCEPT** as specifically stated herein, all other terms and conditions of the Contract shall remain in full force and effect as originally stated, and modified by Amendment One and this Amendment Two is hereby made a part of the Contract.

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

**Harper, Rains, Knight & Company, P.A.**

Thomas Wyzgol  
Signature

THOMAS J. WYGGOL  
Name

Director  
Title

3/29/2021  
Date

**Department of Finance and Administration**

Liz Welch  
Signature

Liz Welch  
Name

MDFA Executive Director  
Title

4/6/2021  
Date

**Office of the State Auditor**

Stephanie Palmertree  
Signature

Stephanie Palmertree  
Name

Director of Financial Audit  
Title

4/12/2020  
Date

**AMENDMENT NUMBER 1**  
**FINANCIAL AUDIT SERVICES CONTRACT**

**WHEREAS**, Mississippi Department of Finance and Administration (DFA) and Harper, Rains, Knight & Company, P.A. (Auditor) entered into a Financial Audit Services Contract (Contract) on the 9<sup>th</sup> day of August, 2019; and

**WHEREAS**, the Office of the State Auditor (OSA) has requested to be added as a signatory to the Contract; and

**WHEREAS**, the parties are in agreement to revise the following terms of the Contract as requested by OSA:

- Delete **Item 3. Contract Term**, in its entirety and replace with the following:

**3. Contract Term**

The effective date of this Contract will be August 9, 2019. This Contract's term will be for two (2) years with an option to renew for an additional two (2) year period, at DFA's and OSA's discretion. By May 1, 2021, DFA will notify the Auditor, in writing, of the intent of DFA and OSA as to renewal of the Contract for two (2) additional years.

- Delete **Subsection A. of Item 26. Termination for Convenience**, in its entirety and replace with the following:

A. **Termination.** This Contract may be terminated by DFA or the Auditor, with or without cause, upon at least thirty (30) days prior written notice of intent to terminate. DFA may, when the interests of the Board or DFA so require, and with the written consent of OSA, terminate this Contract in whole or in part for the convenience of DFA. However, prior to termination of this Contract by DFA, DFA must provide written justification to OSA documenting the reasons for requesting the Contract be terminated. DFA must obtain written approval from OSA prior to terminating this Contract. Notwithstanding the aforementioned, the Contract shall not be terminated based on the nature of the Auditor's opinion on the financial status of DFA and/or the Board in its audit report. DFA shall give written notification of the termination to the Auditor specifying the part of this Contract terminated and when termination becomes effective. In the event of termination for convenience by DFA, DFA shall bear all costs associated with the issuance of a new contract for audit services, including, but not limited to, the costs of reissuing another request for proposals and additional costs resulting from an acceleration of services necessary for the timely completion of such auditing services.

- Delete **Subsection A. of Item 27. Termination for Default (Cause)**, in its entirety and replace with the following:

A. **Default.** Upon the failure of either the Auditor or DFA to perform any obligation or observe any covenant required hereunder, the non-defaulting party, with the written consent of OSA, shall have the right to send a written notice to the defaulting party, with a copy to OSA, specifying such failure and demanding cure within ten (10) days of receipt of such notice. If the defaulting party has not remedied such failure within the cure period, or has not made substantial progress toward remedying such failure within the cure period, then the non-defaulting party may terminate the Contract immediately by sending a written notice of termination to the defaulting party. However, prior to termination of this Contract by DFA, DFA must provide written justification to OSA documenting the reasons that the Contract should be terminated. DFA must obtain written approval from OSA prior to terminating the Contract. In the event of termination for cause by DFA and/or OSA, in addition to other remedies provided herein or available at law or in equity, the Auditor shall bear all costs associated with the issuance of a new contract for audit services, including, but not limited to, the costs of reissuing another request for proposals and additional costs resulting from an acceleration of services necessary for the timely completion of such auditing services.

- Delete **Item 37. Disputes**, in its entirety and replace with the following:

### **37. Disputes**

Any dispute concerning a question of accounting fact arising under this Contract shall be disposed of by good faith negotiation between duly authorized representatives of DFA, OSA and the Auditor. Such a resolution shall be reduced to writing and a copy thereof mailed or furnished to the Auditor and shall be final and conclusive. If a resolution cannot be reached, the Auditor shall mail or furnish to DFA and OSA a written request for review. The Auditor shall be afforded an opportunity to be heard and to offer evidence in support of his/her/its position on the issue in dispute and under review. The review will be handled under a three (3) person panel for arbitration composed of the Deputy State Auditor, the Director of Technical Assistance and the Director of the Financial and Compliance Audit Division. The decision of the arbitration panel of OSA on the review shall be final and conclusive unless determined by a court of competent jurisdiction in Hinds County, State of Mississippi, to have been fraudulent, capricious, or so grossly erroneous as necessarily to imply bad faith, or not be supported by substantial evidence. Pending final decision of a dispute hereunder, the Auditor shall proceed diligently with the performance of the duties and obligations of the Contract.

**AND WHEREAS**, the parties now desire the Contract to consist of this Amendment Number 1, the Contract including all Exhibits, the Response to the Request for Proposals, and the Request for Proposals. Any ambiguities, conflicts, or questions of the interpretation of this Contract shall be resolved by first reference to this Amendment Number 1, and if still unresolved, by reference to the Contract, and if still unresolved, by reference to the Response to the Request for Proposals, and if still unresolved, by reference to the Request for Proposals.

**NOW THEREFORE**, the parties covenant and agree, each to the other, the Contract shall be and hereby is amended as set forth hereinabove as through originally contained therein.

**EXCEPT** as specifically stated herein, all other terms and conditions of the Contract shall remain in full force and effect as originally stated, and this Amendment Number 1 is hereby made a part of this Contract.

**IN WITNESS WHEREOF**, the parties hereto have caused this Amendment Number 1 to be executed on the date shown below:

**Harper, Rains, Knight & Company, P.A.**

**Department of Finance and Administration**

Thomas J. Wiygul  
Signature

Renee Jackson  
Signature

THOMAS J. WIYGUL  
Name

\_\_\_\_\_  
Name

DIRECTOR  
Title

\_\_\_\_\_  
Title

September 5, 2019  
Date

\_\_\_\_\_  
Date

**Office of the State Auditor**

Stephanie Palmertree  
Signature

Stephanie Palmertree  
Name

Director of Audit  
Title

9/5/19  
Date

## FINANCIAL AUDIT SERVICES CONTRACT

This Financial Audit Services Contract (Contract) is made by and between the Mississippi Department of Finance and Administration (DFA), acting administratively on behalf of the Board of Trustees (Board) for the Mississippi State Agencies Self-Insured Workers' Compensation Trust (Trust), and Harper, Rains, Knight & Company, P.A. (Auditor), under which the Auditor agrees to provide services to DFA and the Board relating to its self-insured workers' compensation program, beginning August 9, 2019, subject to the following terms and conditions.

### 1. Identity Of and Relationship Between the Parties

- A. Harper, Rains, Knight & Company, P.A. (the Auditor), a registered professional association organized under the laws of the state of Mississippi, is an entity organized for the purpose of providing financial audit services as herein described.
- B. The Department of Finance and Administration (DFA), an agency of the State of Mississippi, provides administrative support to the Board and acts on behalf of the Board in executing the day to day operational responsibilities concerning the Trust's administration.
- C. The Office of the State Auditor (OSA), an agency of the State of Mississippi, is responsible for auditing and expressing an opinion on the *Comprehensive Annual Financial Report (CAFR)* of the State of Mississippi.
- D. The Auditor and DFA are independent legal entities. Nothing in this Contract shall be construed to create the relationship of employer and employee or principal and agent or any relationship other than that of independent parties contracting with each other solely for the purpose of carrying out the terms of this Contract.
- E. Neither the Auditor nor DFA, nor any of their respective agents or employees shall control or have any right to control the activities of the other party in carrying out the terms of this Contract, nor shall either party, its respective agents or employees, be liable to third parties for any act or omission of the other party.
- F. Nothing in this Contract is intended to be construed, nor shall it be deemed to create, any right or remedy in any third party.

### 2. Scope of Services

The Auditor agrees, at the request of DFA, to assist the Board and the staff of DFA, and OSA by providing the following audit services:

- A. Annually, the Auditor will perform an independent audit of the financial statements of the Mississippi State Agencies Self-Insured Workers' Compensation Trust. The audit will be performed for the purpose of expressing an opinion on the Trust's financial statements, and must comply with the applicable requirements of Rule 1.7(B) (2) (b) (2) of the Rules of the Mississippi Workers' Compensation Commission (MWCC). The auditing services will be made in conformity with the following guidelines and regulations:

1. The standards for financial audits set forth in the U.S. Government Accountability Office's *Government Auditing Standards*, which includes auditing standards generally accepted in the United States of America as set forth by the American Institute of Certified Public Accountants.
  2. Statements of financial accounting standards as prescribed by the Governmental Accounting Standards Board.
- B. The aforementioned standards require that the Auditor plan and perform the audit to obtain reasonable assurance that the financial statements are free of material misstatement, whether caused by error, fraudulent financial reporting, or misappropriation of assets. The audits should include examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. The audit should also include an assessment of the accounting principles used and significant estimates made by the Trust, as well as an evaluation of the overall financial statement presentation. The Auditor must perform the following procedures unless otherwise advised in writing by DFA and OSA:
1. Hold an entrance conference with the Auditor's auditor-in-charge, DFA's Internal Audit Staff, Trust Administrator, and OSA's authorized representatives prior to commencement of any work in order to determine the scope of services, and other related factors.
  2. If applicable, provide an "in-relation-to" conclusion on the supporting schedules based on the auditing procedures applied during the audit of the selected funds' basic financial statements.
  3. If applicable, perform certain limited procedures involving required supplementary information required by the Governmental Accounting Standards Board as mandated by generally accepted in the United States of America auditing standards.
  4. Examine the June 30 GAAP reporting packages and underlying records for completeness and accuracy for inclusion in the State of Mississippi's Comprehensive Annual Financial Report.
  5. Prepare and post entries to the trial balance as needed in order to adjust the trial balances. These adjusting entries should be prepared on the DFA entry standardized forms and submitted to the Trust for approval and then submitted to OSA for review and processing within due dates specified by OSA.
  6. Prepare a schedule of uncorrected misstatements, have Trust management approve the schedule, and submit it to OSA for inclusion in communication to DFA.
  7. Provide OSA the planning materiality level(s) used on the audits of fund GAAP reporting packets for use in performing analysis of unaudited aggregated funds and accounts for the CAFR.
  8. Complete audit reports on the fair presentation of state treasury funds audited in conformity with generally accepted accounting principles in the United States of America.
  9. Prepare a letter to management on suggestions for improvement in internal control and correction of any noncompliance matters.
  10. Conduct an exit conference upon giving prior notice to DFA and OSA.

11. Obtain a plan of corrective action from the Trust as needed and in accordance with instructions provided by OSA.
  12. Submit to the OSA a completed "Request for Representations from Other Auditor."
- C. As a part of the audit, the Auditor will consider the Trust's internal control over financial reporting in order to determine auditing procedures for the purpose of expressing an opinion on the financial statements, and not to provide assurance on the internal control over financial reporting. This consideration will not be sufficient to enable the Auditor to render a separate opinion on the effectiveness of the internal control over financial reporting.
- D. Following completion of the audit, the Auditor will issue a *Report on Internal Control Over Financial Reporting and Compliance and Other Matters Based on an Audit of Financial Statements Performed in Accordance With Government Auditing Standards* (GAGAS report) on compliance and on internal control over financial reporting based on an audit of financial statements performed in accordance with Government Auditing Standards. While the objective of the audit of the financial statements is not to report on the Trust's internal control over financial reporting and the Auditor is not obligated to search for material weaknesses or significant deficiencies as part of its audit of the financial statements, this report will include any material weaknesses and significant deficiencies found during the audit. A significant deficiency shall be defined as a control deficiency, or combination of control deficiencies, that adversely affects the Trust's ability to initiate, authorize, record, process, and report financial data reliably in accordance with generally accepted accounting principles, such that there is more than a remote likelihood that a misstatement of the Trust's financial statements that is more than inconsequential will not be prevented or detected by the Trust's internal control. Significant deficiencies that are also material weaknesses shall be identified as such in the report. Deficiencies that were not considered significant enough to be communicated as significant deficiencies shall be reported in a separate letter to management, which shall be referred to in the report on internal controls. This report will also include instances of fraud and noncompliance with provisions of laws or regulations that have a material effect on the financial statements or other financial data significant to the audit objectives and any other instances that warrant the attention of those charged with governance; noncompliance with provisions of contracts that has a material effect on the determination of financial statement amounts or other financial data significant to the audit objectives; or abuse that is material, either quantitatively or qualitatively. The report will describe its purpose and will state that it is not suitable for any other purpose.
- E. The objective of the audit is to obtain reasonable assurance that the financial statements are free of material misstatement whether arising from fraudulent financial reporting or misappropriation of assets. The Trust acknowledges that while effective internal control reduces the likelihood that misstatements of this nature may occur and remain undetected, it does not eliminate that possibility. For that reason and because the Auditor uses selective testing in its audit, the Auditor cannot guarantee that material misstatements, if present, will be detected.
- F. The financial statements referred to above are the responsibility of the management of the Trust. In this regard, the Trust is responsible for properly recording transactions in the accounting records and maintaining an internal control structure sufficient to permit the preparation of reliable financial statements. The Trust is also responsible for making available to the Auditor, upon request, all of the Trust's original accounting records and related information, and Trust personnel to whom the Auditor's staff may direct inquiries.

- G. As required by applicable auditing standards, the Auditor will make specific inquiries of management and others about the representations embodied in the financial statements and the effectiveness of the internal control structure. Generally accepted auditing standards also require that the Auditor obtain a representation letter covering the financial statements from certain members of Trust's management. The results of the audit tests, the responses to the Auditor's inquiries and the written representations comprise the evidential matter the Auditor will rely upon in forming an opinion on the financial statements.
- H. As part of obtaining reasonable assurance about whether the financial statements are free of material misstatement, the Auditor will perform tests of the Trust's compliance with provisions of laws, regulations, contracts and grants, violations of which could have a direct and material effect on the financial statements. However, the Auditor's objective is not to provide an opinion on overall compliance with such provisions. The Auditor shall report immediately to the Trust any preliminary findings of possible fraud, misapplication or misappropriation of funds.
- I. The Auditor's procedures must include tests of documentary evidence supporting transactions recorded in the accounts and direct confirmation of cash and investments, verification of liabilities, review of claims reserves in reliance upon the Trust's actuarial computations, among other procedures.
- J. The Auditor acknowledges that the Trust and the Mississippi Office of the State Auditor are relying on the timely completion of the audit for inclusion in the State of Mississippi's *Comprehensive Annual Financial Report (CAFR)*.
- K. The scheduling and completion dates for the annual audits will be established by DFA and OSA to ensure compliance with internal deadlines, MWCC Rule 1.7(B) (2) (b) (2) deadlines, and *CAFR* completion deadlines. Unless otherwise agreed to in writing by the Trust and the Auditor, the audit must be completed and final report(s) issued to the Trust no later October 1 of each year in which the audited fiscal year ends.
- L. The Trust will make every effort to ensure that necessary and required access and information is made available to the Auditor on a timely basis so as not to impede the progress of the audit. Such access and information includes applicable records and resources of the Trust, as well as those of its third party claim administrator and actuary.
- M. Upon completion of each annual audit, the Auditor will provide to the Board, ten (10) bound copies, one (1) unbound copy, and one electronic copy in PDF<sup>®</sup> format of the audited financial statements and any related reports.
- N. The Auditor will perform procedures necessary to ensure that subsequent events which may require adjustment to, or disclosure in, the Trust's financial statements are identified and documented between the date of the issued audit report for the financial statements for the fiscal year and the date the State of Mississippi's *CAFR* is issued for that fiscal year. The Auditor will provide to the Board and to the Office of the State Auditor a *Subsequent Events Memorandum* to report the findings of these procedures to be considered in preparation of the State Auditor's opinion of the *CAFR*.
- O. The Auditor will maintain full and accurate records with respect to all matters covered under this Contract. Additionally, at the request of DFA, provide DFA all spreadsheets, assumptions, and calculations for any project authorized and funded by the Board in a format acceptable to DFA.

- P. The Auditor will be pro-active in presenting recommendations and ideas to the Board regarding the management of the Trust and/or the evaluation of the Trust's vendors.
- Q. As requested by DFA, the Auditor will provide such advice and consultative services regarding issues and matters of impact or interest to the Trust for which the Auditor has the technical capability to render. Such services may include, but are not limited to, specific auditing/accounting consultative services, technical advice and/or training in related workers' compensation accounting issues/procedures directly related to the audit of the financial statements.
- R. If so requested by DFA, the Auditor will provide testimony to the Mississippi State Agencies Self-Insured Workers' Compensation Board of Trustees, the Mississippi Workers' Compensation Commission, and/or the State Legislature, on matters directly related to the audit of the financial statements, as needed.
- S. As requested by DFA, provide other such services for which the Auditor has the technical capability to render.
- T. It is mutually understood and agreed by both parties that this Contract is not necessarily be an exclusive contract and that the Board and/or DFA is free to contract with other professionals to perform similar and like services as those contained in this contract.

**3. Contract Term**

The effective date of this Contract will be August 9, 2019. This Contract's term will be for two (2) years with an option to renew for an additional two (2) year period, at DFA's discretion. By May 1, 2021, DFA will notify the Auditor, in writing, of the intent of DFA as to renewal of the Contract for two (2) additional years.

**4. Consideration**

The Board and DFA agree to compensate the Auditor for services approved by DFA and performed by the Auditor under the terms of this Contract as follows:

- A. The fees listed in *Exhibit A – Fee Schedule for Financial Audit Services*, shall constitute the entire compensation due to the Auditor for services and all of the Auditor'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 Auditor. Neither the Board nor DFA shall provide any prepayments or initial deposits in advance of services being rendered. Fees for services provided by the Auditor shall be billable to the Board and/or DFA in arrears on a monthly basis. Only those services agreed to by contract shall be considered for reimbursement and/or compensation by the Board or DFA. Payment for any and all services provided by the Auditor to DFA shall be made only after said services have been duly performed and properly invoiced. The hourly rates and maximum project fees listed in *Exhibit A – Fee Schedule for Financial Audit Services* are firm for the duration of this contract and are not subject to escalation for any reason, unless this contract is duly amended.
- B. The Auditor 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 Auditor of any fees. 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 fees requested for the period being invoiced. The Board and DFA agree to make payment to the Auditor 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 Auditor's obligation to provide any further services under this contract shall cease. The Auditor 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 DFA.

- C. The payment of an invoice by DFA shall not prejudice DFA's nor the Board's right to object or question any invoice or matter in relation thereto. Such payment by DFA shall neither be construed as acceptance of any part of the work or service provided nor as an approval of any costs invoiced therein. Auditor's invoice or payment shall be subject to reduction for amounts included in any invoice or payment theretofore made which are determined by DFA, on the basis of audits, not to constitute allowable costs. Any payment shall be reduced for overpayment, or increased for underpayment on subsequent invoices. For any amounts which are or shall become due and payable to the Board and/or DFA by the Auditor, DFA reserves 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 Auditor within fifteen (15) days of such request, at the Board's and/or DFA's sole discretion.
- D. Compensation to the Auditor 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 Exhibit A – Fee Schedule for Financial Audit Services are to be charged for actual hours worked only and shall not include travel time.

**5. Availability of Funds**

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

**6. E-Payment**

The Auditor agrees to accept all payments in United States currency via the State of Mississippi's electronic payment and remittance vehicle. DFA 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.

**7. Paymode**

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

**8. Recovery of Money**

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

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

DFA and OSA reserve the right to audit all records maintained by the Auditor and/or its affiliates relative to the Auditor's performance under this Contract. At least forty-eight (48) hours' notice by DFA will be given to the Auditor of the intent to audit. DFA and OSA shall have the right to perform financial, performance, and other special audits on such records maintained by the Auditor during regular business hours throughout the Contract period. Provided Auditor is given reasonable advance written notice and such inspection is made during normal business hours of Auditor, the Auditor agrees that DFA and OSA or any of their duly authorized representatives shall have unimpeded, prompt access to any of Auditor'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 Auditor for a minimum period of five (5) 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 five (5) 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 five (5) year period, whichever is later.

**10. 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 Auditor shall comply with applicable federal, state, and local laws and regulations.

**11. Compliance with Laws**

The Auditor understands that 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 Auditor agrees during the term of the Contract that the Auditor will strictly adhere to this policy in its employment practices and provision of services. The Auditor shall comply with, and all activities under this Contract shall be subject to, all applicable federal, State of Mississippi, and local laws and regulations, as now existing and as may be amended or modified.

**12. Anti-Assignment/Subcontracting**

The Auditor acknowledges that it was selected by the State to perform the services required hereunder based, in part, upon Auditor's special skills and expertise. The Auditor shall not assign, subcontract or otherwise transfer in whole or in part, its right or obligations under this Contract without prior written consent of 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 Board 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.

**13. Confidential Information**

"Confidential Information" shall mean: (a) those materials, documents, data, and other information which the Auditor has designated in writing as proprietary and confidential; and (b) all data and information which the Auditor acquires as a result of its contract 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 Auditor or its subcontractor shall rest with Auditor. Disclosure of any confidential information by the Auditor or its subcontractors without the express written approval of DFA may result in the termination of this Contract.

**14. 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.

**15. Transparency**

This Contract, including any accompanying exhibits, attachments, and appendices, is subject to the "Mississippi Public Records Act of 1983," and its exceptions. See Mississippi Code Annotated §§ 25-61-1 et seq. and Mississippi Code Annotated § 79-23-1. In addition, this Contract is subject to provisions of the Mississippi Accountability and Transparency Act of 2008. Mississippi Code Annotated §§ 27-104-151 et seq. Unless exempted from disclosure due to a court-issued protective order, a copy of this executed Contract is required to be posted to the Department of Finance and Administration's independent agency contract website for public access at <http://www.transparency.mississippi.gov>. Information identified by Auditor 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.

**16. Contractor Personnel**

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

**17. Independent Contractor**

The Auditor 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 DFA. Nothing contained herein shall be deemed or construed by Board, Auditor, 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 Board and Auditor. Neither the method of computation of fees or other charges, nor any other provision contained herein, nor any acts of Board or Auditor hereunder creates, or shall be deemed to create a relationship other than the independent relationship of Board and Auditor. Auditor's personnel shall not be deemed in any way, directly or indirectly, expressly or by implication, to be employees of Board. No act performed or representation made, whether oral or written, by the Auditor with respect to third parties shall be binding on DFA. Neither the Auditor nor its employees shall, under any circumstances, be considered servants, agents, or employees of DFA; and DFA shall at no time be legally responsible for any negligence or other wrongdoing by the Auditor, its servants, agents, or employees. Board shall not withhold from the Contract payments to Auditor any federal or state unemployment taxes, federal or state income taxes, Social Security tax, or any other amounts for benefits to Auditor. Further, Board shall not provide to Auditor any insurance coverage or other benefits, including Workers' Compensation, normally provided by Board for its employees.

**18. E-Verification**

If applicable, Auditor 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. Auditor 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, Auditor agrees to provide a copy of each such verification. Auditor 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 Auditor 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 Auditor 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, Auditor would also be liable for any additional costs incurred by the State due to Contract cancellation or loss of license or permit to do business in the State.

**19. Authority to Contract**

Auditor 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.

**20. Debarment and Suspension**

The Auditor 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.

**21. 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 DFA revisions of any applicable laws or regulations make changes in this Contract necessary.

**22. 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 at <http://www.dfa.ms.gov/dfa-offices/personal-service-contract-review/pscrb-rules-regulations/>.

**23. Representation Regarding Contingent Fees**

The Auditor 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.

**24. Representation Regarding Gratuities**

The Auditor 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.

**25. Termination upon Bankruptcy**

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

**26. Termination for Convenience**

- A. 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. DFA may, when the interests of the Board or DFA so require, terminate this Contract in whole or in part for the convenience of DFA. However, prior to termination of this Contract by DFA, DFA must provide written justification to OSA documenting the reasons for requesting the Contract be terminated. Notwithstanding the aforementioned, the Contract shall not be terminated based on the nature of the Auditor's opinion on the financial status of DFA and/or the Board in its audit report. DFA shall give written notification of the termination to the Auditor specifying the part of this Contract terminated and when termination becomes effective. In the event of termination for convenience by DFA, DFA shall bear all costs associated with the issuance of a new contract for audit services, including, but not limited to, the costs of reissuing another request for proposals and additional costs resulting from an acceleration of services necessary for the timely completion of such auditing services.
- B. Auditor's Obligations. The Auditor shall incur no further obligations in connection with the terminated work and on the date set in the notice of termination, the Auditor will stop work to the extent specified. The Auditor shall also terminate outstanding orders and subcontracts as they relate to the terminated work. The Auditor shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated work. DFA may direct the Auditor to assign the Auditor's right, title and interest under terminated orders or subcontracts to DFA. The Auditor must still complete the work not terminated by the notice of termination and may incur obligations as are necessary to do so.
- C. Auditor's Duties. Notwithstanding termination of this Contract and subject to any directions from DFA and OSA, the Auditor shall take timely, reasonable, and necessary actions to protect and preserve property in the possession of the Auditor in which DFA has an interest. Upon termination of this Contract, the Auditor shall fully cooperate with the DFA, OSA, and the new Auditor during the transition of the Plan to the new Auditor. DFA, OSA, and the Auditor will work together in good faith to determine the Auditor's scope of responsibilities and deliverables. Upon request of DFA and/or OSA, the Auditor shall provide all information maintained by the Auditor in relation to the Plan in a reasonable time frame specified by DFA and OSA. Information provided shall be in a usable format, as mutually agreed by DFA, OSA and the Auditor. The Auditor shall provide such explanation of the information provided as to facilitate a smooth transition.
- D. Records Upon Termination. All records and information provided by DFA or through its third party contractors to the Auditor are the sole property of DFA and shall be returned, to DFA within thirty (30) days of the termination date of this Contract. Notwithstanding anything herein, DFA

acknowledge and agrees that the Auditor may retain an archival copy of all records and information provided to the Auditor by DFA or its agents to support the Auditor's work under this Contract and to comply with the Auditor's business continuity and document retention policies, subject to the Auditor's continued compliance with its confidentiality obligations under this Contract.

**27. Termination for Default**

- A. Default. Upon the failure of the Auditor to perform any obligation or observe any covenant required hereunder, DFA and/or OSA shall have the right to send a written notice to the Auditor, with a copy to all parties of the Contract, specifying such failure and demanding cure within ten (10) days of receipt of such notice. If the Auditor has not remedied such failure within the cure period, or has not made substantial progress toward remedying such failure within the cure period, then DFA may terminate the Contract immediately by sending a written notice of termination to the Auditor. However, prior to termination of this Contract, DFA must provide written justification to OSA documenting the reasons that the Contract should be terminated. In the event of termination for default, in addition to other remedies provided herein or available at law or in equity, the Auditor shall bear all costs associated with the issuance of a new contract for audit services, including, but not limited to, the costs of reissuing another request for proposals and additional costs resulting from an acceleration of services necessary for the timely completion of such auditing services.
- B. Auditor's Duties. Notwithstanding termination of this Contract and subject to any directions from DFA and OSA, the Auditor shall take timely, reasonable, and necessary actions to protect and preserve property in the possession of the Auditor in which DFA has an interest. Upon termination of this Contract, the Auditor shall fully cooperate with the DFA, OSA, and the new Auditor during the transition of the Plan to the new Auditor. DFA, OSA, and the Auditor will work together in good faith to determine the Auditor's scope of responsibilities and deliverables. Upon request of DFA and/or OSA, the Auditor shall provide all information maintained by the Auditor in relation to the Plan in a reasonable time frame specified by DFA and OSA. Information provided shall be in a usable format, as mutually agreed by DFA, OSA and the Auditor. The Auditor shall provide such explanation of the information provided as to facilitate a smooth transition.
- C. Compensation. Payment for completed services delivered and accepted by DFA shall be at the Contract price. DFA may withhold from amounts due the Auditor such sums as DFA deems to be necessary to protect DFA against loss because of outstanding liens or claims of former lien holders and to reimburse DFA for the excess costs incurred in procuring similar goods and services.
- D. Records Upon Termination. All records and information provided by DFA or through its third party contractors to the Auditor are the sole property of DFA and shall be returned, to DFA within thirty (30) days of the termination date of this Contract. Notwithstanding anything herein, DFA acknowledge and agrees that the Auditor may retain an archival copy of all records and information provided to the Auditor by DFA or its agents to support the Auditor's work under this Contract and to comply with the Auditor's business continuity and document retention policies, subject to the Auditor's continued compliance with its confidentiality obligations under this Contract.
- E. Excuse for Nonperformance or Delayed Performance. Except with respect to defaults of subcontractors, the Auditor 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 Auditor to make progress in the prosecution of the work hereunder which endangers performance) if the Auditor has notified DFA 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 Auditor'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 Auditor 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 Auditor to meet the Contract requirements. Upon request of the Auditor, DFA shall ascertain the facts and extent of such failure, and if DFA 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 Auditor's progress and performance would have met the terms of the Contract, the delivery schedule shall be revised accordingly, subject to the rights of DFA under the clause entitled "Termination for Convenience". (As used in this paragraph, the term "subcontractor" means subcontractor as any tier.)

- F. Erroneous Termination for Default. If, after notice of termination of the Auditor'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".
- G. Additional Rights and Remedies. The rights and remedies provided under this clause are in addition to any other rights and remedies provided by law or under this Contract.

**28. Stop Work Order**

- A. Order to Stop Work. DFA, may by written order to the Auditor at any time, and without notice to any surety, require the Auditor to stop all or any part of the work called for by this Contract. This order shall be for a specified period not exceeding ninety (90) days after the order is delivered to the Auditor, 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 Auditor 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, DFA shall either:
  - 1. cancel the stop work order; or
  - 2. terminate the work covered by such order as provided in the "Termination for Default" clause or the "Termination for Convenience" clause of this Contract.
- B. Cancellation or Expiration of the Order. If a stop work order issued under this clause is canceled at any time during the period specified in the order, or if the period of the order or any extension thereof expires, the Auditor shall have the right to resume work. An appropriate adjustment shall be made in the delivery schedule or Auditor price, or both, and the Contract shall be modified in writing accordingly, if:
  - 1. the stop work order results in an increase in the in the time required for, or in the Auditor's cost properly allocable to, the performance of any part of this Contract; and,

2. the Auditor asserts a claim for such an adjustment within thirty (30) days after the end of the period of work stoppage; provided that, if DFA decides that the facts justify such action, any such claim asserted may be received and acted upon at any time prior to final payment under this Contract.
- C. Termination of Stopped Work. If a stop work order is not 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.
- D. Adjustment of Price. Any adjustment in Contract price made pursuant to this clause shall be determined in accordance with the "Modification or Renegotiation" clause of this Contract.

**29. Oral Statements**

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

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

The work papers prepared in conjunction with the services under this contract are the property of the Auditor, constitute confidential information and will be retained by the Auditor in accordance with its policies and procedures. These records shall be maintained for at least five (5) years; however, if any litigation or other legal action, by or on behalf of the State has begun that is not completed at the end of the five (5) year period, or if audit findings, litigation or other legal action has not been resolved at the end of the five (5) year period, the records shall be retained until resolution. The Auditor agrees to make its work papers available to subsequent fiscal year audit firms. Upon request by DFA, any data, files and records collected by the Auditor will be destroyed or returned to DFA. The Auditor may retain, however, copies of all such records required for recordkeeping purposes or for compliance with applicable professional standards. Pursuant to Government Auditing Standards, the Auditor is required to make certain work papers available in a full and timely manner to Regulators upon request for their reviews of audit quality and for use by their auditors. In addition, the Auditor may be requested to make certain work papers available to OSA pursuant to authority provided to it by law or regulation. Access to the requested work papers will be provided under supervision of the Auditor's personnel. Furthermore, upon request, the Auditor may provide photocopies of selected work papers to Regulators. Such Regulators may intend, or decide, to distribute the photocopies or information contained therein to others, including other government agencies.

**31. 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.

**32. Third-Party Action Notification**

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

**33. Indemnification**

To the fullest extent allowed by law, the Auditor shall indemnify, defend, save and hold harmless, protect, and exonerate 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 Auditor 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 Auditor may be allowed to control the defense of any such claim, suit, etc. In the event the Auditor defends said claim, suit, etc., the Auditor shall use legal counsel acceptable to the State. The Auditor 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 Auditor 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.

**34. Approval Clause**

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 Personal Service Contract Review, and this Contract is not approved by the PPRB and/or OPSCR, it is void and no payment shall be made hereunder.

**35. Change in Scope of Work**

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 Auditor that the scope of the project or of Auditor's services has been changed, requiring changes to the amount of compensation to the Auditor or other adjustments to the Contract, unless such changes or adjustments have been made by written amendment to the Contract signed by DFA and the Auditor. If the Auditor 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 Auditor, the Auditor must immediately notify DFA in writing of this belief. If DFA believes that the particular work is within the scope of the Contract as written, the Auditor will be ordered to and shall continue with the work as changed and at the cost stated for the work within the Contract.

**36. Failure to Enforce**

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

**37. Disputes**

Any dispute concerning a question of fact arising under this Contract shall be disposed of by good faith negotiation between duly authorized representatives of DFA and the Auditor. Such a resolution shall be reduced to writing and a copy thereof mailed or furnished to the Auditor and shall be final and conclusive. If a resolution cannot be reached, each party shall have available to it all remedies available under this Contract and at law or equity. Pending final decision of a dispute hereunder, the Auditor shall proceed diligently with the performance of the duties and obligations of the Contract.

**38. Standards of Care/Remedies**

The Auditor 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.

**39. Right to Audit**

Auditor shall maintain such financial records and other records as may be prescribed by DFA or by applicable federal and State laws, rules, and regulations. Auditor shall retain these records for a period of five years after final payment, or until they are audited by 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 five-year period for examination, transcription, and audit by OSA and/or DFA, its designees, or other authorized bodies.

**40. 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.

**41. Insurance**

The Auditor shall maintain throughout the Contract period, at its own expense, professional liability insurance. Such policy of insurance shall provide a minimum coverage of One Million Dollars (\$1,000,000) per occurrence, Three Million Dollars (\$3,000,000) annual aggregate through an insurance company licensed by the Mississippi Insurance Department. The Auditor shall annually provide DFA current Certificate(s) of Insurance which meets or exceeds reflects the minimum coverage requirements.

**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 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:                      Attention: Trust Administrator  
Mississippi State Agencies Self-Insured W/C Trust  
Post Office Box 24208  
Jackson, Mississippi 39225-4208

If to the Auditor:                                      Attention: Tom Wiygul, CPV, ABV  
Harper, Rains, Knight & Company, P.A.  
1052 Highland Colony Parkway, Suite 100  
Ridgeland, Mississippi 39157

If to OSA:

Attention: Stephanie Palmertree  
Office of the State Auditor  
P.O. Box 956  
Jackson, Mississippi 39205  
Facsimile: (601) 576-2687

**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 Financial Audit Services*, and
- B. The Auditor’s response to the Mississippi State Agencies Self-Insured Workers’ Compensation Trust’s Request for Proposal for Financial Audit Services dated July 12, 2019, attached hereto as **Exhibit B** and incorporated fully herein by reference;
- C. The Mississippi State Agencies Self-Insured Workers’ Compensation Trust’s Request for Proposal for Financial Audit Services dated June 11, 2019 attached hereto as **Exhibit C** and incorporated fully herein by reference.

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.**

**Harper, Rains, Knight & Company, P.A.**

**Mississippi Department of Finance and Administration:**

By: Thomas J. Wiygul  
 Name: THOMAS J. WIYGUL  
 Title: DIRECTOR  
 Date: 8/9/2019

By: Laura Jackson  
 Name: Laura Jackson  
 Title: Executive Director  
 Date: 8/12/19

**EXHIBIT A –  
FEE SCHEDULE FOR FINANCIAL AUDIT SERVICES**

Our firm’s unit rates (hourly charges), along with maximum annual project rates to provide financial audit services to the Mississippi State Agencies Self-Insured Workers’ Compensation Trust are listed below.

<b>HOURLY FEE BY POSITION</b>	<b>Year 1 8/9/19 – 6/30/20</b>	<b>Year 2 7/1/20 – 6/30/21</b>	<b>Year 3* 7/1/21 – 6/30/22</b>	<b>Year 4* 7/1/22 – 6/30/23</b>
Partner	\$210	\$212	\$214	\$216
Manager	\$150	\$153	\$156	\$159
Supervisor	\$138	\$140	\$142	\$144
Senior	\$125	\$127	\$129	\$131
Clerical	\$78	\$80	\$82	\$84

\* *Optional Renewal Period*

**MAXIMUM PROJECT COSTS\***

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 DFA.

<b>MAXIMUM PROJECT FEE</b>	<b>Year 1 8/9/19 – 6/30/20</b>	<b>Year 2 7/1/20 – 6/30/21</b>	<b>Year 3* 7/1/21 – 6/30/22</b>	<b>Year 4* 7/1/22 – 6/30/23</b>
Annual Audit of Financial Statements	\$12,500	\$13,000	\$13,400	\$13,800

\* *Optional Renewal Period*

The fees 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 DFA for any expense, cost, or fee not specifically authorized by the resulting contract. DFA will not pay any upfront fees prior to the August 9, 2019 contract effective date. All fees or charges related to any service to be provided must be identified.

**EXHIBIT B**

**THE AUDITOR'S RESPONSE TO THE MISSISSIPPI STATE AGENCIES SELF-INSURED  
WORKERS' COMPENSATION TRUST'S REQUEST FOR PROPOSAL FOR FINANCIAL AUDIT  
SERVICES DATED JULY 12, 2019**

**EXHIBIT C**

**THE MISSISSIPPI STATE AGENCIES SELF-INSURED WORKERS' COMPENSATION TRUST'S  
REQUEST FOR PROPOSAL FOR FINANCIAL AUDIT SERVICES DATED  
JUNE 11, 2019**