

**AMENDMENT NUMBER 2**  
**FINANCIAL AUDIT SERVICES CONTRACT**

**WHEREAS**, Mississippi Department of Finance and Administration (DFA), the Office of the State Auditor (OSA), and BKD, LLP (the Firm) entered into a Financial Audit Services Contract (Contract) on the 28<sup>th</sup> day of August, 2017; and

**WHEREAS**, the term of this Contract is for two years with three (3) one-year options to renew, based solely at DFA's and OSA's discretion, and is set to expire on August 27, 2019 and new or replacement contracts have not been entered into; and

**WHEREAS**, in accordance with **Item 6. Contract Term** of the original Contract, the parties are desirous of and in agreement to exercise the first of the Contract's three one-year renewal options and to renew the term of the Contract through August 27, 2020, under the same terms, conditions and guaranteed fees found in the original Contract except as herein noted; and

**WHEREAS**, effective January 1, 2018 the Personal Service Contract Review Board by operation of law became the Public Procurement Review Board, and the Office of Personal Service Contract Review became a part of the Department of Finance and Administration; and

**WHEREAS**, the Public Procurement Review Board has promulgated certain new and/or revised required contractual terms and conditions that became effective after the Contract was originally executed, and the parties desire to amend the Contract to comply with applicable requirements as follows:

- Delete **Subsection f of Item 5, Consideration**, in its entirety and replace with the following:

f. The Firm 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.

- Delete **Item 15. Procurement Regulations**, in its entirety and replace with the following:

**15. Procurement Regulations**

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

- Delete **Item 17. Representation Gratuities**, in its entirety and replace with the following:

**17. Representation Regarding Gratuities**

The Firm 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*.

- Delete **Subsection a.** of **Item 20. Termination for Convenience**, in its entirety and replace with the following:
  - a. DFA, with the written consent of OSA, may terminate this Contract, with or without cause, by providing a thirty (30) day written notice of termination to the Firm. 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.
- Delete **Subsection a.** of **Item 21. Termination for Default (Cause)**, in its entirety and replace with the following:
  - a. Upon the failure of either the Firm 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 Firm 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 26. Indemnification**, in its entirety and replace with the following:

## **26. Indemnification**

To the fullest extent allowed by law, the Contractor 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 Contractor and/or its partners, principals, agents, employees, and/or subcontractors in the performance of or failure to perform this Agreement. In the State's sole discretion, the Contractor may be allowed to control the defense of any such claim, suit, etc. In the event the Contractor defends said claim, suit, etc., the Contractor shall use legal counsel acceptable to the State. The Contractor shall be solely responsible for all costs and/or expenses associated with such defense and the State shall be entitled to participate in said defense. The Contractor shall not settle any claim, suit, etc., without the State's concurrence, which the State shall not unreasonably withhold. Subject to the limitations of the Mississippi Tort Claims Act, DFA agrees that it is responsible for the actions of its agents and employees and will defend the same to the fullest extent allowed by law. Nothing in this agreement shall have the effect of changing or altering or of eliminating any defense available to the State under the Tort Claims Act.

- Delete **Item 32. Disputes**, in its entirety and replace with the following:

### **32. 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 Firm. Such a resolution shall be reduced to writing and a copy thereof mailed or furnished to the Firm and shall be final and conclusive. If a resolution cannot be reached, the Firm shall mail or furnish to DFA and OSA a written request for review. The Firm 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 Firm shall proceed diligently with the performance of the duties and obligations of the contract.

- Renumber **Item 35. Incorporation of Documents** to be indexed as **Item 36**.
- Add the following new items to the Contract:

### **35. 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.

- Modify **Exhibit A, Financial Audit Services Fees**, to include the pricing of all duties within the Scope of Services from the original contract and those added through Amendment Number 1 and to appropriately define the terms covered by this pricing. These modifications are clarification in nature and do not change the originally submitted and approved pricing.

**AND WHEREAS**, the parties now desire the Contract to consist of this Amendment Number 2, 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 2, and if still unresolved, by reference to 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 modified by Amendment Number 1, and this Amendment Number 2 is hereby made a part of this Contract.

IN WITNESS WHEREOF, the parties hereto have caused this Amendment Number 2 to be executed on the date shown below:

**BKD, LLP**

Jerry M. Goolsby  
Signature

Jerry M. Goolsby  
Name

Partner  
Title

8/23/19  
Date

**Department of Finance and Administration**

Laura D. Jackson  
Signature

Laura D. Jackson  
Name

Executive Director  
Title

8/26/2019  
Date

**Office of the State Auditor**

Stephanie Palmertree  
Signature

Stephanie Palmertree  
Name

Director of Audit  
Title

8/27/19  
Date

## EXHIBIT A

### FINANCIAL AUDIT SERVICES FEES

For financial audit services for the Mississippi State and School Employees' Health Insurance Plan rendered under this agreement, the following hourly fees by position and maximum project fees are all-inclusive and include any expenses such as printing, binding, photocopy, and any travel:

<b>HOURLY FEE BY POSITION</b>	<b>Fiscal Year 2017 Audit</b>	<b>Fiscal Year 2018 Audit</b>	<b>Fiscal Year 2019 Audit</b>	<b>Fiscal Year 2020 Audit</b>	<b>Fiscal Year 2021 Audit</b>
<b>Partner</b>	<b>\$255</b>	<b>\$259</b>	<b>\$265</b>	<b>\$269</b>	<b>\$275</b>
<b>Senior</b>	<b>\$132</b>	<b>\$136</b>	<b>\$140</b>	<b>\$146</b>	<b>\$152</b>
<b>Staff</b>	<b>\$103</b>	<b>\$107</b>	<b>\$113</b>	<b>\$118</b>	<b>\$123</b>
<b>Administrative/Clerical</b>	<b>\$82</b>	<b>\$85</b>	<b>\$90</b>	<b>\$95</b>	<b>\$99</b>

<b>MAXIMUM PROJECT FEE</b>	<b>Fiscal Year 2017 Audit</b>	<b>Fiscal Year 2018 Audit</b>	<b>Fiscal Year 2019 Audit</b>	<b>Fiscal Year 2020 Audit</b>	<b>Fiscal Year 2021 Audit</b>
<b>Annual Financial Audit:</b>	<b>\$49,500</b>	<b>\$51,000</b>	<b>\$52,800</b>	<b>\$54,900</b>	<b>\$57,000</b>
<b>Estimated hours by staff level</b>					
<b>Partner</b>	<b>42</b>	<b>42</b>	<b>42</b>	<b>42</b>	<b>42</b>
<b>Senior</b>	<b>162</b>	<b>162</b>	<b>162</b>	<b>162</b>	<b>162</b>
<b>Staff</b>	<b>162</b>	<b>162</b>	<b>162</b>	<b>162</b>	<b>162</b>
<b>Administrative/Clerical</b>	<b>9</b>	<b>9</b>	<b>9</b>	<b>9</b>	<b>9</b>
<b>Total</b>	<b>375</b>	<b>375</b>	<b>375</b>	<b>375</b>	<b>375</b>

Third, fourth, and fifth year pricing will be used in the event any of the one-year extensions are exercised. All rates and maximum fees are guaranteed through the term of the Contract. Above hourly and project maximum fees are all-inclusive and include such items as copies, postage and other delivery charges, supplies, technology-related costs, such as computer processing, software licensing, research and library databases and similar expense items.

For financial audit services related to the GASB 74/75 audit services rendered under this agreement, the following hourly fees by position and maximum project fees are all-inclusive and include any expenses such as printing, binding, photocopy, and any travel:

<b>HOURLY FEE BY POSITION</b>	<b>Fiscal Year 2016/2017 Valuation</b>	<b>Fiscal Year 2018 Valuation</b>	<b>Fiscal Year 2019 Valuation</b>	<b>Fiscal Year 2020 Valuation</b>
<b>Partner</b>	<b>\$259</b>	<b>\$265</b>	<b>\$269</b>	<b>\$275</b>
<b>Manager</b>	<b>\$210</b>	<b>\$215</b>	<b>\$220</b>	<b>\$225</b>
<b>In-Charge</b>	<b>\$136</b>	<b>\$140</b>	<b>\$146</b>	<b>\$152</b>
<b>Independent Reviewer</b>	<b>\$259</b>	<b>\$265</b>	<b>\$269</b>	<b>\$275</b>
<b>Staff Level 1</b>	<b>\$107</b>	<b>\$113</b>	<b>\$118</b>	<b>\$123</b>
<b>Support</b>	<b>\$85</b>	<b>\$90</b>	<b>\$95</b>	<b>\$99</b>

<b>MAXIMUM PROJECT FEE</b>	<b>Fiscal Year 2016/2017 Valuation</b>	<b>Fiscal Year 2018 Valuation</b>	<b>Fiscal Year 2019 Valuation</b>	<b>Fiscal Year 2020 Valuation</b>
<b>Annual GASB 74/75 Audit</b>	<b>\$31,000</b>	<b>\$27,900</b>	<b>\$29,000</b>	<b>\$30,000</b>

## AMENDMENT NUMBER 1

### FINANCIAL AUDIT SERVICES CONTRACT

**WHEREAS** the Mississippi Department of Finance and Administration (DFA), the Office of the State Auditor (OSA), and BKD, LLP (the Firm) entered into a contract (Contract), under which the Firm agreed to render financial audit services with respect to DFA's financial statements for the Mississippi State and School Employees' Life and Health Insurance Plan (the Plan) for the fiscal years ending June 30, 2017, and June 30, 2018, with three (3) one-year options to renew, and

**WHEREAS**, DFA is desirous of amending the Contract to engage the services of BKD to audit the allocation schedules and related schedules of Other Postemployment Benefits (OPEB) amounts and related footnotes in connection with the Government Accounting Standards Board (GASB) Statement 75 Report for the Mississippi State and School Employees' Life and Health Insurance Plan (Plan), and the GASB Statement 74 statement of fiduciary net position and changes in fiduciary net position of the Trust associated with the OPEB for the Plan, hereafter referred to as GASB 74/75 audit services, for the stated objective of expressing an opinion on the conformity of the financial statements, in all material respects, with accounting principles generally accepted in the United States of America; and

**WHEREAS**, BKD is qualified, able, and agreeable to provide the aforementioned services in conformity with the applicable guidelines and regulations, including but not necessarily limited to, *Government Auditing Standards* issued by the Comptroller General of the United States, as well as in compliance with applicable provisions of the GASB 74 and 75 statements; and

**WHEREAS**, BKD will plan and perform the audits to obtain reasonable rather than absolute assurance about whether the financial statements are free of material misstatement, and upon completion of the aforementioned audit services, BKD will issue written reports addressed to the State of Mississippi State and School Employees Health Insurance Management Board; and

**WHEREAS**, the following schedule of hourly fees by position and the maximum project fees to be paid by DFA to BKD for the aforementioned services will apply, with said fees being all-inclusive to include but limited to any expenses incurred by BKD for printing, binding, photocopy, postage and other delivery charges, supplies, technology-related costs, computer processing, software licensing, research, and any travel, unless specifically approved in writing by DFA:

HOURLY FEE BY POSITION	Year 1*	Year 2*	Year 3*	Year 4*	Year 5*
Partner	N/A	\$259	\$265	\$269	\$275
Manager	N/A	\$210	\$215	\$220	\$225
In-Charge	N/A	\$136	\$140	\$146	\$152
Independent Reviewer	N/A	\$259	\$265	\$269	\$275
Staff Level 1	N/A	\$107	\$113	\$118	\$123
Support	N/A	\$85	\$90	\$95	\$99

MAXIMUM PROJECT FEE	Year 1*	Year 2*	Year 3*	Year 4*	Year 5*
Annual GASB 74/75 Audit:	N/A	\$31,000	\$27,900	\$29,000	\$30,000

\*First year of the Contract has expired prior to this amendment. Third, fourth and fifth year pricing will be used in the event any of the one-year extensions in the Contract are exercised. All rates and maximum fees are guaranteed through the term of the Contract.

**WHEREAS**, the parties now desire the Contract to consist of this Amendment Number 1, and the Contract. 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 Proposal, and if still unresolved, by reference to the Request for Proposals.

**NOW THEREFORE**, the Board, the OSA, and the Firm covenant and agree, each to the other to add GASB 74/75 audit services as described herein to this Contract effective September 1, 2018. The Contract now consists of this Amendment Number 1 and the Contract. Any ambiguities, conflicts or questions of the interpretation of this agreement 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 Proposal, and if still unresolved, by reference to the Request for Proposals. 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 the Contract.

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

BKD, LLP

By: Troy T Burns  
Name: Troy T Burns  
Title: Partner  
Date: 11/14/18

Mississippi Department of Finance and Administration

By: Laura Jackson  
Name: Laura Jackson  
Title: Executive Director  
Date: 11/13/18

Office of the State Auditor

By: Stephanie Palmertree  
Name: Stephanie Palmertree  
Title: Director of Audit  
Date: 11/15/18

## CONTRACT FOR PROFESSIONAL SERVICES

This Contract, entered into as of this 7<sup>th</sup> day of December, 2018, by and between the Department of Finance and Administration, hereinafter referred to as the "Agency," the Office of the State Auditor, hereinafter referred to as the "OSA", and BKD, LLP, hereinafter referred to as the "Firm".

1. The Agency and OSA desire to engage the Firm to render certain professional services described within this contract and in the attached Agreed Upon Procedures (AUP) Schedule with respect to the Agency's fiscal years ending June 30, 2016 and 2017 Health and Life Insurance census data.
2. The Firm shall receive as compensation as an independent contractor for the described auditing services a fee not to exceed \$30,000, including any and all necessary overhead and/or travel expenses, plus any amount authorized by a duly executed amendment as provided in paragraph 20 of this contract. Said fee is fixed but is based on an average of \$160.00 for each hour of work performed for services rendered pursuant to this contract.
3. Said fees are based on the expectation that the Agency's records are complete and up-to-date and that the Agency will provide, on a timely basis, assertions, census data, related schedules and supporting information, including communication of all significant accounting matters, as well as clerical assistance as is normal and reasonable in the circumstances. If such records, schedules, etc., are not provided or other unforeseen conditions or events arise, the Firm will confer with the Agency and OSA to mutually revise the fee to reflect the additional effort required of the Firm to achieve its objectives.
4. The State of Mississippi requires the Firm to submit invoices electronically throughout the term of the agreement. Vendor invoices shall be submitted to the Agency using the processes and procedures identified by the State. Payments by the Agency using Mississippi Accountability System for Government Information and Collaboration (MAGIC) shall be made and remittance information provided electronically as directed by the State. These payments shall be deposited into the bank account of the Firm's choice. The Firm understands and agrees that the State is exempt from the payment of taxes. All payments shall be in United States currency.
5. The Firm's invoices will outline the work performed and the number of hours worked. The Agency will pay ninety percent (90%) of each invoice and will retain the remaining ten percent (10%) until final payment is made. The Agency will pay such invoices in accordance with the law related to timely payment for purchases by public bodies (Miss. Code Ann. Section 31-7-301 et seq., Rev.1990). The final payment, including retained amounts, shall be made after completion and acceptance of the audit services. In no instance will a payment be made in excess of the contract amount.
6. Compensation to the Firm for travel, meals and/or lodging shall be allowed subject to the following criteria:
  - a. In order to be compensable by the Agency, travel expenses must be reasonable and necessary for the fulfillment of the project and contractual obligations;
  - b. 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; and
  - c. Personal automobile mileage will be reimbursed at the prevailing rate that State officers and employees traveling on official State business are reimbursed.

7. The AUP services will be made in conformity with the following guidelines and regulations:
- i. The Firm has the responsibility to conduct and will conduct the attestation of the Agency's records in accordance with attestation standards promulgated by the American Institute of Certified Public Accountants (AICPA) and the standards for attestation engagements contained in *Government Auditing Standards*, issued by the Comptroller General of the United States, with the objective of issuing a written practitioner's report that describes the procedures applied, and any findings in regards to those procedures.
  - ii. Chapter 14 of the AICPA Audit and Accounting Guide, Issued March 1, 2018, as applicable.
  - iii. Statements of financial accounting standards # 75 as prescribed by the Governmental Accounting Standards Board, as applicable.
    - a. An agreed-upon procedures engagement is one in which a practitioner is engaged to issue, or does issue, a practitioner's report of findings based on specific agreed-upon procedures applied to subject matter for use by specified parties. Because the specified parties require that findings be independently derived, the services of a practitioner are obtained to perform procedures and report the practitioner's findings. The specified parties determine the procedures they believe to be appropriate to be applied by the practitioner.
    - b. The responsibility of the Firm is to carry out the procedures and report the findings in accordance with the attestation standards. The Firm assumes the risk that misapplication of the procedures may result in inappropriate findings being reported. Furthermore, the Firm assumes the risk that appropriate findings may not be reported or may be reported inaccurately. The Firm's, in order to reduce risk, will perform adequate planning and supervision and due professional care in performing the procedures, accumulating the findings, and preparing the Firm's report.
    - c. Subject to the last sentence of the paragraph, the Firm will issue a written report upon completion of the Firm's engagement of the Agency's records. We realize that the Firm cannot provide assurance that there will be no findings or that an unqualified opinion will be expressed.
    - d. The Firm has no responsibility to determine the differences between the agreed-upon procedures to be performed and the procedures that the Firm would have determined to be necessary had the Firm been engaged to perform another form of attestation engagement. The procedures that the Firm agrees to perform pursuant to an agreed-upon procedures engagement may be more or less extensive than the procedures that the Firm would determine to be necessary had it been engaged to perform another form of engagement.
    - e. Management of the Agency acknowledges and understands that they have responsibility for providing written assertions about the measurement or evaluation of the subject matter detailed in the AUP Services Schedule.
    - f. Management of the Agency also acknowledges and understands that it is their responsibility to provide the Firm with: i) access to all information of which management is aware that is relevant to the preparation of information such as records, documentation, and other matters; ii) additional information that the Firm may request from management for purposes of the engagement; and iii) unrestricted access to persons within the entity from whom the Firm determines it necessary to obtain appropriate evidence. As required by attestation standards,

the Firm will obtain a representation letter from certain members of the Agency's management about these matters. The responses to the Firm's inquiries, the written representations, and the results of attestation tests, among other things, comprise the evidential matter the Firm will rely upon in preparing their report.

- g. Management of the Agency is responsible for providing written representations regarding the Agency's assertions, any information from regulatory agencies or others affecting the subject matter of the assertions, acknowledgement of responsibility for the subject matter and the assertion, acknowledgement that access to all records relevant to the subject matter has been authorized and that the Agency has disclosed any other matters to the Firm that the Firm deems appropriate. Because of the importance of management's representations to the effective performance of the Firm's services, the Agency agrees, to the extent allowed by State law, to release the Firm and its personnel from any claims, liabilities, costs and expenses relating to the Firm's services under this letter attributable to any misrepresentations in the representation letter referred to above. The provisions of this paragraph shall apply regardless of the form of action, damage, claim, liability, cost, expense, or loss asserted, whether in contract, statute, tort (including but not limited to negligence) or otherwise.
  - h. In accordance with *Government Auditing Standards*, the Firm will communicate any significant deficiencies, material weaknesses, instances of fraud, noncompliance with provisions of laws, regulations, contracts or grant agreements, or abuse that comes to the Firm's attention during the course of the engagement.
  - i. If, during the performance of the Firm's audit procedures, circumstances arise which make it necessary to modify their report or withdraw from the engagement, the Firm will communicate its reasons for modification or withdrawal.
  - j. The Firm acknowledges and agrees that OSA will rely on the work of the Firm in order to issue an opinion on the audit of the Comprehensive Annual Financial Report of Mississippi and agrees to allow OSA to review the workpapers and programs of the Firm. The Firm further acknowledges that this work is being performed under the guidance and control of OSA in accordance with AU-C 600.
  - k. The Firm acknowledges that the Agency and OSA are relying on the timely completion of this contract in its scheduling and budgeting and that time is of the essence. If the Firm fails to meet the completion date prescribed herein, the Agency and/or OSA may, at their option, reduce the agreed compensation by an amount not to exceed ten percent (10%) of the total contract amount as liquidated damages for the failure to complete the contract by the completion date provided the failure to meet the report delivery deadline is not the result of Agency delays.
  - l. The Firm shall commence work as soon as the contract has been ratified and will provide to OSA and DFA a draft report no later than December 30, 2018. Upon completion of the report, OSA will be given two weeks to review any and all workpapers of the firm. A completed report will be issued no later than January 15, 2019.
8. The contract shall expire one hundred twenty (120) days after the report release date of the CAFR so that any questions raised during the engagement may be resolved.
9. The procedures as agreed upon by the Firm, the Agency and OSA are hereby incorporated herein as part of this contract, see attachment.

10. The Firm shall submit a monthly progress report which details the work completed the preceding month to the Agency and OSA authorized representatives. The report shall be delivered within ten (10) days after the end of the preceding month. The Firm also agrees to provide OSA and the Agency with Status Updates sporadically as requested by either party.
11. The Agency with the written consent of the OSA's authorized representative is empowered to accept or reject the services furnished by the Firm in compliance with the material provisions of this contract and the attached Audit Services schedule. However, any rejection of services must be based solely on the Firm's failure to comply with the material terms of this contract, and cannot be based on the nature of the Firm's opinion on the financial status of the Agency in its audit report. However, prior to termination of this contract by the Agency, the Agency must provide written justification to the OSA documenting the reasons for requesting the contract be terminated. The Agency must obtain written approval from the OSA prior to terminating the contract.
12. The Firm shall have a certified public accountant (CPA) as the certifying official of the final reports.
13. The work papers prepared in conjunction with the services under this contract are the property of the Firm, constitute confidential information and will be retained by the Firm in accordance with its policies and procedures. These records shall be maintained for at least seven (7) 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 seven (7) year period, or if audit findings, litigation or other legal action has not been resolved at the end of the seven (7) year period, the records shall be retained until resolution. The firm agrees to make its work papers available to subsequent fiscal year audit firms. Upon request by the Agency or OSA, any data, files and records collected by the Firm will be destroyed or returned to the Agency or OSA. The Firm 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 Firm 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 Firm 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 Firm's personnel. Furthermore, upon request, the Firm may provide photocopies of selected work papers, excluding personal health information (PHI) as defined under HIPAA, to Regulators. Such Regulators may intend, or decide, to distribute the photocopies or information contained therein to others, including other government agencies.
14. Except as may otherwise be required by law or permitted under this Contract, the Firm may not release any confidential and/or protected information or reports relative to the Board's and/or DFA's contracts without prior written authorization by DFA.
15. To the extent any applicable personal health information (PHI) is reviewed, the Firm agrees to the provisions, terms and conditions of the attached Business Associate Statement. The Firm recognizes that it may have access to certain confidential and proprietary information pertaining to the business of DFA, including but not limited to, policy benefits, names and addresses of Plan Participants, employer units and contracts with other parties. The Firm agrees that it will not, at any time, directly or indirectly, disclose such confidential or proprietary information, including any and all medical, financial, and personal information reviewed and collected in connection with this Contract regarding individual Plan Participants, to any other person or organization that is not a party to this contract for any purpose, except as may be required by law, authorized by the individual to which such information pertains, or as reasonably relates to the services being provided by the Firm and

contemplated by the terms of the Contract, without the express, written approval of DFA. Any and all medical, financial, and personal information reviewed and collected in connection with this Contract regarding individual Plan Participants shall be held in strict confidence in compliance with all applicable state and federal legal requirements, specifically the provisions of the Health Insurance Portability and Accountability Act (HIPAA) and shall not be released, disclosed, published, or used for any purpose not defined in this Contract by the Firm or OSA without the written consent of DFA, except to DFA. Except as otherwise provided under this Contract, the Firm agrees that confidential information including, but not limited to, medical and other pertinent information relative to Plan Participants in the Plan, shall not be disclosed to any person or organization that is not a party to this contract for any purpose, other than in connection with Firm's performance of the services under this Contract, without the expressed, written authority from DFA or as otherwise required by law

16. Upon the failure of either the Firm or DFA to perform any obligation or observe any covenant required hereunder, the non-defaulting party 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, and OSA must approve the termination. 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 Firm 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.
  - a. Notwithstanding termination of this Contract and subject to any directions from DFA and/or OSA, the Firm shall take timely, reasonable, and necessary action to protect and preserve property in the possession of the Firm in which DFA has an interest.
  - b. In the event of termination for cause, the Firm will be entitled to payment for services in an amount which bears the same ratio to the total compensation as the services actually performed bear to the total services of the Firm covered by the Contract, less payments previously made. In no instance will a payment be made in excess of the Contract amount. All finished or unfinished tests, surveys, checklists, forms, manuals, reports or other material prepared by the Firm under this Contract shall become the property of DFA and OSA.
  - c. Except with respect to defaults of subcontractors, the Firm 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 Firm to make progress in the prosecution of the work hereunder which endangers performance) if the Firm has notified the 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. 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 Firm shall not be deemed to be in default, unless the services to be furnished by the subcontractor were reasonably obtainable from other sources in sufficient time to permit the Firm to meet the Contract requirements. Upon request of the Firm, the DFA shall ascertain the facts and extent of such failure, and, if the DFA determines

that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, the Firm's progress and performance would have met the terms of the Contract, the delivery schedule shall be revised accordingly, subject to the rights of the DFA under the clause of this Contract entitled "Termination for Convenience".

- d. If, after notice of termination of the Firm'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".
  - e. The rights and remedies provided under this clause are in addition to any other rights and remedies provided by law or under this Contract.
- 17. DFA may terminate this Contract, with or without cause, by providing a thirty (30) day written notice of termination to the Firm. However, prior to termination of this Contract by DFA, DFA must provide written justification to OSA documenting the reasons for requesting the Contract be terminate. The Agency must obtain written approval from the OSA prior to terminating the contract.
  - 18. In the event of termination for convenience, the Firm will be entitled to payment for services in an amount which bears the same ratio to the total compensation as the services actually performed bear to the total services of the Firm covered by the Contract, less payments previously made. In no instance will a payment be made in excess of the Contract amount. All finished or unfinished tests, surveys, checklists, forms, manuals, reports or other material prepared by the Firm under this Contract shall become the property of OSA.
  - 19. This Contract may be terminated in whole or in part by the DFA upon written notice to the Firm and a copy to OSA, if the Firm should become the subject of bankruptcy or receivership proceedings, whether voluntary or involuntary, or upon the execution by the Firm of an assignment for the benefit of its creditors. In the event of such termination, the Firm 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.
  - 20. The Agency, the OSA or the Firm may, from time to time, request changes in the scope of services of the Firm to be performed thereunder. Such changes, including any increase or decrease in the amount of the Firm's compensation, which are mutually agreed upon by and between the Agency, the OSA, and the Firm, shall be included in written amendments to this contract signed by all parties prior to the work being performed.
  - 21. The Firm shall not assign or otherwise transfer the obligations incurred on its part pursuant to the terms of this contract without the prior written consent of the Agency and OSA. Any attempted assignment or transfer of its obligation without such consent shall be wholly void. All obligations and duties of either party under this contract shall be binding on all successors in interest or assigns of such party.
  - 22. Contractor understands that the Agency 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.

23. To the fullest extent allowed by law, the Firm shall indemnify, defend, save and hold harmless, protect, and exonerate the State of Mississippi, its Commissioners, Board Members, officers, employees, agents, and representatives 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 Firm and/or its partners, principals, agents, employees, and/or subcontractors in the performance of or failure to perform this Contract. In the State's sole discretion, the Firm may be allowed to control the defense of any such claim, suit, etc. In the event the Firm defends said claim, suit, etc., the Firm shall use legal counsel acceptable to the State; the Firm shall be solely liable for all reasonable costs and/or expenses associated with such defense and the State shall be entitled to participate in said defense. The Firm shall not settle any claim, suit, etc., without the State's concurrence, which the State shall not unreasonably withhold. The Firm does not indemnify the State of Mississippi, its Commissioners, Board Members, officers, employees, agents, and representatives for damages, losses, or costs arising from lawsuits, claims, or settlements that relate, directly or indirectly, to acts by the State of Mississippi, its Commissioners, Board Members, officers, employees, agents, or representatives. 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.
24. 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 Firm shall comply with applicable federal, state, and local laws and regulations.
25. If any term or provision of this contract is prohibited by the laws of the State of Mississippi or declared invalid or void by a court of competent jurisdiction, the remainder of this contract shall not be affected thereby and each term and provision of the contract shall be valid and enforceable to the fullest extent permitted by law.
26. The Firm 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.
27. The Firm 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.
28. The Firm certifies that the price submitted in response to the solicitation has been arrived at independently and without – for the purpose of restricting competition – any consultation, communication, or agreement with any other bidder or competitor relating to the price, the intention to submit a bid, or the methods or factors used to calculate the price bid.
29. The Firm certifies to the best of its knowledge and belief, that it and its principals:
  - a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by an Federal department or Agency;

- b. Have not within a three-year period preceding this contract been convicted or had a civil judgment rendered against them 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; 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;
  - c. Are not presently indicted or otherwise criminally or civilly charged by a government entity (Federal, State or local) with commission of any of the offenses enumerated in item b. of this certification; and
  - d. Have not within a three-year period preceding this contract had one or more public transactions (Federal, State or local) terminated for cause or default.
30. The Firm shall, during the entire term of this contract, be construed to be an independent contractor. Nothing in this contract is intended to nor shall be construed to create an employer-employee relationship, or a joint venture relationship.
31. The Firm represents that it is qualified to perform the duties to be performed under this contract and that it has, or will secure, if needed, at its own expense, applicable personnel who are qualified to perform the duties required under this contract. Such personnel shall not be deemed in any way, directly or indirectly, expressly or by implication, to be employees of the Agency or the OSA. Any person assigned by the Firm to perform the services hereunder shall be the employee of the Firm, who shall have the sole right to hire and discharge its employee.
32. The Firm shall pay when due, all salaries and wages of its employees and accepts exclusive responsibility for the payment of federal income tax, state income tax, social security, unemployment compensation and any other withholdings that may be required.
33. Neither the Firm nor employees of the Firm are entitled to state retirement or leave benefits.
34. It is further understood that the consideration expressed herein constitutes full and complete compensation for all services and performance hereunder, and that any sum due and payable to the Firm shall be paid as a gross sum with no withholdings or deductions being made by the Agency for any purpose from said contract sum except as permitted in Paragraph 6(k).
35. Failure of any party hereto to insist upon strict compliance with any of the terms, covenants and conditions hereof shall not be deemed a waiver or relinquishment of any similar right or power hereunder at any subsequent time or of any other provision hereof, nor shall it be construed to be a modification of the terms of the contract.
36. 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 this 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 such funds were provided, or if funds are not otherwise available to the State, DFA shall have the right upon ten (10) working days written notice to the Firm, 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.

37. The Firm represents that it will maintain workers' compensation insurance which shall inure to the benefit of all the Firm's personnel provided hereunder, comprehensive general liability or professional liability insurance, and, where applicable, employee fidelity bond insurance.
38. Any dispute concerning a question of fact arising under this contract shall be disposed of by good faith negotiation between duly authorized representatives of the Agency, OSA and the Firm. Such a resolution shall be reduced to writing and a copy thereof mailed or furnished to the Firm and shall be final and conclusive. If a resolution cannot be reached, the Firm shall mail or furnish to the Agency and OSA a written request for review. The Firm 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 Firm shall proceed diligently with the performance of the duties and obligations of the contract.
39. This contract, including the documents and schedules previously discussed in paragraph 7(h) and paragraph 10, constitutes the entire agreement of the parties with respect to the subject matter contained herein and supersedes and replaces any and all prior negotiations, understandings and agreements, written or oral, between the parties relating thereto. A separate engagement letter is being issued covering items required to communicate professional standards that are not covered by the Contract for Professional Services.
40. If applicable, the Firm 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. Miss. Code Ann. §§ 71-11-1 et seq. The term "employee" as used herein means any person that is hired to perform work within the State of Mississippi. As used herein, "status verification system" means the Illegal Immigration Reform and Immigration Responsibility Act of 1996 that is operated by the United States Department of Homeland Security, also known as the E-Verify Program, or any other successor electronic verification system replacing the E-Verify Program. The Firm agrees to maintain records of such compliance. Upon request of the State and after approval of the Social Security Administration or Department of Homeland Security when required, the Firm agrees to provide a copy of each such verification. The Firm further represents and warrants that any person assigned to perform services hereafter meets the employment eligibility requirements of all immigration laws. The Firm understands and agrees that any breach of these warranties may subject the Firm to the following: (a) termination of this Contract and ineligibility for any State or public contract in Mississippi for up to three (3) years, with notice of such cancellation/termination being made public, or (b) the loss of any license, permit, certification or other document granted to the Firm 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 termination/cancellation, the Firm 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.
41. This Contract, including any accompanying exhibits, attachments, and appendices, is subject to the "Mississippi Public Records Act of 1983," and its exceptions. See Miss. Code Ann. §§ 25-61-1 et seq. (1972, as amended) and Miss. Code Ann. § 79-23-1 (1972, as amended). In addition, this Contract is subject to the provisions of the Mississippi Accountability and Transparency Act of 2008.

Miss. Code Ann. §§ 27-104-151 et seq. (1972, as amended). 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 Firm 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. Notwithstanding any provision to the contrary contained herein, it is recognized that DFA is a public agency of the State of Mississippi and is subject to the Mississippi Public Records Act, Mississippi Code Annotated 25-61-1, et seq. If a public records request is made for any information provided to DFA pursuant to this Contract, DFA shall promptly notify the Firm, and will respond to the request in accordance with procedures and limitations set forth in applicable law. If the Firm does not obtain protection from the appropriate court, all information supplied whether marked confidential or not, may be released. DFA shall not be liable to the Firm for disclosures of information required by court order or required by law.

42. The Firm agrees to accept all payments in United States currency via the State of Mississippi's electronic payment and remittance vehicle. The 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 DFA within forty-five (45) days of receipt of the invoice. Miss. Code Ann. §§ 31-7-305.
43. 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.
44. It is expressly understood that Mississippi law requires that the provisions of this Contract which contain 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.
45. No oral statement of any person shall modify or otherwise affect the terms, conditions, or specifications stated in this Contract. All modifications to this Contract must be made in writing by DFA, OSA, and the Firm.
46. The Firm shall give DFA prompt notice in writing of any action or suit filed and prompt notice of any claim made against the Firm by any entity that may result in litigation related in any way to this Contract. DFA shall give the Firm prompt notice in writing of any action or suit filed and prompt notice of any claim made against DFA by any entity that may result in litigation related in any way to this Contract.
47. Whenever, under the Contract, any sum of money shall be recoverable from or payable by the Firm to DFA, the same amount may be deducted from any sum due to the Firm under the Contract or under any other contract between the Firm 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 Firm.

48. Any notices required or authorized under this contract shall be delivered to the persons at the addresses designated in this paragraph. Each party may change the person and address designated by delivering written notice to the other party. Any notice shall be effective when actually delivered to the designated address.

For Agency: Laura Jackson  
Executive Director  
Department of Finance & Administration  
P.O. Box 267  
Jackson, MS 39205

For Firm: Tim Burns, CPA  
Partner, BKD LLP  
180 E. Capitol Street, Suite 500  
Jackson, MS 39201-2190

For OSA: Stephanie Palmertree, CPA, CGMA  
Director, Finance and Compliance Division  
State Auditor's Office  
501 North West Street, 801 Woolfolk Building  
Jackson, MS 39201

In witness whereof this contract has been executed.

SIGNED: 

TITLE: Executive Director

AGENCY: Department of Finance and Administration

DATE: 12/7/2018

SIGNED: 

TITLE: Partner

FIRM: BKD, LLP

DATE: 12/7/18

SIGNED: 

TITLE: Director, Department of Audit

FIRM: State Auditor's Office

DATE: 12/7/18

## AUP SERVICES SCHEDULE – Appendix A

### For 2016 and 2017 proportionate Share Census Data testwork:

The purpose of this testwork is to ensure the census data submitted by employers to the Mississippi State and School Employee's Life and Health Insurance Plan (OPEB Plan) is complete and accurate. Additionally, the purpose is to ensure census information submitted to the actuary for the proportionate share calculation and OPEB liability reflects the same information that was submitted by the plan participants. Sample procedures below will be performed for participants in the June 30, 2016 OPEB Plan Census.

- Obtain any necessary information (i.e. engagement letter) that is required by AT-C 215. Follow any standards as required by AT-C 215 for procedures and the report issued (AT-C 215.35).
- Obtain a listing of written assertions from Department of Finance and Administration for the census data.
- Obtain a listing of all entities that comprise the liability reported on the State of Mississippi CAFR. Ensure that any separate opinion units are excluded from listing (IHL, Enterprise funds, DCU's, etc).
  - Provide List to OSA for assistance in identifying appropriate agencies to exclude.
  - OSA will approve final list to ensure completeness and will provide written representation of their agreement.
- OSA will stratify the population by employer, based on number of employees enrolled in the plan based on information from census data.
- Select a sample of 60 participants (using stratification criteria listed below).
  - From the largest 10 employers, sample two employees from each Agency (20 employees)
  - From the second largest strata totaling 38 employers, select a sample of 10 additional employees irrespective of Agency.
  - Agencies in the bottom strata are deemed immaterial and will not be sampled.
- Obtain and document understanding of how Agencies submit OPEB data to the plan. Perform this step in two ways, if applicable
  - Obtain and document understanding of the general procedures utilized by DFA Insurance to receive information from Agencies.
  - If applicable, obtain and document any additional procedures or controls utilized by individual Agencies from which employees are sampled in a format to be agreed to by OSA during fieldwork.
- Obtain complete census data provided to actuary used to calculate OPEB liability. From the complete census data, only using Employers who are participants of the general fund of the CAFR, select a sample of 30 participants in the plan based on stratification detailed above. Trace the participants from the census data for inclusion in the respective agencies payroll records in SPAHRS or the agency's payroll processing program if different than SPAHRS.
- Using the same Agencies selected above and each ones individual selection count, select a sample of 30 total additional participants from the payroll records of the Agencies. These participants should be traced from the payroll records to inclusion (or exclusion if applicable) of the census data.
- Agree the following demographic attributes of your sample to the **“State of Mississippi State and School Employees’ Health Insurance Plan Application for Coverage”** for all 60 participants selected:

- Employee First Name
- Employee Last Name
- Social Security Number (to ensure testing accurate employee)
- Date of Birth
- Hire Date
- Date of Retirement (if applicable)
- Gender

Investigate and evaluate the effect of any discrepancies. If necessary, expand sample in a manner agreed to by the OSA. OSA will determine the need for additional sampling based on results.

Note: If a sample item is selected that is NOT included in the census data; ensure that the employee has completed the State of Mississippi State and School Employees' Health Insurance Plan Application for Coverage and "waived" coverage or that the employee is not otherwise eligible and is properly excluded from the census data.

Hire date and Date of retirement (if applicable) should also be traced to "Current Employee Report for Agency" out of SPAHRS. Any other equivalent report from SPAHRS can be used to verify this information if the Current Employee Report for Agency is not available for a particular agency. Investigate and evaluate the effect of any discrepancies in conjunction with OSA.

- Perform additional verification of census data based on fraud risk factors identified by OSA. The specific procedures will be agreed to by the OSA during fieldwork and will be documented in the final report.

## Appendix B

### BUSINESS ASSOCIATE STATEMENT

This Business Associate Statement (BAS) supplements and is made part of the Agreed-Upon Procedures Engagement Services (AUP) Contract (Contract) entered into by and between BKD, LLP (Business Associate) and the Mississippi Department of Finance and Administration (DFA) and the Office of the State Auditor of Mississippi (OSA), and shall apply to the Business Associate's services provided pursuant to the Contract relating to the State and School Employee's Health Insurance Plan ("Covered Entity"). This BAS shall become effective the date that the Contract is fully signed by the Business Associate and DFA.

Whereas, DFA and Business Associate have entered into the Contract, and whereas the parties are entering into this BAS to satisfy certain standards and requirements of the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA") and regulations promulgated thereunder by the U.S. Department of Health and Human Services ("HHS") (the "HIPAA Regulations") and other applicable laws, including the American Recovery and Reinvestment Act ("ARRA") of 2009.

Whereas, the Covered Entity wishes to disclose certain information ("Information") to Business Associate pursuant to the terms of the Contract, some of which may constitute Protected Health Information ("PHI").

Whereas, the Covered Entity desires and directs Business Associate to share PHI with other Business Associates of the Covered Entity.

Therefore, in consideration of mutual promises below and exchange of information pursuant to this BAS, the parties agree as follows:

**1. Definitions.**

Terms used, but not otherwise defined, in this BAS shall have the same meaning as those terms in the Standards for Privacy of Individually Identifiable Information (the "Privacy Rule") and the Security Standards under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"). In the event of an inconsistency between the provisions of this BAS and mandatory provisions of the Privacy Rule and or the Security Standards, as amended, the Privacy Rule and/or the Security Standards shall control. Where provisions of this BAS are different than those mandated in the Privacy Rule and/or the Security Standards, but are nonetheless permitted by the Privacy Rule and/or the Security Standards, the provisions of this BAS shall control.

- a. Breach. Breach shall be as defined in HITECH and the HIPAA regulations at 45 CFR § 164.402.
- b. Business Associate. Business Associate shall have the meaning given to such term under the HIPAA Regulations, including, but not limited to, 45 CFR § 160.103.
- c. Covered Entity. Covered Entity shall have the same meaning given to such term under the HIPAA Regulations, including, but not limited to, 45 CFR § 160.103.
- d. Electronic Health Record. Electronic Health Record shall have the same meaning as the term "electronic health record" in the Health Information Technology for Economic and Clinical Health Act ("HITECH" Act), which is an electronic record of health-related information on an individual that is "created, gathered, managed and consulted by authorized health care clinicians and staff".

- e. Electronic Media. Electronic Media has the meaning as the term “electronic media” in 45 in CFR § 160.103, which is:
- i. Electronic storage media including memory devices in computers (hard drives) and any removable/transportable digital memory medium, such as magnetic tape or disk, optical disk, or digital memory card; or
  - ii. Transmission media used to exchange information already in electronic storage media. Transmission media include, for example, the internet (wide-open), extranet (using internet technology to link a business with information accessible only to collaborating parties), leased lines, dial-up lines, private networks, and the physical movement of removable/transportable electronic storage media. Certain transmissions, including of paper, via facsimile, and of voice, via telephone, are not considered to be transmissions via electronic media because the information being exchanged did not exist in electronic form before the transmission.
- f. Electronic Protected Health Care Information or (EPHI). EPHI has the meaning as the term ‘electronic protected health care information’ in 45 CFR § 160.103, and is defined as that received from or received on behalf of the Covered Entity.
- g. Individual. Individual shall have the same meaning as the term “individual” in 45 CFR § 164.501 and shall include a person who qualifies as a personal representative in accordance with 45 § CFR 164.502(g).
- h. Limited Data Set. Limited Data Set shall have the same meaning as the term “limited data set” as set forth in as defined in 45 CFR 164.514(e)(2).
- i. Privacy Rule. Privacy Rule shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 § CFR part 160 and part 164, subparts A and E.
- j. Protected Health Information or (PHI). PHI shall have the same meaning as the term “protected health information” in 45 CFR § 164.501, limited to the information created or received by Business Associate from or on behalf of the Covered Entity.
- k. Required By Law. Required By Law shall have the same meaning as the defined term “required by law” in 45 § CFR 164.103 except the term “covered entity” therein shall be replaced with “business associate” or “person,” as applicable.
- l. Security Incident. Security Incident has the meaning in 45 CFR § 164.304, which is: the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system.
- m. Security Standards. Security Standards shall mean the Security Standards under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) codified at 45 CFR Parts 160 and 164 (Security Rule), as amended.
- n. Unsecured PHI. Unsecured PHI as defined in HIPAA and the HIPAA regulations at 45 CFR § 164.402, means protected health information that is not rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of technology or methodology specified by the Secretary in guidance issued under 13402(h)(2) of Public Law 111-5 on HHS website.

- o. Unsuccessful Trivial Security Incident. Unsuccessful Trivial Security Incident means an act or occurrence that may constitute a Security Incident but that was trivial and did not result in unauthorized access, use, or disclosure of Protected Health Information that is Electronic Protected Health Information, including without limitation “pings” and other broadcast attacks on Business Associate’s firewall, port scans, unsuccessful log-on attempts, and denials of service.

## **2. Obligations and Activities of Business Associate.**

- a. Compliance with Applicable Laws. Business Associate shall fully comply with the standards and requirements of the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (“HIPAA”), the American Recovery and Reinvestment Act of 2009, Public Law 111-5 (“ARRA”) and regulations promulgated thereunder by the U.S. Department of Health and Human Services (the “HIPAA Regulations”) and other applicable laws as of the date(s) the requirements under these laws become effective for Business Associates. This compliance shall include all requirements noted in Section 13404(a), (b) and (c) of the HITECH Act.
- b. Business Associate directly subject to certain HIPAA provision. Under HITECH, Business Associates acknowledges that it is directly subject to certain HIPAA provisions including Sections 13401, 13404, 13405.
- c. Use and Disclosure of Protected Health Information. Business Associate may use and/or disclose the Covered Entity’s PHI received by Business Associate pursuant to this BAS, the Contract, or as required by law, or as permitted under 45 CFR § 164.512, subject to the provisions set forth in this BAS. Business Associate may use PHI in its possession for its proper management and administration or to fulfill any of its legal responsibilities. The Covered Entity specifically requests that Business Associate disclose PHI to other Business Associates of the Covered Entity for Health Care Operations of the Covered Entity. The Covered Entity shall provide a list of the affected Business Associates and will request specific disclosures in written format. If any affected Business Associate is no longer under a business associate addendum with the Covered Entity, the Covered Entity shall promptly inform Business Associate of such change.
- d. Safeguards Against Misuse of Information. Business Associate shall use appropriate safeguards to prevent the use or disclosure of the Covered Entity’s PHI in any manner other than as required by this BAS or as required by law. Business Associate shall maintain a comprehensive written information privacy and security program that includes administrative, technical, and physical safeguards appropriate to the size and complexity of the Business Associate’s operations and the nature and scope of its activities.
- e. Reporting of Disclosures. Business Associate shall report to the Covered Entity any use or disclosure of the Covered Entity’s PHI in violation of this BAS or as required by law of which the Business Associate is aware, and agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of the Covered Entity’s PHI by Business Associate in violation of this BAS.
- f. Business Associate’s Agents. Business Associate shall ensure that any agents, including subcontractors, to whom it provides PHI received from (or created or received by Business Associate on behalf of) the Covered Entity agree to be bound to by the same restrictions and conditions on the use or disclosure of PHI as apply to Business Associate with respect to such

PHI. Business Associate represents that in the event of a disclosure of PHI to any third party, the information disclosed shall be no more than the minimum necessary for the intended purpose.

- g. Nondisclosure. Business Associate shall not use or further disclose the Covered Entity's PHI otherwise than as permitted or required by this BAS, the Contract, or as required by law.
- h. Availability of Information to the Covered Entity and Provision of Access and Accountings. Business Associate shall make available to the Covered Entity such information as the Covered Entity may require to fulfill the Covered Entity's obligations to provide access to, provide a copy of, and account for disclosures with respect to PHI pursuant to HIPAA and the HIPAA Regulations, including, but not limited to, 45 CFR §§ 164.524 and 164.528. This availability includes information related to disclosures of an electronic health record made for treatment, payment or healthcare operations. Business Associate agrees to provide access, at the request of the Covered Entity, and in the time and manner designated by the Covered Entity, to Protected Health Information to the Covered Entity or, as directed by the Covered Entity, to an Individual in order to meet the requirements under 45 CFR § 164.524. As requested by the Covered Entity, Business Associate shall produce an accounting of disclosures to an Individual in accordance with 45 CFR § 164.528. [45 CFR § 164.504(e)(2)(E) and (G)]
- i. Amendment of PHI. Business Associate shall make the Covered Entity's PHI available to the Covered Entity as the Covered Entity may require to fulfill the Covered Entity's obligations to amend PHI pursuant to HIPAA and the HIPAA Regulations, including, but not limited to, 45 CFR § 164.526 and Business Associate shall, as directed by the Covered Entity, incorporate any amendments to the Covered Entity's PHI into copies of such PHI maintained by Business Associate. Business Associate agrees to make any amendment(s) to Protected Health Information that the Covered Entity directs or agrees to pursuant to 45 CFR § 164.526 at the request of the Covered Entity or an Individual, and in the time and manner designated by the Covered Entity. [45 CFR § 164.504(e)(2)(F)]
- j. Internal Practices. Business Associate agrees to make its internal practices, policies, procedures, books, and records relating to the use and disclosure of PHI received from the Covered Entity (or received by Business Associate on behalf of the Covered Entity) available to the Secretary of the U.S. Department of Health and Human Services for inspection and copying for purposes of the determining the Covered Entity's compliance with HIPAA and the HIPAA Regulations.
- k. Safeguard of EPHI. The Business Associate will implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the Electronic Protected Health Information that it creates, receives, maintains, or transmits on behalf of the Covered Entity as required by the Security Standards.
- l. Subcontractors. The Business Associate will ensure that any agent, including a subcontractor, to whom it provides PHI agrees to implement reasonable and appropriate safeguards to protect it.
- m. Security Breach Notification. Business Associate will notify the Covered Entity through the Mississippi Department of Finance and Administration, Office of Insurance of a Breach without unreasonable delay, not to exceed fifteen (15) business days. This notification will include, to the extent known:

- i. the names of the individuals whose PHI was involved in the Breach;
- ii. the circumstances surrounding the Breach;
- iii. the date of the Breach and the date of its discovery;
- iv. the information Breached;
- v. any steps the impacted individuals should take to protect themselves;
- vi. the steps Business Associate is taking to investigate the Breach, mitigate losses, and protect against future Breaches; and,
- vii. a contact person who can provide additional information about the Breach.

Business Associate will perform a fact-based risk assessment, as required by the HITECH Act, to determine whether there is a significant risk of financial, reputational, or other harm to the individual whose PHI was impacted. Business Associate will provide the Covered Entity with the results of its risk assessment and will make a recommendation to the Covered Entity regarding whether notification is required pursuant to 45 CFR §164.410. At the Covered Entity's direction and with its prior approval, Business Associate will issue such notices (to individuals and to the media) as the Covered Entity is required to issue pursuant to, and in accordance with the requirements of, 45 CFR §164.410. Business Associate will pay the costs of issuing notices required by law and other remediation and mitigation which, in Business Associate's discretion, are appropriate and necessary to address the Breach. Business Associate will not be required to issue notifications that are not mandated by applicable law. Business Associate will maintain a log of Breaches and will provide such log to the Covered Entity annually to support the Covered Entity's regulatory reporting obligations. The parties acknowledge and agree that this section constitutes notice by Business Associate to Covered Entity of the ongoing existence and occurrence of Unsuccessful Trivial Security Incidents, for which no additional notice by Business Associate to Covered Entity shall be required.

- n. Limited Data Set or Minimum Necessary Standard and Determination. Business Associate shall limit the use, disclosure, or request of Individuals' Protected Health Information, to the extent practicable, to the Limited Data Set (as defined in 45 CFR § 164.514(e)(2)) or, if needed by Business Associate, to the minimum necessary amount of Individuals' Protected Health Information to accomplish the intended purpose of such use, disclosure, or request and to perform its obligations under the underlying Agreement and this Business Associate BAS. Business Associate shall determine what constitutes the minimum necessary to accomplish the intended purpose of such disclosure. Business Associate's obligations under this provision shall be subject to modification to comply with guidance issued by the Secretary.
- o. Marketing. Business Associate will not sell PHI or use or disclose PHI for purposes of marketing, as defined and proscribed in the Regulations.
- p. Data Aggregation. Business Associate may use PHI in its possession to provide data aggregation services relating to the health care operations of the Covered Entity, as provided for in 45 CFR §164.501.

- q. De-identification of PHI. Business Associate may de-identify any and all PHI, provided that the de-identification conforms to the requirements of 45 CFR § 164.514(b), and further provided that Business Associate maintains the documentation required by 45 CFR § 164.514(b), which may be in the form of a written assurance from Business Associate. Pursuant to 45 CFR § 164.502(d), de-identified information does not constitute PHI and is not subject to the terms of the BAS.

**3. Obligations of the Covered Entity.**

- a. Covered Entity's Representatives. The Covered Entity shall designate, in writing to Business Associate, individuals to be regarded as the Covered Entity's representatives, so that in reliance upon such designation Business Associate is authorized to make disclosures of PHI to such individuals or to their designee(s).
- b. Voluntary Restrictions on Use or Disclosure of PHI. If the Covered Entity agrees to voluntary restrictions on use or disclosure, as provided for in 45 CFR § 164.522, of PHI received or created by Business Associate regarding an Individual, the Covered Entity agrees to pay Business Associate the actual costs incurred by Business Associate in accommodating such voluntary restrictions.
- c. Limitation on Requests. The Covered Entity shall not request or require that Business Associate make any use or alteration of PHI that would violate HIPAA or HIPAA Regulations if done by the Covered Entity.

**4. Audits, Inspection, and Enforcement.**

Upon reasonable notice, upon a reasonable determination by the Covered Entity that Business Associate has breached this BAS, the Covered Entity may inspect the facilities, systems, books and records of Business Associate during normal business hours to monitor compliance with this BAS. Business Associate shall promptly remedy any violation of any term of this BAS and shall certify the same to the Covered Entity in writing. The fact that the Covered Entity inspects, or fails to inspect, or has the right to inspect, Business Associate's facilities, systems and procedures does not relieve Business Associate of its responsibility to comply with this BAS, nor does the Covered Entity's (i) failure to detect or (ii) detection, but failure to notify Business Associate or require Business Associate's remediation of any unsatisfactory practices constitute acceptance of such practice or a waiver of the Covered Entity's enforcement rights under this BAS. Business Associate shall fully cooperate with the U.S. Department of Health and Human Services, as the primary enforcer of the HIPAA, who shall conduct periodic compliance audits to ensure that both Business Associate and the Covered Entity are compliant.

**5. Termination**

- a. Material Breach. A breach by Business Associate of any material provision of this BAS, as determined by the Covered Entity, shall constitute a material breach of the BAS and shall provide grounds for immediate termination of the BAS and the Contract by the Covered Entity pursuant to Section 5.b. of this BAS. [45 CFR § 164.504(e)(3)]
- b. Reasonable Steps to Cure Breach. If either party knows of a pattern of activity or practice of the other that constitutes a material breach or violation of that party's obligations under the provisions of this BAS or another arrangement and does not terminate this BAS pursuant to Section 5(a), then that party shall take reasonable steps to cure such breach or end such violation, as applicable.

If the party's efforts to cure such breach or end such violation are unsuccessful, that party shall either (i) terminate this BAS if feasible; or (ii) if termination of this BAS is not feasible, the non-breaching party shall report the other party's breach or violation to the Secretary of the Department of Health and Human Services. [45 CFR § 164.504(e)(1)(ii)]

- c. Judicial or Administrative Proceedings. Either party may terminate this BAS, effective immediately, if (i) the other party is named as a defendant in a criminal proceeding for a violation of HIPAA or (ii) a finding or stipulation that the other party has violated any standard or requirement of HIPAA or other security or privacy laws is made in any administrative or civil proceeding in which the party has been joined.
- d. Effect of Termination. Upon termination of this BAS and the Contract for any reason, Business Associate shall return or destroy all PHI received from the Covered Entity (or created or received by Business Associate on behalf of the Covered Entity) that Business Associate still maintains in any form, and shall retain no copies of such PHI except for one copy that Business Associate will use solely for archival purposes and to defend its work product, provided that documents and data remain confidential and subject to this BAS, or, if return or destruction is not feasible, it shall continue to extend the protections of this BAS to such information, and limit further use of such PHI to those purposes that make the return or destruction of such PHI infeasible. [45 CFR § 164.504(e)(2)(I)]

**6. Disclaimer.**

The Covered Entity makes no warranty or representation that compliance by Business Associate with this BAS, HIPAA or the HIPAA Regulations will be adequate or satisfactory for Business Associate's own purposes or that any information in Business Associate's possession or control, or transmitted or received by Business Associate, is or will be secure from unauthorized use or disclosure. Business Associate is solely responsible for all decisions made by Business Associate regarding the safeguarding of PHI.

**7. Amendment.**

Amendment to Comply with Law. The parties acknowledge that state and federal laws relating to electronic data security and privacy are rapidly evolving and that amendment of this BAS may be required to provide for procedures to ensure compliance with such developments. The parties specifically agree to take such action as is necessary to implement the standards and requirements of HIPAA, the HIPAA Regulations and other applicable laws relating to the security or confidentiality of PHI. The parties understand and agree that the Covered Entity must receive satisfactory written assurance from Business Associate that Business Associate will adequately safeguard all PHI that it receives or creates pursuant to this BAS. Upon the Covered Entity's request, Business Associate agrees to promptly enter into negotiations with the Covered Entity concerning the terms of an amendment to this BAS embodying written assurances consistent with the standards and requirements of HIPAA, the HIPAA Regulations or other applicable laws. The Covered Entity may terminate this BAS upon 90 days written notice in the event (i) Business Associate does not promptly enter into negotiations to amend this BAS when requested by the Covered Entity pursuant to this Section; or (ii) Business Associate does not enter into an amendment to this BAS providing assurances regarding the safeguarding of PHI that the Covered Entity reasonably determines is not sufficient to satisfy the standards and requirements of HIPAA and the HIPAA Regulations.

**8. Assistance in Litigation or Administrative Proceedings.**

Business Associate shall make itself, and any subcontractors, employees or agents assisting Business Associate in the performance of its obligations under this BAS, available to the Covered Entity, at no cost to the Covered Entity, to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against the Covered Entity, its directors, officers or employees based upon claimed violation of HIPAA, the HIPAA Regulations or other laws relating to security and privacy, except where Business Associate or its subcontractor, employee or agent is a named adverse party.

**9. No Third Party Beneficiaries.**

Nothing express or implied in this BAS is intended to confer, nor shall anything herein confer, upon any person other than the Covered Entity, Business Associate and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.

**10. Effect on Contract.**

Except as specifically required to implement the purposes of this BAS, or to the extent inconsistent with this BAS, all other terms of the Contract shall remain in force and effect.

**11. Electronic Health Records (EHR)**

If electronic health records are used or maintained with respect to PHI, individuals shall have the right to obtain a copy of such information in "electronic format".

**12. No Remuneration for PHI.**

Business Associate shall not directly or indirectly receive remuneration in exchange for any PHI, unless it first obtains a valid authorization from the individual whose PHI is being disclosed, unless the purpose of the exchange is:

- a. For public health activities (as described in 45 CFR § 164.512(b));
- b. For research (as described in 45 CFR §§ 164.501 and 164.512(i)) and the price charged reflects the costs of preparation and transmittal of the data for such purpose;
- c. For the treatment of the Individual, subject to any regulations preventing Protected Health Information from inappropriate access, use, or disclosure;
- d. The health care operation specifically described in subparagraph (iv) of paragraph (6) of the definition of health care operations in 45 CFR § 164.501;
- e. For remuneration provided by the Plan to Business Associate for activities involving the exchange of Protected Health Information Business Associate undertakes on behalf of and at the request of the Plan pursuant to the Agreement;
- f. To provide an Individual with a copy of his or her Protected Health Information pursuant to 45 CFR § 164.524; or

- g. Otherwise determined by regulations of the Secretary to be similarly necessary and appropriate as the exceptions described in (a) through (f) above.

**13. Interpretation.**

This BAS shall be interpreted as broadly as necessary to implement and comply with HIPAA, HIPAA Regulations and applicable state laws. The parties agree that any ambiguity in this BAS shall be resolved in favor of a meaning that complies and is consistent with HIPAA and the HIPAA Regulations.

**State Auditor's Authorized Representatives:**

The State Auditor has empowered the following to act as his duly authorized representative:

- Stephanie Palmertree, CPA, CGMA  
State Auditor's Office  
501 North West Street  
801 Woolfolk Building  
Jackson, MS 39201  
Phone: 576-2606

**Legal Compliance Provision:**

Any preliminary findings of possible fraud, misapplication or misappropriation of funds shall be promptly reported in writing to the Agency's and OSA's authorized representative. Notwithstanding anything herein to the contrary, nothing shall prevent the Firm from reporting such findings to the appropriate persons in accordance with professional standards.

If the Firm is required to give advice, testimony or other such activity not within the scope of rendering, confirming or justifying a report of audit services rendered, such arrangements shall be set forth in a separate arrangement letter.