

FINANCIAL AUDIT SERVICES CONTRACT

This Financial Audit Services Contract (Contract) is made by and between the Mississippi Department of Finance and Administration (MDFA), the Office of the State Auditor (OSA), and Forvis, LLP (Contractor), effective upon execution, under the following terms and conditions under which the Contractor agrees to provide financial audit services as herein described for the Mississippi State and School Employees' Life and Health Insurance Plan (OPEB Plan), and the Government Accounting Standards Board (GASB) Statement 74 statement of fiduciary net position and changes in fiduciary net position of the Trust (OPEB Trust), with respect to MDFA's financial statements for the State and School Employees' Life and Health Insurance Plan (the Plan).

1. Identity of and Relationship Between the Parties

- A. Contractor, a registered limited liability partnership organized under the laws of the state of Delaware, is an entity organized for the purpose of providing financial audit services as herein described.
- B. MDFA, an agency of the State of Mississippi, administers the Plan. MDFA acts on behalf of the State and School Employees' Health Insurance Management Board (Board) in executing the day-to-day operational responsibilities concerning the Plan's administration.
- C. OSA, an agency of the State of Mississippi, is responsible for auditing and expressing an opinion on the *Annual Comprehensive Financial Report (ACFR)* of the State of Mississippi.
- D. The Contractor, MDFA, and OSA 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 Contractor, MDFA, OSA, 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 Contractor shall provide all services and otherwise do all things necessary for or incidental to the performance of work, as set forth below:

- A. Assign an Account Representative to work directly with the MDFA and OSA Representatives;

- B. Perform all services provided in the Contract between the Contractor, MDFA, and OSA in accordance with customary and reasonable industry standards as well as in strict conformance to all laws, statutes, and ordinances and the applicable rules, regulations, methods and procedures of all government boards, bureaus, offices, and other agents. The Contractor shall be responsible for the complete performance of all work; for the methods, means, and equipment used; and for furnishing all materials, tools, apparatus, and property of every description used in connection therewith. No statement within this Contract shall negate compliance with any applicable governing regulation. The absence of detail specifications or the omission of detail description shall be recognized as meaning that reasonable audit practices are to prevail, and that only market-standard materials and workmanship are to be used;
- C. The auditing services will be made in conformity with the following guidelines and regulations:
- i. The financial audit services are of selected funds of the Plan. As these selected funds and accounts are considered significant and are to be included in the State of Mississippi's fiscal year 2022 Annual Comprehensive Financial Report, the work to be performed must comply with applicable standards and be completed in a timely fashion to enable the OSA to issue an opinion on the ACFR.
 1. The funds of the Plan are maintained and accounted for in Mississippi Treasury Funds 3315300000, 3315400000, 8820500000 and 6822113600 (as needed). Fund 3315300000 is the Plan's operating fund and is used to process payments for internal and third-party administrative expenses and life insurance charges, and to reimburse the PBM for pharmacy claim payments. Fund 3315400000 is the Plan's reserve fund and is used to hold monies until such time as needed for operations. Fund 8820500000 represents a controlled disbursement checking account maintained at Trustmark National Bank and is used to receipt premiums (both life and health insurance) from employer groups, retirees, and COBRA participants, and used by the Plan's TPA to fund claim disbursements. Fund 6822113600 is a temporary fund for receipt of CSFRF funds.
 2. The June 30, 2022 GAAP reporting packages and underlying records for each of the selected funds will be examined for completeness and accuracy. Adjusting entries to the trial balance generated by the MDFA will be prepared on the MDFA adjusting entry standardized forms and submitted to the agency for approval and OSA for review and processing within the due dates specified by OSA. The trial balances for these funds are scheduled to be available September 2022.
 3. The fund of the OPEB Trust is maintained and accounted for in Mississippi Treasury Fund 3364500000. Fund 3364500000 is the Trust account especially for payments of claims for state and school retirees' benefits under the plan.
 - ii. The Contractor has the responsibility to conduct and will conduct the audit of MDFA's financial statements in accordance with auditing standards generally accepted in the United States of America and the standards for financial audits

contained in *Government Auditing Standards*, issued by the Comptroller General of the United States, with the objective of expressing an opinion as to whether the presentation of the financial statements that have been prepared by management of MDFA, conforms with U.S. generally accepted accounting principles.

- iii. The Contractor has the responsibility to conduct and will conduct the audit of 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 Plan, and the GASB Statement 74 of fiduciary net position and changes in fiduciary net position of the Trust associated with the OPEB for the Plan (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 in conformity with the applicable guidelines and regulations, including but not necessarily limited to, the *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.
 - iv. Special items or reports prescribed by the OSA as set forth in the resulting Contract Scope of Services.
 - v. Compliance with applicable state laws as set forth in the resulting Contract Scope of Services.
 - vi. Statements of financial accounting standards as prescribed by the Governmental Accounting Standards Board.
- D.** An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. In conducting the audit, the Contractor will perform tests of the accounting records and such other procedures, as the Contractor considers necessary in the circumstances, based on the Contractor's judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to error or fraud, to provide a reasonable basis for the Contractor's opinion on the financial statements. The Contractor also will evaluate the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management of MDFA and evaluate the overall financial statement presentation.
- E.** The Contractor's audit of the financial statements will be planned and performed to obtain reasonable, but not absolute, assurance about whether the financial statements are free of material misstatement, whether caused by error or fraud. Absolute assurance is not attainable because of the nature of audit evidence and the characteristics of fraud. Because of the inherent limitations of an audit, together with the inherent limitations of internal control, there is an unavoidable risk that some material misstatements, fraud (including fraud that may be an illegal act), and other illegal acts may exist and not be detected by an audit of financial statements even though the audit is properly planned and performed in accordance with the auditing standards generally accepted in the United

States of America and *Government Auditing Standards*. Also, an audit is not designed to detect matters that are immaterial to the financial statements, and because the determination of abuse is subjective, *Government Auditing Standards* do not expect auditors to detect abuse. The Contractor will also perform certain limited procedures to the required supplementary information as required by auditing standards generally accepted in the United States of America. However, the Contractor will not express an opinion or provide any assurance on the information. The report relating to the financial statements will include the Contractor's consideration of required supplementary information.

- F. Subject to the last sentence of the paragraph, the Contractor will issue a written report upon completion of the Contractor's audit of MDFA's financial statements. We realize that the Contractor cannot provide assurance that an unqualified opinion will be expressed. Circumstances may arise in which it is necessary for the Contractor to modify its opinion, add emphasis-of-matter or other-matter paragraphs or withdraw from the engagement.
- G. In making the Contractor's risk assessments as a part of planning and performing the audit of the financial statements, it will consider MDFA's internal control relevant to the preparation and fair presentation of the financial statements in order to determine the nature, timing, and extent of its audit procedures for the purpose of expressing an opinion on the financial statements but not for the purpose of expressing an opinion on the effectiveness of MDFA's internal control.
- H. Management of MDFA acknowledges and understands that they have responsibility for the preparation and fair presentation, in accordance with U.S. generally accepted accounting principles, of the financial statements and all representations contained therein. Management of MDFA also is responsible for identifying and ensuring that MDFA complies with laws, regulations, contracts, and grant agreements applicable to its activities, and for informing the Contractor of any known material violations of such laws and regulations and provisions of contracts and grant agreements. Management of MDFA also is responsible for preventing and detecting fraud, including the design and implementation of programs and controls to prevent and detect fraud, for adopting sound accounting policies, and for the design, implementation and maintenance of internal control relevant to the preparation and fair presentation of the financial statements and to provide reasonable assurance against the possibility of misstatements that are material to the financial statements whether due to error or fraud. Management of MDFA is also responsible for informing the Contractor, of which it has knowledge, of all material weaknesses and significant deficiencies, in the design or operation of such controls. The audit of the financial statements does not relieve management of MDFA or the audit committee of their responsibilities.
- I. Management of MDFA also acknowledges and understands that it is their responsibility to provide the Contractor with: i) access to all information of which management is aware that is relevant to the preparation and fair presentation of the financial statements such as records, documentation, and other matters; ii) additional information that the Contractor

may request from management for purposes of the audit; and iii) unrestricted access to persons within the entity from whom the Contractor determines it necessary to obtain audit evidence. As required by auditing standards generally accepted in the United States of America, the Contractor will make specific inquiries of management of MDFA about the representations embodied in the financial statements and the effectiveness of internal control and obtain a representation letter from certain members of MDFA's management about these matters. The responses to the Contractor's inquiries, the written representations, and the results of audit tests, among other things, comprise the evidential matter the Contractor will rely upon in forming an opinion on the financial statements.

- J. Management of MDFA is responsible for adjusting the financial statements to correct material misstatements and for affirming to the Contractor in the representation letter that the effects of any uncorrected misstatements aggregated by the Contractor during the current engagement and pertaining to the latest period presented are immaterial, both individually and in the aggregate, to the financial statements being reported upon, taken as a whole. Because of the importance of management's representations to the effective performance of the Contractor's services, MDFA agrees to release the Contractor and its personnel from any claims, liabilities, costs, and expenses relating to the Contractor'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.
- K. As part of obtaining reasonable assurance about whether the financial statements are free of material misstatement, the Contractor will perform tests of MDFA's compliance with certain provisions of laws, regulations, contracts and grant agreements, noncompliance with which could have a direct and material effect on the financial statements. However, the Contractor's objective is not to provide an opinion on overall compliance with such provisions. The Contractor shall report promptly to MDFA and OSA any preliminary findings of possible fraud, misapplication, or misappropriation of funds.
- L. In accordance with *Government Auditing Standards*, as part of planning of the audit the Contractor will evaluate whether MDFA has taken appropriate corrective action to address findings and recommendations from previous engagements that could have a material effect on the financial statements. To assist the Contractor, management of MDFA agrees to identify previous audits, attestation engagements, or other studies that relate to the objectives of the audit, including whether related recommendations have been implemented.
- M. In accordance with *Government Auditing Standards*, the Contractor will also issue a management letter to communicate instances of noncompliance with provisions of contracts or grant agreements or abuse that have an effect on the financial statements that is less than material but warrant the attention of those charged with governance.
- N. In accordance with *Government Auditing Standards*, the Contractor will also provide OSA with a Subsequent Event memorandum to communicate instances of any and all

events subsequent to the reporting period that may have an effect on the financial statements. The reporting period is defined as the commencement of the contract to the final issuance of the Annual Comprehensive Financial Report (ACFR).

- O. The Contractor will report to management of MDFA, in writing, the following matters:
- i. Material, corrected misstatements that were brought to the attention of management as a result of audit procedures.
 - ii. Uncorrected misstatements accumulated by the Contractor during the audit and the effect that they, individually or in the aggregate, may have on the Contractor's opinion in the auditor's report, and the effect of uncorrected misstatements related to prior periods.
 - iii. Significant difficulties and disagreements with management, if any, encountered during the Contractor's audit.
 - iv. Other matters required to be communicated by auditing standards generally accepted in the United States of America.

To the extent that they come to the Contractor's attention, it will inform the appropriate level of management of MDFA and OSA about any illegal acts, unless they are clearly inconsequential, material errors in the financial statements and any instances of fraud. Further, to the extent they come to the Contractor's attention, it also will communicate illegal acts that come to the Contractor's attention, unless they are clearly inconsequential, material errors in the financial statements and any instances of fraud that involve senior management or that, in the Contractor's judgment, cause a material misstatement of the financial statements. If, during the performance of the Contractor's audit procedures, circumstances arise which make it necessary to modify their report or withdraw from the engagement, the Contractor will communicate its reasons for modification or withdrawal.

- P. The Contractor shall provide any adjustments needed for proper financial statement presentation, approved by MDFA management, to the OSA by October 15, of each year of the Contract. Draft financials shall be provided by November 1, of each year of the Contract. The completed audit reports and management letter on the audited funds will be required by November 15, of each year of the Contract. If the completed audit report differs significantly from the draft provided, OSA shall request a reconciliation between the reports from the Contractor.
- Q. The Contractor acknowledges that MDFA 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 Contractor fails to meet the completion date prescribed herein, MDFA 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 MDFA delays.

- R. The Contractor shall submit a monthly progress report which details the work completed the preceding month to MDFA and OSA authorized representatives. The report shall be delivered within ten (10) days after the end of the preceding month. The Contractor also agrees to provide OSA and MDFA with Status Updates sporadically as requested by either party.
- S. MDFA may accept or reject the services furnished by the Contractor in compliance with the material provisions of this Contract. However, any rejection of services must be based solely on the Contractor's failure to comply with the material terms of this contract and cannot be based on the nature of the Contractor's opinion on the financial status of MDFA in its audit report. MDFA must provide written justification to OSA documenting the reasons for any such rejection.
- T. The Contractor shall have a certified public accountant (CPA) as the certifying official of the final reports.
- U. The work papers prepared in conjunction with the services under this contract are the property of the Contractor, constitute confidential information and will be retained by the Contractor 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 Contractor agrees to make its work papers available to subsequent fiscal year audit firms. Upon request by MDFA or OSA, any data, files and records collected by the Contractor will be destroyed or returned to MDFA or OSA. The Contractor 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 Contractor 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 Contractor 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 Contractor's personnel. Furthermore, upon request, the Contractor 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.
- V. MDFA acknowledges that it represents that the financial records and GAAP reporting packages are free of material error and that appropriate supporting documentation is available for the audit. MDFA further acknowledges the Contractor has relied upon this representation in developing its staffing schedule, estimated hours, and that the maximum

project fees set forth in **Exhibit A, Fee Schedule for Financial Audit Services**, does not include any procedures related to error correction and/or accounting assistance.

- W. The Contractor 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 MDFA or OSA. Any person assigned by the Contractor to perform the services hereunder shall be the employee of the Contractor, who shall have the sole right to hire and discharge its employee.
- X. The following procedures must be performed by the Contractor after a contract has been awarded:
- i. Hold an entrance conference with the Contractor's auditor-in-charge, MDFA authorized representatives, and OSA's authorized representatives prior to commencement of any work to determine the scope of services, and other related factors. A copy of the engagement letter should be forwarded to OSA's authorized representative.
 - ii. 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.
 - iii. Express an opinion on the fair presentation of MDFA's financial statements in conformity with generally accepted accounting principles.
 - iv. Perform certain limited procedures involving required supplementary information required by the Governmental Accounting Standards Board as mandated by generally accepted auditing standards.
 - v. Provide a copy of the Contractor's most recent peer review report, as required by *Government Auditing Standards*.
 - vi. If applicable, perform certain limited procedures involving required supplementary information required by the Governmental Accounting Standards Board as mandated by generally accepted auditing standards.
- Y. The Contractor shall perform the following procedures at the request of OSA.
- i. For treasury funds 3315300000, 3315400000, 8820500000, 6822113600 (as needed) and any successor funds established for the State and School Employees' Life and Health Insurance Plan, read and provide comments on the June 30 GAAP reporting package and underlying records for completeness and accuracy for inclusion in the State of Mississippi's *Comprehensive Annual Financial Report*.

- ii. Read and provide comments for entries to the trial balance prepared by MDFA based on MDFA's GAAP packages. These adjusting entries should be prepared on the MDFA entry standardized forms and submitted to MDFA for approval and then submitted to OSA for review and processing within due dates specified by OSA.
 - iii. Prepare a schedule of uncorrected misstatements, have MDFA management approve the schedule, and submit it to OSA for inclusion in communications to MDFA.
 - iv. 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 ACFR.
 - v. Obtain the notes to the statewide financial statements related to MDFA. The Contractor should: a) read and provide comments on current year amounts and information and, b) read and provide comments on the notes for compliance with applicable GASB statements and notify the OSA's authorized representatives of noncompliance and errors.
 - vi. Complete audit reports on the fair presentation of state treasury funds audited in conformity with generally accepted accounting principles.
 - vii. Prepare management letters in accordance with instructions provided by the OSA.
 - viii. Conduct an exit conference upon giving prior notice to the OSA.
 - ix. Obtain a plan of corrective action from MDFA in accordance with instructions provided by the OSA.
 - x. Submit to the OSA a completed "Request for Representations from Other Auditor."
- Z. Following the completion of the audit of the fiscal year's financial statements, the Contractor shall issue:
- i. A report on the fair presentation of the financial statements in conformity with generally accepted accounting principles.
 - ii. A report, *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 the Contractor's consideration of internal control over financial reporting and tests of compliance made as part of its audit of the financial statements. Management of MDFA is responsible for providing the Contractor with written responses in accordance with *Government Auditing Standards* to the findings included in the GAGAS report within 30 days of being provided with draft findings. If such

information is not provided on a timely basis prior to release of the report, the GAGAS report will indicate the status of management's responses.

While the objective of the Contractor's audit of the financial statements is not to report on MDFA's internal control over financial reporting and the Contractor 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 to the extent they come to our attention. 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 or grant agreements 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.

iii. A Management Letter

In accordance with *Government Auditing Standards*, the Contractor will also issue a management letter to communicate instances of noncompliance with provisions of contracts or grant agreements or abuse that have an effect on the financial statements that is less than material but warrant the attention of those charged with governance. The management letter will detail audit findings and recommendations regarding financial statements, internal controls, accounting, information systems, legality of actions, instances of noncompliance with laws and regulations, and any other material matters the auditor believes to be of potential benefit to the entity or has been requested to communicate.

iv. A report on irregularities and illegal acts, if applicable

In accordance with *Government Auditing Standards*, the Contractor is also required in certain circumstances to report fraud, noncompliance with provisions of laws, regulations, contracts, or grant agreements, or abuse directly to parties outside the auditee.

AA. Upon receipt of the final audit reports MDFA will:

- i. review the work,
- ii. approve or reject the work,
- iii. approve or reject final payment for services rendered.

Upon completion of the audit services, the audit conclusion memoranda and any other required reports should be submitted to the OSA's authorized representatives in

accordance with the contractual provisions. All final documentation of services shall be submitted no later than the date specified.

BB. As requested, the Contractor shall provide the following documents to OSA:

- i. Draft and Final reports on the fair presentation of the financial statements in conformity with generally accepted accounting principles.
- ii. A report, *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 the Contractor's consideration of internal control over financial reporting and tests of compliance made as part of its audit of the financial statements. Management of MDFA is responsible for providing the Contractor with written responses in accordance with *Government Auditing Standards* to the findings included in the GAGAS report within 30 days of being provided with draft findings. If such information is not provided on a timely basis prior to release of the report, the GAGAS report will indicate the status of management's responses.
- iii. Engagement Letter
- iv. Journal Entries Summary – Including entries approved and made by MDFA* and a Summary of Past Adjustments.*
- v. Signed Representations of Management as of the date of the Report and an update of representations as of the date of the ACFR report.
- vi. Independence and Related Party statements for the Contractor.
- vii. Letters to Those Charged with Governance, including any management comments made regarding control deficiencies.
- viii. Written findings to be included in the report, as applicable.*
- ix. Summary of verbal findings presented to client.
- x. Reconciliation of Treasury Fund Trial balances (MAGIC GR55/ZBL report) to the Audit Report, if applicable.
- xi. Contractor representations to OSA
- xii. Work papers detailing component materiality and fund materiality used during the audit process.

xiii. Subsequent Event Inquiries

1. From fiscal year end (June 30) to the date of the Contractor audit report;
2. From the date of the Contractor audit report to the date of the ACFR report date; and
3. From the date of the ACFR report to the date of the Single Audit Report (as applicable).

xiv. Corrective Action Plans, if applicable.*

xv. Additional information as needed by OSA to satisfy the requirements of AU-C 600.

** Information must be provided as prescribed by OSA. Submissions not in accordance with Auditing Standards, Uniform Guidance, or prescribed form by OSA will be returned to the Contractor and the Contractor will be required to resubmit the information until OSA is satisfied that it has been completed in accordance with the requirements as listed above.*

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

DD. If the Contractor 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 engagement letter.

3. Contract Term

A. The term of the Contract will be for three (3) years effective upon the date this Contract is signed by all three parties. This Contract replaces and terminates the previous Contract (8200035226). MDFA and OSA reserves the right to renew the Contract for up to two (2) additional years at the sole discretion of the Board, MDFA, and OSA. By May 15, 2025 of the initial Contract term, and by May 15th of any subsequent renewal term, MDFA will notify the Contractor, in writing, of its intent to renew the Contract for an additional year.

B. All records and information provided by MDFA or through its vendors to the Contractor are the sole property of the MDFA and will be returned to the MDFA within thirty (30) days of the termination date of this Contract, unless prohibited by court order, statute, regulation, or audit standards. The Contractor shall be entitled to retain and utilize data that have been captured, computed, or stored in the Contractor's databases to the extent

that such data cannot be identified or linked to MDFA, the Plan, or an individual Plan Participant.

- C. Upon termination of this Contract, the Contractor shall fully cooperate with MDFA, OSA, and the selected new auditor as requested, in accordance with professional standards.

4. Consideration

MDFA agrees to compensate the Contractor for services approved by the MDFA and performed by the Contractor under the terms of this Contract in an amount not to exceed two hundred thirty-two thousand five hundred dollars and zero cents (\$232,500.00) for the initial three-year term, as follows:

- A. The flat fees listed in **Exhibit A, Fee Schedule for Financial Audit Services**, of this Contract will constitute the entire compensation due to the Contractor for services and all of the Contractor's obligations hereunder regardless of the difficulty, materials, or equipment required. The fees include, but are not limited to, all applicable taxes, fees, general office expense, travel, overhead, profit, and all other direct and indirect costs, incurred or to be incurred, by the Contractor. Fees for services provided by the Contractor will be billable to the MDFA in arrears, in either lump sum or incremental amounts, as requested by the Contractor. MDFA shall not provide any prepayments or initial deposits in advance of services being rendered. The fees listed in **Exhibit A, Fee Schedule for Financial Audit Services**, of this Contract are firm for the duration of this Contract and are not subject to escalation for any reason, unless this Contract is duly amended.
- B. The Contractor will submit all invoices, in a form acceptable to the MDFA (provided that such acceptance will not be unreasonably withheld) with all the necessary supporting documentation, prior to any payment to the Contractor of any allowable fees. Fees will be invoiced in sufficient detail and format as determined by the MDFA. Such invoices will include, at a minimum, a description of the service(s) provided, the quantity or number of hours billed and the compensation rate, the time period in which services were provided, and total fees requested for the period being invoiced. Upon the effective date of termination of this Contract, the Contractor will remain liable for any obligations arising hereunder prior to the effective date of such termination. No additional compensation will be provided by the MDFA for any expense, cost, or fee not specifically authorized by this Contract, or by written authorization from the MDFA.
- C. The payment of an invoice by the MDFA will not prejudice the MDFA's right to object or question any invoice or matter in relation thereto. Such payment by the MDFA will neither be construed as acceptance of any part of the work or service provided nor as an approval of any costs invoiced therein. The Contractor's invoice or payment may be subject to reduction for amounts included in any invoice or payment theretofore made which are determined by the MDFA, on the basis of audits, not to constitute allowable costs. Any payment will be reduced for overpayment or increased for underpayment on subsequent invoices. For any amounts which are or will become due and payable to the MDFA by the Contractor, the MDFA reserves the right to (1) deduct from amounts which are or will

become due and payable to the Contractor under this Contract between the parties; or (2) request and receive payment directly from the Contractor within fifteen (15) days of such request, at the MDFA's sole discretion.

D. MDFA and OSA have the right to reject, at any time during the Contract period, any work not meeting the terms of this Contract. Should MDFA or OSA reject any services, MDFA or OSA's authorized representative shall notify the Contractor in writing by registered mail of such rejection giving reason therefore. The right to reject services shall extend throughout the terms of this Contract.

5. Anti-Assignment/Subcontracting

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

6. 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 Contractor shall comply with applicable federal, state, and local laws and regulations.

7. Approval

It is understood that if this Contract requires approval by the Public Procurement Review Board (PPRB) and/or the MDFA Office of Personal Service Contract Review (OPSCR), and this Contract is not approved by the PPRB and/or OPSCR, it is void and no payment shall be made hereunder.

8. Authority to Contract

Contractor 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.

9. Availability of Funds

It is expressly understood and agreed that the obligation of the MDFA 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 time fulfillment of the Contract are, at any time, not forthcoming or insufficient, either through the failure of the federal government to provide funds or of the State of Mississippi to appropriate funds or the discontinuance or material alteration of the program under which funds were provided or if funds are not otherwise available to the MDFA, the MDFA shall have the right upon ten (10) working days written notice to the Contractor, to terminate this Contract without damage, penalty, cost or expenses to the MDFA of any kind whatsoever. The effective date of termination shall be as specified in the notice of termination. Upon termination, the Contractor shall be entitled to payment for services in the amount as determined in paragraph 15 (Debarment and Suspension) or the amount of available funds, whichever is less.

10. Change in Scope of Work

The MDFA and OSA 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 the Contractor that the scope of the project or of the Contractor's services have been changed, requiring changes to the amount of compensation to the Contractor or other adjustments to the Contract, unless such changes or adjustments have been made by written amendment to the Contract signed by the MDFA, OSA, and the Contractor. If the Contractor believes that any particular work is not within the scope of the project, is a material change, or shall otherwise require more compensation to the Contractor, the Contractor shall immediately notify the MDFA and OSA in writing of this belief. If the MDFA and OSA believe that the particular work is within the scope of the Contract as written, the Contractor shall be ordered to and shall continue the work as changed and at the cost stated for the work within the Contract.

11. Compliance with Laws

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

Notwithstanding any provision to the contrary contained herein, it is recognized that MDFA and OSA are public agencies of the State of Mississippi and are 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 MDFA or OSA pursuant to the Contract and designated by the Contractor in writing as trade secrets or other proprietary confidential information, MDFA and OSA shall follow the provisions of Mississippi Code Annotated §§ 25-61-9 and 79-23-1 before disclosing such information. The MDFA and OSA shall not be liable to the Contractor for disclosure of information required by court order or required by law.

The Contractor acknowledges that in the course of the performance of this Contract, it may have access to confidential business information of MDFA and/or its vendors. The Contractor agrees to maintain all confidential business information of MDFA and/or its vendors in strictest confidence using at least the same degree of care it takes in protecting its own confidential business information, but always at least a reasonable degree of care. Except as expressly provided herein or as may be required by law or legal process, the Contractor agrees it will not use confidential business information of MDFA and/or its vendors for its own benefits or disclose it to third parties without written consent.

13. Debarment and Suspension

The Contractor certifies to the best of its knowledge and belief, that it and its principals: (i) Are 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) Have not, within a three-year period preceding this Contract, 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) Have 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) Are 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 (ii) and three (iii) of this certification; and, (v) 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.

14. Disclosure of Confidential Information

In the event that any 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 if permitted by law, 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. 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 MDFA, OSA, and the Contractor. Such a resolution shall be reduced to writing and a copy thereof mailed or furnished to the Contractor and shall be final and conclusive. If a resolution cannot be reached, the Contractor shall mail or furnish to MDFA and OSA a written request for review. The Contractor 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 grossly erroneous as necessarily to imply bad faith, or not to be supported by substantial evidence. Pending final decision of a dispute hereunder, the Contractor shall proceed diligently with the performance of the duties and obligations of the Contract.

16. E-Payment

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

17. E-Verification

If applicable, the Contractor represents and warrants that it shall ensure its compliance with the Mississippi Employment Protection Act of 2008, and shall 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. The Contractor agrees to maintain records of such compliance. Upon request of the State and after approval of the Social Security Administration or Department of Homeland Security when required, the Contractor agrees to provide a copy of each such verification. The Contractor further represents and warrants that any person assigned to perform services hereafter meets the employment eligibility requirements of all immigration laws. The breach of this agreement may subject the Contractor to the following:

- A. termination of this Contract for services and ineligibility for any State or public contract in Mississippi for up to three (3) years with notice of such cancellation/termination being made public; or
- B. the loss of any license, permit, certification, or other document granted to the Contractor by an agency, department, or governmental entity for the right to do business in Mississippi for up to one (1) year; or
- C. both.

In the event of such cancellation/termination, the Contractor would also be liable for any additional costs incurred by the State due to Contract cancellation or loss of license or permit to do business in the State.

18. Failure to Enforce

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

19. Force Majeure

Each party shall be excused from performance for any period and to the extent that it is prevented from performing any obligation or service, in whole or in part, as a result of causes beyond the reasonable control and without the fault or negligence of such party and/or its subcontractors. Such acts shall include without limitation acts of God, strikes, lockouts, riots, acts of war, epidemics, governmental regulations superimposed after the fact, fire, earthquakes, floods, or other natural disasters (“force majeure events”). When such a cause arises, the Contractor shall notify the MDFA and OSA immediately in writing of the cause of its inability to perform, how it affects its performance, and the anticipated duration of the inability to perform. Delays in delivery or in meeting completion dates due to force majeure events shall automatically extend such dates for a period equal to the duration of the delay caused by such events, unless MDFA and determine it to be in its best interest to terminate the Contract.

20. Indemnification

The Contractor agrees to indemnify, defend, and hold harmless, the MDFA and OSA from and against all claims, demands, liabilities, damages and costs relating to our services under this agreement that are attributable to or resulted from intentional, deliberate misconduct or actionable gross negligence of the Contractor and/or its partners, principals, agents, employees or subcontractors in the performance of this contract.

21. Independent Contractor Status

The Contractor shall at all times, be regarded as, and shall be legally considered an Independent Contractor and shall at no time act as an agent for the State. Nothing contained herein shall be deemed or construed by the State, the Contractor, or any third party as creating the relationship of principal and agent, master and servant, partners, joint ventures, employer and employee, or

any similar such relationship between the State and the Contractor. Neither the method of computation of fees or other charges, nor any other provision contained herein, nor any acts of the State or the Contractor hereunder creates, or shall be deemed to create a relationship other than the independent relationship of the State and Contractor. The Contractor's personnel shall not be deemed in any way, directly or indirectly, expressly or by implication, to be employees of the State. Neither the Contractor nor its employees shall, under any circumstances, be considered servants, agents, or employees of the MDFA or OSA, and the MDFA and/or OSA shall be at no time be legally responsible for any negligence or other wrongdoing by the Contractor, its servants, agents, or employees. The State shall not withhold from the Contract payments to the Contractor any federal or state unemployment taxes, federal or state income taxes, Social Security tax, or any other amounts for benefits to the Contractor. Further, the State shall not provide to the Contractor any insurance coverage or other benefits, including Worker's Compensation, normally provided by the State for its employees.

22. Information Designated by Contractor as Confidential

Any disclosure of those materials, documents, data, and other information which Contractor has designated in writing as proprietary and confidential shall be subject to the provisions of Mississippi Code Annotated §§ 25-61-9 and 79-23-1. As provided in the Contract, the personal or professional services to be provided, the price to be paid, and the term of the Contract shall not be deemed to be a trade secret, or confidential commercial or financial information.

Any liability resulting from the wrongful disclosure of confidential information on the part of the Contractor or its subcontractor shall rest with Contractor. Disclosure of any confidential information by the Contractor or its subcontractor without the express written approval of the MDFA and OSA shall result in the immediate termination of this Contract.

23. Insurance

The Contractor shall maintain, throughout the term of this Contract, at its own expense, comprehensive general liability or professional liability coverage that covers any damages caused by error, omission or any negligent acts related to the services to be provided under this Contract in an amount no less than one million dollars (\$1,000,000.00) per occurrence and three million dollars (\$3,000,000.00) aggregate, employee dishonesty or fidelity bond with third party liability coverage in an amount no less than one million dollars (\$1,000,000.00) per occurrence, and workers' compensation coverage as required by the State of Mississippi. The State of Mississippi will be listed as an additional insured on the commercial general liability policy, and all insurance policies shall be issued by insurance companies authorized to do business under the laws of the State of Mississippi, meaning insurance carriers must be licensed or hold a Certificate of Authority from the Mississippi Insurance Department. Contractor shall not commence work under this Contract until it obtains all insurances required under this provision and furnishes certificate(s) or other form(s) showing proof of current coverage to the MDFA. After work commences, the Contractor shall maintain in force all required insurance until the Contract is terminated or expires. Contractor shall submit renewal certificates as appropriate during the term of the Contract. Contractor shall ensure that should any of the above-described policies be cancelled before the expiration date thereof, or if there is a material

change, potential exhaustion of aggregate limits or intent not to renew insurance coverage(s), that written notice will be delivered to the MDFA. There shall be no cancellation, material change, potential exhaustion of aggregate limits or non-renewal of insurance coverage(s) to MDFA. Any failure to comply with the reporting provisions of this clause shall constitute a material breach of Contract and shall be grounds for immediate termination of this Contract by MDFA.

24. Integrated Agreement/Merger

This Contract, including all contract documents, represents the entire and integrated agreement between the parties hereto and supersedes all prior negotiations, representations or agreements, irrespective of whether written or oral. This Contract may be altered, amended, or modified only by a written document executed by the State and Contractor. Contractor acknowledges that it has thoroughly read all contract documents and has had the opportunity to receive competent advice and counsel necessary for it to form a full and complete understanding of all rights and obligations herein. Accordingly, this Contract shall not be construed or interpreted in favor of or against the State or Contractor on the basis of draftsmanship or preparation hereof.

25. Modification or Renegotiation

MDFA, OSA or the Contractor may, from time to time, request changes in the scope of services of the Contractor to be performed thereunder. Such changes, which are mutually agreed upon by and between MDFA, OSA, and the Contractor, shall be included in written amendments to this Contract signed by all parties prior to the work being performed. This Contract may be modified, altered or changed only by written agreement signed by the parties hereto. The parties agree to renegotiate the Contract if federal and/or State revisions of any applicable laws or regulations make changes in this Contract necessary.

26. 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 shall be made in writing by the MDFA, OSA, and the Contractor.

27. Paymode

Payments by state agencies using the State's accounting system shall be made and remittance information provided electronically as directed by the State. These payments shall be deposited into the bank account of the Contractor's choice. The State may, at its sole discretion, require the Contractor to submit invoices and supporting documentation electronically at any time during the term of this Contract. The Contractor understands and agrees that the State is exempt from the payment of taxes. All payments shall be in United States currency. No payment, including final payment, shall be construed as acceptance of defective or incomplete work, and the Contractor shall remain responsible and liable for full performance.

28. 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 <https://www.dfa.ms.gov/dfa-offices/personal-service-contract-review/opsr/>.

29. Record Retention and Access to Records

- a. The working papers prepared in conjunction with the services under this Contract are the property of the Contractor and constitute confidential information. The Contractor shall maintain and make available to MDFA and OSA any financial records, supporting documents, statistical records and all other records pertinent to the services performed under this Contract in accordance with the Contractor's policies and procedures or professional regulatory requirements. Such records shall be kept by the Contractor for a period of seven (7) years after final payment under this Contract, unless MDFA authorizes in writing, their earlier disposition. However, if any litigation, claim, negotiation, audit, or other action involving the records has been started before the expiration of the seven (7) year period, the records shall be retained until completion of the action and resolution of all issues which arise from it.
- b. The Contractor agrees, upon request by MDFA and/or OSA, to make its workpapers available to subsequent fiscal year audit firms, in accordance with professional standards.
- c. Except as may otherwise be required by law or permitted under this Contract, the Contractor may not release any confidential and/or protected information or reports relative to the Board's and/or MDFA's contracts without prior written authorization by MDFA.
- d. The Contractor agrees that the MDFA or any of its duly authorized representatives at any time during the term of this Contract shall have unimpeded, prompt access to and the right to audit and examine any pertinent books, documents, papers, and/or records of the Contractor related to the Contractor's charges and performance under this Contract. The MDFA agrees to provide the Contractor with reasonable advance notice for any standard audits or reviews, with the expectation that such reviews shall be made during normal business hours of the Contractor. The parties shall cooperate to schedule and conduct such audit or inspection to prevent disruption to Contractor's performance of the services hereunder and for Contractor's other customers.
- e. To the extent any applicable personal health information (PHI) is reviewed, the Contractor agrees to the provisions, terms and conditions of the attached Business Associate Statement. The Contractor recognizes that it may have access to certain confidential and proprietary information pertaining to the business of MDFA, including but not limited to, policy benefits, names and addresses of Plan Participants, employer units and contracts with other parties. The Contractor agrees that it will not, at any time, directly or indirectly, disclose such confidential or proprietary information to any other person or organization

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 Contractor and contemplated by the terms of the Contract, without the express, written approval of MDFA. 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 Contractor without the written consent of MDFA, except to MDFA or its Claims Administrator. Except as otherwise provided under this Contract, the Contractor 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 for any purpose, other than in connection with Contractor's performance of the services under this Contract, without the expressed, written authority from MDFA or as otherwise required by law.

30. Recovery of Money

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

31. Representation Regarding Contingent Fees

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

32. Representation Regarding Gratuities

The Contractor represents that it has not violated, is not violating, and promises that it will not violate the prohibition against gratuities set forth in Section 6-204 (Gratuities) of the *Mississippi Public Procurement Review Board Office of Personal Service Contract Review Rules and Regulations*.

33. Right to Inspect

MDFA, the Mississippi Office of the State Auditor, or any other auditing agency prior-approved by MDFA, or their authorized representative shall, at all reasonable times, have the right to enter onto the Contractor's premises, or such other places where duties under this

Contract are being performed, to inspect, monitor, or otherwise evaluate the work being performed. The Contractor shall provide access to all facilities and assistance for MDFA and OSA's representatives. All inspections and evaluations shall be performed in such a manner as to not delay work. Refusal by the Contractor to allow access to all documents, papers, letters or other materials, shall constitute a breach of Contract. All audits performed by persons other than MDFA staff shall be coordinated through MDFA and its staff.

34. Severability

If any part of this Contract is declared to be invalid or unenforceable, such invalidity or unenforceability shall not affect any other provision of the Contract that can be given effect without the invalid or unenforceable 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.

35. Standards of Care/Remedies

The Contractor 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.

36. Stop Work Order

A. *Order to Stop Work.* The MDFA and OSA, may, by written order to the Contractor at any time, and without notice to any surety, require the Contractor to stop all or any part of the work called for by this Contract. This order shall be for a specified period not exceeding 90 days after the order is delivered to the Contractor, unless the parties agree to any further period. Any such order shall be identified specifically as a stop work order issued pursuant to this clause. Upon receipt of such an order, the Contractor shall forthwith comply with its terms and take all reasonable steps to minimize the occurrence of costs allocable to work covered by the order during the period of work stoppage. Before the stop work order expires, or within any further period to which the parties shall have agreed, the MDFA or OSA 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 Contractor shall have the right to resume work. An appropriate adjustment shall be made in the delivery schedule or Contractor price, or both, and the Contract shall be modified in writing accordingly, if:

1. the stop work order results in an increase in the time required for, or in the Contractor's costs properly allocable to, the performance of any part of this Contract; and,

2. the Contractor asserts a claim for such an adjustment within 30 days after the end of the period of work stoppage; provided that, if the MDFA or OSA 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.

37. Termination for Convenience

A. *Termination.* The MDFA, with the written consent of OSA, may when the interests of the State so require, terminate this Contract, with or without cause, in whole or in part, for the convenience of the State by providing a thirty (30) day written notice of termination to the Contractor specifying the part of the Contract terminated and when the termination becomes effective. However, prior to termination of this Contract by MDFA, MDFA must provide written justification to OSA documenting the reasons for requesting the Contract be terminated. MDFA must obtain written approval from OSA prior to terminating this Contract.

B. *Contractor's Obligations.* The Contractor shall incur no further obligations in connection with the terminated work, and on the date set in the notice of termination, the Contractor shall stop work to the extent specified. The Contractor shall also terminate outstanding orders and subcontracts as they relate to the terminated work. The Contractor shall settle the liabilities and claims arising out of the termination of subcontractors and orders connected with the terminated work. The MDFA may direct the Contractor to assign the Contractor's right, title, and interest under terminated orders or subcontracts to the State. The Contractor shall still complete the work not terminated by the notice of termination and may incur obligations as are necessary to do so.

C. In the event of termination for convenience, the Contractor 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 Contractor 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 Contractor under this Contract shall become the property of MDFA and OSA.

38. Termination for Default

A. *Default.* Upon the failure of either the Contractor or MDFA 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 MDFA, MDFA must provide written justification to OSA documenting the reasons that the Contract should be terminated. MDFA must obtain written approval from OSA prior to terminating the Contract. In the event of termination for cause by MDFA and/or OSA, in addition to other remedies provided herein or available at law or in equity, the Contractor 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. *Contractor's Duties.*** Notwithstanding termination of the Contract and subject to any directions from the MDFA and/or OSA, the Contractor shall take timely, reasonable, and necessary action to protect and preserve property in the possession of the Contractor in which the State has an interest.
- C. *Compensation.*** Payment for completed services delivered and accepted by the State shall be at the Contract price. The State may withhold from amounts due the Contractor such sums as the MDFA deems to be necessary to protect the State against loss because of outstanding lien holders or claims of former lien holders and to reimburse the State for the excess costs incurred in procuring similar goods and services. In the event of termination for cause, the Contractor 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 Contractor 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 Contractor under this Contract shall become the property of MDFA and OSA.
- D. *Excuse for Nonperformance or Delayed Performance.*** Except with respect to defaults of subcontractors, the Contractor shall not be in default by reason of any failure in performance of this Contract in accordance with its terms (including any failure by the Contractor to make progress in the prosecution of the work hereunder which endangers performance) if the Contractor has notified the MDFA within 15 days after the cause of the delay and the failure arises out of causes such as: acts of God; acts of the public enemy; acts of the State and any other governmental entity in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather. If the failure to perform is caused by the failure of a subcontractor to perform or make progress, and if such failure arises out of causes similar to those set forth above, the Contractor shall not be deemed to be in default, unless the services to be furnished by the subcontractor were reasonably obtainable from other sources in sufficient time to permit the Contractor to meet the Contract requirements. Upon request of the Contractor, the MDFA shall ascertain the facts and extent of such failure, and, if the MDFA 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 Contractor's progress and performance would have met the terms of the Contract, the delivery schedule shall be revised accordingly, subject to the rights of the State under the clause of this

Contract entitled "Termination for Convenience". (As used in this Paragraph of this clause, the term "subcontractor" means subcontractor at any tier).

E. *Erroneous Termination for Default.* If, after notice of termination of the Contractor 's right to proceed under the provisions of this clause, it is determined for any reason that the Contract was not in default under the provisions of this clause, or that the delay was excusable under the provisions of Paragraph D (Excuse for Nonperformance or Delayed Performance) of this clause, the rights and obligations of the parties shall, if the Contract contains a clause providing for termination for convenience of the State, be the same as if the notice of termination had been issued pursuant to a termination for convenience.

F. *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.

39. Termination Upon Bankruptcy

This Contract may be terminated in whole or in part by the MDFA upon written notice to the Contractor and a copy to OSA, if the Contractor should become the subject of bankruptcy or receivership proceedings, whether voluntary or involuntary, or upon the execution by Contractor of an assignment for the benefit of its creditors. In the event of such termination, Contractor shall be entitled to recover just and equitable compensation for satisfactory work performed under this Contract, but in no case shall said compensation exceed the total Contract price.

40. Third Party Action Notification

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

41. 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.

42. 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 79-23-1. In addition, this Contract is subject to the provisions

of the Mississippi Accountability and Transparency Act of 2008. Mississippi Code Annotated § 27-104-151 *et seq.* Unless exempted from disclosure due to a court-issued protective order, a copy of this executed Contract is required to be posted to the MDFA's independent agency contract website for public access at <http://www.transparency.mississippi.gov>. Information identified by Contractor as trade secrets, or other proprietary information, including confidential vendor information or any other information which is required confidential by state or federal law or outside the applicable freedom of information statutes, shall be redacted.

43. Waiver

No delay or omission by the Contractor, MDFA, or OSA in exercising any right, power, or remedy hereunder or otherwise afforded by contract, at law, or in equity shall constitute an acquiescence therein, impair any other right, power or remedy hereunder or otherwise afforded by any means, or operate as a waiver of such right, power, or remedy. No waiver by the Contractor, MDFA, or OSA shall be valid unless set forth in writing by the party making said waiver. No waiver of or modification to any term or condition of this agreement will void, waive, or change any other term or condition. No waiver by the Contractor, MDFA, or OSA of a default will imply, be construed as or require waiver of future or other defaults. 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.

44. Notices

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

If to MDFA and/or the Board: Attention: Executive Director
Mississippi Department of Finance and Administration
501 N. West St., Suite 1301 Woolfolk Building
Post Office Box 267
Jackson, Mississippi 39205-0267

With copy of any notice to: State Insurance Administrator
Office of Insurance
Mississippi Department of Finance and Administration
501 N. West St., Suite 901-B Woolfolk Building
Post Office Box 24208
Jackson, Mississippi 39225-4208

If to the Contractor: Wil Crawford, CPA, Partner
Forvis, LLP

1400 Meadowbrook Drive, Suite 300
Jackson, MS 39211

If to OSA:

Stephanie Palmertree, CPA, CGMA
Office of the State Auditor
Post Office Box 956
Jackson, MS 39205

45. 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 Exhibit B, MDFA's Business Associate Statement;*
- B. The *Office of the State Auditor's Request for Quotes for Financial Audit Services, dated June 1, 2022*, including any attachments and amendment thereto, attached hereto as *Exhibit C* and incorporated fully herein by reference; and
- C. The *Contractor's Response to the Office of the State Auditor's Request for Quotes for Financial Audit Services, dated June 7, 2022*, attached hereto as *Exhibit D* and incorporated fully herein by reference.

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IN WITNESS WHEREOF, the parties hereto have caused this Contract to be effective upon the date this Contract is signed by all three parties:

Forvis, LLP

Mississippi Department of Finance and Administration

By: Wil Crawford

By: Liz Welch

Name: Wil Crawford

Name: Liz Welch

Title: CPA, Partner

Title: Executive Director

Date: 9-6-22

Date: 9-21-2022

Office of the State Auditor

By: Stephanie Palmer

Name: Stephanie Palmer

Title: Deputy State Auditor

Date: 9/21/22

Exhibit A. Fee Schedule for Financial Audit Services

The financial audit services rendered to the Mississippi State and School Employees' Health Insurance Plan under this agreement, including both the annual ACFR audits and the annual GASB 74/75 audits, the following all-inclusive annual project fees will apply, and include any and all expenses such as printing, binding, photocopy, and travel:

Unit Description	Annual Project Fee/Blended Hourly Rate
Contract Year 1 (08/28/2022 – 08/27/2023)	\$74,000.00/\$169.00
Contract Year 2 (08/28/2023 – 08/27/2024)	\$77,000.00/\$176.00
Contract Year 3 (08/28/2024 – 08/27/2025)	\$81,500.00/\$186.00
Contract Year 4* (08/28/2025 – 08/27/2026)	\$85,500.00/\$196.00
Contract Year 5* (08/28/2026 – 08/27/2027)	\$89,750.00/\$205.00

*Applicable in the event the optional one-year contract renewals are exercised by MDFA and OSA.

The blended hourly fee above will apply in the event MDFA requests the Contractor perform any additional discretionary services over and above the audits described herein as requested by the Board. Billing for any such approved additional services will be based on the actual number of hours at the guaranteed rate.

All annual project fees listed are guaranteed through the term of the Contract. Above annual project fees are all-inclusive with no additional fees and include such items as travel, copies postage and other delivery charges, supplies, technology-related costs, such as computer processing, software licensing, research and library databases and similar expense items. The fees/rates quoted will constitute the entire compensation due to the Contractor for services rendered.

Exhibit B. *Mississippi Department of Finance and Administration's Business Associate Statement*

This Business Associate Statement (BAS) supplements and is made part of the Financial Audit Services Contract (Contract) entered into by and between Forvis, LLP (Business Associate) and the Mississippi Department of Finance and Administration (MDFA) 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 MDFA.

Whereas, MDFA 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.

- 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. 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 maintain a log of Breaches and will provide such log to the Covered Entity upon request 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.**

Within 10 days written notice, upon a reasonable determination by the Covered Entity that Business Associate has breached this BAS, the Covered Entity may conduct a reasonable inspection of Business Associate's facilities, systems, books and records governing the privacy and security of PHI ; provided, however, that (i) the parties shall mutually agree in advance upon the reasonable scope, timing, and location of such inspection; (ii) Covered Entity shall protect the confidentiality of all confidential and proprietary information of Business Associate to which Covered Entity has access during the course of such inspection; and (iii) upon request of Business Associate, Covered Entity agrees to execute a nondisclosure agreement prior to such inspection, upon terms mutually agreed upon by the parties.

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 a cost to be negotiated and agreed-upon by the parties, 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.

Exhibit C. *Office of the State Auditor's Request for Quotes for Financial Audit Services, dated June 1, 2022*

Exhibit D. Contractor's Response to the Office of the State Auditor's Request for Quotes for Financial Audit Services, dated June 7, 2022