

PERSONAL SERVICE CONTRACT

This Personal Service Contract ("Contract") is made by and between the Public Employees' Retirement System of Mississippi ("PERS") whose address is 429 Mississippi Street, Jackson, Mississippi 39201 and Baptist Healthplex Jackson (Contractor"), whose address is 717 Manship Drive, Jackson, MS 39202 on the 1st day of April, 2015 under the following terms and conditions:

1. **Scope of Services** Pursuant to Section 41-97-9, of the 1972 Mississippi Code Annotated, as amended, (Senate Bill 2646, 2010 Regular Legislative Session), PERS has retained your services to provide a facility(ies) for its employees to improve their health and wellbeing. As part of this service, PERS employees shall be entitled to join and use the facilities and equipment as well as participate in classes, nutritional instruction, and any other wellness and fitness activities offered to the general public by your facility that are normally included with the membership fee. PERS employees may participate in programs/services normally provided at additional cost by enrolling and paying for said programs/services. This scope shall include all facilities owned, operated, maintained or affiliated with the Contractor, where ever located. Further, the Contractor agrees to suspend any bank draft or any other form of payment for any PERS employee who is currently enrolled at the Contractor's facility(ies) for the duration of this Contract and any renewals or extension thereof.
2. **Contract Term** The contract period shall be from April 1, 2015 through March 31, 2016, with an option to renew upon the mutual agreement of the parties.
3. **Consideration** As consideration for the performance of this Contract, Contractor shall be paid a fee not to exceed Ten Thousand Dollars (\$10,000) in accordance with the terms of this Contract. The Contractor shall invoice PERS as outlined under paragraph 4 of this contract.
4. **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 DFA agrees to make payment in accordance with Mississippi law on "Timely Payments for Purchases by Public Bodies", Section 31-7-301, et seq. of the 1972 Mississippi Code Annotated, as amended, which generally provides for payment of undisputed amounts by the agency within forty-five (45) days of receipt of the invoice.
5. **Paymode** Payments by state agencies using the State's automated 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 Agreement. The Contractor understands and agrees that the State is exempt from the payment of taxes. All payments shall be in United States currency.
6. **Availability of Funds** It is expressly understood and agreed that the obligation of PERS to proceed under this Agreement is conditioned upon the appropriation of funds by the Mississippi State Legislature and the receipt of state and/or federal funds. If the funds anticipated for the continuing fulfillment of the agreement are, at any time, not forthcoming or insufficient, either through the failure of the federal government to provide funds or of the State of Mississippi to appropriate funds or the discontinuance or material alteration of the program under which funds were provided or if funds are not otherwise available to PERS, PERS shall have the right upon ten (10) working days written notice to the Contractor, to

terminate this Agreement without damage, penalty, cost or expenses to PERS of any kind whatsoever. The effective date of termination shall be as specified in the notice of termination. (MCA Section 27-104-25(3)). PERS shall have the sole right to determine whether funds are available for the payments or performances due under this Contract.

7. **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, except as disclosed in the contractor's bid of proposal.
8. **Representation Regarding Gratuities** The bidder, offeror, or 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 Personal Service Contract Procurement Regulations.
9. **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 venue for resolution of any dispute shall be Jackson, Hinds County, Mississippi. The Contractor shall comply with applicable federal, state, and local laws and regulations. Contractor expressly agrees that under no circumstances shall PERS be obligated to pay an attorney's fee, prejudgment interest or the cost of legal action to Contractor. Further, nothing in this Contract shall affect any statutory rights that PERS may have and such rights cannot be waived or limited by contract.
10. **Assignment** The Contractor shall not assign, subcontract or otherwise transfer in whole or in part, its rights or obligations under this Contract without prior written consent of PERS. Any attempted assignment or transfer without said consent shall be void and of no effect.
11. **Compliance with Laws** The Contractor understands that PERS is an equal opportunity employer and therefore maintains a policy which prohibits unlawful discrimination based on race, color, sex, age, national origin, disability, 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 agreement that the Contractor will 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. **Transparency** This contract, including any accompanying exhibits, attachments, and appendices, is subject to the "Mississippi Public Records Act of 1983," and its exceptions. See Miss. Code Ann. § 25-61-1 *et seq.*, (1972, as amended) and Miss. Code Ann. § 79-23-1 (1972, as amended). In addition, this contract is subject to the provisions of the Mississippi Accountability and Transparency Act of 2008. Miss. Code Ann. § 27-104-151, *et seq.* (1972, as amended). Unless exempted from disclosure due to a court-issued protective order, a copy of this executed contract is required to be posted to the Department of Finance and Administration's independent Agency contract website for public access at <http://www.transparency.mississippi.gov>. Information identified by the Contractor as trade secrets, or other proprietary information including confidential vendor information or any other information which is required confidential by state or federal law or outside the applicable freedom of information statutes, will be redacted.

13. **Employee Status Verification System** If applicable, Contractor represents and warrants that it will ensure its compliance with the Mississippi Employment Protection Act of 2008, and will register and participate in the status verification system for all newly hired employees. Mississippi Code Annotated §§71-11-1, *et seq.* (1972, as amended) The term "employee" as used herein means any person that is hired to perform work within the State of Mississippi. As used herein, "status verification system" means the Illegal Immigration Reform and Immigration Responsibility Act of 1996 that is operated by the United States Department of Homeland Security, also known as the E-Verify Program, or any other successor electronic verification system replacing the E-Verify Program. Contractor agrees to maintain records of such compliance. Upon request of the State and after approval of the Social Security Administration or Department of Homeland Security when required, Contractor agrees to provide a copy of each such verification. Contractor further represents and warrants that any person assigned to perform services hereafter meets the employment eligibility requirements of all immigration laws. The breach of which may subject Contractor to the following:

- (1) termination of this Agreement 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;
- (2) 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,
- (3) both.

In the event of such termination/cancellation, the Contractor shall 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.

14. **Independent Contractor** The Contractor shall perform all services as an Independent Contractor and shall at no time act as an agent for PERS. No act performed or representation made, whether oral or written, by the Contractor with respect to third parties shall be binding on PERS. Neither the Contractor nor its employees shall, under any circumstances, be considered servants, agents, or employees of PERS; and PERS shall no time be legally responsible for any negligence or other wrongdoing by the Contractor, its servants, agents, or employees. It is expressly understood and agreed that PERS enters into this Contract with Contractor based on the procurement of professional services and not based on an employer-employee relationship. For all purposes under this Contract, it is understood that the consideration expressed herein constitutes full and complete compensation for all services and performances hereunder, and that any sum due and payable to Contractor shall be paid as a gross sum with no withholdings or deductions being made by PERS for any purpose from said Contract sum. Contractor accepts exclusive responsibility for the payment of Federal Income Tax, State tax, Social Security, and any other withholdings that may be required.

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 shall be 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 PERS. Any person assigned by Contractor to perform the services hereunder

shall be the employee of Contractor, who shall have the sole right to hire and discharge its employee. PERS may, however, direct Contractor to replace any of its employees under this Contract. Contractor will be responsible for the behavior of all its employees and subcontractors while on the premises of PERS. Any employee or subcontractor of Contractor acting in a manner determined by the administration of that location to be detrimental, abusive or offensive to any of the staff will be asked to leave the premises and may be suspended from further work on the premises. All employees and subcontractors of Contractor who will be working at such locations shall be covered by Contractor's comprehensive general liability insurance policy. Contractor shall pay when due, all salaries and wages of its employees and it accepts exclusive responsibility for the payment of federal income tax, state income tax, social security, unemployment compensation and any other withholdings that may be required. Neither Contractor nor its employees are entitled to state retirement or leave benefits.

15. **Termination** PERS may terminate this Contract with or without cause upon ten (10) days written notice to the Contractor. The Contractor may terminate this Contract with cause upon thirty (30) days written notice to PERS.
16. **Modification or Renegotiation** This Agreement may be modified, altered or changed only by written agreement signed by the parties hereto. The parties agree to renegotiate the agreement if federal or state revisions of any applicable laws or regulations make changes in this Contract necessary.
17. **Procurement Regulations** The Contract shall be governed by the applicable provisions of the Personal Service Contract Review Board Regulations, a copy of which is available at 210 East Capitol Street, Suite 800, Jackson, MS, for inspection, or downloadable at www.mspb.ms.gov.
18. **Ownership of Documents and Work Papers** PERS shall own all documents, files, reports, work papers and working documentation, electronic or otherwise, whether completed or in progress, created in connection with this Contract, except for the Contractor's internal administrative and quality assurance files and internal project correspondence. The Contractor shall deliver such documents and work papers to PERS upon termination or completion of the Contract. The foregoing notwithstanding, the Contractor shall be entitled to retain a set of such work papers for its files. The Contractor shall be entitled to use such work papers only after receiving written permission from PERS and subject to any copyright protections.
19. **Indemnification** To the fullest extent allowed by law, the Contractor shall indemnify, defend, save and hold harmless, protect, and exonerate PERS, its officers, employees, agents, and representatives, and the State of Mississippi from and against all claims, demands, liabilities, suits, actions, damages, losses, and costs of every kind and nature whatsoever, including, without limitation, court costs, investigative fees and expenses, and attorneys' fees, and claims for damage arising out of or caused by the Contractor and/or its partners, principals, agents, employees and/or subcontractors in the performance of or failure to perform this Contract.
20. **Third Party Action Notification** The Contractor shall notify PERS in writing within five (5) business days of its receipt of liquidation or receivership proceedings or within five (5) business days of its receipt of notification of any action or suit being filed or any claim being

made against Contractor or PERS by any entity that may result in litigation related in any way to this Contract and/or which may affect the Contractors performance under this Contract. Failure of the Contractor to provide such written notice to PERS shall be considered a material breach of this Contract and PERS may, at its sole discretion, pursue its rights as set forth in the Termination clauses herein and any other remedies it may have at law or in equity.

21. **Notices** All notices required or permitted to be given under this Contract must be in writing and personally delivered or sent by facsimile provided that the original of such notice is sent by certified United States mail postage prepaid, return receipt requested, or overnight courier with the signed receipt, 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.

For the Contractor:

David Carpenter
Director
Baptist Healthplex Jackson
717 Manship Drive
Jackson, MS 39202
(601) 968-1766

For PERS:

Public Employees' Retirement System
Attn: Pat Robertson
Executive Director
429 Mississippi Street
Jackson, MS 39201

22. **Severability** If any term or provision of this Contract is prohibited by the laws of this 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 this Contract shall be valid and enforceable to the fullest extent permitted by law.

23. **Change In Scope of Work** The Mississippi State Personnel Board may order changes in the work consisting of additions, deletions, or other revisions within the general scope of the contract. No services has 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 Mississippi State Personnel Board and the Contractor.

If the Contractor believes that any particular work is not within the scope of the project, is a material change, or will otherwise require more compensation to the Contractor, the Contractor must immediately notify the Mississippi State Personnel Board in writing of this belief. If the Mississippi State Personnel Board believes that the particular work is within the scope of the contract as written, the Contractor will be ordered to and shall continue with the work as changed and at the cost stated for the work within the scope.

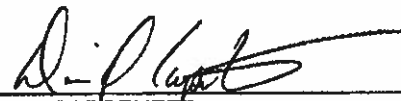
24. **Failure to Enforce** Failure by PERS, at any time, to enforce the provisions of the Contract shall not be construed as a waiver of any such provisions. Such failure to enforce shall not affect the validity of the Contract or any part thereof or the right of PERS to enforce any provision at any time in accordance with its terms.
25. **Sovereign Immunity** By entering into this Contract with Contractor, the State of Mississippi does, in no way, waive its sovereign immunities or defenses, as provided by law.

26. **Confidential Information** Contractor shall treat all PERS data and information to which it has access by its performance under this Contract as confidential and shall not disclose such data or information to a third party without specific written consent of PERS. In the event that Contractor receives notice that a third party requests divulgence of confidential or otherwise protected and/or has served upon it a subpoena or other validly issued administrative or judicial process ordering divulgence of such information, Contractor shall promptly inform PERS and thereafter respond in conformity with such subpoena to the extent mandated by state and/or federal laws, rules and regulations. This Article shall survive termination or completion of this Contract and shall continue in full force and effect and shall be binding upon the Contractor and its agents, employees, successors, assigns, subcontractors or any party or entity claiming an interest in this Contract on behalf of, or under the rights of the Contractor following any termination or completion of this Contract.
27. **Entire Agreement** This Contract constitutes the entire agreement of the parties with respect to the subject matter contained herein and supercedes or replaces any and all prior negotiations, understandings and agreements, written or oral, between the parties relating thereto.

This Contract has been entered into and executed by the parties hereto as of the day and year first above written.



PAT ROBERTSON
EXECUTIVE DIRECTOR
PUBLIC EMPLOYEES' RETIREMENT SYSTEM



DAVID CARPENTER
DIRECTOR
BAPTIST HEALTHPLEX JACKSON