

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

**AMENDMENT NO. 1 TO CONTRACTUAL AGREEMENT FOR
THIRD-PARTY ADMINISTRATIVE SERVICES FOR HEALTHSELECTSM OF TEXAS, INCLUDING
A HIGH DEDUCTIBLE HEALTH PLAN**

This Amendment No. 1 ("**Amendment No. 1**"), is entered into by and between the Employees Retirement System of Texas ("**ERS**") and Blue Cross and Blue Shield of Texas, an Operating Division of Health Care Service Corporation, a Mutual Legal Reserve Company ("**TPA**").

RECITALS

WHEREAS, effective December 2, 2016, ERS and TPA entered into a Contractual Agreement to provide Third-Party Administrative Services for HealthSelectSM of Texas ("**HealthSelect**"), including a High Deductible Health Plan (the "**Original Contract**"), under the Texas Employees Group Benefits Program; and

WHEREAS, effective August 25, 2017, ERS and TPA (sometimes hereinafter referred to as the "**Parties**") supplemented the Original Contract to continue the Employee Health Center at the Texas Commission on Environmental Quality ("**Supplement No. 1**"); and

WHEREAS, effective September 1, 2017, the Parties supplemented the Original Contract to provide access to ERS Users to the OnLife Health website and mobile application ("**Supplement No. 2**"; the Original Contract, Supplement No. 1 and Supplement No. 2 will hereinafter collectively be referred to as the "**Contract**"); and

WHEREAS, ERS and TPA have determined to amend Exhibit D Fee Schedule; and

WHEREAS, in accordance with Article 2.8 of the Contract, the Contract may be altered, extended, modified or amended by mutual written agreement of ERS and TPA.

NOW, THEREFORE, in consideration of the above premises, ERS and TPA now desire to enter into this amendment, effective January 1, 2018, in order to amend Exhibit D Fee Schedule and make other necessary amendments, in each case as more fully set forth below.

AGREEMENT

ERS and TPA, by their authorized signatures below, agree that:

1. Section 16.2(a), with regard to *Conflicts of Interest*, is hereby amended to read in its entirety as follows:

(a) TPA warrants and represents that for a period of two (2) years prior to the Effective Date of the Contract, TPA and its Agents (which includes any person or entity who has undertaken to advise, consult or communicate with Public Servants (as defined below) on behalf of or to the benefit of TPA and its Agents (whether or not TPA and its Agents sought the benefit)), have not communicated with, caused or permitted any other person or entity to communicate with:

(1) Any RFP Advisor (as defined below),

(2) Any member of the Board or the Investment Advisory Committee ("**IAC**"),

- (3) Any member of the Group Benefits Advisory Committee ("**GBAC**");
- (4) ERS' Executive Director or designee or other member of ERS executive management, or
- (5) Any member, officer, or staff employee of any office of the executive or legislative branches of the state of Texas (collectively referred to as "**Public Servants**"),

in any way related to the subject matter of this Contract or any other contract or program administered by ERS; or that in any manner affects ERS' administration of any existing or prospective contract; or that attempts to facilitate and/or influence the obtaining of any contract, rights, payment, or direct or indirect benefit in relation to the subject matter of this Contract. This warranty and representation also applies if TPA or its Agents knew or should have known that any of the foregoing occurred and did not stop or prevent the communication.

This warranty and representation does not apply to communications scheduled or approved by ERS between TPA and/or (i) the Board, (ii) the IAC, (iii) ERS' Executive Director or his designee and other ERS executive management, (iv) RFP Advisor as part of the underlying RFP/Proposal process; or (v) related to Solution Sessions or similar meetings scheduled by ERS. It also does not apply to communications with the Board, the IAC, or ERS' Executive Director or his designee and other ERS executive management, or RFP Advisor regarding matters related to any other contract between TPA and ERS if such communications are expressly permitted under the relevant contract or expressly authorized by ERS' Executive Director or designee."

- 2. Article 18, with regard to *Employment Verification*, is hereby amended to read in its entirety as follows:

"Article 18. Employment Verification

18.1 By entering into this Contract, TPA certifies and ensures that it utilizes and will continue to utilize, for the term of this Contract, the U.S. Department of Homeland Security's E-Verify system, or another similar system as approved by ERS, in accordance with that system's established rules and requirements, to determine the eligibility of: (1) All persons employed to perform duties within Texas, during the term of the Contract; and (2) All persons (including subcontractors) assigned by TPA to perform work pursuant to the Contract, within the United States of America.

18.2 ERS shall have the right to audit, at its own cost, TPA's compliance with this Article 18 at any time during the term of this Contract. If ERS elects to conduct such audit, TPA is required to provide reasonable documentation agreed to by both parties (at TPA's own expense) to sufficiently demonstrate to ERS that TPA is in compliance with Section 18.1.

18.3 If the certification at section 18.1 is falsely made or TPA does not comply with Section 18.2, the Contract may be immediately terminated, at the discretion of ERS and at no fault to ERS, with no prior notification. TPA shall also be responsible for the costs of any re-solicitation that ERS must undertake to replace the terminated Contract, if applicable."

- 3. Section 29.1(b), with regard to *Notice*, is hereby amended as follows:

"(b) ERS at:
 Employees Retirement System of Texas
 P.O. Box 13207
 Austin, Texas 78711-3207

Attn: Porter Wilson, Executive Director Email:
Porter.Wilson@ers.texas.gov

cc: Paula A. Jones, Deputy Executive Director and General Counsel
Email: Paula.jones@ers.texas.gov

4. Section 32.4, with regard to *Entire Contract*, is hereby amended in its entirety to read as follows:

"32.4 The parties acknowledge and agree that if it is determined that there is an inherent or implied conflict among the Contract and any component parts thereof, then the following shall be the order of priority of the documents described herein, with the first document in the list being the ultimate authority to the extent necessary to resolve any conflicts, ambiguities or inconsistencies between them, and then descending down the list that follows, but silence on any matter in a higher order document shall not negate, change, avoid, modify, or prevail over the provisions of a lower order document as to that matter:

- (a) This Contractual Agreement, as executed by authorized representatives of the parties hereto;
- (b) The Business Associate Agreement (Exhibit "F");
- (c) The Data Security and Breach Notification Agreement (Exhibit "H");
- (d) The Fee Schedule (Exhibit "D");
- (e) The First Amended and Restated Performance Guarantees (Exhibit "E");
- (f) The Clarifications (Exhibit "C");
- (g) The Implementation Plan (Exhibit "I");
- (h) The RFP (Exhibit "A"); and
- (i) The Proposal (Exhibit "B")."

5. Article 35 of the Contract with regard to *List of Exhibits* is amended in its entirety to read as follows:

Article 35. List of Exhibits

35.1 The following exhibits are attached to this Contract and incorporated herein for all purposes as specified in Article 31 herein:

Exhibit No.	Exhibit Description
Exhibit A	The RFP
Exhibit B	The Proposal
Exhibit C	Clarifications
Exhibit D	Fee Schedule
Exhibit E	First Amended and Restated Performance Guarantees
Exhibit F	Business Associate Agreement
Exhibit G	Declaration Pages from Insurance Policies
Exhibit H	Data Security and Breach Notification Agreement
Exhibit I	Implementation Plan
Exhibit J	Incumbency Certificate

9. Article 36 shall be incorporated in its entirety to read as follows:

"Article 36. Boycott of Israel"

36.1 In accordance with Texas Government Code, Chapter 2270, TPA certifies that it does not currently boycott Israel, and agrees that it will not boycott Israel during the term of the Contract. "Boycott Israel" is defined in Texas Government Code, Section 808.001."

11. Exhibit E, the First Amended and Restated Performance Guarantees, is attached hereto and into the Contract as Exhibit "E" and is incorporated herein by reference for all purposes as if restated in full.

12. TPA warrants and represents that the statements, warranties and representations contained in the Contract continue to be true and correct. TPA acknowledges that ERS has executed this Amendment No. 1 in reliance on the truth and accuracy of these statements, warranties and representations. TPA shall immediately notify ERS in the event such warranties, representations and/or statements are no longer true and correct.

13. The Contract, as amended hereby, shall be effective as of January 1, 2018, and supersedes all prior understandings or arrangements between the Parties as stated herein, whether oral or written, with respect to the provisions hereof.

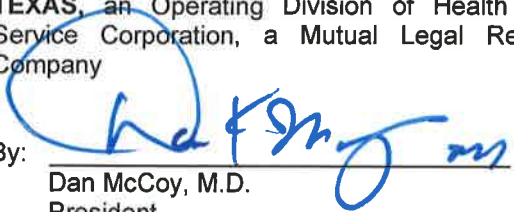
14. Except as expressly amended hereby, all provisions of the Contract, including all supplements, amendments and Exhibits thereto, shall remain in full force and effect and are unchanged in all other aspects.

15. If any provision of the Contract, as amended hereby, is held to be void or unenforceable, the remaining provisions are considered to be severable and their enforceability is not affected or impaired in any way by reason of such law or holding.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, ERS and TPA, as the two signatories to this Amendment No. 1 to the Contract, have memorialized this Amendment No. 1 to be fully effective January 1, 2018.

BLUE CROSS AND BLUE SHIELD OF TEXAS, an Operating Division of Health Care Service Corporation, a Mutual Legal Reserve Company

By: 
Dan McCoy, M.D.
President

Date: June 20, 2018

EMPLOYEES RETIREMENT SYSTEM OF TEXAS

By: 
Porter Wilson
Executive Director

Date: 6-27-18

Attachment

Exhibit E – First Amended and Restated Performance Guarantees