

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

**AMENDMENT NO. 1 TO CONTRACTUAL AGREEMENT FOR
PHARMACY BENEFIT MANAGER SERVICES FOR A MEDICARE PART D
EMPLOYER GROUP WAIVER PLAN WITH A WRAP PRESCRIPTION DRUG PLAN**

This Amendment No. 1 ("**Amendment No. 1**"), effective as of January 1, 2018, is entered into by and between the Employees Retirement System of Texas ("**ERS**") and United HealthCare Services, Inc. ("**PBM**").

RECITALS

WHEREAS, effective May 17, 2016, ERS and PBM entered into a Contractual Agreement for Pharmacy Benefit Management Services ("**Original Contract**") for a Medicare Part D Employer Group Waiver Plan with a Wrap Prescription Drug Plan provided to participants under HealthSelectSM of Texas ("**HealthSelect**"); and

WHEREAS, effective October 5, 2016, ERS and PBM (sometimes hereinafter referred to as the "**Parties**") supplemented the Contract to address the use of PBM websites ("**Supplement No. 1**"; the Original Contract and Supplement No. 1 will hereinafter collectively be referred to as the "**Contract**"); and

WHEREAS, ERS and PBM have determined to amend PBM's performance guarantees under the Contract; and

WHEREAS, in accordance with Article 2.7 of the Contract, the Contract may be altered, extended, modified or amended by mutual written agreement of ERS and PBM.

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

AGREEMENT

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

1. Effective January 1, 2018, Section 5.5 of the Contract with regard to *Performance Guarantees* is hereby amended to read as follows:

"5.5 Performance Guarantees

To the extent that PBM has agreed to Performance Guarantees in connection with its performance under the Contract, then they are attached hereto as Exhibit "E" ("**Performance Guarantees**") and Exhibit "E-1" ("**First Amended Performance Guarantees**"), and in each event are incorporated herein for all purposes as if restated in full. ERS and PBM agree that the Performance Guarantees, as further described in Exhibit "E", shall apply to PBM's performance under the Contract prior to January 1, 2018, and the First Amended

Performance Guarantees, as further described in Exhibit "E-1", shall apply to PBM's performance under the Contract beginning January 1, 2018."

2. Article 17, with regard to *Employment Verification*, is hereby amended to read in its entirety as follows:

"Article 17. Employment Verification

- 17.1 By entering into this Contract, PBM 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 PBM to perform work pursuant to the Contract, within the United States of America.
- 17.2 ERS shall have the right to audit PBM's compliance with this Article 17 at any time during the term of this Contract. If ERS elects to conduct such audit, PBM is required to provide documentation (at PBM's own expense) that is satisfactory to ERS in its sole discretion to show that PBM is in compliance with Section 17.1.
- 17.3 If the certification at Section 17.1 is falsely made or PBM does not comply with Section 17.2, the Contract may be immediately terminated, at the discretion of ERS and at no fault to ERS, with no prior notification. PBM shall also be responsible for the costs of any re-solicitation that ERS must undertake to replace the terminated Contract, if applicable."

3. Section 30.1(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
Fax: (512) 867-3480
Email: Paula.jones@ers.texas.gov"

4. Section 31.4, with regard to *Entire Contract*, is hereby amended in its entirety to read as follows:

"31.4 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) The Contractual Agreement for Pharmacy Benefit Management Services, and all amendments and supplements thereto, 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 Performance Guarantees (Exhibit "E") and the First Amended Performance Guarantees (Exhibit "E-1");
- (f) The Clarifications (Exhibit "C");
- (g) Implementation Plan (Exhibit "I");
- (h) The RFP (Exhibit "A"); and
- (i) The Proposal (Exhibit "B")."

5. Article 34 of the Contract with regard to *List of Exhibits* is amended in its entirety to read as follows:

Article 34. List of Exhibits

34.1 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 | Performance Guarantees |
| Exhibit E-1 | First Amended 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" |

6. Articles 35 shall be incorporated in its entirety to read as follows:

"Article 35. Boycott of Israel

35.1 In accordance with Texas Government Code, Chapter 2270, PBM 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."

7. Exhibit E-1, the First Amended Performance Guarantees, is attached hereto and into the Contract as Exhibit "E-1" and is incorporated herein by reference for all purposes as if restated in full.
8. PBM warrants and represents that the statements, warranties and representations contained in the Contract continue to be true and correct. PBM acknowledges that ERS has executed this Amendment No. 1 in reliance on the truth and accuracy of these statements, warranties and representations. PBM shall immediately notify ERS in the event such warranties, representations and/or statements are no longer true and correct.
6. 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.
7. 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.
8. 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.

[SPACE INTENTIONALLY LEFT BLANK – SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, ERS and PBM, 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.

UNITED HEALTHCARE SERVICES, INC.

*By: [Signature]
John S. Aissis
Senior Associate General Counsel

Date: 2/19/2018
*Signature must be notarized.

EMPLOYEES RETIREMENT SYSTEM
OF TEXAS

By: [Signature]
Porter Wilson
Executive Director

Date: 2/28/2018

Attachment: Exhibit E-1 – First Amended Performance Guarantees

STATE OF Connecticut §
 §
COUNTY OF Hartford §

This instrument was subscribed, sworn to, and acknowledged before me on February 19, 2018 by John S. Aissis, Senior Associate General Counsel, of United HealthCare Services, Inc., a Connecticut corporation, on behalf of said corporation.

Signature of Notary: [Signature]

Printed Name of Notary: Karen J Bombard

Notary Public in and for the State of Connecticut

My Commission expires: 6/30/2022