

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

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

THIS SUPPLEMENT NO. 1 (“*Supplement No. 1*”), to be effective as of the date indicated on the signature page hereto, is entered into by and between the Employees Retirement System of Texas (“*ERS*”) and United HealthCare Services, Inc. (“*PBM*”).

RECITALS

WHEREAS, ERS and PBM entered into a Contractual Agreement (“*Contract*”) for pharmacy benefit management services for a Medicare Part D Employer Group Waiver Plan with a Wrap Prescription Drug Plan provided to participants under HealthSelectSM of Texas (“*HealthSelect*”), dated effective May 17, 2016; and

WHEREAS, HealthSelect is a self-funded health plan administered by ERS as part of the Texas Employees Group Benefits Program (“*GBP*”) as established by Chapter 1551 of the Texas Insurance Code and its predecessor statutes; and

WHEREAS, PBM maintains various websites accessible by subscribers, including, but not limited to, the following websites: -texas.html, myuhc.com/hs, optumrx.com, optumrx.com/ERS, optumrx.com/HealthSelectrx, <https://www.unitedpharmacysaver.com>, and www.uhcretiree.com/ers (“*Websites*”); and

WHEREAS, embedded within the Websites are certain Terms of Use, Privacy Policies and Privacy Notices/Disclosures, as the same may hereafter be amended, revised, restated, modified or otherwise changed, intended to be applicable to subscribers (“*Terms of Use*”); and

WHEREAS, PBM utilizes the Terms of Use across its book of business, and cannot suppress, remove or modify such Terms of Use; and

WHEREAS, the Websites are to be made available for use by ERS, its members, retirees, dependents, participants, alternate payees and beneficiaries (each, an “*ERS User*”) on January 1, 2017 and thereafter; and

WHEREAS, in accordance with Section 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 hereby now desire to supplement the Contract as follows:



ERS



PBM

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

1. ERS and PBM, by their authorized signatures below, agree that the Terms of Use shall not apply, shall be null and void and shall have no force or effect, as if the Terms of Use did not exist, as to any and all ERS Users, HealthSelect, the GBP, ERS' past, present and future officers, directors, trustees and employees, and the state of Texas and its past, present and future officers and employees without the written agreement of ERS' Executive Director.
2. Pursuant to Section 6.1 of the Contract, the governing law in connection with the relationship of the parties and the duties to be performed under the Contract is the law of the State of Texas, without regard to conflicts of law provisions. PBM agrees that, specifically to the Websites referencing "Governing law and statute of limitations," they are not applicable to ERS Users and that:
 - a. the laws of the State of Texas govern the Terms of Use for ERS Users; and
 - b. the proper jurisdiction and venue for ERS Users for any dispute with the PBM, or in any way relating to the Websites, is in the state and federal courts of the State of Texas.
3. PBM agrees that the Websites which reference "Additional Terms" with the following specific language do not apply to ERS Users:

"You agree to defend and indemnify, Website-Related-Parties and their subsidiaries, affiliates, officers, directors, employees, and agents, harmless from any claim, demand, or damage, including reasonable attorneys' fees, arising out of or related to your breach of this Agreement or your use or misuse of the Content or website. You may not transfer or assign any rights or obligations under this Agreement. The Company may transfer or assign its rights and obligations under this Agreement."
4. PBM will not market to any ERS User without ERS reviewing all material first.
5. Paragraphs 1-4 apply regardless of whether the Terms of Use are actually consented or agreed to by an ERS User at the time at which the ERS User, person or entity initially registers an account on, or subsequently visits, logs on to, or uses, any of the Websites.
6. Except as expressly supplemented hereby, all provisions of the Contract shall remain in full force and effect and are unchanged in all other respects.

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SIGNATURE PAGE TO FOLLOW]



ERS



PBM

IN WITNESS WHEREOF, ERS and PBM, as the two signatories to this Supplement No. 1 to the Contract, have memorialized this Supplement No. 1 to be fully effective upon execution by an authorized representative of ERS.

UNITED HEALTHCARE SERVICES, INC.

EMPLOYEES RETIREMENT SYSTEM OF TEXAS

*By: *John S. Aissis*
John S. Aissis
Senior Associate General Counsel

By: *Porter Wilson*
Porter Wilson
Executive Director

Date: 9/30/2016
*Signature must be notarized.

Date: 10/5/2016

STATE OF Connecticut §
§
COUNTY OF Hartford §

This instrument was subscribed, sworn to, and acknowledged before me on September 30, 2016 2016, by John S. Aissis, Senior Associate General Counsel, of United HealthCare Services, Inc., a Connecticut corporation, on behalf of said corporation.

Signature of Notary: *Karen J Bombardieri*

Printed Name of Notary: Karen J Bombardieri

Notary Public in and for the State of ~~Texas~~ Connecticut

My Commission expires: 6/30/2017