

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

**AMENDMENT 2 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 2 (“**Amendment 2**”), effective upon execution by all parties, 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, ERS and PBM (sometimes hereinafter referred to as the “**Parties**”) have amended, supplemented, or otherwise modified the Original Contract from time to time. The Original Contract together with any amendment, supplement or modification of any kind shall be referred to herein as the “**Contract**,” and

WHEREAS, ERS and PBM desire to amend the Contract to extend the term for 1 year; and,

WHEREAS, ERS and PBM desire to amend and restate Exhibit D, Fee Schedule, Exhibit E, Performance Guarantees, and add or modify statutorily required sections to 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 as more fully set forth below.

AGREEMENT

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

- 1. Section 2.1 of Article 2 of the Contract with regard to *Contract Term, Renewal Amendment and Termination* is amended in its entirety to read as follows:

“2.1 The Contract and all aspects of the Contract will be for a term beginning as of the date executed by an authorized representative of ERS as set forth on the signature page hereto (“Effective Date”) and extending through December 31, 2023 (the “Contract Term”) unless terminated as provided herein or further extended or renewed by written agreement of the parties. ERS and PBM agree and acknowledge that the Services to be provided under the Contract are


Contractor


ERS

anticipated to be transacted primarily between January 1, 2017 and December 31, 2023 (collectively, the " Service Period")."

2. Section 4.1 of Article 4 of the Contract with regard to Administrative Fees and Compensation is hereby amended to add new subsection (j) which shall be incorporated in its entirety to read as follows:

(j) PBM and ERS will mutually agree to modify or amend the financial provisions of this Agreement in the event of changes to the Medicare Part D program, including point-of-sale rebates. For modifications or amendments made pursuant to the preceding sentence, PBM and ERS will negotiate in utmost good faith as to any adjustments to the Fee Schedule. PBM will provide documentation of the revised pricing terms.

3. Section 5.5 of Article 5 of the Contract with regard to **Performance Guarantees** is hereby amended to read as follows:

"5.5 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-2 ("**Second Amended and Restated 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 from January 1, 2018 to December 31, 2022, and Exhibit E-2 shall apply to PBM's performance under the Contract beginning January 1, 2023.

4. Article 13 of the Contract with regard to **Public Information Act, Confidentiality and Ownership and Use of Intellectual Property** is amended as follows:

Section 13.22 is renumbered to be 13.23 and a new Section 13.22 shall be incorporated in its entirety to read as follows:

13.22 PBM warrants and represents that it will comply with all requirements of Section 552.372(a) of the Texas Government Code. PBM acknowledges that except as provided for in Section 552.374(c) of the Texas Government Code, the requirements of Subchapter J, Chapter 552 of the Government Code may apply to the Contract and the PBM agrees that the Contract can be terminated if PBM knowingly or intentionally fails to comply with a requirement of that subchapter. Section 15.2(a) of Article 15 of the Contract with regard to **Conflicts of Interest** is amended in its entirety as follows:

(a) PBM warrants and represents that for a period of two (2) years prior to the Effective Date of the Contract, PBM 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 PBM and its Agents (whether or not PBM 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 PBM 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 PBM and/or (i) the Board, (ii) the GBAC, (iii) the IAC, (iv) ERS’ Executive Director or his designee and other ERS executive management, (v) RFP Advisor as part of the underlying RFP/Proposal process; or vi related to Solution Sessions or similar meetings scheduled by ERS. It also does not apply to communications with the Board, the GBAC, 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 PBM and ERS if such communications are expressly permitted under the relevant contract or expressly authorized by ERS’ Executive Director or designee.

5. Article 19 of the Contract with regard to **Disaster Recovery** is amended in its entirety to read as follows:
 - 19.1 PBM warrants and represents that it has a written disaster recovery plan that provides for the recovery of PBM’s electronic data and data processing equipment. PBM further warrants and represents that the business related functions that PBM uses to provide Services to ERS during the performance of this Contract are addressed by the written disaster recovery plan, and PBM agrees that the disaster recovery plan will be tested annually.
 - 19.2 PBM agrees that all Services provided to ERS under this Contract will be fully operational within twenty-four (24) hours after any business interruption.
 - 19.3 PBM further agrees to deliver to ERS, on an annual basis, one of the following:
 - (a) A copy of the disaster recovery plan and the disaster recovery test results. These shall include, but not be limited to: (a) the disaster recovery plans plus a description of the changes from the previous year’s plans, if any; and (b) the exercise test results conducted within the last twelve (12) months of the disaster recovery and business continuity tests referencing the adequacy of these plans. The test results must include the Recovery

Time Objective (RTO) and Recovery Point Objective (RPO) of the systems and applications that provide service to ERS. If these are a part of a SOC II Type 2 report, PBM shall provide the portions of the report that refer to the normal, annual disaster recovery and business and continuity tests, plus copies of the service auditor's report. PBM further agrees to be available for and respond to reasonable inquiries by ERS of the disaster recovery plan and tests.

- (b) A summary of the latest disaster recovery test results and a summary of the disaster recovery programs. The test results shall include the RTO and RPO of the systems and applications that provide service to ERS. PBM must attest annually, by signature, that the disaster recovery tests will ensure that systems that PBM uses to provide Services to ERS will be available within 24 hours of outage and will experience a maximum [1] hours of data loss. PBM further agrees to be available for and respond to reasonable inquiries by ERS of the disaster recovery plan and tests.

19.4 PBM agrees to exercise reasonable care and prudence to provide all legally required and any other appropriate security measures for the purpose of preventing the transmission of viruses, worms, spyware, and/or Trojan horses, and for protecting ERS' information, confidential or otherwise, and for protecting ERS from losses caused by the alteration, damage or erasure of electronic data related to this Contract.

19.5 This entire Article shall survive any termination, expiration, renewal, extension or amendment of the Contract.

6. Article 27 of the Contract with regard to **Additional Warrantees** is amended as follows:

Section 27.10 is amended in its entirety to read as follows:

27.10 Under Texas Government Code Ann. § 403.055 (West 2013) and Texas Government Code Ann. §§ 2155.004 and 2155.006, and 2261.053 (West 2008), PBM certifies that it is eligible to receive the Contract, it acknowledges that the Contract may be terminated and payment withheld if this certification is inaccurate, and in the event PBM is indebted to ERS or the state of Texas or delinquent in paying any taxes owed the state of Texas at the time the Contract is entered into, PBM agrees that any payment owed to PBM under the Contract shall first be applied towards such debt or delinquent taxes until the debt or delinquent taxes are paid in full. PBM warrants and represents that at the time it entered into the Contract, PBM was not indebted to ERS or the state of Texas or delinquent in paying any taxes owed the state of Texas.

Section 27.22 is renumbered to be 27.25 and new Sections 27.22, 27.23, and 27.24 shall be incorporated in its entirety as follows:

27.22 PBM represents and warrants that the Contract is not prohibited by Section 2272.003 of the Texas Government Code.

27.23 CONTRACTOR certifies that it is not listed in the prohibited vendors list authorized by Executive Order No. 13224, "~~Blocking Property and Prohibiting~~"

Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism,” published by the United States Department of the Treasury, Office of Foreign Asset Control.

27.24 CONTRACTOR warrants and represents that it and its Agents are in good standing with the state of Texas and all its political subdivisions, departments and agencies, and any self-regulatory agency with any oversight authority over such person or entity, and that neither it nor its principals are debarred, suspended, proposed for debarment, declared ineligible, or otherwise excluded from participation in the Contract by any state or federal agency

7. Section 35.1 of Article 35 of the Contract with regard to *Boycott of Israel* is amended in its entirety to read as follows:

35.1 In accordance with Texas Government Code, Chapter 2271, Contractor certifies that either (i) it qualifies for an exemption under Section 2271.002; or (ii) 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

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

Article 36. Human Trafficking Prohibition

36.1 Under Section 2155.0061 of the Texas Government Code, Contractor certifies that it is not ineligible to receive this contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate.

9. New Article 37 shall be incorporated in its entirety to read as follows:

Article 37. Foreign Terrorist Organizations

37.1 PBM warrants and represents that it is not engaged in business with Iran, Sudan, or a foreign terrorist organization, as prohibited by Section 2252.152 of the Texas Government Code.

10. Effective January 1, 2023, Exhibit D, First Amended and Restated Fee Schedule, is attached hereto and into the Contract as Exhibit D, and is incorporated herein by reference for all purposes as if restated in full.

11. Effective January 1, 2023, Exhibit E-2, the Second Amended and Restated Performance Guarantees, is attached hereto and into the Contract as Exhibit E-2 and is incorporated herein by reference for all purposes as if restated in full.

12. 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 2 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.

13. The Contract, as amended hereby, 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.
16. PBM warrants and represents that its undersigned representative is duly authorized to approve and execute this Agreement on behalf of PBM, that this shall be a legally binding obligation of PBM, and that PBM hereby agrees to all matters set forth herein.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, ERS and PBM, as the two signatories, have memorialized this Amendment 2 to be fully effective upon execution by all parties.

UNITED HEALTHCARE SERVICES, INC.

EMPLOYEES RETIREMENT SYSTEM OF TEXAS

*By: 
Michael Grossman
Chief Operating Officer

DocuSigned by:

By: 
Porter Wilson
Executive Director

Date: Dec 23, 2021

Date: 12/29/2021 | 11:05 AM CST

*Signature must be verified.

STATE OF Minnesota §
§
COUNTY OF Hennepin §

Pursuant to Chapter 132 of the Texas Civil Practice and Remedies Code, I, Michael Grossman, declare the following:

I am over 18 years of age, of sound mind, and fully competent and capable of making this statement.

I am the person whose name is subscribed above and have signed the foregoing instrument for the purposes and consideration therein expressed, as an authorized representative of United Healthcare Services, Inc.

I declare under penalty of perjury that the foregoing is true and correct.

EXECUTED in Hennepin County, State of Minnesota, on the 23 day of Dec, 2021.

Michael Grossman
Declarant

Chief Operating Officer
Title

Attachment(s)

Exhibit D – First Amended and Restated Fee Schedule

Exhibit E-2 – Second Amended and Restated Performance Guarantees

EXHIBIT D

**UnitedHealthcare Services, Inc.'s
Contract to Provide Pharmacy Benefit Manager
Services for a Medicare Part D Employer Group
Waiver Plan with a Wrap Prescription Drug Plan**

First Amended Fee Schedule

This Exhibit D, including its attachments, contains the Fee Schedule as defined and described in Article 4 of the Contractual Agreement to Provide Pharmacy Benefit Manager Services for a Medicare Part D Employer Group Waiver Plan with a Wrap Prescription Drug Plan, entered into by and between the Employees Retirement System of Texas ("ERS") and UnitedHealthcare Services, Inc. ("PBM"), and this Exhibit is hereby incorporated into the Contract as Exhibit D for all purposes as if restated in full to the extent that it does not conflict with any term or provision in the Contractual Agreement. The PBM warrants and represents that each of its answers in Exhibit D is true and correct, that there are no other costs, expenses, compensation, payments, reimbursements, or fees (collectively referred to as "fees") to which PBM shall claim it is entitled except for what is specifically enumerated herein, and such fees shall remain valid throughout the entire Contract Term.

Nothing in this Fee Schedule or in PBM Proposal, or in Article 27 of the Contractual Agreement shall act to change, negate, avoid, modify or prevail over any provision or term of the Contractual Agreement which was mutually negotiated and drafted by both parties, and in the event of any ambiguity, such ambiguity shall be resolved in favor of the Contractual Agreement without reference to Exhibit D or other exhibits to the Contractual Agreement.

Article 31 of the Contractual Agreement defines what constitutes the entire contract for purposes of the PBM services and related obligations as agreed to between ERS and PBM. All references herein Company or Contractor shall mean UnitedHealthcare Services, Inc., the PBM selected by the ERS Board of Trustees and further defined in the Contractual Agreement.

PBM warrants and represents that its undersigned representative is duly authorized to approve and execute the Fee Schedule (Exhibit D to the Contract) on behalf of PBM, and that this shall be a legally binding obligation of PBM, and that PBM hereby agrees to all matters set forth herein.

IN WITNESS WHEREOF, the PBM has executed this Fee Schedule as of the day and year written below, to become effective upon the execution of this document by ERS' Executive Director.

UNITEDHEALTHCARE SERVICES, INC.

By: 
Michael Grossman
Chief Operating Officer
Date: Dec 23, 2021

EMPLOYEES RETIREMENT SYSTEM OF TEXAS

DocuSigned by:

By: 38EC8BA45AC04F3...
Porter Wilson
Executive Director
Date: 12/29/2021 | 11:05 AM CST

EXHIBIT E-2

**UnitedHealthcare Services, Inc.'s
Contract to Provide Pharmacy Benefit Manager
Services for a Medicare Part D Employer Group
Waiver Plan with a Wrap Prescription Drug Plan**

**Second Amended and Restated
Performance Guarantees**

This Exhibit contains the Performance Guarantees entered into by and between the Employees Retirement System of Texas ("ERS") and UnitedHealthcare Services, Inc. ("PBM"), the contractor selected by ERS to provide Pharmacy Benefit Manager Services for a Medicare Part D Employer Group Waiver Plan with a Wrap Prescription Drug Plan, under the Texas Employees Group Benefits Program. This Exhibit is hereby incorporated into the Contractual Agreement ("Contract") as Exhibit E-2 for all purposes as if restated in full to the extent that it does not conflict with any term or provision in the Contract.

Nothing in this Exhibit E-2 (or in PBM's Proposal), or in the Contract, shall act to negate, change, avoid, modify or prevail over any provision or term of the Contract, which was mutually negotiated and drafted by both parties, and in the event of any ambiguity, such ambiguity shall be resolved in favor of the Contract.

Article 31 of the Contract defines what constitutes the entire Contract for purposes of providing Pharmacy Benefit Manager Services for a Medicare Part D Employer Group Waiver Plan with a Wrap Prescription Drug Plan, under the Texas Employees Group Benefits Program and related obligations as agreed to between ERS and PBM.

PBM warrants and represents that its undersigned representative is duly authorized to approve and execute these Performance Guarantees (Exhibit E-2 of the Contract) on behalf of PBM, that this shall be a legally binding obligation of PBM, and that PBM hereby agrees to all matters set forth herein.

IN WITNESS WHEREOF, PBM, has executed these Performance Guarantees to become effective upon the execution of this document by ERS' Executive Director.

UNITEDHEALTHCARE SERVICES, INC.

By: 

Michael Grossman
Chief Operating Officer

Date: Dec 23, 2021

EMPLOYEES RETIREMENT SYSTEM OF TEXAS

DocuSigned by:

By: 38EC8BA45AC04F3...

Porter Wilson
Executive Director

Date: 12/29/2021 | 11:05 AM CST

