

CONTRACTUAL AGREEMENT

Article 1. Background

- 1.1 The Employees Retirement System of Texas ("**ERS**") is a trust fund established by the Texas Constitution and is described in Article XVI, Section 67, Texas Constitution. ERS is also organized pursuant to Subtitle B, Title 8, Texas Government Code, as well as 34 Texas Administrative Code, Sections 61.1, *et seq.* ERS administers defined benefit pension plans for State employees, law enforcement and custodial officers, elected State officials and judges. ERS invests State and member contributions in the retirement trust funds and administers the trust funds with a fiduciary obligation to the members and retirees of ERS who are its beneficiaries. ERS also administers the Texas Employees Group Benefits Program, which consists of health benefits, life insurance and other optional benefits to participating individuals eligible to receive those benefits under applicable law. The Board of Trustees for ERS (the "**Board**") is the trustee for trust funds maintained and administered by ERS.
- 1.2 On May 25, 2022, ERS issued a Request for Proposal (entitled Pharmacy Benefits Management Services for the HealthSelect of Texas Prescription Drug Programs and the HealthSelect Medicare Rx Prescription Drug Program, RFP No. 21-11565-001) (the "**RFP**"), which is attached hereto as Exhibit A and is incorporated herein for all purposes as if restated in full.
- 1.3 Express Scripts, Inc. ("**PBM**") submitted a proposal (the "**Proposal**") in response to the RFP seeking to provide those services, benefits and/or products for or on behalf of ERS as described in the RFP (the "**Services**"). The Proposal shall remain on file with ERS and is attached hereto as Exhibit B and is incorporated herein by reference for all purposes as if restated in full, except to the extent it conflicts or is inconsistent with this Contractual Agreement (the "**Contract**," as more fully defined in Article 34 herein) or the RFP and ERS has not accepted such conflicting terms or inconsistent provisions in accordance with the clarifications referenced and defined below.
- 1.4 As used herein, PBM shall mean and necessarily include the business entity selected by ERS to provide the Services pursuant to the Contract, and also includes PBM's Agents (as defined below) involved in performing, delivering or providing any representations, warranties, services, coverages, equipment, or products relating to the Contract or the Services. The term "**Agent**" shall mean subsidiaries, joint venturers, representatives, officers, directors, principals, partners, employees, agents, assigns, any subcontractors and independent contractors, and any person or entity authorized by PBM to advise, consult or communicate with Public Servants on behalf of or to the benefit of PBM (whether or not PBM sought the benefit). References hereafter in the Contract listing Agent, Agents and/or any of the above specific entities, in addition to PBM, are for emphasis only and are not intended to limit the scope of the foregoing definition of PBM.
- 1.5 Prior to its selection by ERS, in addition to PBM submitting its Proposal and Clarifications, if any, PBM participated in extensive interviews and meetings with and made representations to ERS' staff and representatives regarding its ability to provide the Services to aid ERS in determining which entity seeking to provide the Services for ERS would be most capable of delivering the Services at the best value to ERS ("**RFP/Proposal Process**"). To the extent that Clarifications are made a part of this Contract, they are attached hereto and incorporated herein as Exhibit C.
- 1.6 For and in consideration of the mutual promises, covenants, and consideration herein expressed, the receipt and sufficiency of which is hereby acknowledged, the Contract is entered into by and between PBM and ERS to be effective as of the date set forth herein.

Article 2. Contract Term, Renewal, Amendment and Termination

- 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, 2029 (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 anticipated to be transacted primarily between January 1, 2024 and December 31, 2029 (the “**Service Period**”).

- 2.2 Notwithstanding the immediately preceding paragraph, ERS and PBM agree and acknowledge that there are duties and obligations specified by the Contract to be performed prior to, during and following the Service Period, and the parties each agree to perform all such duties and obligations, and all damages provisions and any applicable Performance Guarantee and/or Service Level Agreement provisions included herein shall thereby be in effect during the Service Period. All contractual provisions related to PBM's obligations that extend beyond the Service Period, shall survive the termination or expiration of the Contract. In the event any dispute arises in connection with any aspect of the Contract, PBM and ERS each agree to continue to perform their obligations consistent with the undisputed terms of the Contract until the dispute is resolved and until termination of the Contract in accordance with the terms of the Contract.
- 2.3 PBM agrees to act as a fiduciary by acting in good faith, with candor and due diligence in connection with the performance of the Contract and any negotiations related thereto.
- 2.4 Termination
- (a) For Cause. Without limiting any other rights or remedies that ERS may have at law, equity or under contract, ERS shall have the right to terminate the Contract immediately in the event PBM, in ERS' sole opinion, fails or refuses to perform, is negligent in performing, is unable to perform or it reasonably appears that PBM will not perform any of its duties or obligations, in whole or in part, as provided by the Contract; or
 - (b) Without Cause. In addition to and without restricting or waiving any other legal, contractual or equitable remedies otherwise available to ERS, ERS may terminate the Contract without cause by giving PBM ninety (90) days written notice; or
 - (c) Mutual Agreement. The parties agree that they may also terminate the Contract upon the mutual written agreement of their duly authorized representatives; or
 - (d) Funding Out. ERS may terminate the Contract, either in whole or in part, without cause, if funds for the Contract are not approved by the Board of Trustees of the Employees Retirement System of Texas.
- 2.5 In the event that PBM fails or refuses to perform or is negligent in performing any of its duties or obligations as required by the Contract, or fails or refuses to perform consistent with PBM's statements, promises, and commitments made during the RFP/Proposal Process and in the Contract, then ERS, without limiting any other rights or remedies it may have by law, equity or under the Contract, will have the right to impose and collect liquidated damages as provided herein, to invoke any Performance Guarantees when applicable, to institute an action for actual damages and/or injunctive relief and/or to terminate the Contract immediately. ERS' termination of the Contract with or without cause shall not limit or waive any remedies ERS may have for PBM's breach of its past, present or future duties and obligations created by the Contract or otherwise required by applicable law.
- 2.6 Amendments. The Contract may be altered, extended, modified or amended only by written agreement properly executed by the duly authorized representatives of ERS and PBM, subject to good faith negotiations of the parties concerning terms, fees and services required.
- 2.7 This entire Article shall survive any termination, expiration, renewal, extension or amendment of the Contract.

Article 3. Definitions

- 3.1 Unless provided otherwise herein, the terms used in this Contract shall be as defined in the RFP, the Act, the Rules, the Master Benefit Plan Document for the HealthSelect of TexasSM Prescription

Drug Program ("HealthSelect PDP"), or the Evidence of Coverage for HealthSelect Medicare Rx Prescription Drug Program ("HealthSelect Medicare Rx PDP"). In the event of a conflict, the definition of a term in the Act or in the Rules shall control. References to "Plan" or the "Plans" will include the HealthSelect PDP and HealthSelect Medicare Rx PDP, as applicable, unless otherwise specified. Where appropriate to the context, the definition of a term in the singular also applies to the use of the term in the plural. The following definitions are in addition to terms that may be defined elsewhere in the Contract.

- (a) "Act" means the Texas Employees Group Benefits Act, Texas Insurance Code, Chapter 1551, as amended, and its predecessor and successor statutes.
- (b) "Equipment" means computer systems and equipment including hardware, software, firmware, electronic components and computer-related products that are in any way utilized or relied upon by PBM to perform, deliver or provide Services, coverages, benefits, Equipment, supplies or products to or on behalf of ERS, HealthSelect PDP, HealthSelect Medicare RX PDP, the GBP, and its Participants. Equipment also means durable medical equipment and other medical devices as defined and covered, to the extent applicable, in the EOC and MBPD.
- (c) "Evidence of Coverage" or "EOC" means the document that describes the benefits, coverages and provisions of the HealthSelect Medicare Rx PDP and any amendments or changes thereto, in addition to those described in this Contract. For the purposes of this Contract, the term EOC will encompass all supplemental or amended and restated benefit plan documents relating to the HealthSelect Medicare Rx PDP.
- (d) "Master Benefit Plan Document" or "MBPD" means the document that describes the benefits, coverages and provisions of the HealthSelect PDP and any amendments or changes thereto, in addition to those described in this Contract. For the purposes of this Contract, the term Master Benefit Plan Document will encompass all supplemental or amended and restated benefit plan documents relating to the HealthSelect PDP.
- (e) "Network" means a group of Providers, including independent pharmacies or chains of pharmacies, whether at retail or mail, or other Providers, that has been established and credentialed by the PBM and approved to provide prescription drug Services, benefits, coverages, Equipment, supplies and products for HealthSelect Medicare Rx PDP or HealthSelect PDP Participants. For purposes of this Contract, Network also includes the mail service prescription drug facility(ies) used by PBM to perform any Services under the Contract.
- (f) "Participating Pharmacy" means any licensed retail pharmacy with which PBM or one or more of its affiliates has executed an agreement to provide prescription drug services, benefits, Equipment, supplies or products to Participants. Participating Pharmacies are independent contractors of PBM. PBM does not direct or exercise any control over the Participating Pharmacies or the professional judgment exercised by any pharmacist in dispensing prescriptions or otherwise providing pharmaceutical related services at a Participating Pharmacy.
- (g) "Provider" means any licensed pharmacy with whom contracts have been established by the PBM or one or more of its affiliates to perform, provide or deliver prescription drug services, benefits, Equipment, supplies or products to Participants.
- (h) "PBM Mail Pharmacy" means a pharmacy owned or operated by PBM or one or more of its affiliates, other than a PBM Specialty Pharmacy, where prescriptions are filled and delivered to Participants via mail delivery service.

- (i) "PBM Specialty Pharmacy" means Accredo Health Group, Inc., Express Scripts Specialty Distribution Services, Inc., or another pharmacy or home health agency owned or operated by PBM or its affiliates that primarily dispenses Specialty Products.
- (j) "Rules" means the administrative rules and regulations adopted by the ERS Board of Trustees pursuant to law and contained in Title 34, Texas Administrative Code, Part IV, which are incorporated herein by reference for all purposes as if restated in full.

Article 4. Rates and Payments; Tax Exempt Status

4.1 Administrative Fees and Compensation

- (a) PBM's administrative fees, if any, and the compensation and/or reimbursement schedule that PBM will in any way receive for or in connection with the Services, coverages, benefits, Equipment, supplies and products that PBM is required to perform, deliver or provide in connection with, arising out of or related to its performance of this Contract shall be only those specifically agreed to and accepted by ERS and that are reflected in the Fee Schedule attached hereto and fully incorporated herein as Exhibit D.
- (b) PBM warrants and represents that the PBM Fee Schedule is effective for the Contract Term, and such rates shall remain unchanged for the Contract Term unless changed by the mutual written agreement of the parties, or as required by law, or as ERS may require from time-to-time based on more favorable pricing and/or Contract terms that may be available to ERS pursuant to the terms of the Contract and that ERS may request in the best interest of ERS, the GBP, its Participants, and the state of Texas.
- (c) Notwithstanding the foregoing, the parties acknowledge and agree that the pricing terms in the Contract are based on the Plan design and program specifications set forth in the RFP. ERS must approve in writing any material modification of the Plan design or program specifications, including the formulary in place for ERS, prior to any implementation thereof. If such modifications, including, but not limited to, modifications to the formulary, as that term is defined in Article 4.1 (h)(i) herein, are material and are initiated or approved by ERS, ERS shall notify PBM of the required modifications, and PBM and ERS understand and agree that such material Plan modifications may result in a corresponding increase or decrease in PBM's Fee Schedule as reasonably necessary to reflect such material modification of the Plan design or specifications. Any Plan changes or program specification modifications that are not considered material shall be communicated to PBM and implemented in a timely manner by PBM.
- (d) PBM may only modify MAC pricing to the extent it is done in the ordinary course of business, so long as any such changes would not reasonably be expected to discourage retail pharmacy participation in the Network. ERS and PBM agree that the pricing source for Average Wholesale Price ("AWP") shall be as published by Medi-span. The requirements of this Article, including each of subdivisions (a) through (c) above, shall be applicable throughout the entire Contract Term, unless modified by prior written consent of ERS' Executive Director.
- (e) ERS and PBM agree that PBM shall not receive, charge or seek any administrative fees or any other costs, reimbursements, expenses or fees in connection with the Contract unless they are included in the administrative fees, if any, accepted in writing by ERS. ERS shall promptly pay PBM its administrative fees, if any, in accordance with and as provided by the Contract in connection with PBM's performance of the Services. If applicable, the parties also agree that ERS may select one or more of PBM's additional management programs identified in PBM's Proposal for the fees agreed to by the parties as reflected in Exhibit D. Subject to the terms herein, PBM warrants and represents that any fees PBM may receive, in whole or in part, from any Pharmaceutical Manufacturer relating to such additional management programs shall be paid to ERS to the extent they are attributable

to GBP Participants or to their prescription drug utilization. To this end, these fees shall be included in the definition of Rebate (see Article 4.1 (h)).

- (f) Except as otherwise provided herein and in accordance with the RFP, PBM shall pay all eligible claims and reimburse all eligible charges on behalf of eligible HealthSelect Medicare Rx PDP or HealthSelect PDP Participants before seeking any reimbursement for same from ERS. Thereafter, PBM will promptly be reimbursed by ERS as provided in the RFP.
- (g) PBM shall promptly pay to ERS all consideration specified herein and in the manner required by the Contract, including, but not limited to, any rebate payments, performance guarantees, credits, overpayment reimbursements, actual damages, and liquidated damages as described in the Contract.
 - 1. PBM shall also promptly pay to ERS any other payments as mutually agreed upon by the parties. In no event shall any such payment be made by PBM later than any time period specified in or in accordance with the Contract, or as agreed upon by the parties. Rebate payments, as defined in this Contract, shall be paid at the applicable rate as further described in the RFP, the Contract and in the PBM Fee Schedule. In addition to the terms of the RFP, any sums or consideration required to be paid to ERS by PBM in accordance with the Contract may be offset by ERS and deducted from any administrative fees or other compensation or reimbursement that may otherwise be owed to PBM by ERS.
- (h) Rebate Payments. PBM shall pay all Federal subsidies, including direct subsidies, coverage gap subsidies and catastrophic re-insurance and all Rebates, as defined in this Contract, to ERS as set forth below and in Exhibit D and/or the Clarifications for the Contract Term and any extension or renewal thereof.
 - 1. Formulary - A list of prescription drugs administered by PBM that has been evaluated by the PBM for inclusion on its formulary ("**Formulary**"). As provided in the RFP, the drugs included on the PBM's Formulary may be modified by PBM, with prior approval by ERS' authorized representatives, from time-to-time as a result of factors including, but not limited to, medical appropriateness, manufacturer rebate arrangements and patent expirations. Upon ERS' review and approval, PBM shall implement a Formulary management program, which may include cost containment initiatives, communications with HealthSelect Medicare Rx PDP or HealthSelect PDP Participants, participating Providers, pharmacies and/or physicians (including communications regarding generic substitution programs).
 - 2. Rebates and Rebate Payment Timing. PBM has represented to ERS that PBM contracts for Rebates and will be entitled to or otherwise will receive Rebates, as defined in this Contract, from persons or entities that offer Rebates for pharmaceutical products and/or drugs (hereinafter, "**Pharmaceutical Manufacturers**") as a result of the utilization of same by HealthSelect Medicare Rx PDP or HealthSelect PDP Participants ("**Rebates**"). PBM shall use its best efforts to negotiate commercially reasonable terms for its Rebate agreements. PBM shall pay all Rebates to ERS as set forth herein and in Exhibit D based on each Pharmaceutical Manufacturer's drugs or products dispensed to HealthSelect Medicare Rx PDP or HealthSelect PDP Participants. Such Rebates shall be paid to ERS by PBM promptly, but in no event later than on a quarterly basis until all such compensation has been received by ERS.
- (i) The term "Rebates" is intended to include any rebates, price protection dollars, price concessions, discounts, or any other payments or remuneration received by PBM

pursuant to a contract with a pharmaceutical manufacturer, and related to utilization of Formulary prescription drugs by Participants.

- 4.2 ERS is a Texas governmental public trust fund and is, therefore, a tax-exempt governmental entity. Any fees to be paid by ERS in connection herewith (including any quote, proposal or lease schedule related thereto) do not include taxes of any kind, and have not been, and will not be, increased to compensate for the fact that ERS is tax-exempt. ERS does not agree to pay, and shall not pay, any taxes, including any property taxes of any kind whatsoever, on any lease, products or services related to this Contract or any quote, proposal or lease schedule related thereto. Neither PBM nor any affiliated entity, successor or assign of PBM shall submit any invoice to ERS for payment or reimbursement of any taxes of any kind or nature, including any property taxes of any kind or nature. Notwithstanding the foregoing, any applicable sales, use or other similarly assessed and administered tax imposed on items dispensed, or services provided hereunder will be the sole responsibility of Participant.
- 4.3 In the event the Fee Schedule requires that any portion of the fees payable by ERS hereunder be paid in advance of receiving any of the Services, and the Contract is terminated pursuant to Section 2.5 hereof after payment of fees but prior to the end of any prepaid Service Period, PBM agrees that, within two business days after receiving notice of such termination, it will refund to ERS, in immediately available funds, the pro rata portion of such prepaid fees that apply to the portion of the Service Period that falls after the effective date of the termination of this Contract.
- 4.4 Unclaimed Funds. Any funds unclaimed by Plan Participants, including lost, returned and uncashed checks, reimbursement or otherwise, shall be managed by PBM in accordance with Section 1551.401(g) of the Texas Insurance Code. After making a good faith effort to locate the person entitled to the unclaimed funds, PBM shall return the funds to the Plan. Such funds are neither subject to escheatment to any state, nor are they to be turned over to the Comptroller of Public Accounts as "unclaimed property" to be held for the benefit of the recipient because they are trust funds as set forth in Texas Insurance Code § 1551.401. In the event a dispute arises with the Comptroller of Public Accounts once PBM returns the funds to the Plan, ERS will facilitate resolution of any such dispute.
- 4.5 This entire Article shall survive any termination, expiration, renewal, extension or amendment of the Contract.

Article 5. Scope of Services and Guidelines

- 5.1. Without limiting the importance of each provision of the RFP and PBM's obligation to comply with the detailed requirements of the entire RFP, PBM warrants and represents that it shall in good faith provide the Services as described in the Contract, as Contract is defined in Article 34 herein.
- 5.2. PBM shall not revise the Services for the Contract Term, unless required by applicable state or federal law or regulations applicable to the GBP, as defined herein, or as determined by ERS, or in accordance with a written agreement between the authorized representatives of PBM, as defined in Section 36.1, and ERS. PBM understands and acknowledges that ERS may revise the Services at any time and agrees to cooperate with ERS and to negotiate in utmost good faith as to any adjustment of the Fee Schedule reasonably related to such Services.
- 5.3. Eligibility, enrollment and participation in HealthSelect Medicare Rx PDP or HealthSelect PDP shall be governed by the terms set out more fully in the RFP, the Act and the Rules. Any determination of or interpretation of Participant eligibility and effective dates shall be made solely by ERS, and may include retroactive participation and effective date determinations, when deemed appropriate by ERS. The Executive Director of ERS or his designee, by law and as acknowledged in the Contract, has exclusive authority to determine all questions relating to enrollment and eligibility in HealthSelect Medicare Rx PDP or HealthSelect PDP. However, where the rules and regulations of the Centers for Medicare and Medicaid Services ("**CMS**") conflict, the CMS rules and regulations will control.

5.4. Good Faith Performance of Services

- (a) PBM warrants and represents that it shall act in utmost good faith in performing, delivering and providing all Services, coverages, benefits, Equipment, supplies and products specified in the Contract,
- (b) PBM warrants and represents that it shall perform its obligations and duties under this Contract with utmost good faith, loyalty, candor and skill.
- (c) PBM warrants and represents that all Providers in PBM's Network are credentialed and have a signed contract with PBM to provide benefits for HealthSelect Medicare Rx PDP or HealthSelect PDP Participants in accordance with the Contract.
- (d) PBM warrants and represents that it shall cooperate in utmost good faith with ERS if ERS, in its sole discretion, chooses to implement any alternate retail pharmacy network referenced in the RFP or that may hereafter be requested by ERS.
- (e) From time to time ERS may, on an *ad hoc* basis, request that PBM prepare reports regarding the HealthSelect Medicare Rx PDP or the HealthSelect PDP in the course of ERS' administration of the GBP. PBM agrees to produce such reports on a timely basis as requested by ERS, and PBM shall not charge ERS any additional fee for or require ERS to execute any additional documents in connection with the preparation of such reports. Any anticipated costs to PBM for preparing such reports must be subsumed into the administrative fees, if any, and compensation of PBM provided in the PBM Fee Schedule attached as Exhibit D.
- (f) PBM warrants and represents that it shall cooperate and act in utmost good faith in connection with any request for ERS or GBP-specific information by ERS, an authorized ERS representative, and/or ERS' consulting actuary in order for ERS and its representatives to administer the GBP and to determine that all or any portion of the terms of the Contract are being performed as required herein.
- (g) PBM warrants and represents that it agrees with and shall comply with each aspect, article, requirement, specification or obligation set forth in the RFP, regardless of whether or not it is specifically addressed herein, unless any RFP requirement was specifically altered or revised by ERS in a written document agreed to by ERS' Executive Director.
- (h) PBM represents and warrants that it shall act in utmost good faith, in a professional and workmanlike manner and in accordance with applicable professional standards in providing all Services, coverages, benefits, Equipment, supplies and products specified in the Contract. PBM will immediately correct any work not in compliance with this warranty.

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, 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.

5.6. Fraud and Incorrect Billing/Payments

- (a) PBM shall implement a comprehensive plan, as described in the Proposal, including automated systems, to detect and prevent internal and external fraud, malfeasance, criminal and improper activity and other similar abuses and improprieties, including, but not limited to, intentionally perpetrated fraud, theft, embezzlement, misappropriation of funds, commingling, misuse of the HealthSelect Medicare Rx PDP, overcharges, overpayments, wrongful and incorrect payments, deceptive, and duplicate or suspicious billings, and the failure to disclose material information in connection with the GBP (hereinafter collectively "Improprieties") by PBM, as that term is defined in this Contract and including, but not limited

to, PBM's officers, employees, affiliates, subsidiaries, agents, independent contractors, and subcontractors; HealthSelect Medicare Rx PDP or HealthSelect PDP Participants; and Providers. Whether or not an Impropriety exists or may have been committed, includes, but is not limited to, by way of example, the following circumstances and/or factors:

1. if a person or entity, either intentionally or negligently, presents or causes to be presented to PBM, ERS or a Provider, a claim for benefits, Services, coverages, Equipment, supplies or products or for any other manner of payment or reimbursement that (a) contains any statement or representation that the person or entity knows or reasonably should have known was false, and/or (b) fails to disclose material information;
 2. if a Provider fails to provide an individual with any benefits, Services, coverages, Equipment, supplies or products that are required to be provided under this Contract, the HealthSelect Medicare Rx PDPEOC as it relates to the HealthSelect Medicare Rx PDP, the HealthSelect PDP MBPD as it relates to the HealthSelect PDP, or applicable laws and regulations in connection with the HealthSelect Medicare Rx PDP or HealthSelect PDP;
 3. if a Provider providing prescription drug benefits, Services, Equipment, supplies, coverages or products for HealthSelect Medicare Rx PDP or HealthSelect PDP Participants, in relation to the HealthSelect Medicare Rx PDP or HealthSelect PDP, either intentionally or negligently, provides a materially false or misleading representation, or fails or refuses to provide information required to be provided to ERS or PBM by law or this Contract in order to obtain payment or reimbursement or to establish the legitimacy of a claim, charge or billing or to avoid any damages or penalties otherwise payable in connection with the Contract;
 4. if any person or entity misappropriates from or commits any malfeasance in connection with ERS' or a HealthSelect Medicare Rx PDP or HealthSelect PDP Participant's account, or any Participant information;
 5. if a Provider engages in actions that indicate a pattern of wrongful denial of Services, benefits, Equipment, supplies, coverages or products that are required to be provided under this Contract, the EOC as it relates to the HealthSelect Medicare Rx PDP, the MBPD as it relates to HealthSelect PDP, or applicable laws and regulations, or that indicate a pattern of wrongful requests for payment for Services, benefits, Equipment, supplies, coverages or products not performed, delivered, or provided or improperly billed or that are not medically/pharmaceutically necessary; or
 6. if any person or entity commits any act or omission that could reasonably be considered to be a violation of §§ 1551.066, 1551.104, or 1551.351 of the Act, whether or not the Act specifically applies to that person or entity.
- (b) PBM shall enforce and implement all aspects of its comprehensive plan and the requirements of this Contract in order to prevent, detect, investigate and eliminate Improperities. PBM shall conduct investigations on its own, in cooperation with Providers and other Carriers or Administering firms (as those two terms are defined in the Act), when directed by ERS or as PBM otherwise deems in good faith to be appropriate in the exercise of reasonable due diligence, with regard to Improperities, and as further provided in the RFP.
- (c) PBM shall notify ERS immediately whenever it reasonably believes that any of the Improperities described herein by way of example, or other similar Improperities not so specifically identified, have occurred in connection with the GBP and in connection with PBM's performance under the Contract.

- (d) PBM shall also provide reports to ERS regarding such Improprieties immediately upon their detection by PBM and also as may be requested by ERS.
 - (e) PBM shall comply with all future additional ERS policies or directives, as they are developed by ERS and provided to PBM, in connection with the prevention, detection, investigation and elimination of fraud, abuse and other Improprieties in connection with the GBP and as they may apply to PBM.
 - (f) PBM shall further maintain all ERS, GBP and HealthSelect Medicare Rx PDP or HealthSelect PDP -related information and claims records as required by the Contract. PBM acknowledges and agrees that ERS or, subject to Section 13.11, its designated representatives, shall have reasonable and timely access to all such information related to ERS, the GBP, HealthSelect Medicare Rx PDP, HealthSelect PDP, and their Participants.
 - (g) PBM warrants and represents that it shall fully assist and cooperate with ERS, the Office of the Attorney General of Texas, any other applicable state or federal agency and law enforcement authorities in the prosecution of administrative and civil actions and/or criminal prosecution of those individuals or entities who have engaged in the commission of Improprieties.
- 5.7. During the Contract Term, including any renewals or extensions thereof, PBM shall provide the Equipment necessary for ERS and its authorized representatives to access those automated system(s) that provide data regarding the GBP records, including, but not limited to, Participant information, enrollment, demographic, individual claims information and group specific data for ad hoc actuarial analysis. The Equipment will be located on ERS' premises, and GBP records should be available to ERS during normal business hours, including the hours from 7:30 a.m. until 5:30 p.m., Monday through Friday, Central Time. PBM agrees to provide ERS staff with the training necessary to use the Equipment and to access and interpret the GBP records. PBM also agrees to provide ERS with a direct contact to interface with PBM to answer questions in connection with HealthSelect Medicare Rx PDP and HealthSelect PDP.
- 5.8. PBM shall report to ERS all litigation matters and bankruptcy matters directly related to ERS, the Plans, or Plan Participants; such reports shall be in the form specified by ERS during Implementation or as otherwise agreed by the Parties. PBM shall provide information to ERS in form and by method consistent with the requirements of ERS, as applicable.
- 5.9. This entire Article shall survive any termination, expiration, renewal, extension or amendment of the Contract.

Article 6. Governing Law

- 6.1 The Contract and the parties' performance of same and all matters in connection with the relationship of the parties shall be governed by and construed and performed in accordance and conformity with the laws of the state of Texas, without regard to conflicts of law provisions.
- 6.2 To the extent that federal or Texas state laws or regulations change or a change of circumstances require ERS to include additional language in its contracts, PBM agrees to act in good faith and to cooperate in the execution of any contract amendment necessary to effectuate such federal or state law or regulation change or a change of circumstances subject to an agreed-upon adjustment in any Administrative Fee, if necessary, to compensate PBM for program modification. In any situation under the Contract where a question arises regarding the applicability of state or federal laws or regulations, then ERS' interpretation of the applicability of such law or rule shall control.
- 6.3 Subject to and without waiving ERS' or the state of Texas' sovereign or official immunity and pursuant to Texas Government Code Ann. § 811.010, ERS and PBM agree and consent to Austin, Travis County, Texas as the proper venue for any court proceedings between the parties, and that a Texas state court sitting in Austin, Travis County, Texas shall have jurisdiction over PBM in

connection with any action or proceeding arising out of, in connection with or related to the Contract or the parties' relationship.

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

Article 7. Sovereign Immunity

- 7.1 The parties agree and acknowledge that nothing contained in the Contract, or in any amendment, extension or renewal thereof, is intended to nor will it have the effect of waiving the sovereign or official immunity of ERS, its past, present or future trustees, officers, employees and agents, or of the state of Texas, its past, present or future officers, employees, agents, or its departments, or agencies, nor does ERS' acceptance of any services, benefits, supplies or products under the Contract constitute any waiver, express, implied or otherwise, of sovereign or official immunity to suit or liability of ERS, its trustees, officers, agents or employees or of the state of Texas. As described herein, ERS' sovereign immunity includes, but is not limited to, all immunities, privileges, defenses, rights or actions available to ERS and its employees, trustees, and directors based on ERS' sovereign status and such protections to which it may be entitled as an agency of the state of Texas under Texas law (by comity or otherwise) and under the Eleventh Amendment to the Constitution of the United States of America. The parties further agree that ERS' exercise of any legal, regulatory, equitable or contractual remedies in connection with the Contract shall not constitute a waiver of the immunities identified herein.
- 7.2 This entire Article shall survive any termination, expiration, renewal, extension or amendment of the Contract.

Article 8. Notification of Management Changes and Personnel

- 8.1 Without contravening applicable law, PBM agrees to notify ERS' Executive Director immediately upon being able to lawfully make a public announcement of reaching any form of binding agreement in connection with and prior to any merger, acquisition, business reorganization, or other material change of PBM's management, ownership or business structure or similar Change of Control as that term is defined in Article 23.1 herein.
- 8.2 Before PBM's personnel are assigned to perform any Services, ERS must be provided the name and qualifications of each person PBM proposes to utilize to perform any aspect of the Services. ERS, in its sole discretion, may approve each individual or require that additional names be submitted. Once assigned, if any PBM personnel are determined by ERS to be unsatisfactory for the proper and satisfactory completion of any Services, such person will immediately be removed from ERS' account and cease providing the Services and will be replaced by PBM as soon as reasonably possible.
- 8.3 This entire Article shall survive any termination, expiration, renewal, extension or amendment of the Contract.

Article 9. Liquidated Damages and Performance Guarantees

- 9.1 PBM acknowledges that with respect to the performance of, or a violation of, its duties and obligations under the Contract, it is impossible or impractical to estimate certain damages with any degree of certainty. Therefore, the parties agree that, in addition to ERS' right to terminate the Contract as otherwise set forth herein, PBM shall pay to ERS as fixed, agreed, and liquidated damages, for each instance of delay, non-compliance, or non-performance, the sum set forth in Section 9.7 below in any of the following situations (each, a "**Default**"):
 - (a) upon ERS' receipt of information that PBM is not reasonably in compliance with the Contract, or that PBM by its action, inaction, or declaration of intent, will not be in compliance with any of its obligations under the Contract;

- (b) in the event that PBM fails to perform, deliver or provide the Services within the time (i) specified in the Contract, (ii) otherwise specified by ERS in writing if a deadline specified in the Contract is reasonably changed by ERS and PBM is notified of same within a reasonable time before performance is required, or (iii) otherwise specified by ERS in writing if a deadline is not currently specified in the Contract but later provided to PBM within a reasonable time before performance is required; or
 - (c) if, in the sole opinion of ERS, delivery or performance is inexcusably delayed by PBM, or if it becomes apparent that PBM will not or has no apparent intent or ability to perform, deliver or provide all or any portion of the Services in accordance with the terms of the Contract.
- 9.2 In the event of a Default as described herein, ERS will provide written or electronic notification ("**Notice**") to PBM that the Default must be corrected by the date specified by ERS in the Notice, which date shall be at least five (5) days after such Notice has been given, unless ERS reasonably determines in its sole discretion that more immediate performance is required, in which case any shorter deadline contained in the Notice shall apply. PBM shall correct the Default by the time stated in the Notice. If, however, the Default has not been fully corrected within the time specified in the Notice ("**Notice Period**"), then ERS may, in its sole discretion, enforce the liquidated damages provision of the Contract beginning five (5) days following the Notice Period, or invoke Performance Guarantees if applicable, or both, as further specified below.
- 9.3 The liquidated damages permitted hereunder shall accrue each calendar day and/or ERS may invoke the agreed upon Performance Guarantees, if any, until such time as PBM complies with the Contract or satisfactorily performs, delivers and/or provides the Services or until the time ERS may reasonably obtain performance, delivery or provision of similar services or products from another source. In the event PBM fails or refuses to comply, or it becomes apparent that PBM will not or has no apparent intent or ability to comply with all or any portion of its obligations under the Contract, ERS may be required, because of such non-compliance, to obtain services and/or products from another source. In this event, ERS may elect to charge the full increase in costs to PBM as an element of actual damages and/or to invoke the agreed upon liquidated damages and/or Performance Guarantee provisions, if any. The liquidated damages and/or Performance Guarantees shall be in addition to any other remedy or damages available to ERS.
- 9.4 The parties hereto agree that the liquidated damages and, if applicable, Performance Guarantees provided in the Contract, and any amounts assessed in connection therewith, are neither a penalty nor a forfeiture and shall compensate ERS solely for ERS' inability to use or benefit from the Services, and they are not intended to, and do not include:
 - (a) any damages, additional costs or extended costs incurred by ERS for extended or substituted administration of the Contract or by ERS' agents, representatives, consultants, or independent contractors for extended or substituted administration of the Contract;
 - (b) any increases in financing costs resulting from delay in performance; or
 - (c) any additional services relating to, or arising as a result of, PBM's delay in performance.
- 9.5 ERS shall be entitled to claim against PBM, as part of ERS' actual damages, including, but not limited to, direct, indirect and consequential damages, any amounts not specifically included within the liquidated damages and/or Performance Guarantees as set forth herein. Such actual damages shall be computed separately. Together with liquidated damages and/or Performance Guarantees, all such damages shall, in ERS' sole discretion, be either deducted from any monies due to PBM under the Contract, billed to PBM or otherwise collected in accordance with applicable law.

- 9.6 PBM shall not be charged with liquidated damages when, in ERS' determination, the delay in delivery or performance arises out of causes beyond the control and without any fault or negligence of PBM.
- 9.7 The amount of such liquidated damages, as referred to herein, shall be up to and including \$10,000.00 (Ten Thousand Dollars) for each Default or each calendar day beyond the Notice Period or deadline, as applicable, that PBM delays or fails to perform its obligations under this Contract, whichever ERS determines is appropriate.
- 9.8 In the event ERS determines that PBM has made an error in the handling of a HealthSelect Medicare Rx PDP or HealthSelect PDP Participant's account, PBM shall compensate the Participant for his reasonable out-of-pocket loss by either direct payment to the Participant or credit to his account, at the Participant's election. The cost of such payment or credit shall be borne entirely by PBM and shall not be charged back to the Participant, ERS, HealthSelect Medicare Rx PDP, HealthSelect PDP, the GBP, or the state of Texas.
- 9.9 This entire Article and ERS' right to any and all remedies, including, but not limited to, liquidated damages, Performance Guarantees, if applicable, actual damages, injunctive relief or other remedies available under the Contract, at equity or pursuant to applicable statutory, regulatory, and common law, shall survive any termination, expiration, renewal, extension or amendment of the Contract.

Article 10. Independent Contractor Status

- 10.1 PBM and ERS understand and agree that PBM is an independent contractor performing, providing, and delivering the Services. It is expressly understood and agreed by the parties hereto that personnel assigned by PBM to perform or provide any of the Services are employees of PBM, and are not employees, agents, joint venturers, representatives or partners of ERS or the state of Texas for any purpose. Therefore, as an independent contractor, PBM agrees that its employees are not eligible for or entitled to receive any retirement benefits as a member of the employee class pursuant to Texas Government Code Ann. § 812.003, or any insurance benefits pursuant to Chapter 1551 of the Texas Insurance Code Ann., or any other kind of benefit ordinarily provided by the state of Texas to its employees. Further, PBM shall be responsible for obtaining, paying and maintaining all insurance and payroll withholding obligations that may be required by state or federal law in its performance of the Contract, including, but not limited to, federal and state payroll taxes, income taxes, and health and worker's compensation insurance, if required. No employer or other responsibilities to such personnel are, or may be, assumed by ERS, its past, present or future officers or employees, the Board, or the state of Texas.

Article 11. Cumulation of Remedies

- 11.1 All remedies available to ERS for PBM's breach or anticipatory breach of the Contract are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies. Liquidated damages, actual damages, cost projections, injunctive relief and/or Performance Guarantees may also be invoked either separately or combined with any other remedy in accordance with applicable law. Repudiation by PBM of any provisions of the Contract and any failure by PBM to disclose information to ERS as required by the Contract also constitutes a breach of the Contract.
- 11.2 This entire Article shall survive any termination, expiration, renewal, extension or amendment of the Contract.

Article 12. Historically Underutilized Businesses

- 12.1 If PBM has indicated in its Proposal that subcontracting opportunities for historically underutilized businesses, as defined in Texas Government Code Ann. § 2161.001, are available, then PBM warrants and represents that such subcontracting will only be permitted and performed in a manner consistent with ERS' and PBM's fiduciary duties.

- 12.2 HSP Prime Contractor Progress Assessment Report. All HUB and non-HUB subcontractor information shall be reported to ERS using the HSP Prime Contractor Progress Assessment Report form. The report shall be submitted to ERS' Purchasing Section. The report shall be submitted monthly even during the months no invoice is submitted to ERS. All payments made to subcontractors shall be reported. ERS may verify the amounts being reported as paid by requesting copies of canceled checks paid to subcontractors.

Article 13. Public Information Act and Confidentiality

- 13.1 PBM acknowledges that ERS is an agency of the state of Texas and is subject to the Texas Public Information Act, Texas Government Code Ann. ch. 552 (the "**PIA**"). PBM agrees that it is required by Texas law to make any information pursuant to this Contract, and not otherwise excepted from disclosure under the PIA, available in a format that is accessible by the public at no additional charge to ERS.
- 13.2 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.
- 13.3 ERS maintains documents and information that are considered confidential by law. In connection with the Contract, PBM will have access to information that is considered confidential. PBM understands that public availability of individual items of ERS' confidential information does not release its obligation of confidentiality. PBM is not permitted to disregard its obligations of confidentiality by use of items of ERS' confidential information to guide a search of publicly available information. PBM also is not permitted to piece together a series of items of information from unconnected sources and fit these items of information together by use of ERS' confidential information to make a showing that all or part of ERS' confidential information was "public." PBM warrants and represents that during and after the Contract such confidential information shall not be sold, assigned, provided, conveyed, released, disseminated, or otherwise disclosed by PBM, its Agents or any other persons or entities without ERS' express written permission, and that PBM shall instruct its Agents, representatives, subcontractors and/or independent contractors that they shall not so use or disclose such confidential information to any other person or entity, during or after the Contract, without the express written permission of ERS, except as absolutely necessary for PBM to provide the Services or as required by law. PBM warrants and represents that it has a tested and proven system in effect to protect all confidential information as defined herein.
- 13.4 As used herein, "**confidential information**" means all trade secrets, confidential or proprietary information, and all other knowledge, information, documents or materials, owned, developed, or possessed by ERS or in any way related to its members, retirees, participants, alternate payees, beneficiaries and annuitants (each, a "**Participant**"), whether in electronic, tangible or intangible form, the confidentiality of which ERS or its Participant take reasonable measures to protect. Confidential information includes, but is not limited to, information relating to ERS' processes, operations, Participant (including the identities of Participant or prospective Participant), business relationships, ERS products/services (including prices, costs, sales, or materials/processes used to make/provide the ERS products/services), financial information, employee salaries, employee or retiree benefits, business methods, business plans, databases, computer programs, designs, models, operating procedures, drawings, specifications, and any other information owned, developed, or possessed by ERS. Examples of such confidential information include, but are not limited to, all records and information contained in the claims or membership records of all Participant in any program or retirement system administered by ERS, all information that is subject to protection from disclosure pursuant to Texas or federal laws and regulations including, without limitation all privacy protections as provided in Texas Health & Safety Code Ann. Chapter 181 and in the "Privacy Rule" adopted pursuant to the federal Health Insurance Portability and Accountability Act of 1996 [Pub. L. No. 104-191], amended by the Health Information Technology for Economic and Clinical Health Act, as incorporated in the American Recovery and Reinvestment Act of 2009,

and the implementing regulations issued and amended by the U.S. Department of Health and Human Services Secretary (45 C.F.R. Parts 160 and 164) (hereinafter referred to as “**HIPAA**”), information that is provided or made available to PBM by ERS, its Administering firms and Carriers (as defined in Chapter 1551, Texas Insurance Code), if applicable, and consulting actuaries in connection with the Contract. Confidential information also includes any and all “access devices,” as that term is defined by § 552.136 of the PIA, and information relating to computer network security or to the design, operation, or defense of a computer network.

- 13.5 PBM further warrants and represents that it will comply with all applicable Texas and federal laws and regulations, including, without limitation Chapter 1551, Texas Insurance Code Ann., Texas Health & Safety Code Ann., Chapter 181 as it may apply, the federal HIPAA law and regulations promulgated pursuant to HIPAA, and all other applicable state and federal laws and regulations. If applicable, the parties’ Business Associate Agreement required by HIPAA is attached and incorporated by reference as Exhibit F. PBM warrants and represents that PBM and its affiliates, subsidiaries, employees, officers, directors, principals, agents, representatives, assigns and/or successors shall not, and that PBM shall instruct its independent contractors and subcontractors that they shall not, use, appropriate, sell, assign, convey, provide, release, access, obtain, disclose or otherwise disseminate any confidential or protected health information except as is absolutely necessary for PBM to perform its obligations under the Contract, and in any event shall not do so in violation of any applicable state or federal law or regulation.
- 13.6 The items designated herein as confidential information are the exclusive property of ERS and the Texas Employees Group Benefits Program (the “**GBP**”) as applicable, and PBM agrees that the confidential information shall be kept confidential as required herein, and by the above-cited statutes and applicable regulations, and Texas Government Code Ann. §§ 552.0038, 615.045, 815.503 and 840.402; § 1551.063 Texas Insurance Code Ann. and any and all other applicable Texas and federal laws and regulations. This paragraph shall, to the extent possible, be interpreted to be consistent with the terms of HIPAA, but in the event of a conflict with HIPAA, the terms of HIPAA and the Business Associate Agreement shall control.
- 13.7 PBM warrants and represents that it shall instruct its Agents that any release of any confidential information to any person or entity, including any Public Servants and any person or entity who has undertaken to advise, consult, or communicate with Public Servants on behalf of or to the benefit of PBM (whether or not PBM sought the benefit), may be authorized only by ERS in writing unless such release is absolutely required to provide the Services, and that such release must be in accordance with the applicable laws and regulations cited herein. If PBM receives a request for any information connected with the Services, confidential or otherwise, from any person or entity, including any Public Servants and any person or entity who has undertaken to advise, consult, or communicate with Public Servants on behalf of or to the benefit of PBM (whether or not PBM sought the benefit), PBM shall immediately send, if possible, a copy of such request to ERS by facsimile, electronic mail or similar means to ensure same or next day arrival at ERS, and in no event shall such notice be sent later than five (5) business days after PBM’s receipt of the request, so that ERS can determine if a disclosure is required or permitted. PBM shall maintain and protect from unauthorized disclosure, all confidential information and materials it receives or creates in connection with the Contract.
- 13.8 Except as expressly stated herein, neither PBM nor any Agent of PBM may use or permit to be used, released, conveyed, assigned, provided, transmitted, disclosed or otherwise disseminated to any other person or entity, any confidential information obtained as a result of PBM’s or any Agent’s duties under the Contract without the prior written consent of ERS, except as is absolutely necessary for PBM to perform the Services or as otherwise required by applicable law. PBM shall establish, maintain, and enforce agreements with its Agents who have access to any confidential information to fulfill PBM’s duties and obligations in the Contract and to specifically prohibit any use, sale, assignment, conveyance, provision, release, disclosure or other dissemination of any confidential information, except as otherwise required by law or authorized by ERS in writing.

- 13.9 PBM shall immediately report to ERS any and all unauthorized use, appropriation, sale, assignment, conveyance, provision, release, access, acquisition, disclosure or other dissemination, or attempt thereof, and use its best efforts to assist ERS in investigating or preventing the reoccurrence of such event in the future. PBM shall cooperate with ERS in connection with any litigation and investigation deemed necessary by ERS to protect any confidential information. PBM further agrees to promptly prevent a reoccurrence of any unauthorized use, appropriation, sale, assignment, conveyance, provision, release, access, acquisition, disclosure, or other dissemination of confidential information.
- 13.10 PBM acknowledges that any improper use, appropriation, sale, assignment, conveyance, provision, release, access, acquisition, disclosure or other dissemination of any confidential information to others may cause immediate and irreparable harm to ERS and/or a Participant and may violate state or federal laws and regulations. If PBM or its Agents improperly use, appropriate, sell, assign, convey, provide, release, access, acquire, disclose or otherwise disseminate such confidential information to any person or entity in violation of the Contract, or applicable laws or regulations, ERS will immediately be entitled to injunctive relief and/or any other rights or remedies available to ERS under the Contract, at equity or pursuant to applicable statutory, regulatory and common law without a cure period.
- 13.11 ERS and, subject to a non-disclosure agreement with PBM, its auditors, advisors, consultants, and custodians, if applicable, are entitled to use and retain copies of all written materials generated by PBM under this Contract. PBM should assume that all reports created by it for ERS may be publicly available records, in accordance with Texas law, and may be subject to the PIA and that any discussions regarding the reports and advice rendered by PBM that ERS may deem necessary to be conducted in an open meeting will comply with applicable Texas open meetings laws. PBM acknowledges and agrees that materials it delivers to ERS may be included in board materials provided to the public in connection with an open meeting of the Board or one of its committees. **If PBM includes materials that PBM deemed confidential and/or proprietary or copyrighted materials of any third party source in any report or document delivered to ERS, PBM shall clearly and prominently label such confidential and/or proprietary materials as such and shall include the appropriate trademark, service mark or copyright notices in such trademarked, service marked or copyrighted materials and identify the specific materials subject to trademark, service mark or copyright. If ERS receives a PIA request for information labeled as confidential and/or proprietary, ERS will notify PBM in accordance with the PIA of the PBM's right to submit written comments to the Office of the Attorney General as to why the information should not be released. PBM acknowledges that trademarked, service marked or copyrighted material may under some circumstances be copied by ERS in response to a request under the PIA. PBM further acknowledges that trademarked, service marked or copyrighted information and other information that PBM claims is confidential and/or proprietary may nevertheless be determined by the Office of the Texas Attorney General to be public information under the PIA and subject to release or inspection upon request. In assembling materials delivered to ERS, PBM shall use its reasonable best efforts to separate any trademarked, service marked or copyrighted materials, clearly designated as such, from non-trademarked, non-service marked or non-copyrighted materials and confidential and/or proprietary information, also clearly designated as such, from information that is not confidential and/or proprietary. PBM acknowledges that ERS does not have any duty to designate PBM information as confidential and proprietary or to otherwise advocate for such information to be considered confidential and proprietary.**
- 13.12 This entire Article shall survive any termination, expiration, renewal, extension or amendment of the Contract.

Article 14. Ownership and Use of Intellectual Property

- 14.1 Each party reserves all right, title, and interest in and to its respective copyrights, patents, trade secrets, trademarks, and other intellectual property, whether presently existing or hereafter

authored, invented, developed, or acquired. Without limiting the foregoing, as between the parties, PBM shall solely and exclusively own the systems, methodologies, and technology used to provide the Services, all modifications, enhancements, and improvements thereto, and all associated intellectual property rights. Notwithstanding the foregoing, as between PBM and ERS, the Work Product (defined below) shall be owned exclusively by ERS, and not PBM. PBM specifically agrees that all Work Product shall be considered a “work made for hire” and that the Work Product shall, upon creation be owned exclusively by ERS. To the extent that the Work Product, under applicable law, may not be considered a work made for hire, PBM hereby agrees that the Contract effectively transfers, grants, conveys, assigns, and relinquishes exclusively to ERS all right, title and interest in and to all ownership rights in the Work Product, without the necessity of any further consideration, and ERS shall be entitled to obtain and hold in its own name all intellectual property rights in and to the Work Product.

- 14.2 PBM’s systems (including, without limitation, standard reporting), methodologies, and technology are not Work Product (defined below), even if they are configured for use by ERS. From time to time, PBM may create electronic, tangible or intangible items, things or materials including, but not limited to, reports, communications, call scripts, and other forward-facing deliverables in connection with the Services (“**ERS Deliverables**”). ERS Deliverables may include Work Product, PBM’s pre-existing rights, and/or Third-Party IP. Work Product is defined as any aspects of the ERS Deliverables that are prepared, created, or developed by PBM (or such third parties as PBM may be permitted to engage) at any time following the Effective Date, exclusively for or on behalf of ERS under the Contract. To the extent that any pre-existing rights are embodied or reflected in the ERS Deliverables or standard reports delivered pursuant to the Services, PBM hereby grants to ERS the irrevocable, perpetual, non-exclusive, worldwide, royalty-free right and license to (a) use, execute, reproduce, display, perform, distribute copies of, and prepare derivative works based upon such pre-existing rights and any derivative works thereof, and (b) authorize others to do any or all of the foregoing. On request, PBM shall provide ERS with documentation indicating a third party’s written approval for PBM to use any Third-Party IP that may be embodied or reflected in the ERS Deliverables. PBM shall indemnify, defend (with counsel selected by PBM and ERS in consultation with the Office of the Attorney General of Texas), and hold harmless ERS from any losses, claims, damages, costs (including attorneys’ fees) or causes of action relating to any claim or assertion by any third party that the ERS Deliverables include third party materials or infringes third party rights.

For the avoidance of doubt, in no event shall any systems, methodologies, and technology used to provide the Services, all modifications, enhancements, and improvements thereto, be deemed an ERS Deliverable. Similarly, PBM reserves its ownership of the systems, methodologies, and templates used to prepare the reports for ERS, and all modifications, enhancements, and improvements thereto

- 14.3 The parties acknowledge that the Services, systems, and applications made available by PBM under this Agreement may incorporate or rely upon certain third-party pricing, protocols, software, confidential information, and/or other intellectual property (“**Third-Party IP**”). Notwithstanding anything to the contrary, any such Services, systems, and applications that incorporate or rely upon Third-Party IP may be used only as authorized by PBM and the applicable third-party supplier. PBM shall have no liability for any unauthorized use of Third-Party IP, nor shall PBM have any obligation to provide ERS with access to any Third-Party IP that PBM is prohibited by law or its contract with the owner, licensor, or sublicensor to PBM of the Third-Party IP from sharing with ERS. If and as applicable and required, PBM agrees to sublicense and/or pass-through the license terms for the Third-Party IP, to the extent that PBM is authorized by the third-party supplier to do so at no additional charge. If and as applicable, PBM agrees to provide reasonable cooperation, at ERS’ request and expense, in securing any other licenses to Third-Party IP that may be required.
- 14.4 PBM hereby warrants and represents to ERS that individuals or characters appearing or depicted in any Work Product have provided their written consent for the use of their persona or personality rights, including name, biographical information, picture, portrait, likeness, performance, voice and/or identity (“**Personality Rights**”), and have been compensated for such Personality Rights, if

appropriate. PBM agrees to indemnify, defend and hold ERS harmless from any claims, including, but not limited to, claims for invasion of privacy, infringement of the right of publicity, libel, unfair competition, false advertising, intentional or negligent infliction of emotional distress, copyright or trademark infringement, and/or claims for attorney's fees, resulting from use of the Personality Rights.

- 14.5 If the Work Product or the intellectual property rights therein become the subject of a lawsuit or claim of infringement, or PBM becomes aware that such items are likely to become the subject of a lawsuit or claim of infringement, PBM shall exercise one (1) of the following two (2) options in order to provide ERS with continued and uninterrupted use of the Work Product and intellectual property rights therein: (a) obtain for ERS the right to continue the use of the alleged infringing Work Product at no additional cost to ERS, or (b) obtain alternative, substitute or new works for the allegedly infringing Work Product, which are of equivalent or superior quality to the allegedly infringing Work Product, at no additional cost to ERS, and subject to the acceptance of ERS in its sole discretion.
- 14.6 PBM obtains no rights in or to the Work Product by virtue of this Contract, other than the limited right to use such materials for purposes of performing Services for or on behalf of ERS pursuant to the Contract, and PBM must receive prior authorization from ERS before any such use. With respect to PBM's use of ERS trademarks, service marks or logos ("Marks") for the foregoing purpose, upon receipt of such authorization, PBM shall use the Marks without any modifications, distortions or blurring whatsoever, and PBM must maintain, among other aspects of the Marks, proportions, color, brightness and contrast of the Marks. Furthermore, the Marks cannot be altered in any way, including, but not limited to, custom treatments such as additional lines, graphics, or clip art; special effects such as halos or drop shadows; or embossed into a photographic background. In instances where the Marks are used in conjunction with other logos, PBM agrees not to attempt to join the Marks with, or make it/them look like part of, another logo, and PBM agrees to maintain size and spacing in a way to maximize the impact of each logo as a separate, individual brand. PBM shall not affix its company name, label, logo, or any other identifying information to, on or in connection with the Marks, without prior express written permission. PBM agrees to submit an example of any use of the Marks to ERS' Benefits Communications Division for prior approval, which will not be unreasonably withheld. All use of the Work Product or intellectual property rights therein inures to the sole benefit of ERS.

Article 15. Records, Audits and Compliance Review

- 15.1 Notwithstanding any other provision of the Contract, except for such records as are provided to a third party by PBM at the request of ERS, PBM must retain copies of ERS-related records in accordance with applicable law, including licensing regulations, and PBM's record retention policy throughout the entire Contract Term and any extension or renewal thereof, and for a period of seven (7) years. Such records shall be in their original form or in a form acceptable with current industry standards. In addition, PBM shall maintain or provide ERS with copies of such records to the extent there is any legal action, investigation or audit related to the Contract and PBM is notified of same.
- 15.2 Unless there is currently pending or anticipated litigation or audits related to the records, PBM shall destroy all ERS-related records in a commercially reasonable manner following the applicable retention periods and PBM shall provide to ERS upon request a written certification of such destruction. With regard to Participants' personally identifying and/or sensitive personal information and, if applicable, protected health information ("**PHI**") (together, "**Personal Data**"), PBM shall comply with the Data Security and Breach Notification Agreement (Exhibit H) with regard to secure retention, maintenance and irreversible destruction of Personal Data.
- 15.3 The parties agree that ERS has the right to conduct, at ERS' expense and in ERS' sole discretion, compliance reviews of PBM in a number and at times as ERS determines is necessary in order to evaluate and oversee PBM's performance of any and all Services required under this Contract. Such compliance reviews may be conducted in PBM's offices or facilities as may be necessary.

- 15.4 ERS, or its designated representatives, may travel to PBM's offices to audit and inspect PBM's business practices in connection with its performance under the Contract in a number and at times as ERS determines is necessary in order to evaluate and oversee PBM's performance of any and all Services required under this Contract. Such compliance reviews may be conducted in PBM's offices or facilities as may be necessary.
- 15.5 PBM specifically understands, acknowledges and agrees that ERS has an absolute right to conduct compliance reviews and/or audits of PBM in connection with PBM's duties and obligations under the Contract, and that all ERS-related records (and including, without limiting the foregoing, any arrangements, contracts, or related agreements that PBM has with any Pharmaceutical Manufacturers as well as all documents and information necessary for ERS to ensure PBM's compliance with Section 31.6 herein) may be audited by ERS or its authorized representative at any reasonable time at PBM's offices and any other appropriate location during regular business hours. Except as otherwise specified in this Article, the Executive Director of ERS will determine who will act as the authorized representatives of ERS in conducting such audits. Any third party authorized representative of ERS will sign a non-disclosure agreement with PBM. PBM shall cooperate with ERS and/or its representatives in connection with an audit of PBM's performance in connection with the Contract. As appropriate, ERS reserves the right to be present during PBM's performance of the Contract to verify that PBM is faithfully and fully performing its contractual duties and obligations. Neither ERS nor the auditors will indemnify PBM for any costs incurred in connection with any audits or compliance reviews performed pursuant to this Article.
- 15.6 ERS shall bear the cost of any audit or compliance review; provided, however, that in the event any final audit or compliance review reveals a breach of the Contract by PBM resulting in errors in excess of \$50,000 (FIFTY THOUSAND DOLLARS) or ERS imposes liquidated damages, performance guarantees or seeks any remedy or damages under this Contract, PBM shall reimburse ERS all of its actual costs, fees and expenses of whatever nature related to the cost of the related audit or compliance review. Such reimbursement shall be in addition to any other rights and remedies available to ERS under the Contract, at equity or pursuant to applicable statutory, regulatory, and common law, including liquidated damages.
- (a) In accordance with § 1551.067, Texas Insurance Code, and notwithstanding any other provision of the Contract related to compliance reviews and/or audits of the PBM:
- i. ERS is entitled to audit PBM to verify costs and discounts associated with drug claims, PBM compliance with the Contract, and subcontractor Services.
 - ii. Such audit shall be conducted by an independent auditor in accordance with established auditing standards.
 - iii. To conduct the audit, ERS and the independent auditor are entitled to access to all information related to the Services and costs associated with the Services, including access to PBMs Facilities, records, contracts, medical records and agreements with subcontractors.
- 15.7 In connection with the audit of retail, independent and mail order pharmacies performing Services, PBM shall provide access to all requested information to confirm contractual compliance and agrees that any audit results shall be reported to the Board as required, and at least annually.
- 15.8 PBM is required to return recovered overpayments in any way related to the HealthSelect Medicare Rx PDP or HealthSelect PDP Program to the GBP.
- 15.9 Any ERS audits of PBM's mail service operation, including a mail order pharmacy owned by PBM or its affiliates, shall be conducted in accordance with established auditing standards by an

independent Auditor designated by ERS. The independent Auditor designated by ERS will sign a non-disclosure agreement with PBM.

- 15.10 PBM agrees, both individually and on behalf of its subcontractors, that the Texas state auditor may conduct an audit or investigation of PBM and its subcontractors in connection with PBM's receipt of funds from the state directly under the Contract or the subcontractor's receipt of funds from the state indirectly through a subcontract under the Contract. Under the direction of the legislative audit committee, an entity that is the subject of an audit or investigation by the state auditor must provide the state auditor with access to any information the state auditor reasonably and in good faith considers relevant to the investigation or audit.
- 15.11 The parties agree that ERS has the right to conduct, at ERS' expense and in ERS' sole discretion, one or more compliance reviews of PBM. Additionally, the parties agree that, in the event ERS determines that PBM is not satisfactorily performing its obligations under the Contract, ERS, or its designated representatives, may travel to PBM's offices to audit and inspect PBM's business practices in connection with its performance under the Contract.
- 15.12 To the extent that PBM's agreements for Rebates, as defined in this Contract, are subject to confidentiality agreements, any ERS audits of PBM's Rebate agreements conducted pursuant to this Article will be conducted by (a) a public accounting or auditing firm approved by ERS whose audit department is a separate stand-alone business entity, or (b) any other qualified independent third party designated by ERS, and/or (c) the Texas State Auditor ("**Auditor**"). The organization performing the audit must carry insurance for professional malpractice of at least \$1,000,000 per occurrence and \$5,000,000 in the aggregate, unless such Auditor is an agency of the state of Texas or unless the parties agree otherwise. Such audit will include only those portions of any and all agreements as the Auditor reasonably determines is necessary to ensure PBM's compliance with the Contract with respect to Rebates. The audit will be conducted as scheduled by agreement of the parties after Auditor's execution of a reasonable confidentiality agreement, the terms of which are to be reasonably agreed upon by PBM and Auditor. This provision does not apply to other audits or audits unrelated to such confidentiality agreements by and between PBM and any Rebate Payor.
- 15.13 PBM acknowledges and agrees that, notwithstanding any other provision in the Contract, nothing in PBM's Proposal or in the Clarifications in Exhibit C shall in any way limit or otherwise reduce ERS' full and complete right to audit and conduct compliance reviews of all aspects of PBM's performance of the Services and any other obligations related to this Contract, and this Article shall prevail in the event that there are any conflicts among any of the Contract terms in this regard.
- 15.14 This entire Article shall survive any termination, expiration, renewal, extension or amendment of the Contract.

Article 16. Conflicts of Interest

- 16.1 PBM acknowledges and agrees that it has not and shall not engage in any actions that are or could be perceived to be a conflict of interest, appearance of impropriety or Prohibited Communication (as defined below) in connection with the performance of its obligations under the Contract.
- 16.2 The intent of this Article is to ensure that ERS contracting decisions are made exclusively on the merits of the business opportunity, and to ensure that all business decisions, recommendations and processes are free of improper influence or the appearance thereof. Furthermore, in order to ensure that ERS' RFP/Proposal and contracting processes are transparent and that all persons or entities seeking to engage in business with ERS are afforded the same opportunities, ERS requires all persons or entities to make the following warranties and representations:
 - (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 (v 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.

- (b) PBM further warrants and represents that throughout the Contract Term, any renewal or extension thereof, and for a period of two (2) years following the Contract's termination:

1. PBM and its Agents (which includes any person or entity who has undertaken to advise, consult or communicate with Public Servants on behalf of or to the benefit of PBM and its Agents (whether or not PBM and its Agents sought the benefit)), have been instructed and agree that, except as otherwise expressly permitted in the Contract or expressly authorized by ERS' Executive Director or designee, they are prohibited from any Prohibited Communications (as defined below); and
2. Except as otherwise expressly permitted in the Contract or expressly authorized by ERS' Executive Director or designee, PBM shall refrain from making, directly or indirectly, on its own or through any person or entity, including any person or entity who undertakes to advise, consult or communicate with Public Servants on behalf of or to the benefit of PBM and its Agents (whether or not PBM and its Agents seeks the benefit), any Prohibited Communications.

"Prohibited Communications" specifically includes any communications to any member of the Board, the GBAC or IAC, any officer or employee of ERS, or any Public Servants (including advising, consulting or communicating with any Public Servants), or the RFP Advisor regarding (i) this Contract; (ii), the subject matter of this Contract or any other contract or program administered by ERS; (iii) anything that in any manner affects ERS' administration of any existing or prospective contract; or (iv) any attempt 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.

- (c) PBM warrants and represents that it shall not recruit, retain or employ any RFP Advisor or ERS personnel who have worked on projects relating to the subject matter of the Contract, throughout the Contract Term and any renewal or extension thereof and for a period of two (2) years following termination or expiration of the Contract. Additionally, PBM warrants and represents that it shall not recruit, retain or employ any ERS personnel who participated on behalf of ERS in the procurement or negotiation of the Contract before the second anniversary of the date the personnel's employment with ERS has ceased.
1. Moreover, PBM understands and acknowledges that the purpose of ERS' retention of an advisor to aid in the RFP development and subsequent selection of the PBM for the Contract ("**RFP Advisor**") is to receive wholly unbiased and objective advice from RFP Advisor. PBM further warrants and represents that PBM and PBM's officers, directors, affiliates, subsidiaries, assigns, employees, subcontractors, independent contractors, representatives and/or agents who in any manner have or will participate in the performance of this Contract have been instructed and agree that they are prohibited from seeking or accepting any offers to receive advice or consulting services from or from receiving any services whatsoever, for consideration or not, from or on behalf of the RFP Advisor selected by ERS. This prohibition shall continue throughout the Contract Term and any renewal or extension thereof. Rudd & Wisdom is the RFP Advisor in connection with this Contract.
 2. Unless specifically permitted to do so by ERS, PBM warrants and represents that it has not and will not in any manner engage in Prohibited Communications or communicate with RFP Advisor or any person or entity other than PBM's officers, directors, affiliates, subsidiaries, assigns, employees, subcontractors, independent contractors, representatives and/or agents, regarding the Request for Proposal and any responses thereto, this Contract, and PBM's performance under the Contract and/or the RFP at any time following ERS' issuance of the RFP through the award of the Contract to PBM.
- (d) PBM further warrants and represents that the information in the Proposal and Clarifications, if any, was not knowingly disclosed prior to the award of the Contract, directly or indirectly, to any competitor of PBM or any other person or entity engaged in a line of business competitive with PBM's during the procurement process for the RFP by PBM or PBM's officers, directors, affiliates, subsidiaries, assigns, employees, subcontractors, independent contractors, representatives and/or Agents, including any person or entity who has undertaken to advise, consult or communicate with Public Servants on behalf of or to the benefit of PBM and its Agents (whether or not PBM and its Agents sought the benefit). No attempt has been made by PBM to induce any other vendor to submit or not submit a proposal in connection with the RFP for any purpose.
- (e) PBM further warrants and represents that, except as otherwise expressly provided in the Contract, it has neither directly nor indirectly given, offered to give, nor intends to give at any time prior to the Contract's Effective Date and thereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, benefit, service, or other consideration to any of the Public Servants, any person or entity who has undertaken to advise, consult or communicate with Public Servants on behalf of or to the benefit of PBM and its Agents (whether or not PBM and its Agents sought the benefit) or RFP Advisor in connection with the award and/or performance of the Contract.
- (f) PBM warrants and represents that it has not in any manner, directly or indirectly, participated in the preparation of the RFP.
- (g) PBM understands and acknowledges that, except for the receipt of insurance and retirement benefits as a member of ERS, Public Servants, or any person or entity who has

undertaken to advise, consult or communicate with Public Servants on behalf of or to the benefit of PBM (whether or not PBM sought the benefit), or the RFP Advisor shall not have a direct or indirect interest in the gains or profits of the Contract and may not receive any pay or emolument for any service performed for the PBM. In the case that any Public Servant, any person or entity who has undertaken to advise, consult or communicate with Public Servants on behalf of or to the benefit of PBM and its Agents (whether or not PBM and its Agents sought the benefit), or RFP Advisor receives any payment from PBM for (i) any services performed for PBM, (ii) being awarded the Contract, or (iii) any gains or profits of the Contract, then ERS may terminate its relationship with the PBM immediately and may pursue all rights and remedies available to ERS under the Contract, at equity or pursuant to applicable statutory, regulatory and common law. Under such circumstances, the PBM must, if so directed by ERS, complete any outstanding transactions as soon as possible, and thereafter, fully comply with all duties and obligations that survive the termination of the Contract.

- (h) PBM agrees that, during the Contract Term, neither it nor any of its Agents will offer, give, deliver (or agree to later offer, give, or deliver) to ERS, any ERS employee, any Board member, any GBAC member or any IAC member any monetary or in-kind gift (any such item being a "**Gift**"). For breach or violation of this provision of this Contract, ERS shall have the right, in its sole and absolute discretion, to (i) terminate this Contract without liability to ERS, (ii) deduct from the amount payable under the Fee Schedule, or otherwise recover, the full value of such Gift, or (iii) exercise any other remedies that may be available to ERS under this Contract, at law, or in equity. PBM further represents and warrants that it has reviewed Chapter 36 of the Texas Penal Code and the ERS Ethics Policy and agrees that, during the Contract Term, it will not engage in any act that would be a violation thereof or that would cause the violation thereof by any ERS employee, any Board member, any GBAC member or any IAC member.
 - (i) PBM warrants and represents that, as of the Effective Date of the Contract and to the best of its knowledge and belief, there are no relevant facts or circumstances that could give rise to any actual or perceived conflict of interest, appearance of impropriety or Prohibited Communication with regard to the Contract. PBM warrants and represents that, if at any time after the Effective Date of the Contract, PBM discovers or is made aware of an actual or perceived conflict of interest, appearance of impropriety or Prohibited Communication that pre-existed the Contract's Effective Date or arose thereafter, PBM shall immediately disclose such interest, appearance or communication in writing to ERS. In addition, PBM must promptly disclose any relationship that might be perceived or represented as a conflict of interest after its discovery by PBM or by ERS as a potential conflict. Such disclosure must include a description of the actions that PBM has taken or proposes to take to cure, avoid or mitigate such conflicts.
- 16.3 PBM acknowledges that any violation of this Article may cause immediate and irreparable harm to ERS, programs administered by ERS and/or the state of Texas and may violate state or federal laws and regulations. If PBM or any of its Agents (which includes any person or entity who has undertaken to advise, consult or communicate with Public Servants on behalf of or to the benefit of PBM and its Agents (whether or not PBM and its Agents sought the benefit)) should engage in any actions or failures to act in violation of this Article, ERS will immediately be entitled to injunctive relief and/or to pursue all rights and remedies available to ERS under the Contract, at equity or pursuant to applicable statutory, regulatory, and common law. PBM further agrees, understands and acknowledges that ERS may disqualify PBM from participating in the RFP/Proposal process or terminate the Contract immediately if ERS obtains information reflecting that PBM is not able to in good faith make any of the warranties and representations in this Article or ERS subsequently learns of any violation of this Article.
- 16.4 PBM agrees that in addition to any other rights and remedies ERS may have as a result of a violation of this Article of the Contract, ERS may, for the purpose of rectifying and preventing other

actual or potential conflicts of interest, appearances of impropriety or Prohibited Communications, provide notice of the violation to any person or entity, including, but not limited to, all state agencies, departments, commissions, state institutions of higher learning or other governmental or law enforcement entities of the state of Texas and all officers, members and staff of any office in the legislative and executive branches of the state of Texas. PBM agrees that ERS, any Public Servants, the state of Texas, any person or entity notified by ERS, and any other persons or entities will not be liable to PBM or to PBM's Agents (which includes any person or entity who has undertaken to advise, consult or communicate with Public Servants on behalf of or to the benefit of PBM and its Agents (whether or not PBM and its Agents sought the benefit)) in any respect in connection with such notification. PBM acknowledges and understands that ERS may also determine, in its sole discretion, that as a result of PBM's violation of this Article, PBM shall not be eligible to (a) be considered for this RFP/Proposal Process or Contract, (b) participate in any future RFP or similar bidding opportunities, or (c) otherwise be eligible to engage in business with ERS for any period of time as determined by ERS.

- 16.5 PBM acknowledges, understands and agrees that any findings, interpretations and decisions in connection with this Article shall be made by ERS, in its sole discretion, regarding the existence of any actual or perceived conflicts of interest, appearance of impropriety, Prohibited Communications or any violation of this Article, and PBM agrees, warrants and represents that it shall abide by ERS' decision without any right to appeal, protest or seek any legal redress related to ERS' determination.
- 16.6 This entire Article shall survive any termination, expiration, renewal, extension or amendment of the Contract.

Article 17. Prohibited Solicitation and Marketing

- 17.1 PBM warrants and represents that PBM and any officer, director, principal, employee, agent, affiliate, subsidiary, representative, assign and/or successor of PBM shall not, and that PBM shall instruct its independent contractors and subcontractors, if any, that they shall not, for any purpose, including, but not limited to, the purpose of soliciting or marketing products to Participants, use, sell, assign, convey, provide or otherwise disseminate, copy, make available or otherwise distribute to any person or entity, other than to ERS or to a person or entity designated by ERS, any information regarding ERS or the Participant(s), including, but not limited to, any list of Participants, information regarding eligible or covered employees and dependents, confidential information, claims-related information or other Participant data, any protected health information, or any identifiable personal information, without the prior express written consent of ERS' authorized representative, and except as is absolutely necessary for PBM to perform its obligations under the Contract or as required by law. Nothing in this provision restricts PBM's ability to offer benefits and services to Texas residents as part of PBM's normal business activities as long as neither PBM nor any of its Agents solicits Participants knowingly or intentionally, so long as PBM does not utilize Participant data or confidential information obtained directly or indirectly as a result of, or in connection with, PBM's relationship with ERS arising from the Contract.
- 17.2 This entire Article shall survive any termination, expiration, renewal, extension or amendment of the Contract.

Article 18. Employment Verification

- 18.1 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.
- 18.2 ERS shall have the right to audit PBM's compliance with this Article 18 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 18.1.

- 18.3 If the certification at Section 18.1 is falsely made or PBM 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. PBM shall also be responsible for the costs of any re-solicitation that ERS must undertake to replace the terminated Contract, if applicable.

Article 19. Indemnification and Liability Insurance

19.1 PBM shall defend (with counsel selected by ERS in consultation with the Office of the Attorney General of Texas and with sole settlement authority retained by ERS), indemnify, save and hold harmless ERS, its past, present and future officers, directors, trustees, and employees, and the state of Texas and its past, present and future officers and employees ("*Indemnified parties*") from claims, damages, losses, causes of action of whatever kind or nature, expenses, judgments, and all amounts, including, but not limited to, reasonable fees for and costs related to attorneys and experts, arising from or related to any acts or omissions of PBM and/or PBM's Agents arising or resulting from, in connection with, or related to their acts or omissions under the Contract. This includes, but is not limited to, any and all such damages resulting or alleged to result from:

- (a) the refusal or inability of the PBM, its Agents and Providers arising or resulting from, in connection with, or related to their acts or omissions under the Contract; and/or
- (b) the refusal or inability of PBM and/or any Provider or any of them to perform, deliver or provide Services, coverages, Equipment, benefits, products or supplies in connection with the Contract, the EOC as it relates to the HealthSelect Medicare Rx PDP, or the MBPD as it relates to HealthSelect PDP; and/or
- (c) the negligent provision or omission of such Services, coverages, benefits, Equipment, supplies or products by PBM and/or its Agents or any Provider or any of them in connection with the Contract, the EOC as it relates to the HealthSelect Medicare Rx PDP, or the MBPD as it relates to HealthSelect PDP; and/or
- (d) any failure, refusal, inability or negligence of PBM and/or any Provider or any of them in meeting or complying with any and all obligations under the Contract or to perform, deliver or provide any Services, benefits, coverages, Equipment, supplies or products required by this Contract, by the EOC as it relates to the HealthSelect Medicare Rx PDP, or by the MBPD as it relates to HealthSelect PDP; and/or
- (e) PBM's and/or its Agents' actions and/or omissions in connection with the RFP/Proposal Process, and/or the management, contracting, credentialing or re-credentialing of the Network, Providers or administration of the HealthSelect Medicare Rx PDP or HealthSelect PDP; and/or
- (f) Any and all claims or causes of action asserted against an Indemnified Party arising from or related to Services rendered by PBM and/or its Agents and/or any Provider or any of them in connection with this Contract.

19.2 This indemnification will not apply to any judgment or award if the court or agency making the award determines that the liability underlying the judgment or award was caused solely by the gross negligence, fraud, or criminal misconduct of ERS, its officers, trustees, employees, or representatives.

19.3 PBM shall maintain, during the Contract Term and any amendment, renewal or extension thereof, liability insurance coverage with limits of not less than \$10 million per occurrence and in the aggregate per policy year, with excess and/or umbrella liability coverage in an

amount not less than \$10 million per policy year that shall apply to PBM's obligations under the Contract. To this end, attached hereto as Exhibit G and incorporated herein for all purposes as if restated in full, are copies of certificates of insurance representing PBM's liability and fidelity insurance coverage in connection with PBM's performance under the Contract. Evidence that such coverage is being maintained during the primary term or any renewal of the Contract Term shall be furnished to ERS upon the anniversary date of the policies reflected in Exhibit G and otherwise promptly upon ERS' request. Such insurance coverage shall be in addition to PBM's Indemnification obligations as provided herein.

- 19.4 ERS agrees to provide PBM with reasonable notice of any claim or cause of action of which it has knowledge and which ERS reasonably believes may be subject to this Indemnification provision.
- 19.5 This entire Article shall survive any termination, expiration, renewal, extension or amendment of the Contract.

Article 20. Disaster Recovery

- 20.1 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.
- 20.2 PBM agrees that all Services provided to ERS under this Contract will be fully operational within ZERO (0) to twenty-four (24) hours after any business interruption.
- 20.3 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 0 to 24 hours of outage and will experience a maximum 0 to 12 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.
- 20.4 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.
- 20.5 This entire Article shall survive any termination, expiration, renewal, extension or amendment of the Contract.

Article 21. Transition; Maintenance of Records and Data

- 21.1 If the Service Period does not begin immediately upon execution of the Contract, then PBM agrees that it will maintain appropriate, sufficient and qualified staff, technical capabilities and resources to provide the Services to ERS upon the inception of the Service Period. PBM further agrees that it will not permit any current or prospective business, projects or other matters to interfere in any manner with the smooth and timely transition from ERS' existing Services provider to PBM. Furthermore, PBM understands and agrees that time is of the essence in the performance of the Contract and in the transition from ERS' existing Services provider to PBM.
- 21.2 Upon request by ERS for any reason, or upon termination or expiration of the Contract, PBM agrees to coordinate and cooperate with ERS and any entity providing all or part of the Services to ERS following such termination (as designated in writing by ERS, the "**Successor Firm**") in the transition of responsibilities and obligations under the Contract (the "**Transition**") to the Successor Firm. Such cooperation shall include making PBM personnel available to answer questions relating to the Services or the Transition and providing other assistance as reasonably requested by ERS or the Successor Firm. Upon termination or expiration of the Contract, or upon request by ERS or its designee, PBM shall promptly, in good faith, and with the standard of care required under the Contract, assign, transfer and/or deliver the ERS-related records and data in its possession to ERS and/or the Successor Firm. The records and data shall be provided to ERS and/or the Successor Firm in the format contemplated by Section 21.3 below in a duly organized manner, as they are kept in the ordinary course of business. Any coordination and cooperation provided by PBM pursuant to this Section 21.2 shall be provided without any additional cost or expense to ERS or any Successor Firm.
- 21.3 PBM hereby acknowledges that the intent of Section 21.2 above is to provide for the smooth and orderly transition from PBM to ERS or a Successor Firm, and PBM will use all reasonable efforts in good faith to prepare and provide for such smooth and orderly transition. In furtherance thereof (and not as a limitation of PBM's obligations under the prior sentence), PBM hereby represents and warrants to ERS that during the Contract Term, PBM will maintain all records and data relating to the Services in a format that can be read, accessed and used by ERS and/or any Successor Firm during the Contract Term and following the Transition, without any requirement for ERS or such Successor Firm to utilize any specialized software or take any other action. PBM shall permit ERS to audit its compliance with this Section 21.3 upon reasonable notice at no additional cost to ERS.
- 21.4 This entire Article shall survive any termination, expiration, renewal, extension or amendment of the Contract.

Article 22. No Third Party Beneficiaries

- 22.1 Except as otherwise provided in the Contract, a person or entity that is not a party to the Contract shall have no right to enforce any provision of the Contract.

Article 23. No Contract Assignment

- 23.1 PBM shall not assign, or otherwise attempt to transfer or convey the Contract or any of its rights, title, interests and/or obligations hereunder to any person or entity without the prior express written consent of ERS' Executive Director. A Change of Control, as defined herein, shall be deemed an assignment. Any attempted assignment without such consent shall be voidable at ERS' option, and ERS may terminate the Contract immediately and pursue all rights and remedies available to ERS under the Contract, at equity or pursuant to applicable statutory, regulatory and common law. A "**Change of Control**" shall include (a) any merger, consolidation, or sale or exchange of capital stock or equity interests in which the owners of the capital stock or equity interests of PBM immediately prior to the transaction have less than 50% of the outstanding capital stock or equity interests of the surviving entity immediately after the transaction, or (b) a sale, lease, exchange or other transfer of all or substantially all the assets of PBM. Notwithstanding and without waiving the foregoing, any assignee of or legal successor in interest to PBM shall assume and retain all of the obligations of PBM to ERS and the state of Texas as provided under the Contract, as if the same

had been expressly entered into by or wholly conveyed to the assignee or successor in interest upon ERS' written agreement to such assignment.

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

Article 24. Privacy and Antitrust Claims

- 24.1 In addition to any other contractual obligations that PBM has with regard to confidential information and to otherwise maintain the confidentiality of Participants' and ERS' information, PBM warrants and represents that it shall comply with the terms of HIPAA, the Health Information Technology for Economic and Clinical Health Act ("**HITECH**") and the HIPAA Privacy Rule to the extent applicable, and any other applicable federal and state laws and regulations regarding privacy, security and the disclosure of confidential information or **PHI**, as PHI is defined in the HIPAA Privacy Rule.
- 24.2 PBM agrees to cooperate with ERS in complying with the requirements of HIPAA and HITECH.
- 24.3 PBM warrants and represents that it shall comply with all obligations HIPAA and HITECH impose on Covered Entities in connection with its performance under the Contract.
- 24.4 PBM agrees that whether or not it is a "Covered Entity" under the HIPAA Privacy Rule, because PBM will have regular access to PHI, PBM agrees to enter into a Business Associate Agreement with ERS that complies with the requirements of HIPAA, the HIPAA Privacy Rule and HITECH and will require any subcontractors or agent handling PHI to comply with the terms of the Business Associate Agreement, which is attached hereto as Exhibit F and fully incorporated herein as if restated in full.
- 24.5 PBM warrants and represents that it shall comply with all requirements of Exhibit H, Data Security and Breach Notification Agreement, which is attached hereto and incorporated herein for all purposes as if restated in full. In addition, if PBM subcontracts with any other person or entity for processing or in any manner handling, accessing or viewing ERS data, then PBM warrants and represents that it shall ensure that such party agrees to adhere to the provisions of the Data Security and Breach Notification Agreement. PBM specifically assumes all liability for ensuring that its affiliates, subsidiaries, representatives, officers, directors, principals, employees, agents, assigns, and any subcontractors and independent contractors abide by the Data Security and Breach Notification Agreement and shall, in any event, be liable for performance of any Services related to the Contract, including any Services performed by subcontractors.
- 24.6 PBM shall utilize an alternate identification number for ERS Participants rather than social security numbers.
- 24.7 PBM hereby assigns to ERS any and all present or future claims as may be required by applicable law associated with this Contract that arise under the antitrust laws of the United States, 15 U.S.C.A. §§ 1 et seq. ("**U.S. Antitrust Laws**"), as may be applicable and that arise under the antitrust laws of the state of Texas, Texas Business and Commerce Code Ann. §§ 15.01 et seq. ("**Texas Antitrust Laws**"), as may be applicable.
- 24.8 PBM warrants and represents that neither PBM nor its Agents has violated the U.S. Antitrust Laws or the Texas Antitrust Laws.
- 24.9 This entire Article shall survive any termination, expiration, renewal, extension or amendment of the Contract.

Article 25. Technology Access Requirement

- 25.1 As applicable, PBM must ensure the products procured by ERS under this Contract (as further defined at Article 34), if any, comply with the state of Texas Accessibility requirements for Electronic and Information Resources specified in 1 Texas Administrative Code Chapter 213.

Article 26. Buy Texas

- 26.1 In accordance with Texas Government Code § 2155.4441, if products and/or materials are used in the performance of the service work, PBM shall use commercially reasonable efforts to purchase Texas products and/or materials when they are available at a comparable price, quality and delivery schedule.

Article 27. ERS Premises

- 27.1 Security. When on ERS' premises, PBM agrees to comply with ERS' security requirements for contractors and subcontractors.
- 27.2 Parking Access. Parking at ERS may be provided in accordance with ERS' policies and procedures for contractors and subcontractors.
- 27.3 Drug and Alcohol-Free Workplace and Smoking Policy. ERS is committed to maintaining an alcohol-free, drug-free and smoke-free workplace. ERS prohibits PBM's employees from the use of any tobacco products or possession, use, or being under the influence of alcohol or controlled substances while on ERS' premises.

Article 28. Boycott of Israel

- 28.1 In accordance with Texas Government Code, Chapter 2271, PBM certifies that either (i) it qualifies for an exemption under § 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, § 808.001.

Article 29. Foreign Terrorist Organizations

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

Article 30. Human Trafficking Prohibition

- 30.1 Under § 2155.0061 of the Texas Government Code, PBM 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.

Article 31. Additional Warranties and Representations

- 31.1 PBM warrants and represents that it has and shall maintain the capability to adequately carry out any record-keeping and reporting requirements as set forth in the Contract.
- 31.2 PBM acknowledges that all of its representations and warranties contained in any part of the Contract are material and have been relied upon by ERS in selecting and continuing to contract with PBM to provide the Services and in entering into the Contract with PBM. PBM shall promptly notify ERS in the event that at any time any representations and warranties provided herein are no longer true and correct.
- 31.3 PBM warrants and represents that it has adequate financial capital and security to fully indemnify the Indemnified parties, as provided herein, should same be necessary.
- 31.4 Under Texas Government Code Ann. § 403.055 and Texas Government Code Ann. §§ 2155.004 and 2155.006, and 2261.053 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.

31.5 In accordance with Texas Family Code Ann. § 231.006, relating to delinquent child support obligations, PBM certifies that it is eligible to receive payments in connection with the Contract and acknowledges that, in addition to other remedies available to ERS, the Contract may be terminated immediately and any such payments withheld if this certification is inaccurate.

31.6 PBM warrants and represents that if, during the term of this Contract, PBM enters into any agreement with any other governmental customer or any commercial customer not affiliated with PBM, of a similar size or smaller (the Comparative Agreement), by which PBM agrees to perform, deliver or provide equivalent Services, coverages, benefits, supplies or products that PBM is providing in accordance with this Contract for more generous pricing terms (lower administrative fees, lower compensation, more generous discounts, more generous rebates, and/or more generous financial incentives or terms), measured in the aggregate, then this Contract, at ERS' sole option, shall be amended to accord equivalent advantage to ERS.

PBM shall determine whether the pricing terms offered under the Comparative Agreement are more generous in the aggregate than the pricing terms provided to ERS in this Contract by application of (a) the pricing terms offered under the Comparative Agreement to (b) the actual brand/generic utilization and distribution of such utilization among retail, mail, and specialty pharmacies under the Contract during a recent annual period. Such process shall objectively and reasonably consider differences, if any, between the Comparative Agreement and the Contract in relation to (a) the scope and relative cost of the services provided by PBM and (b) plan design including plan formulary.

PBM further warrants and represents that it shall (a) notify ERS promptly in the event it enters into any such Comparative Agreement, and (b) provide ERS with the applicable terms of such agreement and full documentation of the determination described herein.

31.7 Neither PBM nor to the best of PBM's knowledge any Agent of PBM is subject to any present or past civil or criminal litigation, administrative proceeding, inquiry or investigation of or before any court, administrative or regulatory body which could affect ERS and/or could have a material adverse effect on PBM or its ability to discharge its responsibilities under the Contract, or could otherwise be detrimental to ERS' interests nor, to its knowledge, is any such litigation, proceeding, inquiry or investigation presently threatened against any of them or their property.

31.8 **PBM 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.**

31.9 PBM 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.

31.10 **PBM warrants and represents that neither PBM nor any of its affiliates, subsidiaries, employees, principals, directors or officers, nor, to its knowledge, PBM's agents, assigns, representatives, independent contractors, and/or subcontractors who are involved, either directly or indirectly, in PBM's performance of the Contract, are or may, at the time such parties become involved, be the subject(s) of any inquiry, investigation, or prosecution by any state or federal regulatory or law enforcement authority, including, but not limited to, such actions by the United States Department of Justice or the offices of any state's attorney general, the Department of Labor, Department of Health and Human Services, Centers for Medicare & Medicaid Services, or any self-regulatory organization with oversight authority over PBM or such parties concerning any violation of state or federal statutes, rules,**

regulations or other laws that would have a material adverse effect on the Contract or PBM's performance of the Services thereunder.

- 31.11 PBM warrants and represents that none of the Services to be performed pursuant to this Contract by PBM (including, for the avoidance of doubt, any other entity) shall be outsourced or performed, by someone outside the United States. PBM's breach of this provision shall subject PBM to liquidated damages in the full amount provided in Section 9.7 for each and every Participant record involved in any violation of this Article as well as all other remedies available to ERS under the Contract, at equity or pursuant to applicable statutory, regulatory and common law.
- 31.12 PBM warrants and represents that in the event it contracts with subcontractors to provide services in connection with the Contract, PBM has exercised reasonable due diligence to ensure that all of PBM's representations and warranties in the Contract pertaining to such subcontractors are true and correct, and that PBM and each subcontractor has the commitment, capability, resources, security, and competence reasonably necessary to perform all services and obligations relating to the Contract in a good and workmanlike manner in accordance with applicable professional standards and the standard of care required by the Contract. PBM further warrants and represents that it shall exercise the same reasonable due diligence in selecting any additional subcontractors who may perform future services relating to the Contract. PBM shall advise each of its past, present or future subcontractors that said subcontractors shall not be entitled to any benefits or consideration from ERS in connection with the Contract. Furthermore, PBM is solely responsible for all Contract services required to be performed to carry out the terms of the Contract, and PBM specifically assumes all liability for any and all such services provided by subcontractors, if any.
- 31.13 PBM warrants and represents that it shall not violate the federal anti-kickback statute, set forth at 42 U.S.C. § 1320a-7b(b) ("**Anti-Kickback Statute**"), or the federal "**Stark Law**," set forth at 42 U.S.C. § 1395nn, with respect to the performance of its obligations under this Contract.
- 31.14 PBM represents and warrants that the Contract is not prohibited by § 2273.003 of the Texas Government Code.
- 31.15 In accordance with Texas Government Code § 2274, PBM verifies that it (1) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and (2) will not discriminate during the term of the Contract against a firearm entity or firearm trade association. "Discriminate against a firearm entity or firearm trade association" is defined at § 2274.001(3).
- 31.16 PBM verifies that:
- (1) it does not, and will not for the duration of this Contract, boycott energy companies; or
 - (2) the verification required by Section 2274.002 of the Texas Government Code does not apply to this Contract, and if circumstances relevant to this provision change during the course of this Contract, PBM shall promptly notify ERS.
- 31.17 Under §161.0085 of the Texas Health and Safety Code, PBM certifies that it is not ineligible to receive this Contract.
- 31.18 PBM agrees that any Services, coverages, Equipment, benefits, products or supplies to be performed, delivered or provided under this Contract by PBM, described and offered to ERS in PBM's Proposal, and included in the PBM Fee Schedule, whether or not accepted by ERS at the time the Contract was executed, shall remain valid and available for acceptance by ERS throughout the Contract Term.
- 31.19 This entire Article shall survive any termination, expiration, renewal, extension or amendment of the Contract.

Article 32. Notice

32.1 Any notice or report to be given pursuant to this Contract shall be delivered by certified mail, first class postage prepaid, with a copy by email, to:

(a) PBM at:
Express Scripts, Inc.
One Express Way
St. Louis, Missouri 63121

Attn: Senior Vice President of Account Management
cc: Legal Department

(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: Cynthia Hamilton, General Counsel
Email: general.counsel@ers.texas.gov

Either party may waive the requirement for a particular notice or report to be delivered via certified mail and instead accept it solely by email. Further, either party may change its notice information by sending written notice of such change to the other party in the manner set forth above, without any requirement to amend this Contract.

Article 33. Implementation Plan

33.1 PBM agrees and acknowledges that time is of the essence in the performance of this Contract and in assuring a smooth, timely, efficient and effective implementation of PBM's duties with respect to this Contract.

33.2 Following selection of PBM by ERS and upon ERS' execution of this Contract, PBM shall immediately staff an implementation team and name an implementation manager.

33.3 The names, positions and qualifications of the implementation team shall be communicated to ERS within fifteen (15) business days from the award of the Contract. The implementation team and manager must be acceptable to ERS, and ERS reserves the right to require that any or all of the implementation team and manager be replaced with individuals acceptable to ERS. The implementation manager shall serve as ERS' primary contact and shall be accessible to ERS at all times throughout the Contract. PBM management with authority to make binding decisions for PBM shall be accessible to ERS at all times throughout the Contract, including the Implementation Period and Service Period. PBM understands and agrees that time is of the essence during the Implementation Period; therefore, the implementation manager, as primary contact for ERS, shall obtain necessary binding decisions by authorized PBM management, in a seamless and expedited manner.

33.4 The period of time beginning with the selection of the PBM by ERS and upon ERS' execution of this Contract to the point at which the PBM assumes full responsibility for the duties specified hereunder, such date being no later than December 1, 2023, shall be known as the ***"Implementation Period."***

33.5 On the first day of the Implementation Period, PBM shall begin implementation of its obligations under the Contract in accordance with the Implementation Plan agreed upon by ERS and PBM (***"Implementation Plan"***).

- 33.6 The Implementation Plan, attached hereto as Exhibit I and incorporated herein for all purposes, is the most up-to-date Implementation Plan at the time of Contract execution. ERS and PBM agree that scheduled updates and/or amendments to the Implementation Plan will be necessary. PBM agrees to confer at least weekly with ERS on any necessary updates and/or amendments to the Implementation Plan. Any modification to the Implementation Plan must be approved by ERS in writing prior to any implementation thereof. Failure by PBM to adhere to the Implementation Plan will subject PBM to possible Liquidated Damages and/or Performance Guarantees as specified in Exhibit E, attached hereto and incorporated herein. In addition, PBM further agrees that ERS may exercise any and all rights and remedies available to it under this Contract, at equity or pursuant to applicable statutory, regulatory, and common law.
- 33.7 During the Implementation Period, PBM warrants, represents, and agrees to the following:
- (a) It shall maintain appropriate, sufficient, qualified staff, with technical capabilities and resources that are fully devoted to the Implementation of the Services.
 - (b) It shall not permit any current or prospective business, projects or other matters to interfere in any manner with the smooth, timely, and effective Implementation of the Services.
 - (c) It shall manage all aspects of the Services identified during the Implementation Period and through the completion of the Contract in a timely manner and with ERS' approval.
- 33.8 PBM shall exclusively utilize only those implementation materials approved by ERS to guide and manage all implementation activities and as deemed necessary by ERS for the successful delivery of Services throughout the Contract Term.
- 33.9 PBM acknowledges and agrees that ERS, the Participants and participants of the programs and funds administered by ERS, the GBP and the state of Texas will suffer irreparable harm if the HealthSelect Medicare Rx PDP and HealthSelect PDP Program Implementations are not completed on or before December 1, 2023.
- 33.10 ERS may immediately assess against PBM any liquidated damages and/or Performance Guarantees, without prior notice, in the event PBM fails, refuses or is unable to perform, or is negligent in performing, or if it reasonably appears that PBM will fail, refuse or be unable to complete or perform any aspect of this Contract in connection with the Implementation Plan.

Article 34. Entire Contract

- 34.1 This Contractual Agreement (the "**Contract**") includes all exhibits attached hereto and described herein, except to the extent any term or provision of such exhibit may conflict with or is inconsistent with the Contract or the RFP and ERS has not accepted such conflicting terms or inconsistent provisions, in accordance with the Contract, and all such exhibits are incorporated herein by reference for all purposes as if restated in full. Such exhibits include, but are not limited to, the RFP and its attachments; the Proposal and its attachments (to the extent there is no conflict with this Contractual Agreement) and any Clarifications agreed to in writing by ERS and accepted by ERS; the rates, fees, Performance Guarantees, reimbursements, and related costs and compensation presented to and accepted by ERS; all interrogatories in the RFP and any responses thereto in the Proposal; and all other exhibits to the Contract identified herein and incorporated herein by reference throughout this document for all purposes as if restated in full, shall collectively be referred to as and shall constitute the entire Contract between ERS and PBM.
- 34.2 Each of the parties warrants and represents that the Contract and the documents identified herein as part of the Contract constitute a valid and binding agreement enforceable against each party in accordance with their terms. Further, except as otherwise expressly stated in the Contract, the documents identified in this Contract embody the entire agreement between the parties and no other agreement or understanding between the parties, their agents or employees, oral or

otherwise, will constitute a part of the Contract, will be binding upon the parties, or will be effective to interpret, change, restrict, or otherwise modify the provisions of the Contract, and any such other prior agreements, statements, or understandings between the parties, their agents, representatives or employees, oral or otherwise, are hereby superseded. ERS and PBM agree that the Contract, including the component parts described herein and within each document, shall govern the responsibilities and obligations of the parties to the Contract.

- 34.3 PBM acknowledges and agrees that its statements and representations to ERS and in the Contract are material and have been relied upon by ERS and/or the Board in selecting PBM to provide the Services described in the Contract. PBM further warrants and represents that throughout the entire Contract Term and any renewal, amendment or extension thereof, that it has a continuing duty to immediately notify ERS in the event any statements or representations made to ERS or any information contained in the Contract or any of its component parts are no longer true, correct or complete or may otherwise be misleading, and PBM must immediately provide ERS with the applicable true, correct or complete information.
- 34.4 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 Performance Guarantees (Exhibit E);
 - (f) The Clarifications (Exhibit C);
 - (g) Implementation Plan (Exhibit I);
 - (h) The RFP (Exhibit A); and
 - (i) The Proposal (Exhibit B).
- 34.5 The invalidity, illegality, or unenforceability of any provision of the Contract shall in no way affect the validity, legality, or enforceability of any other provision, and if any court of competent jurisdiction shall determine that any provision, term or part of the Contract is void, unlawful, or unenforceable for any reason, that portion shall be severed and the remainder of the Contract shall remain valid and enforceable and shall be construed as if the severed provisions had never been included in the Contract. Toward this end, the provisions of the Contract are specifically declared to be severable, so that any one provision may be enforced without enforcement of any other.
- 34.6 The waiver of any particular provision by either party shall not constitute a waiver of any other provision. No waiver shall be valid unless the same is reduced to writing and executed by all parties. Furthermore, a breach of any provision of the Contract shall not constitute a waiver of any remedies available, whether at law, equity or under the Contract, for any subsequent breach of that

provision or a breach of any provision hereof. Failure of either party to enforce at any time or from time to time any provision of the Contract shall not be construed as a waiver thereof.

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

Article 35. Execution in Counterparts

- 35.1 The Contract may be executed in multiple counterparts, each of which shall be deemed an original, but all of which taken together shall be deemed to be but one and the same instrument.
- 35.2 The Contract and the documents incorporated by reference therein and any modifications, waivers, or amendments thereto may be executed and delivered by facsimile or electronic mail, and such facsimile or electronic mail delivery shall constitute the final agreement of the parties and conclusive proof of such agreement. Original signatures may be provided to the parties thereafter.

Article 36. Incumbency Certificate

- 36.1 PBM warrants and represents that it has full power and authority to enter into the Contract, and that the Contract has been duly authorized, executed and delivered by PBM's authorized representative on behalf of PBM and constitutes a valid, binding, and legally enforceable agreement of PBM. Attached hereto and incorporated herein for all purposes as Exhibit J is PBM's Incumbency Certificate setting forth the true signature of each person authorized by PBM to sign any binding legal documentation on behalf of PBM, referred to herein as the "authorized representative" of PBM which Exhibit J may be amended and restated from time to time by PBM, such amendment and restatement to be effective when furnished to ERS.

Article 37. List of Exhibits

- 37.1 The following exhibits are attached to this Contract and incorporated herein for all purposes as specified in Article 34 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 F	Business Associate Agreement
Exhibit G	Declaration Pages from Insurance Policies; Bond Information
Exhibit H	Data Security and Breach Notification Agreement
Exhibit I	Implementation Plan
Exhibit J	Incumbency Certificate

IN WITNESS WHEREOF, ERS and PBM, as the two signatories to the Contract, have memorialized this agreement by executing the Contract to be fully effective upon the Effective Date.

EXPRESS SCRIPTS, INC.

DocuSigned by:
By: 
93BAA6AE5D3C48E...
Amy Bricker
President, Express Scripts, Inc.
Date: 12/05/2022 | 9:04 AM EST

EMPLOYEES RETIREMENT SYSTEM OF TEXAS

DocuSigned by:
By: 
81E085A48A094F3...
Porter Wilson
Executive Director
Date: 12/7/2022

EXHIBIT A

**Employees Retirement System of Texas'
Request for Proposals to Provide Pharmacy Benefit
Management Services for the HealthSelectSM
Prescription Drug Program and HealthSelectSM
Medicare Rx (Medicare Part D) Prescription Drug
Program under the Texas Employees Group Benefits
Program**

EXHIBIT B

**Express Scripts, Inc.'s
Proposal to Provide Pharmacy Benefit Management
Services for the HealthSelectSM Prescription Drug
Program and HealthSelectSM Medicare Rx (Medicare
Part D) Prescription Drug Program under the Texas
Employees Group Benefits Program**

EXHIBIT C

**Express Scripts, Inc.'s
Contract to Provide Pharmacy Benefit Management
Services for the HealthSelectSM Prescription Drug
Program and HealthSelectSM Medicare Rx (Medicare
Part D) Prescription Drug Program under the Texas
Employees Group Benefits Program**

Clarification Responses

EXHIBIT D

**Express Scripts, Inc.'s
Contract to Provide Pharmacy Benefit Management
Services for the HealthSelectSM Prescription Drug
Program and HealthSelectSM Medicare Rx (Medicare
Part D) Prescription Drug Program under the Texas
Employees Group Benefits Program**

Fee Schedule

EXHIBIT E

**Express Scripts, Inc.'s
Contract to Provide Pharmacy Benefit Management
Services for the HealthSelectSM Prescription Drug
Program and HealthSelectSM Medicare Rx (Medicare
Part D) Prescription Drug Program under the Texas
Employees Group Benefits Program**

Performance Guarantees

EXHIBIT F

**Express Scripts, Inc.'s
Contract to Provide Pharmacy Benefit Management
Services for the HealthSelectSM Prescription Drug
Program and HealthSelectSM Medicare Rx (Medicare
Part D) Prescription Drug Program under the Texas
Employees Group Benefits Program**

Business Associate Agreement

**BUSINESS ASSOCIATE AGREEMENT
BETWEEN EMPLOYEES RETIREMENT SYSTEM OF TEXAS
AND EXPRESS SCRIPTS, INC.**

This Business Associate Agreement ("Agreement") is effective upon execution by and between the Employees Retirement System of Texas (hereinafter "Health Plan" or "Covered Entity") and Express Scripts, Inc. (hereinafter "Business Associate"). Health Plan and Business Associate may be individually referred to as a "Party" and collectively as the "Parties."

PREAMBLE

WHEREAS, the requirements of the Health Insurance Portability and Accountability Act of 1996 (Public Law 104-191), amended by the Health Information Technology for Economic and Clinical Health Act ("HITECH"), as incorporated in the American Recovery and Reinvestment Act of 2009, and the implementing regulations issued and amended by the U.S. Department of Health and Human Services Secretary ("Secretary") (45 CFR Parts 160 and 164, known as the "Privacy and Security Rules," require the Parties to reach agreements regarding the privacy, security and breach notification requirements related to '*protected health information*,' as clarified by the Genetic Information Nondiscrimination Act of 2008 ("GINA"), Public Law 110-233 and applicable regulations (PHI) (these requirements are hereinafter collectively referred to as "HIPAA")); and

WHEREAS, Health Plan is a '*Covered entity*' under HIPAA in that it is a covered group health plan, and as a covered entity must ensure the privacy and security of all PHI which its Business Associate '*uses*' or '*discloses*;' and

WHEREAS, Health Plan and Business Associate have entered into a Contractual Agreement (the "Contract") under which Business Associate contracted to provide certain functions, activities, or services (collectively "Services") to Health Plan, and in the continued performance of these Services may create, receive, use, disclose, or have access to PHI from or on behalf of Health Plan; and

WHEREAS, in performing Services for Health Plan, Business Associate is considered a '*Business Associate*' as this term is defined in HIPAA; and

WHEREAS, the Parties agree that this Business Associate Agreement shall be attached to the Contract as Exhibit F to incorporate therein for all purposes as if restated in full the terms of this Agreement; and

WHEREAS, HIPAA mandates that a '*Covered Entity*' enter into agreements with their '*Business Associates*' to ensure the continued privacy and security of PHI; and

WHEREAS, the Parties desire to comply with HIPAA; and

WHEREAS, this Agreement is intended to ensure that Business Associate will establish and implement appropriate safeguards (including certain administrative and security requirements) for the PHI the Business Associate may create, receive, use, disclose, or have access to in connection with Services by Business Associate to Health Plan.

NOW THEREFORE, in consideration of the Parties' continuing obligations under the Contract, in compliance with HIPAA, and for other good and valuable consideration, the sufficiency of which

is hereby acknowledged, the Parties agree to the provisions of this Agreement in order to address the statutory obligations imposed upon them and to protect the interests of the Parties.

SECTION I. DEFINITIONS

The following capitalized terms are defined in 45 CFR Parts 160 and 164. Terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms are defined in 45 CFR Parts 160 and 164. References herein to the Privacy and Security Rules, or a specific section thereof, shall mean the section as in effect or as amended.

- 1.1 *'Breach'* means the acquisition, access, use, or disclosure of PHI in a manner not permitted under 45 CFR §§ 164.500 et seq. (Subpart E) of this part which compromises the security or privacy of the protected health information. As set forth in 45 CFR 164.401(2), except as provided in 45 CFR 164.401(1), an acquisition, access, use or disclosure of protected health information in a manner not permitted under Subpart E is presumed to be a breach unless Health Plan or Business Associate demonstrates that there is a low probability that the PHI has been compromised based on a risk assessment of at least the following factors: (i) the nature and extent of the PHI involved, including the types of identifiers and the likelihood of re-identification; (ii) the unauthorized person who used the PHI or to whom the disclosure was made; (iii) whether the PHI was actually acquired or viewed; and (iv) the extent to which the risk to the PHI has been mitigated. Further, a use or disclosure of protected health information that does not include the identifiers listed at 45 CFR § 164.514(e)(2), date of birth, and zip code does not compromise the security or privacy of the protected health information. *'Breach'* excludes unintentional, inadvertent and/or un-retainable breaches, as defined by 45 CFR 164.402(1).
- 1.2 *'Electronic Protected Health Information'* means PHI that is created, received, stored, maintained, processed and/or transmitted in an electronic format.
- 1.3 *'Health Information'* means any information, including *'genetic information,'* whether oral or recorded in any form or medium, that: (1) is created or received by a *'Health Care Provider,'* *'Health Plan,'* public health authority, employer, life insurer, school or university, or *'Health Care Clearinghouse,'* and (2) relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual.
- 1.4 *'Individually Identifiable Health Information'* means information that is a subset of *'Health Information,'* including demographic information collected from an individual, and: (1) is created or received by a *'Health Care Provider,'* *'Health Plan,'* employer, or *'Health Care Clearinghouse,'* and (2) relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and (a) that identifies the individual; or (b) with respect to which there is a reasonable basis to believe the information can be used to identify the individual.
- 1.5 *'Protected Health Information'* ("PHI") means Individually Identifiable Health Information: (1) except as provided in section (2) of this definition, that is (a) transmitted by electronic media; (b) maintained in any medium described in the definition of 'electronic media' found at 45 CFR § 160.103; or (c) transmitted or maintained in any other form or medium. (2) Protected Health Information excludes Individually Identifiable Health Information in (i) education records covered by the Family Educational Rights and Privacy Act, as

amended, 20 U.S.C. § 1232g; (ii) records described at 20 U.S.C. § 1232g(a)(4)(B)(iv); (iii) employment records held by a Covered Entity in its role as employer; and (iv) regarding a person who has been deceased for more than 50 years.

- 1.6 'Subcontractor' means a person to whom a 'Business Associate' delegates a function, activity, or service, other than in the capacity of a member of the workforce of such business associate.
- 1.7 'Workforce' means employees, volunteers, trainees, and other persons whose conduct, in the performance of work for Business Associate, is under the direct control of Business Associate, whether or not they are paid by Business Associate.
- 1.8 'Unsecured PHI' means PHI that is not rendered unusable, unreadable, or indecipherable to unauthorized persons through the use of a technology or methodology specified by the Secretary in the guidance issued under section 13402(h)(2) of Public Law 111-5 on the U.S. Department of Health and Human Services ("HHS") website.
- 1.9 For purpose of security requirements, 45 CFR Part 164 Subpart C: 'Availability' means the property that data or information is accessible and useable upon demand by an authorized person. 'Confidentiality' means the property that data or information is not made available or disclosed to unauthorized persons or processes. 'Integrity' means the property that data or information have not been altered or destroyed in an unauthorized manner.

SECTION II. GENERAL TERMS

- 2.1 This Agreement shall remain in effect for a period coterminous with the Contract and any extensions, amendments and renewals thereof.
- 2.2 Except as otherwise might be defined herein, all terms first appearing in 'single' quotation marks and italicized shall have the same meaning set forth in HIPAA, including 45 CFR §§ 164.103, 164.105, 164.304, 164.501 and 164.502.
- 2.3 In the event of an inconsistency between the terms of this Agreement and the mandatory terms of HIPAA, the mandatory terms of HIPAA shall prevail. Where the terms of this Agreement are different from those included in HIPAA but the terms of HIPAA are permissive, the terms of this Agreement shall control.
- 2.4 The terms of HIPAA may be expressly amended from time to time by Legislation, HHS, or as a result of interpretations by HHS, a court, or another regulatory agency with authority over the Parties. In such an event, the Parties will work together in good faith to determine the impact on the Parties' obligations and whether the specific event requires the need to amend this Business Associate Agreement.
- 2.5 The Parties agree to take such action as necessary to amend this Agreement from time to time as is necessary to comply with HIPAA, the Privacy and Security Rules and HITECH.
- 2.6 Any ambiguity in this Agreement shall be resolved to permit compliance with HIPAA and HITECH.
- 2.7 Business Associate is solely responsible for all decisions made by Business Associate regarding the safeguarding of PHI.
- 2.8 This Agreement does not create or confer any rights or remedies onto third parties.

- 2.9 Modification of the terms of this Agreement shall not be effective or binding upon the Parties unless and until such modification is committed to writing and executed by the Parties hereto.
- 2.10 This Agreement shall be binding upon the Parties hereto, and their respective legal representatives, trustees, receivers, successors and permitted assigns.
- 2.11 Should any provision of this Agreement be found unenforceable, it shall be deemed severable and the balance of the Agreement shall continue in full force and effect as if the unenforceable provision had never been made a part hereof.
- 2.12 To the extent not preempted by federal law, this Agreement and the rights and obligations of the Parties hereunder shall in all respects be governed by, and construed in accordance with, the laws of the state of Texas, including all matters of construction, validity and performance.
- 2.13 All notices and communications required or permitted to be given hereunder shall be delivered by certified mail, first class postage prepaid or via first class mail, with a copy by email, to the individual(s) listed in Section VII. Notices, or at such other address as such Party shall from time to time designate in writing to the other Party, and shall be effective from the date of mailing. Either party may waive the requirement for a particular notice or communication to be delivered via certified mail or first class mail and instead accept it solely by email. Further, either party may change its notice information by sending written notice of such change to the other party in the manner set forth above, without any requirement to amend this Agreement.
- 2.14 This Business Associate Agreement, including such portions as are incorporated by reference herein, constitutes the entire Business Associate Agreement by, between and among the Parties, and such Parties acknowledge by their signature hereto that they do not rely upon any representations or undertakings by any person or Party, past or future, not expressly set forth in writing herein. In the event of a conflict between the Contract and this Business Associate Agreement, the conflict shall be resolved to permit compliance with HIPAA and HITECH.
- 2.15 These provisions shall survive termination of this Agreement: 4.7, 4.8, 4.9, 4.10, 4.14, 4.15, 4.16 and 4.18.

SECTION III. SPECIFIC PERMITTED AND REQUIRED USES AND DISCLOSURES BY BUSINESS ASSOCIATE

- 3.1 Business Associate agrees to create, receive, '*use*,' or '*disclose*' PHI only in a manner that is consistent with this Agreement and HIPAA, or as permitted or required by law, and in connection with providing the Services to Health Plan identified in the Contract. Accordingly, in providing Services to or for Health Plan, Business Associate, for example, will be permitted under HIPAA to:
 - (1) '*use*' and '*disclose*' PHI for '*treatment*,' '*payment*,' or '*health care operations*.'
 - (2) de-identify PHI and maintain such de-identified health information indefinitely; provided that all identifiers are destroyed or returned in accordance with this Agreement.
 - (3) create a '*limited data set*,' provided that Business Associate:

- (a) does not *'use'* or further *'disclose'* PHI contained in the *'limited data set'* except as necessary to provide the Services or as provided for in this Agreement or otherwise *'required by law'*;
- (b) uses appropriate Safeguards to prevent the *'use'* or *'disclosure'* of PHI contained in the *'limited data set'* other than as provided for by this Agreement;
- (c) reports to Health Plan any *'use'* or *'disclosure'* of PHI contained in the *'limited data set'* of which Business Associate becomes aware that is not provided for by this Agreement;
- (d) ensures that any agents or subcontractors to whom it provides access to the *'limited data set'* agree to the same restrictions and conditions that apply to Business Associate under this Agreement; and
- (e) does not re-identify PHI or contact the *'individuals'* whose information is contained within the *'limited data set.'*

3.2 Additionally, under HIPAA, Business Associate may *'use'* or *'disclose'* PHI received by the Business Associate in its capacity as a Business Associate to Health Plan to perform functions, activities, or services for, or on behalf of, Health Plan as specified in the Contract.

Further, Business Associate may *'use'* or *'disclose'* PHI if:

- (1) The use relates to: (a) the proper management and administration of the Business Associate or to carry out legal responsibilities of the Business Associate, or (b) data aggregation services relating to the health care operations of Health Plan.

For purposes of this Agreement, the following terms shall have the meanings identified:

- (i) *'data aggregation services'* shall mean the combining of PHI by Business Associate with the PHI received by Business Associate in its capacity as a Business Associate of another covered entity, to permit data analyses that relate to the health care operations of Health Plan or another covered entity, and
 - (ii) *'legal responsibilities'* of the Business Associate shall mean responsibilities imposed by law or regulation but (unless otherwise expressly permitted by Health Plan) shall not mean obligations Business Associate may have assumed pursuant to contracts, agreements, or understandings with entities other than Health Plan.
- (2) The disclosure of information received in such capacity is for the proper management and administration of the Business Associate or to carry out its legal responsibilities and, when the law requires such disclosure, or the Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will be held confidential and the person agrees to notify the Business Associate of any breaches of confidentiality. In this regard, *'required by law'* shall have the meaning set forth in HIPAA.

3.3 Business Associate may use and disclose PHI to report violations of law to appropriate federal and state authorities, consistent with 45 CFR 164.502 (j)(i).

SECTION IV. OBLIGATIONS OF BUSINESS ASSOCIATE

- 4.1 To the extent such agreements are otherwise permitted under the Contract, Business Associate shall include in all agreements or contracts with its agents, contractors, subcontractors or vendors, if such agreements or contracts involve Business Associate's '*disclosure*' to or '*use*' by the agents, contractors, or subcontractors of PHI received in connection with Services, the same restrictions and conditions on the '*use*' and '*disclosure*' of PHI that are set forth in this Agreement; such agreement or contract shall comply with 45 CFR § 164.314.
- 4.2 Business Associate shall ensure compliance with this Agreement by its '*workforce*' and '*subcontractors*.'
- 4.3 Business Associate shall adopt privacy, security and breach notification policies and procedures that are consistent with the requirements of HIPAA as applicable to Business Associate.
- 4.4 Business Associate shall implement, maintain and use '*administrative safeguards*,' '*physical safeguards*' and '*technical safeguards*' ("Safeguards") that reasonably and appropriately protect the confidentiality, integrity and availability of PHI as required by 45 CFR Part 164 Subpart C ("Security Rule") in the same manner that those requirements apply to Health Plan pursuant to 45 CFR § 164.504, and ensure that PHI is not '*used*' or '*disclosed*' except as provided for by HIPAA and by this Agreement.
- 4.5 Business Associate shall protect against any reasonably anticipated threats or hazards to the security or integrity of such information, as required by 45 CFR § 164.306.
- 4.6 Business Associate shall prevent, detect, contain and correct against any reasonably anticipated uses or disclosures unpermitted by this Agreement, as required by 45 CFR § 164.306 and § 164.308.
- 4.7 Business Associate shall report to Health Plan any '*use*' or '*disclosure*' of PHI, including by its employees, agents, contractors, or subcontractors, that is not provided for by HIPAA or by this Agreement and shall report to Health Plan any breach of unsecured PHI as required by 45 CFR § 164.410, and any successful '*security incident*' of which it becomes aware.
- 4.8 Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a '*use*' or '*disclosure*' of PHI by Business Associate in violation of the requirements of this Agreement or of any '*security incident*' of which it becomes aware.
- 4.9 In accordance with HIPAA, Business Associate shall make available to Health Plan, in the time and manner designated by Health Plan, PHI that is contained in '*designated record sets*.' At Health Plan's request, the PHI shall be made available to Health Plan or as directed by Health Plan, to an '*individual*' in order to meet the requirements under 45 CFR § 164.524. If the '*individual*' requests an electronic copy of the information, Business Associate must provide Health Plan with the information requested in the electronic form and format requested by the '*individual*' and/or Health Plan if it is readily producible in such form and format; or, if not, in a readable electronic form and format as requested by Health Plan.
- 4.10 Business Associate shall document such disclosures of PHI and information related to such disclosures as would be required for Health Plan to respond to a request by an '*individual*' for an accounting of disclosures, and at Health Plan's request, to make

available the information necessary to provide an accounting of disclosures of PHI as provided for in HIPAA. Health Plan acknowledges and agrees that neither this Agreement nor the Contract requires Business Associate to make any disclosure for which an accounting would be required under HIPAA.

- 4.11 At Health Plan's request, Business Associate shall make available PHI in its possession or under its control in '*designated record sets*' for amendment, and shall incorporate any amendments to PHI in accordance with the requirements of the Privacy Rule and any instructions provided by Health Plan.
- 4.12 Business Associate shall follow any written instructions received from Health Plan with respect to restricting the '*uses*' and '*disclosures*' of certain PHI. Business Associate shall ensure that the PHI is not '*used*' or '*disclosed*' in a manner that would violate the restriction, unless otherwise directed by Health Plan.
- 4.13 When necessary to accommodate '*individuals*' reasonable requests for '*confidential communications*,' Business Associate shall communicate with an '*individual*' regarding his/her PHI only in the alternative manner or at the alternative location instructed by Health Plan, unless otherwise directed by Health Plan.
- 4.14 Upon termination, cancellation, expiration, or other conclusion of this Business Associate Agreement, Business Associate shall, after consultation with Health Plan and in accordance with Health Plan's determination, return to Health Plan or destroy (after obtaining Health Plan's permission) all PHI, in whatever form or medium (including in any electronic medium under Business Associate's custody or control) that Business Associate (or its agents, contractors, or subcontractors) created or received for or from Health Plan, including all copies of and any data or compilations that allow identification of any '*individual*' who is a subject of the PHI. Business Associate will identify any PHI that Business Associate (or its agents, contractors, or subcontractors) created or received for or from Health Plan that cannot feasibly be returned to Health Plan or destroyed. Business Associate shall extend the protections of the Business Associate Agreement to such PHI, and will limit its further '*uses*' or '*disclosures*' of that PHI to those purposes that make return or destruction of that PHI impractical or impossible. Health Plan hereby acknowledges and agrees that infeasibility includes Business Associate's need to retain PHI for purposes of complying with its work product documentation standards.
- 4.15 For purposes of determining Health Plan's compliance with the Privacy Rule or this Agreement, Business Associate shall make available to the Secretary of HHS (or its agents) the Business Associate's internal practices, books and records relating to the '*use*' and '*disclosure*' of PHI in connection with Services, in a time and manner designated by Health Plan or the Secretary.
- 4.16 If Business Associate accesses, maintains, retains, modifies, records, stores, destroys, or otherwise holds, uses, or discloses '*unsecured protected health information*' (as defined in 45 CFR 164.402 and in HITECH Section 4402 (h)), it shall, promptly following the discovery of a '*breach*' of such information, as defined by HIPAA, notify Health Plan of such breach. Such notice shall include:
 - (1) The identification of each '*individual*' whose '*unsecured protected health information*' has been, or is reasonably believed by Business Associate to have been, accessed, acquired or disclosed during such '*breach*;'
 - (2) A brief description of what happened, including the date(s) of the '*breach*' and discovery of the '*breach*;'

- (3) A description of the type of '*unsecured protected health information*' that was involved in the '*breach*,'
 - (4) A description of the investigation into the '*breach*,' mitigation of harm to the individuals, and protection against further breaches;
 - (5) The results of the investigation performed by Business Associate related to the '*breach*,' and
 - (6) Contact information of an individual for Health Plan to contact relating to the '*breach*' and its investigation into the '*breach*.'
- 4.17 Health Plan has elected to delegate to Business Associate the provision of the HITECH Security Breach services described in Attachment 1, as allowed by HITECH and any subsequent regulation or guidance from HHS.
- 4.18 Business Associate represents that, if applicable, it has policies and procedures in place designed to detect, prevent and mitigate the risk of Identity Theft to comply with the Federal Trade Commission's Identity Theft Prevention Red Flags Rule (16 CFR § 681.2).
- 4.19 In addition to HIPAA, Business Associate shall comply with all applicable state and federal security and privacy laws.
- 4.20 In the event that Business Associate transmits or receives any Covered Electronic '*Transaction*' on behalf of Health Plan, it shall comply with all applicable provisions of the Standards for Electronic Transactions Rule to the extent required by law.
- 4.21 Business Associate agrees that it will not receive remuneration directly or indirectly in exchange for PHI without authorization unless an exception under 13405(d) of HITECH applies.
- 4.22 Business Associate agrees that it will not receive remuneration for certain communications that fall within the exceptions to the definition of '*Marketing*' under 45 CFR § 164.501 unless permitted by HITECH.
- 4.23 Business Associate agrees that it will not use or disclose '*genetic information*' for underwriting purposes, as that term is defined in 45 CFR § 164.502.
- 4.24 The safeguards set forth in this Agreement shall apply equally to PHI, confidential and personal information. "Personal information" means an individual's first name or first initial and last name in combination with any one or more of the following data elements, if the name and data elements are not encrypted: (a) social security number; (b) driver's license number or government-issued identification number; or (c) account number or credit or debit card number in combination with any required security code, access code or password, that would permit access to a person's financial account; provided, however, that "personal information" shall not include publicly available information that is lawfully made available to the public from the federal, state or local government.

SECTION V. OBLIGATIONS OF HEALTH PLAN

- 5.1 Health Plan shall not request Business Associate to '*use*' or '*disclose*' PHI in any manner that would not be permissible under HIPAA if done by Health Plan.
- 5.2 Health Plan shall notify Business Associate of limitation(s) in its notice of privacy practices in accordance with 45 CFR Section 164.520, to the extent such limitation affects Business Associate's permitted '*uses*' or '*disclosures*.'

- 5.3 Health Plan shall notify Business Associate of changes in, or revocation of, permission by an *'individual'* to *'use'* or *'disclose'* PHI to the extent such changes affect Business Associate's permitted *'uses'* or *'disclosures.'*
- 5.4 Health Plan shall notify Business Associate of restriction(s) in the *'use'* or *'disclosure'* of PHI that Health Plan has agreed to in accordance with 45 CFR Section 164.522, to the extent such restriction affects Business Associate's permitted *'uses'* or *'disclosures.'*

SECTION VI. TERMINATION OF AGREEMENT

- 6.1 Upon Health Plan's knowledge of a material breach of this Business Associate Agreement (or its agents, employees, contractors, and subcontractors), Health Plan shall either:
- (1) Provide an opportunity for Business Associate to cure the breach or end the violation and terminate the Agreement if Business Associate does not cure the breach or end the violation within the time period specified by Health Plan; or
 - (2) Immediately terminate this agreement if Business Associate has breached a material term in this Agreement and cure is not possible; or
 - (3) If neither termination nor cure is feasible, report the violation to the Secretary of HHS.
- 6.2 The Parties agree that if Health Plan terminates this Agreement pursuant to this section, it shall also terminate all provisions of the Contract for Services that relate to Business Associate's *'use'* or *'disclosure'* of PHI, and Health Plan shall have the discretion to terminate the Contract for Services in its entirety and pursue all remedies available under the Parties' Contract.

SECTION VII. NOTICES

Any notice or report to be given pursuant to this Agreement shall be sent to the persons listed below in accordance with Section 2.13 of this Agreement.

Covered Entity:

Employees Retirement System of Texas
P.O. Box 13207
Austin, Texas 78711-3207
Attn: Porter Wilson, Executive Director
Email: porter.wilson@ers.texas.gov

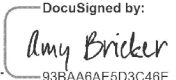
cc: Cynthia Hamilton, General Counsel
Email: general.counsel@ers.texas.gov

Business Associate:

Express Scripts, Inc.
One Express Way
St. Louis, Missouri 63121
Attn: Privacy Officer, US

IN WITNESS WHEREOF, the Parties have executed this Business Associate Agreement as of the day and year written below.

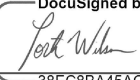
EXPRESS SCRIPTS, INC.

By:  _____
DocuSigned by:
93BAA6AE5D3C46E...

Amy Bricker
President, Express Scripts, Inc.

Date: 12/05/2022 | 9:04 AM EST

**EMPLOYEES RETIREMENT SYSTEM
OF TEXAS**

By:  _____
DocuSigned by:
38EC8BA45AC04F3...

Porter Wilson
Executive Director

Date: 12/7/2022

ATTACHMENT 1

DELEGATION OF HITECH BREACH NOTIFICATION

The following Health Information Technology for Economic and Clinical Health Act ("HITECH") Security Breach services will be provided by Business Associate as indicated by Covered Entity in the Business Associate Agreement, as allowed by HITECH and any subsequent regulation or guidance from the HHS:

1. Investigate any unauthorized access, use, or disclosure of Health Plan participant protected health information ("PHI").
2. Determine whether there is a significant risk of an impermissible use or disclosure under the Privacy Rule that compromises the security or privacy of any Health Plan participant's PHI as provided for in HITECH.
3. Determine whether the incident falls under any of the HITECH Security Breach notification exceptions.
4. Document and retain each HITECH Security Breach risk assessment and exception analyses, and make this information available to Health Plan upon request.
5. Provide Health Plan with written notification that describes the HITECH Security Breach incident in detail including a list of the impacted participants and/or a copy of a participant notification.
6. After notice to and consultation with Health Plan, notify each Health Plan participant impacted by the HITECH Security Breach by first class mail, or such other notification method permitted under HITECH, within the applicable statutory notification period, and provide toll-free numbers to the impacted participants in order to handle any participant questions regarding the incident. The notification will include the following:
 - a. A brief description of the incident, including the date of the Security Breach and the date it was discovered;
 - b. A description of the types of PHI involved in the Security Breach (i.e., name, birth date, home address, account number, Social Security Number, etc.);
 - c. The steps that individuals might take to protect themselves from potential harm; and
 - d. A brief description of what the Business Associate is doing to mitigate the harm and to avoid further incidents.
7. Provide a substitute notice, as described in HITECH, to impacted participants if there is insufficient mailing address information.
8. Maintain a log and submit to HHS an annual report of Security Breaches that impact fewer than 500 participants.
9. After notice to and consultation with Health Plan, notify HHS within the time required in HITECH or regulations pertaining thereto in the event the Security Breach impacts more than 500 individuals.

10. After notice to and consultation with Health Plan, notify media when required under HITECH or regulations pertaining thereto, subject to approval by Health Plan, which approval shall not be unreasonably withheld.

The above listed HITECH Security Breach services may be changed from time to time by Business Associate as necessary, after notice to and consultation with Health Plan, and as required to maintain compliance with HIPAA, HITECH, HHS regulation and/or HHS guidance.

EXHIBIT G

**Express Scripts, Inc.'s
Contract to Provide Pharmacy Benefit Management
Services for the HealthSelectSM Prescription Drug
Program and HealthSelectSM Medicare Rx (Medicare
Part D) Prescription Drug Program under the Texas
Employees Group Benefits Program**

Insurance Declaration Pages



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
08/31/2021

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Marsh USA Inc. 1717 Arch Street Philadelphia, PA 19103-2797 Attn: Healthcare.AccountsCSS@marsh.com FAX: 212-948-1307		CONTACT NAME: PHONE (A/C, No. Ext): E-MAIL: ADDRESS:		FAX (A/C, No):	
CN121292831-ES-CRIME-21-22		INSURER(S) AFFORDING COVERAGE		NAIC #	
INSURED EXPRESS SCRIPTS HOLDING CO. AND ITS WHOLLY OWNED SUBSIDIARIES INCLUDING EXPRESS SCRIPTS, INC., MEDCO HEALTH SOLUTIONS, INC. AND CARECORE NATIONAL GROUP, LLC DBA EVICORE HEALTHCARE ONE EXPRESS WAY, HQ2N01 ST. LOUIS, MO 63121		INSURER A : National Union Fire Insurance Co. of Pittsburgh, PA		19445	
		INSURER B :			
		INSURER C :			
		INSURER D :			
		INSURER E :			
		INSURER F :			

COVERAGES

CERTIFICATE NUMBER: [REDACTED]

REVISION NUMBER: 2

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
	COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☐ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☐ PRO-JECT ☐ LOC ☐ OTHER:						EACH OCCURRENCE \$ DAMAGE TO RENTED PREMISES (Ea occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COMP/OP AGG \$ \$
	AUTOMOBILE LIABILITY ☐ ANY AUTO ☐ OWNED AUTOS ONLY ☐ SCHEDULED AUTOS ☐ HIRED AUTOS ONLY ☐ NON-OWNED AUTOS ONLY						COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
	UMBRELLA LIAB ☐ OCCUR EXCESS LIAB ☐ CLAIMS-MADE DED RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$ \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y / N ☐	N / A				PER STATUTE ☐ OTH-ER ☐ E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
A	CRIME / FIDELITY			[REDACTED]	04/30/2021	04/30/2022	LIMIT 2,000,000 DEDUCTIBLE 2,500,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

CERTIFICATE HOLDER

EXPRESS SCRIPTS HOLDING COMPANY
 ONE EXPRESS WAY, HQ2N01
 ST. LOUIS, MO 63121

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

Marsh USA Inc.

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ADDITIONAL REMARKS SCHEDULE

AGENCY Marsh USA Inc.		NAMED INSURED EXPRESS SCRIPTS HOLDING CO. AND ITS WHOLLY OWNED SUBSIDIARIES INCLUDING EXPRESS SCRIPTS, INC., MEDCO HEALTH SOLUTIONS, INC. AND CARECORE NATIONAL GROUP, LLC DBA EVICORE HEALTHCARE ONE EXPRESS WAY, HQ2N01 ST. LOUIS, MO 63121
POLICY NUMBER		
CARRIER	NAIC CODE	
EFFECTIVE DATE:		

ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,
FORM NUMBER: 25 FORM TITLE: Certificate of Liability Insurance

ADDITIONAL NAMED INSURED:

EXPRESS SCRIPTS HOLDING COMPANY, INC.
EXPRESS SCRIPTS, INC.
EXPRESS SCRIPTS SERVICES CO.
DIVERSIFIED PHARMACEUTICAL SERVICES, INC.
ESI MAIL PHARMACY SERVICE, INC.
EXPRESS SCRIPTS SPECIALTY DISTRIBUTION SERVICES, INC.
ESI PARTNERSHIP
ESI RESOURCES, INC.
ESI GP HOLDINGS, INC.
EXPRESS SCRIPTS UTILIZATION MANAGEMENT COMPANY
EXPRESS SCRIPTS STRATEGIC DEVELOPMENT, INC.
EXPRESS SCRIPTS SALES OPERATIONS, INC.
AIRPORT HOLDINGS, LLC
CURASCRIPT, INC.
PRIORITY HEALTHCARE CORPORATION
STRATEGIC PHARMACEUTICAL INVESTMENTS, LLC
L&C INVESTMENTS, LLC
MATRIX GPO, LLC
HEALTHBRIDGE REIMBURSEMENT & PRODUCT SUPPORT, INC.
CARE CONTINUUM, INC.
EXPRESS SCRIPTS SENIOR CARE HOLDINGS, INC.
EXPRESS SCRIPTS PHARMACEUTICAL PROCUREMENT, LLC
ESI MAIL ORDER PROCESSING, INC.
EXPRESS REINSURANCE COMPANY
ECONDISC CONTRACTING SOLUTIONS, LLC
EXPRESS SCRIPTS CANADA HOLDING, LLC
EXPRESS SCRIPTS CANADA HOLDING CO.
ACCREDITO HEALTH, INCORPORATED
AHG OF NEW YORK, INC.
BIOPARTNERS IN CARE, INC.
ACCREDITO HEALTH GROUP, INC.
MAH PHARMACY, LLC
EXPRESS SCRIPTS PHARMACY, INC.
MEDCO CONTAINMENT LIFE INSURANCE COMPANY
MEDCO CONTAINMENT INSURANCE COMPANY OF NY
MEDCO HEALTH SOLUTIONS, INC.
MEDCO EUROPE, LLC
MEDCO EUROPE II, LLC
EXPRESS SCRIPTS ADMINISTRATORS LLC
MEDCO HEALTH PUERTO RICO, LLC
SYSTEMED, LLC
MEDCO HEALTH SERVICES, INC.
UBC LATE STAGE, INC.
UNITED BIOSOURCE PATIENT SOLUTIONS, INC.
THE VACCINE CONSORTIUM, LLC
UNITED BIOSOURCE LLC



ADDITIONAL REMARKS SCHEDULE

AGENCY Marsh USA Inc.		NAMED INSURED EXPRESS SCRIPTS HOLDING CO. AND ITS WHOLLY OWNED SUBSIDIARIES INCLUDING EXPRESS SCRIPTS, INC., MEDCO HEALTH SOLUTIONS, INC. AND CARECORE NATIONAL GROUP, LLC DBA EVICORE HEALTHCARE ONE EXPRESS WAY, HQ2N01 ST. LOUIS, MO 63121
POLICY NUMBER		
CARRIER	NAIC CODE	
EFFECTIVE DATE:		

ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,
FORM NUMBER: 25 FORM TITLE: Certificate of Liability Insurance

UNITED BIOSOURCE HOLDINGS, INC.
PRIORITY HEALTHCARE DISTRIBUTION, INC.
FRECO, INC.
LYNNFIELD COMPOUNDING CENTER, INC.
FREEDOM SERVICE COMPANY, LLC
SPECTRACARE, INC.
SPECTRACARE HEALTH CARE VENTURES, INC.
ESI CANADA
EXPRESS SCRIPTS CANADA CO.
ESI GP CANADA ULC
ESI GP2 CANADA ULC
EXPRESS SCRIPTS CANADA WHOLESALE
EXPRESS SCRIPTS CANADA SERVICES
EXPRESS SCRIPTS PHARMACY ONTARIO, LTD.
EXPRESS SCRIPTS PHARMACY WEST, LTD.
EXPRESS SCRIPTS PHARMACY CENTRAL, LTD.
EXPRESS SCRIPTS PHARMACY ATLANTIC, LTD.
UNITED BIOSOURCE HOLDING (CANADA) COMPANY
UNITED BIOSOURCE (HCA CANADA) COMPANY
UNITED BIOSOURCE (GERMANY) GMBH
UNITED BIOSOURCE CORPORATION, S.L.
UNITED BIOSOURCE (SUISSE) SA
MHS HOLDINGS, CV
MEDCO INTERNATIONAL HOLDINGS, BV
UNITED BIOSOURCE HOLDING (UK) LIMITED
UBC LATE STAGE (UK) LIMITED
MEDCO HEALTH SOLUTIONS [IRELAND] LIMITED
LYNNFIELD DRUG, INC.
DIVERSIFIED NY IPA, INC.
EXPRESS SCRIPTS SENIOR CARE, INC.
HEALTHBRIDGE, INC.
INSIDE RX, LLC
MYMATRIX HOLDINGS, LLC
MATRIX HEALTHCARE SERVICES, INC.
MYM TECHNOLOGY SERVICES, LLC
MYMATRIX-B, LLC
INNOVATIVE PRODUCT ALIGNMENT, LLC
CARECORE NATIONAL GROUP, LLC
MEDSOLUTIONS HOLDSINGS, INC.
MEDSOLUTIONS, INC. (DBA EVICORE HEALTHCARE)
QPID HEALTH, INC.
AS ACQUISITION CORP.
HEALTHFORTIS, INC.
DNA DIRECT, INC.
LANDMARK HEALTHCARE, INC. (DBA EVICORE HEALTHCARE MSK)
LANDMARK HEALTHCARE SERVICES, INC. (DBA EVICORE HEALTHCARE MSK SERVICES)
LANDMARK HEALTHCARE NEW JERSEY, INC.
LANDMARK HEALTHCARE NEW MEXICO, INC.
LANDMARK HEALTHCARE COLORADO, INC. (DBA EVICORE HEALTHCARE MSK COLORADO)
LANDMARK HEALTHCARE ARIZONA, INC.

AGENCY CUSTOMER ID: CN121292831

LOC #: Philadelphia



ADDITIONAL REMARKS SCHEDULE

AGENCY Marsh USA Inc.		NAMED INSURED EXPRESS SCRIPTS HOLDING CO. AND ITS WHOLLY OWNED SUBSIDIARIES INCLUDING EXPRESS SCRIPTS, INC., MEDCO HEALTH SOLUTIONS, INC. AND CARECORE NATIONAL GROUP, LLC DBA EVICORE HEALTHCARE ONE EXPRESS WAY, HQ2N01 ST. LOUIS, MO 63121
POLICY NUMBER		
CARRIER	NAIC CODE	
EFFECTIVE DATE:		

ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,
FORM NUMBER: 25 FORM TITLE: Certificate of Liability Insurance

INTEGRICARE HEALTHPLAN OF TEXAS, INC.
CARECORE NJ, LLC (DBA EVICORE HEALTHCARE NJ ODS)
CCN-WYN IPA, LLC (DBA EVICORE HEALTHCARE IPA)
CCN NMO, LLC (DBA EVICORE HEALTHCARE IPA)
MEDSOLUTIONS OF TEXAS, INC.
MSI HEALTH ORGANIZATION OF TEXAS, INC.
PREMERUS, INC.
TRIAD HEALTHCARE, INC. (DBA EVICORE HEALTHCARE MSK SERVICES OF CONNECTICUT)
EVICORE HEALTHCARE MSI, LLC (DBA EVICORE HEALTHCARE)
PALLADIAN HEALTH OF FLORIDA, LLC
PALLADIAN INDEPENDENT PRACTICE ASSOCIATION, LLC
CHIRO ALLIANCE CORPORATION
MEDSOLUTIONS HOLDINGS, INC.
EVERNORTH CARE SOLUTIONS, INC.
EVERNORTH DIRECT HEALTH, LLC

"IF EVIDENCE OF COVERAGE IS NO LONGER REQUIRED, KINDLY RETURN THE CERTIFICATE MARKED "NO LONGER REQUIRED", AND WE WILL ADJUST OUR FILES ACCORDINGLY."

EXHIBIT H

**Express Scripts, Inc.'s
Contract to Provide Pharmacy Benefit Management
Services for the HealthSelectSM Prescription Drug
Program and HealthSelectSM Medicare Rx (Medicare
Part D) Prescription Drug Program under the Texas
Employees Group Benefits Program**

Data Security and Breach Notification Agreement

DATA SECURITY AND BREACH NOTIFICATION AGREEMENT

All capitalized terms not defined in this Data Security and Breach Notification Agreement (“**Agreement**”) shall have the meaning ascribed to them in the Contractual Agreement (“**Contract**”) between the Employees Retirement System of Texas (“**ERS**”) and Express Scripts, Inc. (“**PBM**”).

Article 1. Purpose

- 1.1 To ensure continued security for ERS, its members, annuitants, retirees, participants, alternate payees and beneficiaries (collectively “**Participants**”) and their respective Personal Data (as hereinafter defined), and to mitigate the risk of identity theft and fraud, PBM agrees to be bound by the provisions contained in this Agreement.

Article 2. Specific Requirements

- 2.1 PBM, including its affiliates, subsidiaries, representatives, officers, directors, principals, employees, agents, assigns and any subcontractors and independent contractors (“**Agents**”), as a condition of handling Participants’ personally identifying and / or sensitive personal information and, if applicable, protected health information (“**PHI**”) (together, “**Personal Data**”) must annually, or more frequently upon request of ERS, (i) issue certificates of compliance with this exhibit to ERS and permit ERS to initiate independent audits to verify compliance with same, (ii) provide evidence of compliance to ERS in accordance with §2054.138 of the Texas Government Code and (iii) respond fully and completely to ERS’ vendor security questionnaire.
- 2.2 All Personal Data must be processed fairly and lawfully, according to the laws and regulations of the United States of America and the state of Texas. PBM shall comply, to the extent applicable, with the Privacy Act of 1974, Computer Matching and Privacy Protection Act of 1988, Texas Business and Commerce Code, ch. 521 and information security standards as outlined in Title 1, Texas Administrative Code, § 202. Further, PBM shall comply with all applicable federal and state laws and regulations pertaining to the handling and use of Personal Data. In the event of a conflict between applicable laws, the Contract and this Agreement, the strictest provision or provisions offering protections to ERS and its Participants shall apply.
- 2.3 The amount of Personal Data collected must be adequate, relevant and not excessive in relation to the purposes for which it is collected or for which it is further processed. If applicable, PHI must be collected only for purposes consistent with what is communicated to the Participant and what is outlined in the Business Associate Agreement and not further processed in a way incompatible with those purposes. All other Personal Data must be collected only for purposes as necessary for PBM to perform and fulfill its obligations under the Contract, the Business Associate Agreement, or as required by law, and not further processed in a way incompatible with those purposes. Further processing of such Personal Data for historical, statistical or other business purposes is not incompatible with the original purpose, provided it is permitted under the Contract and the further processing includes adequate additional controls protecting the rights of the Participant.
- 2.4 If PBM serves as a recordkeeper for ERS or collects data on behalf of ERS, all Personal Data must be accurate and complete, and where necessary, kept up to date. Every reasonable step must be taken to ensure that Personal Data that is inaccurate or incomplete, keeping in mind the purposes for which it was collected or for which it is further processed, is definitively erased or corrected in accordance with applicable law.
- 2.5 PBM shall maintain industry-accepted standards, such as those recommended by the National Institute of Standards and Technology (NIST), and shall incorporate other applicable state and federal laws and regulations regarding the confidentiality, integrity, accessibility and availability of Personal Data, including, but not limited to, maintenance of disaster recovery and business continuity plans. PBM agrees to allow ERS to view these standards and plans upon request onsite at ERS’ premises.

- 2.6 PBM shall maintain computer files containing Personal Data in a secure, hardened facility which provides environmental and access controls. All computer files containing Personal Data, including, but not limited to, duplicate or backup copies, shall be encrypted while at rest and in transit. Additionally, all mobile devices, including, but not limited to, laptop computers, and external storage devices which contain, process or interact with ERS data, including, but not limited to, Personal Data, shall be encrypted at all times.
- 2.7 Except as specifically permitted by ERS, Personal Data must not be kept in a form that permits identification of Participants for any longer than is necessary for the purposes for which the data was collected or for which it is further processed. For example, this can be implemented with linked separate files that contain identification information and related sensitive information, respectively.

Article 3. Processing Confidentiality and Security

- 3.1 Personal Data shall not be made available to or viewed by any person or entity (including any Agent of PBM), in any fashion, no matter what technology is employed, at any location outside the fifty (50) states of the United States of America. Access to Personal Data for purposes of this requirement occurs whenever it is possible to view Personal Data from outside the United States, whether or not the Personal Data is actually sent out of the United States or is actually viewed by someone outside the United States.
- 3.2 When building, testing, enhancing and maintaining processing systems that contain, or will contain, Personal Data, developers must not use actual Personal Data. Instead, they must use fictional or sanitized data that preserves the essential characteristics of the Personal Data, but that does not relate to identifiable individuals. In emergency situations where processing with actual Personal Data is required, use of such information may be permitted only if security procedures are approved in advance, in writing, by ERS' Executive Director, Deputy Executive Director and General Counsel and Information Security Officer.
- 3.3 All authentication access to processing systems and networks containing Personal Data must be logged so that access attempts to systems and networks containing Personal Data can be traced to a specific user. PBM is responsible for monitoring and following up on potential security-relevant events.
- 3.4 When no longer needed, or as required by applicable state or federal law or the Contract, all copies of Personal Data, including, but not limited to, copies on backup tapes, must be irreversibly destroyed according to standards and procedures as provided in the Contract, the Data Security and Breach Notifications Agreement, the Business Associate Agreement, and applicable law. In the event there is any litigation or investigative proceedings related to the Personal Data or PBM's performance under the Contract or this Agreement, then the Personal Data must be retained during the pendency of such litigation or investigative proceedings. To the extent feasible, upon termination of the Contract for any reason, PBM shall, and shall cause any subcontractors and agents to, return or destroy all Personal Data received from, or created or received by PBM on behalf of ERS. If PBM determines, in its sole discretion, that return or destruction of such information is not feasible, PBM shall continue to limit the use or disclosure of such information as set forth in this Agreement as if the Contract has not been terminated.

Article 4. Data Breach Monitoring and Notification

- 4.1 PBM must take proactive steps to monitor for breaches of system security, including, but not limited to, unauthorized acquisition, access, use or disclosure of Personal Data (each, a "**Notification Event**"). In the event of such a Notification Event, PBM must notify ERS promptly from the time the Notification Event is discovered. The primary contact for notification at ERS is the General Counsel. In the event of a Notification Event that requires notification to affected Participant(s) under applicable law, PBM will notify, at PBM's expense, the affected Participant(s), including those

Participants reasonably believed to have been affected in accordance with the requirements of applicable law

Employees Retirement System of Texas
Cynthia Hamilton, General Counsel
Email:general.counsel@ers.texas.gov

- 4.2 If PBM is required to notify at one time more than 10,000 Participants of a Notification Event, pursuant to applicable law, PBM shall also notify, without unreasonable delay, all consumer reporting agencies that maintain files on consumers on a nationwide basis of the timing, distribution, and content of the notices if required to do so by applicable law.

IN ACCORDANCE WITH PBM'S PRIVACY AND SECURITY POLICIES AND PROCEDURES, PBM AGREES TO PROVIDE AT PBM'S SOLE COST AND EXPENSE, ONE (1) YEAR OF CREDIT MONITORING SERVICE TO PARTICIPANT(S) WHOSE PERSONAL DATA HAS BEEN DISCLOSED PURSUANT TO A NOTIFICATION EVENT.

IN WITNESS WHEREOF, the Parties have executed this Agreement to be effective upon execution by both Parties.

EXPRESS SCRIPTS, INC.

By: DocuSigned by:

93BAABAE6D3C48E...

Amy Bricker
President, Express Scripts, Inc.

Date: 12/05/2022 | 9:04 AM EST

**EMPLOYEES RETIREMENT SYSTEM
OF TEXAS**

By: DocuSigned by:

38EC8BA45AC04F3...

Porter Wilson
Executive Director

Date: 12/7/2022

EXHIBIT I

**Express Scripts, Inc.'s
Contract to Provide Pharmacy Benefit Management
Services for the HealthSelectSM Prescription Drug
Program and HealthSelectSM Medicare Rx (Medicare
Part D) Prescription Drug Program under the Texas
Employees Group Benefits Program**

Implementation Plan

EXHIBIT J

**Express Scripts, Inc.'s
Contract to Provide Pharmacy Benefit Management
Services for the HealthSelectSM Prescription Drug
Program and HealthSelectSM Medicare Rx (Medicare
Part D) Prescription Drug Program under the Texas
Employees Group Benefits Program**

Incumbency Certificate

LIST OF AUTHORIZED REPRESENTATIVES
FOR EXPRESS SCRIPTS, INC.

INCUMBENCY CERTIFICATE

Express Scripts, Inc. ("PBM") hereby certifies that each person whose name appears below is an authorized officer who is at a vice president or higher level and authorized to act on PBM's behalf (including the authorization to sign any binding legal document) with respect to the attached Contractual Agreement for Pharmacy Benefit Management Services for the HealthSelectSM Prescription Drug Program and HealthSelectSM Medicare Rx (Medicare Part D) Prescription Drug Program under the Texas Employees Group Benefits Plan between the Employees Retirement System of Texas ("ERS") and PBM. PBM further certifies that the true signature of each such person is set forth below opposite his/her name, and that ERS may rely upon this certificate until such time as it receives another certificate bearing a later date.

Printed Name	Title	Signature
Amy Bricker	President, Express Scripts, Inc.	DocuSigned by: <i>Amy Bricker</i> 93BAA6AE5D3C46E...