

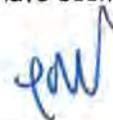
CONTRACTUAL AGREEMENT

Article 1. Background

- 1.1 The Employees Retirement System of Texas ("**ERS**" or "**retirement system**") is a constitutional trust fund established as mandated by Article XVI, Section 67, Texas Constitution, and further organized pursuant to Subtitle B, Title 8, Texas Government Code, as well as 34 Texas Administrative Code, Sections 61.1 et seq. ERS administers retirement and employment-related benefits, including insurance benefits, for several classes of public servants, including elected officials, appointed public officers, public employees and their dependents. The Board of Trustees for ERS (the "**Board**") is the trustee for trust funds maintained and administered by the retirement system.
- 1.2 On June 23, 2016, ERS issued a Request for Proposal (entitled Request for Proposal to Provide Third-Party Administrative Services for HealthSelectSM of Texas, Including a High Deductible Health Plan, Under the Texas Employees Group Benefits Program) (the "**RFP**"), which is attached hereto as Exhibit "A" and is incorporated herein for all purposes as if restated in full.
- 1.3 Blue Cross and Blue Shield of Texas, an Operating Division of Health Care Service Corporation, a Mutual Legal Reserve Company ("**TPA**"), 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**") related to HealthSelect of TexasSM and Consumer Directed HealthSelectSM (each a "**Plan**" and collectively, the "**Plans**"). 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 32 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, TPA shall mean and necessarily include the business entity selected by ERS to provide the Services pursuant to the Contract, and also includes TPA'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 affiliates, subsidiaries, joint venturers, representatives, officers, directors, principals, partners, employees, agents, assigns, any subcontractors and independent contractors, and any person or entity who has undertaken to advise, consult or communicate with Public Servants on behalf of or to the benefit of TPA (whether or not TPA sought the benefit). References hereafter in the Contract listing Agent, Agents and/or any of the above specific entities, in addition to TPA, are for emphasis only and are not intended to limit the scope of the foregoing definition of TPA.
- 1.5 Prior to its selection by ERS, in addition to TPA submitting its Proposal and Clarifications, if any, TPA 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." For purposes of this Contract, "**Provider**" refers to any facility, entity or person with whom contracts have been established by the TPA to perform, provide or deliver health care services, benefits, equipment, supplies or products to Participants, including those Providers who are part of a Network. The term "**Network**" refers to a group of Providers that have been established by



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the TPA and approved to provide services, benefits, coverages, equipment, supplies and products for Participants.

- 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 TPA 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 effective following the Board's selection of TPA and immediately upon execution of this Contract by an authorized representative of ERS as set forth on the signature page hereto ("**Effective Date**") and extending through August 31, 2023 (the "**Contract Term**") unless terminated as provided herein or further extended or renewed by written agreement of the parties. ERS and TPA agree and acknowledge that the Services to be provided under the Contract are anticipated to be transacted primarily between the date this Contract is executed and August 31, 2023 (the "**Service Period**").
- 2.2 Notwithstanding the immediately preceding paragraph, ERS and TPA 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 included herein shall thereby be in effect during the Service Period. All contractual provisions related to TPA'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, TPA 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 TPA agrees to act as a fiduciary in good faith, with candor and due diligence in connection with the performance of the Contract and any negotiations related thereto.
- 2.4 The Contract may be renewed or extended, in ERS' sole discretion, for additional periods upon terms and conditions to be agreed upon by the parties in writing and to be executed by authorized representatives of the parties, subject to good faith negotiations of the parties concerning terms, fees and services required.
- 2.5 **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 TPA, in ERS' sole opinion, fails or refuses to perform, is negligent in performing, is unable to perform or it reasonably appears that TPA 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 TPA 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.
- 2.6 **Nonpayment.** On the thirty-first (31st) calendar day following the date that ERS is required to make a claims payment to TPA under the terms of the Contract ("**Original Payment Date**"), TPA may notify ERS in writing in the event that such payment has not been received by TPA's banking



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institution and that it is therefore TPA's intention to suspend payment of claims under the Contract ("**Initial Nonpayment Notice**"). ERS shall have ten (10) calendar days following receipt of the Initial Nonpayment Notice to provide written notice to TPA of ERS' bona fide dispute related to such payment, specifying the reasons for nonpayment ("**Dispute Notice**"). If ERS has not provided a Dispute Notice to TPA on or before the tenth (10th) day following the Initial Nonpayment Notice date, then TPA may issue to ERS a final notice of nonpayment specifying the date that TPA will suspend payment of claims under the Contract ("**Final Nonpayment Notice**"). TPA may suspend payment of claims on the date specified in the Final Nonpayment Notice, provided that such date shall be not less than five (5) calendar days after the issuance date of the Final Nonpayment Notice. Payment of claims may be suspended by TPA until payment has been made by ERS or until the parties reach mutual agreement that TPA shall again pay claims, if payment in full has not yet been made by ERS.

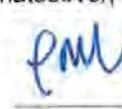
- 2.7 In the event that TPA fails or refuses to perform or is negligent in performing any of its duties or obligations as required by the Contract, or fails or refuses to perform consistent with TPA's statements, promises, and commitments made during the RFP/Proposal Process and in the Contract, then 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 TPA's breach of its past, present or future duties and obligations created by the Contract or otherwise required by applicable law.
- 2.8 Amendments. The Contract may be altered, extended, modified or amended only by written agreement properly executed by the duly authorized representatives of ERS and TPA.
- 2.9 This entire Article shall survive any termination, expiration, renewal, extension or amendment of the Contract.

Article 3. Rates and Payments; Tax Exempt Status

- 3.1 TPA's fees for the Services provided in connection with its performance of the Contract shall be only those submitted in writing by TPA and specifically as described and accepted by ERS and attached hereto and fully incorporated herein as Exhibit "D" ("**Fee Schedule**"). ERS and TPA acknowledge and agree that the fees reflected in Exhibit "D" are effective for the Contract Term, and such fees shall remain unchanged for the Contract Term unless changed by 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 Texas Employees Group Benefits Program (the "**GBP**"), and its Participants. To this end, TPA shall act in utmost good faith to execute any Contract amendments necessary to reflect such mutually agreed upon modifications of the Contract. TPA further agrees that any Services, coverages, benefits, equipment, supplies or products that were described and offered to ERS in TPA's Proposal and included in the RFP's Price Proposal, 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.
- 3.2 The funding and payment methodology to be utilized by ERS is fully set out in the RFP in Article VIII. ERS agrees to make payments, and TPA shall accept payments, as described therein.
- 3.3 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,



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products or services related to this Contract or any quote, proposal or lease schedule related thereto. Neither TPA nor any affiliated entity, successor or assign of TPA 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.

- 3.4 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 prior to any implementation thereof. If such modifications, including modifications to the Network, are material and are initiated or approved by ERS, ERS shall notify TPA of the required modifications, and TPA and ERS understand and agree that such material Plan modifications may result in a corresponding increase or decrease in TPA's pricing or compensation terms 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 TPA and implemented in a timely manner by TPA.
- 3.5 The parties agree that to the extent that any Services, coverages, benefits, equipment, supplies or products performed, delivered or provided under this Contract are no longer applicable, practical, consistent with current industry standards or otherwise not practicable to deliver or perform and/or have been superseded by any other program, guarantee or standard, then such portion of the Contract may be voidable upon the written mutual agreement of the parties.
- 3.6 ERS and TPA agree that TPA shall not receive or charge any administrative fees or any other costs, expenses or fees in connection with the Contract unless it is included in the administrative fees accepted by the Board. ERS shall promptly pay TPA its administrative fees in accordance with and as provided by the Contract. If applicable, the parties also agree that ERS may select one or more of TPA's additional management programs identified in TPA's Proposal for the fees agreed to by the parties as reflected in the Exhibit "D" Fee Schedule. Subject to the terms herein, TPA warrants and represents that any fees TPA 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 Section 3.16).
- 3.7 Except as otherwise provided herein and in accordance with the RFP, TPA shall first pay all eligible claims and reimburse all eligible charges on behalf of eligible Participants before seeking any reimbursement for same from ERS. Thereafter, TPA will promptly be reimbursed by ERS as provided in the RFP. Although TPA will be responsible for maintaining an account sufficient to meet the cash demands for payment of claims, as provided in the RFP, TPA will have no risk for the sufficiency of Plan contributions. For purposes of this Contract, "**Participant**" is defined as an Employee, Annuitant (Retiree) or Dependent, as defined in the Texas Employees Group Benefits Act, Texas Insurance Code, Chapter 1551, and its predecessor and successor statutes (the "**Act**") or the Board Rules located at Title 34, Part IV, Tex. Admin. Code (the "**Rules**") and surviving Dependents of deceased Employees and Retirees who are eligible to receive and are enrolled in GBP coverage in accordance with the Act and the Rules.
- 3.8 TPA shall promptly pay to ERS all consideration specified herein and in the manner required by the Contract, including any Rebate payments, cost projections, Performance Guarantees, actual damages and liquidated damages as described in the Contract. TPA 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 TPA later than any time period specified in or in accordance with the Contract, or as agreed upon by the parties. In addition to the terms of the RFP, any sums or consideration required to be paid to ERS by TPA 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 TPA by ERS.



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- 3.9 From time to time ERS may, on an *ad hoc* basis, request that TPA prepare reports regarding the Plans and/or any Disabled Dependent Child Coverage Applications (as defined in Section 4.21) in the course of ERS' administration of the GBP. TPA agrees to produce such reports on a timely basis as requested by ERS, and TPA 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 TPA for preparing such reports must be subsumed into the administrative fees and compensation of TPA provided in the Fee Schedule attached as Exhibit "D." Such reports, and the information and intellectual property reflected therein, shall be ERS' sole and exclusive property.
- 3.10 In the event ERS determines that TPA has made an error in the handling of a Participant's account, TPA shall first immediately correct the error by re-adjudicating any claims as necessary, which shall be paid from the appropriate Plan under the GPB. If, after such claim adjudication, the Participant has incurred an out-of-pocket loss, TPA shall compensate the Participant for Participant's reasonable out-of-pocket loss by either direct payment to the Participant or credit to Participant's account, at the Participant's election. The cost of such payment or credit shall be borne entirely by TPA and shall not be charged back to the Participant, ERS, the GBP, or the state of Texas.
- 3.11 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 do not include taxes of any kind, and have not been increased to compensate for the fact that ERS is tax exempt.
- 3.12 TPA shall be responsible for all costs associated with subrogation activities and litigation. ERS and TPA acknowledge and agree that the fees reflected in Exhibit "D" include all such subrogation costs.
- 3.13 In the event any audit reveals a breach of the Contract by TPA resulting in injuries to ERS, the GBP or the Participants in excess of fifty thousand dollars (\$50,000), TPA shall reimburse ERS the cost of the audit, including attorney fees and costs, if any. Such reimbursement shall be in addition to any other rights and remedies available to ERS under this Contract, at equity or pursuant to applicable statutory, regulatory and common law.
- 3.14 When TPA enters into and/or renews a contract with any Providers on or after the date of this Contract, TPA shall notify the Providers that they may only charge or bill Participants for: the routine execution of forms documenting medical status, the copying and providing of medical records, and the ordering and documentation of prescription drug refills as consistent with applicable laws. Additionally, any issues relating to inappropriate billing by Providers shall immediately be addressed by TPA's network management process.
- 3.15 Beginning on September 1, 2017, TPA shall implement its 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 Plans or GBP, overcharges, overpayments, wrongful and incorrect payments, deceptive, and duplicate or suspicious billings, and the failure to disclose material information (hereinafter collectively "*Improprieties*") by TPA, TPA's officers, employees, affiliates, subsidiaries, agents, independent contractors, subcontractors, Participants, and Providers in connection with the GBP. 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:
- (a) If a person or entity, either intentionally or negligently, presents or causes to be presented to TPA, ERS or a Provider, a claim for services, coverages, benefits,

equipment, supplies or products or for any other manner of payment or reimbursement that:

- (i) contains any statement or representation that the person or entity knows or reasonably should have known was false; and/or
- (ii) fails to disclose material information.

The term "**equipment**" shall refer to computer systems and equipment including, but not limited to, hardware, software, firmware, electronic components and computer-related products that are in any way utilized or relied upon by TPA to perform, deliver or provide Services, coverages, benefits, equipment, supplies or products to or on behalf of ERS, the GBP and its Participants. Equipment also means durable medical equipment and other medical devices as defined and covered in the Master Benefit Plan Documents, the documents that describe the benefits, coverages and provisions of the Plans ("**MBPDs**").

- (b) If a Provider fails to provide an individual with any Services, coverages, benefits, equipment, supplies or products that are required to be provided under this Contract, the MBPDs, or applicable laws and regulations in connection with the GBP.
- (c) If a TPA-contracted Provider 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 TPA 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.
- (d) If any person or entity misappropriates from or commits any malfeasance in connection with ERS' or a Participant's account, or any Participant information. To this end, TPA's fidelity coverage currently in effect must cover such occurrences.
- (e) If TPA and/or a Provider engages in actions that indicate a pattern of wrongful denial of health care services, benefits, supplies, coverages, equipment or products that are required to be provided under this Contract, the MBPDs or applicable laws and regulations, or that indicate a pattern of wrongful requests for payment for health care services, benefits, supplies, coverages, equipment or products not performed, delivered, or provided or improperly billed or that are not medically necessary.
- (f) If any person or entity commits any act or omission that could reasonably be considered to be a violation of §§ 1551.066, 1551.104, and 1551.351 of the Act, whether or not the Act specifically applies to that person or entity.
- (g) TPA shall enforce and implement all aspects of its comprehensive plan and the requirements of this Contract in order to prevent, detect, investigate and eliminate Improprieties. TPA 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 TPA otherwise deems in good faith to be appropriate in the exercise of reasonable due diligence, with regard to Improprieties, and as further provided in the RFP.
- (h) TPA shall notify ERS immediately whenever it reasonably believes that any of the Improprieties described herein by way of example, or other similar Improprieties not so specifically identified, have occurred in connection with the GBP and in connection with TPA's performance under the Contract.

- (i) TPA shall also provide reports to ERS regarding such Improprieties immediately upon their detection by TPA and also as may be requested by ERS.
- (j) TPA shall comply with all future additional ERS policies or directives, as they are developed by ERS and provided to TPA, 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 TPA.
- (k) TPA shall further maintain all ERS, GBP and Plan-related information and claims records as required by the Contract, and TPA acknowledges and agrees that ERS or its designated representatives shall have reasonable and timely access to all such information related to ERS, the GBP and its Participants.
- (l) TPA agrees that it shall fully assist and cooperate with ERS, the Office of the Attorney General of Texas, State Auditor's Office and 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.

3.16 Rebate Payments. TPA shall pay 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. TPA has represented to ERS that TPA's pharmacy benefits manager 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**") in connection with a covered pharmaceutical product that is submitted to and paid by the TPA as an eligible claim under HealthSelect ("**Rebates**"). TPA's pharmacy benefits manager, Prime Therapeutics, shall negotiate commercially reasonable terms for TPA's Rebate agreements. TPA shall pay all Rebates to ERS as set forth herein based on each Pharmaceutical Manufacturer's drugs or products dispensed to HealthSelect Participants. Such Rebates shall be paid to ERS by TPA promptly, but in no event later than on a quarterly basis or on such other basis as specified by ERS until all such compensation has been received by ERS. The term "Rebates" is intended to include all revenues, proceeds, reimbursements, funds, discounts, monies and payments generated from or in any way related to the prescription drug utilization of HealthSelect Participants, whether or not such revenues, proceeds, reimbursements, funds, discounts, monies and/or payments are described as "Rebates" by and between any such Pharmaceutical Manufacturers, their affiliates, agents, assigns, or other parties and TPA or TPA's Agents.

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

Article 4. Scope of Services and Guidelines

4.1 Without limiting the importance of each provision of the RFP and TPA's obligation to comply with the detailed requirements of the entire RFP, TPA specifically agrees to provide the Services as described in the Contract.

- 4.2 ERS is the Plan Administrator for the Plans under the GBP. Pursuant to Texas Insurance Code, the administration and implementation of the GBP are vested solely in the Board. As the Plan Administrator, ERS has complete discretionary and final authority to construe the terms of the Plans, interpret ambiguous Plan language and make final determinations regarding the payment of claims and the provision of benefits. Eligibility, enrollment and participation in the Plans 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, enrollment 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 acknowledged in the Contract, has exclusive authority to determine all questions relating to enrollment and eligibility in the Plans.
- 4.3 TPA shall not limit or discourage enrollment of any Participant of any agency, department or commission of the state by "quota" or other enrollment restrictions, unless approved by the Board.
- 4.4 TPA must provide coverage for each Participant beginning immediately upon the effective date of the Participant's enrollment.
- 4.5 TPA may not impose a waiting period or other requirements that are not in compliance with applicable laws, rules and regulations as determined by ERS.
- 4.6 TPA shall not revise the Services or benefits for the Contract Term, unless required by state or federal law or regulations applicable to the GBP as determined by ERS, or unless by written agreement between the authorized representatives of TPA, as defined in Section 34.1, and ERS. TPA understands that ERS may revise the Services, benefits or plan design at any time and agrees to cooperate with ERS and to negotiate in utmost good faith as to any adjustment of the fees reasonably related to such changes.
- 4.7 TPA represents and warrants that the Services it provides under the Contract shall be performed in good faith, with candor and due diligence, in a professional and workmanlike manner and in accordance with applicable professional standards and the standards required under the Contract. TPA will immediately correct any work not in compliance with this warranty. This requirement shall survive any termination, expiration, renewal, extension or amendment of the Contract.
- 4.8 TPA has agreed to Performance Guarantees ("**Performance Guarantees**") in connection with its performance under the Contract, as attached hereto as Exhibit "E" and incorporated herein for all purposes as if restated in full, which will apply to TPA's performance under the Contract.
- 4.9 Any funds unclaimed by Participants, including lost, returned and uncashed checks, reimbursement or otherwise, shall be managed by TPA 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, TPA 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 Texas 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.
- 4.10 As required by the RFP, TPA shall timely:
- (a) Prepare and distribute claim forms and Participant identification cards;
 - (b) Adjudicate claims and reimburse Participants and Providers for eligible claims; and



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- (c) Instruct Providers as to how to obtain reimbursement and file claims for eligible and medically necessary Services, coverages, benefits, equipment, supplies and products provided to Participants.
- 4.11 TPA shall, as further described in the RFP, provide initial and ongoing management of the Network as well as the recruitment and credentialing of and contracting with quality Providers of a sufficient number (including hospitals, physicians and facilities) to provide the full range of covered benefits, coverages, equipment, Services, supplies and products included in the MBPD for Participants. All Providers shall be duly licensed and in good standing with the state of Texas before they may be included in the Network. Other Providers outside of Texas must meet state licensing requirements comparable to those applicable in the state of Texas, and must also be duly licensed by their applicable state or country of practice and in good standing with their applicable state or country regulatory oversight bodies in order to receive payments under the Plans, regardless of whether Services are provided in the state of Texas.
- 4.12 TPA shall provide coordination of benefits on claims or charges where there is other group coverage involved.
- 4.13 TPA shall diligently pursue all subrogation rights of recovery arising under the Plans. Subrogation and reimbursement may apply when another party (person or organization) is or may be considered responsible for payment resulting from a Participant's injury or sickness for which benefits under the Plans shall be or have been provided. TPA shall provide subrogation services which will include, but not be limited to, investigating claims to determine potential third-party liability, contacting Participants and/or their counsel to obtain information related to third-party liability, initiating demands, guarantees and negotiating settlements to protect the GBP's interests, supporting intervention in litigation when necessary, enforcing remedies for violation by Participants or their counsel of subrogation and reimbursement obligations.
- 4.14 TPA shall timely prepare the MBPDs, subject to the review and approval of ERS, so that the MBPDs may be reviewed and approved by ERS and published to Participants on or before September 1 of each Fiscal Year during the Contract Term.
- 4.15 TPA shall timely post the approved HealthSelectSM of Texas ("**HealthSelect**") Benefits Book, Summaries of Benefits and Coverages, supplement and Provider directory on a customized website approved by ERS. Upon request, TPA, at its expense, will provide the foregoing materials, including the HIPAA privacy notice, in printed form to Participants.
- 4.16 From time to time, ERS may, on an *ad hoc* basis, request that TPA prepare reports regarding the Plans in the course of ERS' administration of the GBP. TPA agrees to produce such reports on a timely basis as requested by ERS. Such reports, and the information and intellectual property reflected therein, shall be ERS' sole and exclusive property.
- 4.17 TPA agrees to cooperate and to 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. This paragraph shall survive any termination, renewal, extension or amendment of the Contract.
- 4.18 TPA agrees to provide ERS with a direct contact to interface with TPA to answer questions in connection with the Plans, including a contact person for Medicare coordination of benefits issues.
- 4.19 TPA will not practice discriminatory selection, or encourage segregation, among the total group of eligible Participants of any agency, department or commission of the state of Texas by excluding, seeking to exclude or otherwise discriminating against any of the following classes of people:

- (a) Women – as prohibited by title VII of the Civil Rights Act of 1964, as amended, Executive Order 11246 of 1965, as amended.
- (b) Pregnant Women – as prohibited by the Pregnancy Discrimination Act of 1978, as amended, PL 95-555.
- (c) Racial Minorities – as prohibited by Title VII of the Civil Rights Act of 1964, as amended.
- (d) Aged and Retired – as prohibited by the Age Discrimination in Employment Act of 1967, as amended.
- (e) Handicapped and those with catastrophic and terminal illnesses – as prohibited by Sections 503 and 504 of the Rehabilitation Act of 1973, as amended.
- (f) Disabled – as prohibited by the Americans with Disabilities Act of 1990, as amended, subject to the specific provisions of Title V, Section 501(c) thereof.

4.20 TPA warrants and represents that the Services it provides under the Contract shall be performed as a fiduciary in utmost good faith, in a professional and workmanlike manner and in accordance with applicable professional standards. In this regard:

- (a) TPA 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, and in its negotiation of and agreement to any amendments and/or contract modifications that ERS subsequently requests to be made by written agreement between TPA and ERS.
- (b) TPA warrants and represents that it shall perform its obligations and duties under this Contract with utmost good faith, loyalty, candor and skill.
- (c) TPA will immediately correct any work not in compliance with this warranty.

4.21 Review of Applications to Request or Renew Health Coverage for a Disabled Dependent Child (at Age 26 or Over) ("Disabled Dependent Child Coverage Applications"). As part of the Services, TPA shall review Disabled Dependent Child Coverage Applications for all GBP non-Medicare health plans submitted for continued coverage of disabled dependents beyond age 26 using standard medical guidelines and will provide coverage recommendations to ERS.

Article 5. Conformity with Contract, Rules, Laws, and Regulations

- 5.1 TPA warrants and represents that it shall comply with each aspect, requirement, specification or obligation set forth in the RFP, as amended or modified as accepted by ERS, regardless of whether or not it is specifically addressed herein.
- 5.2 TPA warrants and represents that it shall comply with each aspect, requirement, specification, or obligation set forth in the additional documents incorporated herein by reference, regardless of whether or not specifically addressed herein.
- 5.3 TPA warrants and represents that it shall comply with all aspects of the Contract and all applicable laws and regulations, both state and federal, and requirements of any organization or entity with any oversight authority over TPA throughout the entire Contract Term and any extension, amendment or renewal thereof.
- 5.4 TPA warrants and represents that it shall instruct its Agents that they must comply with all applicable Texas and federal laws and regulations and with all requirements of any organization

or entity with any oversight authority over TPA or its Agents in connection with the performance of the Contract throughout the entire Contract Term and any extension, amendment or renewal thereof.

- 5.5 TPA warrants and represents that it, and its Agents, to the best of TPA's knowledge, are presently in compliance with all existing state and federal laws and regulations, a violation of which would or could affect ERS and/or would or could materially adversely affect TPA's ability to fulfill its obligations and undertakings set forth in 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, TPA agrees to act in utmost 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. 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 (West 2012), ERS and TPA 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 TPA 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, TPA 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 TPA's management, ownership or business structure or similar Change of Control as "Change of Control" is defined in Section 23.1.

- 8.2 Before TPA's personnel are assigned to perform any Services, ERS must be provided the name and qualifications of each person TPA 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 TPA 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 TPA as soon as reasonably possible.
- 8.3 This Article shall survive any termination, expiration, renewal, extension or amendment of the Contract.

Article 9. Liquidated Damages and Performance Guarantees

9.1 TPA 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, TPA 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 TPA is not reasonably in compliance with the Contract, or that TPA 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 TPA 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 TPA 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 TPA within a reasonable time before performance is required; or
- (c) if, in the sole opinion of ERS, delivery or performance is inexcusably delayed by TPA, or if it becomes apparent that TPA 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 TPA 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. TPA 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 TPA 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 TPA fails or refuses to comply, or it becomes apparent that TPA 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 TPA 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, TPA's delay in performance.
- 9.5 ERS shall be entitled to claim against TPA, 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 TPA under the Contract, billed to TPA or otherwise collected in accordance with applicable law.
- 9.6 TPA 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 TPA.
- 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 TPA delays or fails to perform its obligations under this Contract, whichever ERS determines is appropriate.
- 9.8 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 TPA and ERS understand and agree that TPA is an independent contractor performing, providing, and delivering the Services. It is expressly understood and agreed by the parties hereto that personnel assigned by TPA to perform or provide any of the Services are employees of TPA, 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, TPA 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 (West Supp. 2014), or any insurance benefits pursuant to Chapter 1551 of the Texas Insurance Code Ann. (West Supp. 2014), or any other kind of benefit ordinarily provided by the state of Texas to its employees. Further, TPA 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 TPA'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 TPA of any provisions of the Contract and any failure by TPA 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 TPA has indicated in its Proposal that subcontracting opportunities for historically underutilized businesses, as defined in Texas Government Code Ann. § 2161.001 (West Supp. 2014), are available, then TPA warrants and represents that such subcontracting will only be permitted and performed in a manner consistent with ERS' and TPA'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 TPA 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 (West 2012 & Supp. 2014) (the "**PIA**"). TPA 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 ERS maintains documents and information that are considered confidential by law. In connection with the Contract, TPA will have access to information that is considered confidential. TPA understands that public availability of individual items of ERS' confidential information does not release its obligation of confidentiality. TPA 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. TPA 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." TPA 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 TPA, its Agents or any other persons or entities without ERS' express written permission, and that TPA 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 TPA to provide the Services or as required by law. TPA warrants and represents that it has a tested and proven system in effect to protect all confidential information as defined herein.
- 13.3 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 "Member"), whether in electronic, tangible or intangible form, the confidentiality of which ERS or its Members take reasonable measures to protect. Confidential information includes, but is not limited to, information relating to ERS' processes, operations, Members (including the identities of Members or prospective Members), business relationships, products/services (including prices, costs, sales, or materials/processes used to make/provide the 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 Members 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 (West Supp. 2014) 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 TPA 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.

- 13.4 TPA 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. (West Supp. 2014), Texas Health & Safety Code Ann., Chapter 181 (West Supp. 2014) 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". TPA warrants and represents that TPA and its affiliates, subsidiaries, employees, officers, directors, principals, agents, representatives, assigns and/or successors shall not, and that TPA 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 TPA 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. 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.
- 13.5 The items designated herein as confidential information are the exclusive property of ERS and the GBP, as applicable, and TPA 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 (West 2012); § 1551.063 Texas Insurance Code Ann. (West Supp. 2014) 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 shall control unless this Section is more strict in protecting confidential information.
- 13.6 TPA 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 TPA (whether or not TPA 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 TPA 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 TPA (whether or not TPA sought the benefit), TPA 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 one (1) business day after TPA's receipt of the request, so that ERS can determine if a disclosure is required or permitted. TPA shall maintain and protect from unauthorized disclosure, all confidential information and materials it receives or creates in connection with the Contract.

- 13.7 Except as expressly stated herein, neither TPA nor any Agent of TPA 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 TPA's or any Agent's duties under the Contract without the prior written consent of ERS, except as is absolutely necessary for TPA to perform the Services or as otherwise required by applicable law. TPA shall establish, maintain, and enforce agreements with its Agents and Providers who have access to any confidential information to fulfill TPA'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.
- 13.8 TPA shall immediately report to ERS any and all unauthorized use, appropriation, sale, assignment, conveyance, provision, release, access, acquisition, disclosure or other dissemination of any confidential information of which it or its Agent is aware or has knowledge or reasonably should have knowledge. TPA shall also promptly furnish to ERS full details of the 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. TPA shall cooperate with ERS in connection with any litigation and investigation deemed necessary by ERS to protect any confidential information. TPA 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.
- 13.9 TPA 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 Member and may violate state or federal laws and regulations. If TPA 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.
- 13.10 TPA agrees that all Work Product produced or created as a result of the Contract will be the sole and exclusive property of ERS, or with regard to materials provided by or pertaining to a specific Member, the sole and exclusive property of ERS and such Member. TPA will not make, use, offer to sell, sell, lease, publish, reproduce, distribute, perform, or display, or otherwise prepare derivative works to, all or any portion of any Work Product produced or created as a result of any work performed or service provided by TPA pursuant to the Contract. "**Work Product**" is defined as any electronic, tangible or intangible items or things that have been or will be prepared, created, maintained, utilized, serviced or developed by TPA (or such third parties as TPA may be permitted to engage) at any time following the Effective Date, for or on behalf of ERS under the

Contract, including, but not limited to, any (a) works of authorship (such as literary works, musical works, dramatic works, choreographic works, pictorial, graphic and sculptural works, motion pictures and other audiovisual works, sound recordings and architectural works, which includes, but is not limited to, documents, plans, forms, reports, analyses, and account information, databases, data, Member information, Member lists, or communications in any communication medium, written or otherwise, manuals, instructions, printed material, graphics, artwork, images, illustrations, photographs, computer software, scripts, object codes, source codes or other programming codes, HTML codes, multimedia files, text web pages or websites, other written or machine readable expression of such works fixed in any tangible media, and all other copyrightable works), (b) trademarks, service marks, trade dress, trade names, logos, or other indicia of source or origin, (c) ideas, designs, concepts, personality rights, methods, processes, techniques, apparatuses, inventions, formulas, discoveries, or improvements, including any patents, trade secrets and know-how, (d) domain names, (e) copies, and similar or derivative works to any of the foregoing, (f) all documentation and materials related to any of the foregoing, and (g) all other goods, services or deliverables to be provided to ERS under the Contract.

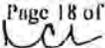
- 13.11 For the purposes of this Contract, the term "**Work**" includes Work Product (as defined above) and also all reports, statistical analyses, work papers, work products, materials, approaches, designs, specifications, systems, documentation, methodologies, concepts, research materials, intellectual property or other property developed, produced, or generated in connection with this Contract. All work performed pursuant to this Contract is made the exclusive property of ERS. All right, title and interest in and to said property shall vest in ERS upon creation and shall be deemed to be a work for hire and made in the course of the services rendered pursuant to this Contract. To the extent that title to any such work may not, by operation of law, vest in ERS, or such work may not be considered a work made for hire, all rights, title and interest therein are hereby irrevocably assigned to ERS. ERS shall have the right to obtain and to hold in its name any and all patents, trademarks, service marks, copyrights, registrations or such other protection as may be appropriate to the subject matter, and any extensions and renewals thereof. TPA must give ERS, as well as any person designated by ERS, all assistance required to perfect the rights defined herein without any charge or expense beyond those amounts payable to TPA for the services rendered under this Contract.
- 13.12 ERS and its auditors, advisors, consultants, and custodians, if applicable, (a) are entitled to use and retain copies of all written materials generated by TPA under this Contract and (b) to the extent permitted by ERS in its sole discretion, may disclose such materials to third parties. TPA 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 TPA will generally be conducted in open meetings subject to the Texas open meetings laws. TPA 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 TPA includes materials that are deemed confidential and/or proprietary or copyrighted materials of any third party source in any report or document delivered to ERS, TPA 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. TPA acknowledges that trademarked, service marked or copyrighted material may under some circumstances be copied by ERS in response to a request under the PIA. TPA further acknowledges that trademarked, service marked or copyrighted information and other information that TPA 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 inspection upon request. In assembling materials delivered to ERS, TPA 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. TPA acknowledges that ERS does not have any duty to designate TPA information as confidential and proprietary or to otherwise advocate for such information to be considered confidential and proprietary.

- 13.13 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 As between TPA and ERS, the Work Product and Intellectual Property Rights therein are and shall be owned exclusively by ERS, and not TPA. TPA 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, TPA 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, and all Intellectual Property 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. "**Intellectual Property Rights**" means the worldwide legal rights or interests evidenced by or embodied in: (a) any idea, design, concept, personality right, method, process, technique, apparatus, invention, formula, discovery, or improvement, including any patents, trade secrets, and know-how (e.g., patents); (b) any work of authorship, including any copyrights, moral rights or neighboring rights (e.g., copyrights); (c) any trademark, service mark, trade dress, trade name, or other indicia of source or origin; (d) domain name registrations; and (e) any other proprietary or similar rights. The Intellectual Property Rights of a party include all worldwide legal rights or interests that the party may have acquired by assignment or license with the right to grant sublicenses.
- 14.2 TPA, upon request and without further consideration, shall perform any acts that may be deemed necessary or desirable by ERS to evidence more fully the transfer of ownership of all Work Product to ERS to the fullest extent possible, including, but not limited to, the execution, acknowledgement and delivery of such further documents in a form determined by ERS. In the event ERS shall be unable for any reason to obtain the TPA's signature on any document necessary for any purpose set forth in the foregoing sentence, TPA hereby irrevocably designates and appoints ERS and its duly authorized officers and agents as the TPA's agent and the TPA's attorney-in-fact to act for and in the TPA's behalf and stead to execute and file any such document and to do all other lawfully permitted acts to further any such purpose with the same force and effect as if executed and delivered by TPA.
- 14.3 TPA hereby irrevocably and forever waives, and agrees never to assert, any Moral Rights in or to the Work Product which TPA may now have or which may accrue to the TPA's benefit under U.S. or foreign copyright laws and any and all other residual rights and benefits which arise under any other applicable law now in force or hereafter enacted. "**Moral Rights**" means any and all rights of paternity or Integrity of the Work Product and the right to object to any modification, translation or use of the Work Product, and any similar rights existing under the judicial or statutory law of any country in the world or under any treaty, regardless of whether or not such right is denominated or referred to as a moral right.
- 14.4 Upon the request of ERS, but in any event upon termination of the Contract, TPA shall surrender to ERS all documents and things pertaining to the Work Product, including, but not limited to, drafts, memoranda, notes, records, drawings, manuals, computer software, reports, data, and all other documents or materials (and copies of same) generated or developed by TPA or furnished by ERS to TPA, including all materials embodying the Work Product, any ERS confidential information, or Intellectual Property Rights, regardless of whether complete or incomplete. This Section is intended to apply to all Work Product made or compiled by TPA, as well as to all



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documents and things furnished to TPA by ERS or by anyone else that pertains to the Work Product.

- 14.5 TPA 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. TPA 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.
- 14.6 To the extent that any pre-existing rights are embodied or reflected in the Work Product, TPA 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. TPA agrees to notify ERS on delivery of the Work Product if such materials include any such pre-existing rights. On request, TPA shall provide ERS with documentation indicating a third party's written approval for TPA to use any pre-existing rights that may be embodied or reflected in the Work Product. TPA shall indemnify, defend with counsel selected by 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 Work Product includes third party materials or infringes third party rights.
- 14.7 TPA agrees that it shall have and maintain, during the performance of any Services arising under this Contract, written agreements with all employees, contractors or agents engaged by TPA in performance hereunder, granting TPA rights sufficient to support all performance and grants of rights by TPA. Copies of such agreements shall be provided to ERS promptly upon request.
- 14.8 If the Work Product or the Intellectual Property Rights therein become the subject of a lawsuit or claim of infringement, or TPA becomes aware that such items are likely to become the subject of a lawsuit or claim of infringement, TPA 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.
- 14.9 TPA obtains no rights in or to the Work Product or Intellectual Property Rights therein 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 TPA must receive prior authorization from ERS before any such use. With respect to TPA's use of ERS trademarks, service marks or logos ("**Marks**") for the foregoing purpose, upon receipt of such authorization, TPA shall use the Marks without any modifications, distortions or blurring whatsoever, and TPA 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, TPA agrees not to attempt to join the Marks with, or make it/them look like part of, another logo, and TPA agrees to maintain size and spacing in a way to maximize the impact of each logo as a separate, individual brand. TPA 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. TPA 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 TPA at the request of ERS, TPA must retain copies of ERS-related records in accordance with the Contract throughout the entire Contract Term and any extension or renewal thereof, and for a period of seven (7) years following the termination, for any reason, of the Contract. Such records shall be in their original form or in a form acceptable with current industry standards. In addition, TPA shall maintain such records indefinitely to the extent there is any legal action, investigation or audit related to the Contract and TPA is notified of same.
- 15.2 Unless there is currently pending or anticipated litigation or audits related to the records, TPA shall destroy all ERS-related records in a commercially reasonable manner following the applicable retention periods, and TPA shall provide to ERS a written certification, guarantee and verification identifying: the records destroyed, date and manner of destruction, and who performed such destruction. With regard to Members' personally identifying and/or sensitive personal information and, if applicable, protected health information ("**PHI**") (together, "**Personal Data**"), TPA 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 All ERS-related records may be audited by ERS or its authorized representative at any reasonable time during regular business hours. ERS shall bear its cost of any audit; provided, however, that in the event ERS imposes liquidated damages or seeks any remedy or damages under this Contract, ERS may seek to recover the cost of any audit. 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. TPA shall cooperate with ERS or its representatives in connection with an audit of TPA's performance in connection with the Contract. As appropriate, ERS reserves the right to be present during TPA's performance of the Contract to verify that TPA is faithfully and fully performing its contractual duties and obligations. Neither ERS nor the auditors will indemnify TPA for any costs incurred in connection with any audits performed pursuant to this Article.
- 15.4 TPA agrees, both individually and on behalf of its subcontractors, that the Texas state auditor may conduct an audit or investigation of TPA and its subcontractors in connection with TPA'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.
- 15.5 The parties agree that ERS has the right to conduct, at ERS' expense and in ERS' sole discretion, one or more compliance reviews of TPA. Additionally, the parties agree that, in the event ERS determines that TPA is not satisfactorily performing its obligations under the Contract, ERS, or its designated representatives, may travel to TPA's offices to audit and inspect TPA's business practices in connection with its performance under the Contract.
- 15.6 In the event ERS determines, in the course of an annual or periodic audit, that TPA is not satisfactorily performing its obligations under the Contract, ERS will notify TPA of the deficiencies in performance and further provide that ERS, or its designated representatives, may travel to TPA's offices to audit and inspect TPA's business practices in connection with its performance under the Contract. TPA shall be required in each instance to pay ERS' and its representatives' reasonable and necessary travel expenses and staff time (including transportation, meals, and



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lodging expenses in accordance with the state of Texas travel guidelines); provided, further such expenses will include (a) the expense of independent auditors engaged for the scope of an audit as solely determined by ERS; and (b) any fees or fines of any governmental or regulatory agency assessed against or incurred by ERS, the GBP and/or any of its Members or any related costs or expenses as a direct or indirect result of TPA's actions or omissions where ERS, the GBP or its Members are required to take corrective actions that any of the aforementioned parties determine is necessary to take pursuant to any audit or investigation findings. TPA shall pay such reasonable fees and expenses in a timely manner upon receiving an invoice from ERS. ERS may deduct such fees and expenses from any monies due to TPA under the Contract or otherwise collect the fees and expenses as provided in the Contract. ERS also acknowledges that if the audit or investigation findings of such independent auditor conclusively prove that TPA is not at fault, then TPA is not required to pay the fees and expenses of such respective independent audit.

- 15.7 To the extent that TPA's pharmacy benefits manager's agreements for Rebates, as defined in this Contract, are subject to confidentiality agreements, any audits of TPA's pharmacy benefits manager'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 TPA'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 TPA and Auditor. This provision does not apply to other audits or audits unrelated to such confidentiality agreements by and between TPA's pharmacy benefits manager and any Rebate payor.
- 15.8 This entire Article shall survive any termination, expiration, renewal, extension or amendment of the Contract.

Article 16. Conflicts of Interest

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



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

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

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

(b) TPA 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) TPA 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 TPA and its Agents (whether or not TPA 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, TPA 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 TPA and its Agents (whether or not TPA and its Agents seeks the benefit), any Prohibited Communications.

"**Prohibited Communications**" specifically includes any communications to any member of the Board 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) TPA 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, TPA 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, TPA understands and acknowledges that the purpose of ERS' retention of an advisor to aid in the RFP development and subsequent selection of the TPA for the Contract ("**RFP Advisor**") is to receive wholly unbiased and objective advice from RFP Advisor. TPA further warrants and represents that TPA and TPA'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, Inc. is the RFP Advisor in connection with this Contract.
 - (2) Unless specifically permitted to do so by ERS, TPA 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 TPA'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 TPA'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 TPA.
- (d) TPA 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 TPA or any other person or entity engaged in a line of business competitive with TPA's during the procurement process for the RFP by TPA or TPA'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 TPA and its Agents (whether or not TPA and its Agents sought the benefit). No attempt has been made by TPA to induce any other vendor to submit or not submit a proposal in connection with the RFP for any purpose.
- (e) TPA 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 TPA and its Agents (whether or not TPA and its Agents sought the benefit) or RFP Advisor in connection with the award and/or performance of the Contract.
- (f) TPA warrants and represents that it has not in any manner, directly or indirectly, participated in the preparation of the RFP.
- (g) TPA 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



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has undertaken to advise, consult or communicate with Public Servants on behalf of or to the benefit of TPA (whether or not TPA 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 TPA. 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 TPA and its Agents (whether or not TPA and its Agents sought the benefit), or RFP Advisor receives any payment from TPA for (i) any services performed for TPA, (ii) being awarded the Contract, or (iii) any gains or profits of the Contract, then ERS may terminate its relationship with the TPA 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 TPA 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) TPA 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. TPA warrants and represents that, if at any time after the Effective Date of the Contract, TPA 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, TPA shall immediately disclose such interest, appearance or communication in writing to ERS. In addition, TPA must promptly disclose any relationship that might be perceived or represented as a conflict of interest after its discovery by TPA or by ERS as a potential conflict. Such disclosure must include a description of the actions that TPA has taken or proposes to take to cure, avoid or mitigate such conflicts.

16.3 TPA 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 TPA 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 TPA and its Agents (whether or not TPA 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. TPA further agrees, understands and acknowledges that ERS may disqualify TPA from participating in the RFP/Proposal process or terminate the Contract immediately if ERS obtains information reflecting that TPA 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 TPA 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. TPA 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 TPA or to TPA'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 TPA and its Agents (whether or not TPA and its Agents sought the benefit)) in any respect in connection with such notification. TPA acknowledges and understands that ERS may also determine, in its sole discretion, that as a result of TPA's violation of this Article, TPA 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 TPA 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 TPA 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 TPA warrants and represents that TPA and any officer, director, principal, employee, agent, affiliate, subsidiary, representative, assign and/or successor of TPA shall not, and that TPA 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 Members, 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 Member(s), including, but not limited to, any list of Members, information regarding eligible or covered employees and dependents, confidential information, claims-related information or other Member 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 TPA to perform its obligations under the Contract or as required by law. Nothing in this provision restricts TPA's ability to offer benefits and services to Texas residents as part of TPA's normal business activities as long as neither TPA nor any of its Agents solicits Members knowingly or intentionally, so long as TPA does not utilize Member data or confidential information obtained directly or indirectly as a result of, or in connection with, TPA'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, TPA certifies and ensures that it utilizes and will continue to utilize, for the term of this Contract, the U.S. Department of Homeland Security's E-Verify system, or another similar system as approved by ERS, in accordance with that system's established rules and requirements, to determine the eligibility of: (1) All persons employed to perform duties within Texas, during the term of the Contract; and (2) All persons (including subcontractors) assigned by TPA to perform work pursuant to the Contract, within the United States of America.
- 18.2 TPA shall provide, if ERS determines that it should so request, an electronic or hardcopy screenshot of the confirmation or tentative non-confirmation screen containing the E-Verify case verification number for attachment to the Form I-9 for the three most recent hires that match the criteria above, by TPA, and TPA's subcontractors, as proof that this provision is being followed. If TPA does not utilize the E-Verify system, the TPA shall provide (at TPA's own expense) to ERS, if ERS determines that it should so request, another form of eligibility verification for the three most recent hires of TPA and TPA's subcontractors.
- 18.3 If the certification at section 18.1 is falsely made, the Contract may be immediately terminated, at the discretion of ERS and at no fault to ERS, with no prior notification. TPA shall also be responsible for the costs of any re-solicitation that ERS must undertake to replace the terminated Contract, if applicable.

Article 19. Indemnification and Liability Insurance

19.1 In addition to any requirements elsewhere in the Contract, TPA shall defend (with counsel selected by ERS in consultation with the Office of the Attorney General of Texas and agreed to by TPA, such agreement not to be unreasonably withheld, 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 any and all claims, damages, losses, causes of action of whatever kind or nature, expenses, judgments, or any other amounts, including, but not limited to, reasonable attorneys' and experts' fees and costs, arising from or related to any acts or omissions of TPA and/or TPA's Agents, employees, officers, directors, representatives, principals, agents, independent contractors and subcontractors (as previously defined "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 TPA or any Provider or any of them to perform, deliver or provide the Services, coverages, benefits, equipment, supplies or products in connection with the Contract or the MBPD;
- (b) The negligent provision or omission of such Services, coverages, benefits, equipment, supplies or products by TPA or any Provider or any of them in connection with the Contract or the MBPD;
- (c) Any failure, refusal, inability or negligence of TPA or any Provider or any of them in meeting or complying with any and all obligations under the Contract or to perform, delivery or provide any Services, benefits, coverages, equipment, supplies or products required by the Contract or the MBPD;
- (d) TPA's actions or omissions in connection with the RFP/Proposal Process, or the management, contracting, credentialing or re-credentialing of the Network, Providers or administration of the Plans; and
- (e) Any and all claims or causes of action asserted against an Indemnified Party arising from or related to Services rendered by TPA or any Provider or any of them in connection with the 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 TPA shall maintain, during the Contract Term and any amendment, renewal or extension thereof, fidelity and liability insurance coverage with limits of not less than \$10,000,000 per occurrence and in the aggregate per policy year, with excess and/or umbrella liability coverage in an amount not less than \$10,000,000 per policy year that shall apply to TPA'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 all applicable declarations pages representing TPA's liability and fidelity insurance coverage in connection with TPA'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 TPA's Indemnification obligations as provided herein.

- 19.4 ERS agrees to provide TPA 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. In the event TPA fails or refuses to agree to selected counsel referenced in Section 19.1 herein, then counsel selected by ERS in consultation with the Office of the Attorney General of Texas shall be used.
- 19.5 This entire Article shall survive any termination, expiration, renewal, extension or amendment of the Contract.

Article 20. Disaster Recovery

- 20.1 TPA warrants and represents that it has a tested and proven written disaster recovery plan in place that provides for the recovery of TPA's electronic data and data processing equipment which assures that the data processing system will be operational and such data will be accessible within twenty-four (24) hours after a natural disaster, or any other business interruption, whether natural or otherwise.
- 20.2 TPA 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.

TPA further agrees to deliver, on an annual basis, a summary of its disaster recovery plan and its test results to ERS. These should include, but not be limited to: (a) the master plans plus a description of the changes from the previous year's plans, if any; and (b) the exercise results conducted within the last twelve months of the recovery and business continuity tests referencing the adequacy of its disaster recovery and business continuity plans. If these are a part of a SSAE16 Type 2 report, ERS is hereby requesting 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. TPA further agrees to be available for reasonable inquiry by ERS of the disaster recovery plan.

- 20.3 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 TPA 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. TPA 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 TPA. Furthermore, TPA 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 TPA.
- 21.2 Upon request by ERS for any reason, or upon termination or expiration of the Contract, TPA 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 TPA 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, TPA 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 TPA pursuant to this Section 21.2 shall be provided without any additional cost or expense to ERS or any Successor Firm.

- 21.3 TPA hereby acknowledges that the intent of Section 21.2 above is to provide for the smooth and orderly transition from TPA to ERS or a Successor Firm, and TPA 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 TPA's obligations under the prior sentence), TPA hereby represents and warrants to ERS that during the Contract Term, TPA 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. TPA 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 TPA shall not assign, or otherwise attempt to transfer or convey the Contract or any of its rights, title, interests and/or obligations hereunder or delegate any of its duties 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 or delegation 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 TPA 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 TPA. Notwithstanding and without waiving the foregoing, any assignee of or legal successor in interest to TPA shall assume and retain all of the obligations of TPA to ERS, the GBP, its Participants 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 TPA has with regard to confidential information and to otherwise maintain the confidentiality of Members' and ERS' information, TPA 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 TPA agrees to cooperate with ERS in complying with the requirements of HIPAA and HITECH.

- 24.3 TPA 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 TPA agrees that whether or not it is a "Covered Entity" under the HIPAA Privacy Rule, because TPA will have regular access to PHI, TPA 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 TPA warrants and represents that it shall comply with all requirements 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 TPA subcontracts with any other person or entity for processing or in any manner handling, accessing or viewing ERS data, then TPA warrants and represents that it shall ensure that such party agrees to adhere to the provisions of the Data Security and Breach Notification Agreement. TPA 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 TPA agrees to mask the social security numbers of ERS Members in electronic and print communications, and only to expose the last four digits of the social security number when necessary for self-identification verification of the Member.
- 24.7 TPA 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. (1973) ("**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. (West Supp. 2014) ("**Texas Antitrust Laws**"), as may be applicable.
- 24.8 TPA warrants and represents that neither TPA 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, TPA must ensure the products procured by ERS under this Contract (as further defined at Article 32.1), 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, TPA 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, TPA 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 TPA'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. Additional Agreements, Warranties and Representations

- 28.1 TPA 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.
- 28.2 TPA 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 TPA to provide the Services and in entering into the Contract with TPA. TPA shall promptly notify ERS in the event that at any time any representations and warranties provided herein are no longer true and correct.
- 28.3 TPA warrants and represents that it has adequate financial capital and security to fully indemnify the Indemnified parties, as provided herein, should same be necessary.
- 28.4 Under Texas Government Code Ann. § 403.055 (West 2013) and Texas Government Code Ann. §§ 2155.004 and 2155.006 (West 2008), TPA 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 TPA 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, TPA agrees that any payment owed to TPA under the Contract shall first be applied towards such debt or delinquent taxes until the debt or delinquent taxes are paid in full. TPA warrants and represents that at the time it entered into the Contract, TPA was not indebted to ERS or the state of Texas or delinquent in paying any taxes owed the state of Texas.
- 28.5 In accordance with Texas Family Code Ann. § 231.006, (West 2014), relating to delinquent child support obligations, TPA 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.
- 28.6 TPA warrants and represents that if, during the term of this Contract, TPA enters into any agreement with any other governmental customer or any commercial customer not affiliated with TPA, of a similar size or smaller, by which TPA agrees to perform, deliver or provide equivalent Services, coverages, benefits, supplies or products that TPA is providing in accordance with this Contract for the following: lower administrative fees, lower compensation, more generous discounts, more generous rebates (including Rebates), or more generous financial incentives or terms, then this Contract, at ERS' sole option, shall be amended to accord equivalent advantage to ERS. TPA further warrants and represents that it shall notify ERS promptly in the event it enters into any such agreement containing any one or more of the above matters, and TPA shall provide ERS with the applicable terms of such agreement.
- 28.7 Neither TPA nor to the best of TPA's knowledge any Agent of TPA 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 TPA 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.
- 28.8 TPA 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.

- 28.9 TPA further warrants and represents that neither TPA nor any of its affiliates, subsidiaries, employees, principals, directors or officers, nor, to its knowledge, TPA's agents, assigns, representatives, independent contractors, and/or subcontractors who are involved, either directly or indirectly, in TPA'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 TPA or such parties concerning any violation of state or federal statutes, rules, regulations or other laws. Current inquiries, investigations and prosecutions, including those for the last five years, shall be listed on TPA's Proposal (Section C.2) titled "Legal Services and Litigation" and provided to ERS.
- 28.10 TPA warrants and represents that none of the Services to be performed pursuant to this Contract by TPA (including, for the avoidance of doubt, any other entity) shall be outsourced or performed, nor shall any records or information made available to TPA by ERS or any of its Members under this Contract be made available or accessible to or viewed by any person or entity (including any Agent of TPA), in any fashion, at any location outside the fifty (50) states of the United States of America. Access to information for purposes of this requirement occurs whenever it is possible to view information or data covered by this provision from outside the United States, whether or not the information or data is actually sent out of the United States or is capable of being viewed by someone outside the United States. TPA's breach of this provision shall subject TPA to liquidated damages in the full amount provided in Section 9.7 for each and every Member 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.
- 28.11 TPA warrants and represents that in the event it contracts with subcontractors to provide Services in connection with the Contract, TPA has exercised reasonable due diligence to ensure that all of TPA's representations and warranties in the Contract pertaining to such subcontractors are true and correct, and that TPA 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. TPA 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. TPA 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, TPA is solely responsible for all Contract services required to be performed to carry out the terms of the Contract, and TPA specifically assumes all liability for any and all such services provided by subcontractors, if any.
- 28.12 TPA further 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.
- 28.13 To the extent TPA's Proposal or any other exhibit, annex, schedule or other document attached to or incorporated by reference into the Contract (or into any amendment, renewal, or extension to the Contract) contains any language that is or could be interpreted or construed to be a deviation, qualifier, proviso, condition, caveat, or disclaimer that purports to limit, reduce, excuse, postpone, or eliminate TPA's liability, financial responsibility, agreement, or obligation to perform any aspect of the Contract and/or attempts to add or increase the liability, obligations, or requirements of ERS ("**Deviation**"), then ERS notified TPA that ERS does not accept any such Deviations and they will not be considered part of the Contract unless specifically agreed to by ERS in writing.

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

Article 29. Notice

29.1 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) TPA at:
Blue Cross and Blue Shield of Texas
1001 East Lookout Drive
Richardson, Texas 75082
Attn: Dan McCoy, M.D.
Email: dan_mccoy@bcbstx.com

cc: Nancy Pruitt, General Counsel
Email: nancy_pruitt@hcsc.net

(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.state.tx.us

cc: Paula A. Jones, Deputy Executive Director and General Counsel
Email: paula.jones@ers.state.tx.us

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.

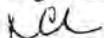
Article 30. Implementation Plan

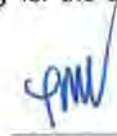
30.1 TPA agrees and acknowledges that time is of the essence in the performance of this Contract and in assuring a smooth, timely, efficient and effective implementation of TPA's duties with respect to this Contract.

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

30.3 The names, positions and qualifications of the implementation team shall be communicated to ERS within ten (10) 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. TPA management with authority to make binding decisions for TPA shall be accessible to ERS at all times throughout the Contract, including the Implementation Period, as defined in Section 30.4 below, and Service Period. TPA 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 TPA management, in a seamless and expedited manner.

30.4 The period of time beginning with the selection of the TPA by ERS and upon ERS' execution of this Contract to the point at which the TPA assumes full responsibility for the duties specified



TPA

ERS

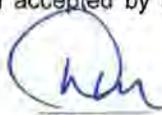
hereunder, such date being no later than August 1, 2017, shall be known as the "**Implementation Period.**"

- 30.5 On the first day of the Implementation Period, TPA shall begin implementation of its obligations under the Contract in accordance with the Implementation Plan agreed upon by ERS and TPA ("**Implementation Plan**").
- 30.6 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 TPA agree that scheduled updates and/or amendments to the Implementation Plan will be necessary. TPA 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 TPA to adhere to the Implementation Plan will subject TPA to possible Performance Guarantees as specified in Exhibit "E," attached hereto and incorporated herein. In addition, TPA 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.
- 30.7 During the Implementation Period, TPA 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 in a timely manner and with ERS' approval.
- 30.8 TPA 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.
- 30.9 TPA acknowledges and agrees that ERS, the Members and Participants of the programs and funds administered by ERS, the GBP and the state of Texas will suffer irreparable harm if the Program Implementation is not completed on or before August 1, 2017.
- 30.10 ERS may immediately assess against TPA any liquidated damages and/or Performance Guarantees, without prior notice, in the event TPA fails, refuses or is unable to perform, or is negligent in performing, or if it reasonably appears that TPA will fail, refuse or be unable to complete or perform any aspect of this Contract in connection with the Implementation Plan.

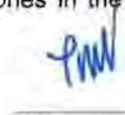
Article 31. Reserved

Article 32. Entire Contract

- 32.1 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



TPA



ERS

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 TPA.

- 32.2 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 TPA 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.
- 32.3 TPA 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 TPA to provide the Services described in the Contract. TPA 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 TPA must immediately provide ERS with the applicable true, correct or complete information.
- 32.4 The parties acknowledge and agree that if it is determined that there is an inherent or implied conflict among the Contract and any component parts thereof, then the following shall be the order of priority of the documents described herein, with the first document in the list being the ultimate authority to the extent necessary to resolve any conflicts, ambiguities or inconsistencies between them, and then descending down the list that follows, but silence on any matter in a higher order document shall not negate, change, avoid, modify, or prevail over the provisions of a lower order document as to that matter:
- (a) This Contractual Agreement, as executed by authorized representatives of the parties hereto;
 - (b) The Business Associate Agreement (Exhibit "F");
 - (c) The Data Security and Breach Notification Agreement (Exhibit "H");
 - (d) The Fee Schedule (Exhibit "D");
 - (e) The Performance Guarantees (Exhibit "E");
 - (f) The Clarifications (Exhibit "C");
 - (g) The Implementation Plan (Exhibit "I");
 - (h) The RFP (Exhibit "A"); and
 - (i) The Proposal (Exhibit "B").
- 32.5 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.

32.6 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.

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

Article 33. Execution in Counterparts

33.1 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.

33.2 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 34. Incumbency Certificate

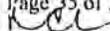
34.1 TPA warrants and represents that it has full power and authority to enter into the Contract, and that the Contract has been duly authorized, executed and delivered by TPA's authorized representative on behalf of TPA and constitutes a valid, binding, and legally enforceable agreement of TPA. Attached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

Article 35. List of Exhibits

35.1 The following exhibits are attached to this Contract and incorporated herein for all purposes as specified in Article 32 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
Exhibit H	Data Security and Breach Notification Agreement
Exhibit I	Implementation Plan
Exhibit J	Incumbency Certificate

SIGNATURE PAGE TO FOLLOW.



 TPA


 ERS

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

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

*By: [Signature]

Printed Name: Dan McCoy, M.D.

Title: President

Date: November 29, 2016

*Signature must be notarized.

EMPLOYEES RETIREMENT SYSTEM
OF TEXAS

By: [Signature]

Printed Name: Porter Wilson

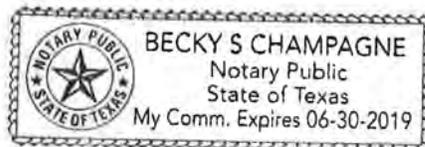
Title: Executive Director

Date: 12-2-16

STATE OF TEXAS §
COUNTY OF COLLIN §

This instrument was subscribed, sworn to, and acknowledged before me on November 29, 2016, by Dan McCoy, M.D. (Name of Authorized Representative), President (Title of Authorized Representative) of Blue Cross and Blue Shield of Texas, an Operating Division of Health Care Service Corporation, a Mutual Legal Reserve Company (TPA), an Illinois Mutual Legal Reserve Company, on behalf of said corporation.

Signature of Notary: [Signature]
Printed Name of Notary: Becky S. Champagne
Notary Public in and for the State of Texas
My Commission expires: 6-30-2019





200 E. 18TH STREET, AUSTIN, TEXAS 78701 | P. O. BOX 13207, AUSTIN, TEXAS 78711-3207 | (877) 275-4377 TOLL-FREE | WWW.ERS.STATE.TX.US

June 23, 2016

Qualified Third-Party Administrators

Re: Request for Proposal to Provide Third-Party Administrative Services for HealthSelectSM of Texas, including a High Deductible Health Plan, under the Texas Employees Group Benefits Program

To Whom It May Concern:

The Employees Retirement System of Texas ("ERS") is issuing a Request for Proposal ("RFP") seeking a qualified third-party administrator to provide health care administration (claims processing, network management and utilization review), benefits and services for the HealthSelectSM of Texas plan under the Texas Employees Group Benefits Program ("GBP"). Services under the RFP will include a self-funded, managed care, point-of-service health plan as well as a self-funded high deductible health plan that uses a preferred provider organization platform. The term of the contract begins upon execution of the Contract by ERS and the provision of third-party administrative services is anticipated to begin on or around September 1, 2017 and extend through August 31, 2023.

ERS anticipates receiving high quality proposals for the services listed herein, and encourages your organization to give full consideration to the development of a proposal that complies with the RFP.

If you have any questions regarding this process, please submit your inquiry directly to the iVendor Mailbox at: ivendorquestions@ers.state.tx.us.

Thank you for your interest in doing business with the GBP.

Employees Retirement System of Texas

RFP No. 327-94807-160623

**Request for Proposal
To Provide Third-Party Administrative Services
for HealthSelectSM of Texas, including a High
Deductible Health Plan, under the Texas
Employees Group Benefits Program**



June 23, 2016

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I. Definitions

Instructions to Respondents: These defined terms are capitalized when used throughout the RFP. Please use this section as a reference because the terms will not be defined within the text of the RFP.

Account Executive Team: Respondent's executive staff assigned to work directly with ERS during the Contract Term.

Account Management Team: Respondent's staff assigned to work directly with ERS on a daily basis during the Contract Term.

ACA: Patient Protection and Affordable Care Act of 2010.

ACO: Accountable Care Organizations; groups of providers that come together in a formal manner to accept responsibility for health services provided to all Participants or a defined set of Participants.

Act: The Texas Employees Group Benefits Act as set forth in Chapter 1551 of the Texas Insurance Code, as amended.

AD: Assistant Director of the Benefit Contracts division of the Employees Retirement System of Texas.

ADA: Americans with Disabilities Act of 1990, as amended.

Addendum or Addenda: A modification or addition to the initially published Request for Proposal.

Administrative Fee: The Administrative Fee is provided for in Section IX.B.

AES or Advanced Encryption Standard: A symmetric-key block cipher algorithm and U.S. government standard for secure and classified data encryption and decryption.

Authorized Representative (for Respondent): The Chief Executive Officer or other authorized officer who is at a Vice President or higher level of Respondent's organization.

BAA: Business Associate Agreement, Appendix C to the RFP.

BAFO or Best and Final Offer: Finalist's best and final offer.

BC: Benefits Coordinator; a State Agency staff member dedicated to benefits enrollment and education at the employer level.

BCOM: ERS' Benefits Communications division.

Bit: The basic unit of information in computing and digital communications.

Board: The Board of Trustees for the Employees Retirement System of Texas.

Board Rules: Rules of the Board of Trustees of the Employees Retirement System of Texas located at Title 34, Part 4, Tex. Admin. Code, including any amendments thereto.

Calendar Year or CY: A calendar year begins annually on January 1 and ends on December 31 of the same year.

Call Center: A centralized location where Respondent's staff will manage inbound and outbound telephone calls related to the Plans.

Chief Security Officer: Respondent's senior level executive responsible for establishing and maintaining Respondent's information assets and technologies and ensuring the information systems, assets, and technologies are adequately secure; also referred to as the Information Security Officer.

Clarifications: Clarifications consist of the clarification questions posed by ERS based on Proposal review and/or Finalist evaluations as well as Respondent's clarification responses to those questions; mutually agreed Clarifications of the Contract and RFP terms and conditions are attached to the executed Contract as Exhibit C.

COB: Coordination of Benefits.

COBRA: The Consolidated Omnibus Budget Reconciliation Act of 1985, as amended.

Consumer Directed HealthSelectSM: A statewide plan, consisting of a self-funded, high deductible health plan with a health savings account, offered through the GBP and administered by ERS and qualified carriers or administering firms.

Contract: The agreement between ERS and the TPA which includes, but is not limited to, the RFP, Proposal and all of the exhibits and appendices thereto.

Contractual Agreements: Collectively the contractual documents found respectively at Appendices B, C, D and F: the Contractual Agreement, Business Association Agreement, Data Security and Breach Notification Agreement, and Performance Guarantees.

Contract Term: The term of the Contract begins upon execution of the Contract by ERS and extends through August 31, 2023.

CPI-U: Consumer Price Index for All Urban Consumers.

CPT or Current Procedural Terminology: A medical code set that is used to report medical, surgical, and diagnostic procedures and services.

CSR: Customer service representative.

CT: Central Time; also includes Central Daylight Savings Time when applicable.

Customer Service Team: Respondent's staff trained to manage GBP-related questions and provide for resolution of complaints, clarifications, and escalated issues, and to assist in claim submissions.

DAT files: Electronic files that use the .DAT extension.

DDA or Demand Deposit Account: A demand deposit account is an account from which deposited funds can be withdrawn at any time.

Deviation: A proposed deviation from a requirement contained in the RFP or the Contractual Agreements.

Disease/Condition Management Services: Those services established to assist an individual in managing a disease or other chronic health condition including, but not limited to, heart disease, diabetes, respiratory illness, end-stage renal disease, HIV, or AIDS.

DSBNA: Data Security and Breach Notification Agreement, Appendix D of the RFP.

EOB: Explanation of Benefits.

ERISA: The Employee Retirement Income Security Act of 1974, as amended.

ESBD or Electronic State Business Daily: The electronic marketplace where State bid opportunities over \$25,000 are posted, located at esbd.cpa.state.tx.us. ERS posts notice of RFP publication on ESBD as well as notice of any addendum to the RFP.

ESBD Notice: A notice published on ESBD related to this solicitation.

ERS: The Employees Retirement System of Texas.

ERS' Server: The server in which ERS posts solicitations and documents related to such solicitations, such as addenda and answers to questions. ERS' Server is located at <https://ftpsrvr.ers.state.tx.us>.

ERS Project Manager: The project manager assigned by ERS to oversee implementation and other project management duties associated with the RFP and Contract.

Experience Data: The confidential data contained in Appendix J of the RFP.

Fall Enrollment or FE: The enrollment period that takes place in the fall, typically during the month of November, during which Medicare-eligible retirees can enroll or make changes to their GBP benefits elections.

Fedwire: A real-time gross settlement system of central bank money used in the United States by its Federal Reserve Banks to settle final payments in U.S. dollars electronically between its member institutions.

Finalists: The top ranked Respondents based on the results from the Preliminary Review and Proposal Review phases.

Fiscal Year or FY: The Fiscal Year begins annually on September 1 and ends on August 31 of the following year.

GBP: The Texas Employees Group Benefits Program as provided under Chapter 1551 of the Texas Insurance Code.

GPG: A command line tool allows for encryption and signing of data and communications that includes a key management system as well as access modules for all kinds of public key directories.

HCMI or Health Care Management Incentive: The incentive for the TPA's efficient and cost-effective management of health care provided to in-area Participants as set out in Article VIII of the RFP.

HDHP: The high deductible health plan that is part of Consumer Directed HealthSelect.

HealthSelect: HealthSelectSM of Texas, the statewide health benefit plan self-funded by the Employees Life, Accident and Health Insurance and Benefits Fund, as administered by ERS and a qualified carrier or administering firm. It includes both in-area and out-of-area POS plans.

HIPAA: 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), as amended.

HMO: Health maintenance organization.

HSA or Health Savings Account: A tax-exempt account with a qualified custodian or trustee (bank) to pay or reimburse certain medical expenses for qualified individuals participating in a high deductible health plan.

HSA Administrator: The administrator for the HDHP Participants' HSAs.

HTTP: Hypertext Transfer Protocol.

HTTPS or Hypertext Transport Protocol Secure: The use of Secure Socket Layer or Transport Layer Security as a sublayer under regular HTTP application layering.

HUB: A Historically Underutilized Business, as defined in Texas Government Code, Chapter 2161, Subchapter F.

ID: A Member's unique employee identification number.

Implementation Team: Respondent's staff that is fully devoted to implementation of the Plans upon selection of the TPA by the Board and being awarded the Contract.

Implementation Project Manager: The person responsible for managing Respondent's Implementation Team and for implementation, coordination, and maintenance of the business relationship and continuity pertaining to all business matters in support of the Contract during the Implementation Period.

Implementation Period: The period of time beginning with ERS' execution of the Contract through the date on which Respondent assumes full responsibility for provision of the Services (as defined in the Contract).

Information Security Policy: Respondent's policies and/or procedures that outline its information security program.

IRO or Independent Review Organization: An entity that performs independent external reviews of adverse benefit determinations and final internal adverse benefit determinations in accordance with the requirements of the ACA.

Information Technology: The study or use of systems (computers and telecommunications) for storing, retrieving, and sending information.

Internet Availability Rate: The percentage of available hours that Respondent's GBP-specific Internet site is operational, excluding scheduled and pre-approved maintenance time, measured on a Fiscal Year basis.

IRC: Internal Revenue Code of 1986, as amended.

IRS: Internal Revenue Service.

IVR: Interactive Voice Response system.

Marketing Guidelines for GBP and ERS Vendors: Marketing guidelines found in the *ERS Editorial Style Guide & Usage Manual* located at: http://www.ers.state.tx.us/ERS_Guidelines/.

Members: For purposes of this RFP, a Member is a Participant who is an employee, retiree or other person eligible to participate in the GBP as an employee, retiree, or other person eligible to participate in the GBP as provided under the Act and who is not a dependent.

MBPD or Master Benefit Plan Document: A document containing the description of the health benefits available to eligible Participants, including information regarding who is eligible, services that are covered, services that are not covered, how benefits are paid, and the rights and responsibilities of Participants under the associated health plan. Current copies of the MBPDs for the HealthSelect POS plans are located at: <http://healthselectoftexas.welcometouhc.com/assets/pdf/HS%20In-Area%201-2016%20MBPD%20FINAL.pdf>.

Minimum Requirements: The requirements specified in Section V.A. of the RFP.

NAIC: National Association of Insurance Commissioners.

NCQA: National Committee for Quality Assurance.

Nondisclosure Agreement: The Confidentiality and Nondisclosure Agreement attached as Appendix K to the RFP.

Participants: Individuals eligible under applicable law to receive health benefits, life insurance and other optional benefits under the GBP. Participants include Members and their dependents.

Patient-Centered Medical Home or PCMH: Integrated multi-specialty provider team model generally focused on wellness, advanced technology uses, evidence-based medicine and expanded hours, for which shared savings are received by provider groups when quality standards and cost trends are met.

PBM or Pharmacy Benefit Manager: The pharmacy benefit manager selected by ERS to administer the HealthSelect of Texas Prescription Drug Program.

PCP: Primary Care Physician, including the following physicians if used as a PCP: family practice, general practice, internal medicine, pediatrician, and OB/GYN.

Performance Guarantees: The performance standards guaranteed by Respondent attached as Appendix F to the RFP.

PGP: A data encryption and decryption computer program that provides cryptographic privacy and authentication for data communication.

PIA: Texas Public Information Act, Chapter 552 of the Texas Government Code, as amended.

Plans: Collectively, HealthSelect and the HDHP. References to the "Plans" will include both HealthSelect and the HDHP, unless otherwise specified.

PMPM: Per Member Per Month.

POS: A Point-Of-Service health benefit plan.

PPO: Preferred Provider Organization.

Proposal: The document prepared and submitted by Respondent that is responsive to the RFP.

Protected Materials: Patents, trademarks, copyrights and other intellectual property embodied in the version of Respondent's Proposal.

QLE: A Qualifying Life Event, as specified in Section 81.7 of the Act.

Qualified Public Depository: Bank or savings association that has been designated by ERS and the State to accept deposits.

RFP: This Request for Proposal to Provide Third-Party Administrative Services for HealthSelectSM of Texas, including a High Deductible Health Plan, under the Texas Employees Group Benefits Program, RFP No. 327-94807-160623.

Respondent: Any qualified third-party administrator submitting a Proposal in response to this RFP. For purposes of the Contract, including the RFP, Respondent necessarily includes Respondent, its affiliates, subsidiaries, joint venturers, representatives, officers, directors, principals, partners, employees, agents, assigns, and any subcontractors and independent contractors.

SBC: Summary of Benefits and Coverage.

Schedule of Benefits: The current HealthSelect and HDHP Schedule of Benefits are attached in Appendix M of this RFP.

Section 508: Section 508 of the Rehabilitation Act of 1998 (29 U.S.C. 794d), as amended by the Workforce Investment Act of 1998 (P.L. 105-220), August 7, 1998.

SFTP or Secure File Transfer Protocol: A secure network protocol that provides file transfer and manipulation functionality over any reliable data stream.

Signature Pages: The pages requiring the signature of Respondent's Authorized Representative, which are attached as Appendix A of this RFP.

SOC or Service Organization Control: A series of accounting standards that measure the effectiveness of internal controls over operations.

Specialty Care Facilities: A Specialty Care Facility program is one that specializes in a particular type of program or service and meets certain benchmarks in order to produce excellent outcomes.

SSH or Secure Shell Handling: A UNIX-based command interface and protocol for securely getting access to a remote computer.

SSAE16 or Statement of Standards for Attestation Engagements: A series of accounting standards that measure the effectiveness of internal controls over operations.

SSN: Social Security Number.

State: State of Texas.

State Agencies: State agencies, institutions of higher education and other governmental or quasi-governmental employers within the State whose employees or annuitants are authorized by the Act to participate in the GBP.

Summer Enrollment or SE: The enrollment period that takes place in the summer, typically during the month of July, during which active employees and retirees not eligible for Medicare can enroll in and make changes to their GBP benefits elections.

T.A.C.: Texas Administrative Code.

TC or Technical Consultant: The person who ensures that all ERS system requests and issues are thoroughly analyzed and given priority positioning to ensure prompt resolution.

TCC: Target claim cost as provided in Articles VIII. and IX.

TDI: Texas Department of Insurance.

Terms of Use: Respondent's rules for using Respondent's services, especially with regard to the use of Respondent's website(s) and mobile applications.

TLS or Transport Layer Security: A protocol that ensures privacy between communicating applications and their users on the Internet.

T.I.C.: Texas Insurance Code.

Total Cost: Total Cost based on Financial Requirements and Specifications and Price Proposal, is also referred to in this RFP as Total Cost.

TPA: The entity selected, if any, by the Board as a result of the RFP process to perform the third-party administrative services specified in the RFP.

Trojans: Programs that create a backdoor on a computer that gives malicious users access to the system, possibly allowing confidential or personal information to be compromised.

United States or U.S.: The United States of America.

Uptime Tier III standards; Uptime Tier IV standards: The Uptime Institute is an unbiased advisory organization focused on improving the performance, efficiency, and reliability of business critical infrastructure through innovation, collaboration, and independent certifications, and it sets the standards known as the Uptime Tier III standards and Uptime Tier IV standards.

User ID: The identification number of the person using the system.

VPN or Virtual Private Network: A network that is constructed by using public wires — usually the Internet — to connect to a private network, such as a company's internal network.

WCAG: Web Content Accessibility Guidelines.

Wellness Services: Those services established to promote, encourage and support wellness among Participants.

XML or Extensible Markup Language: A markup language that defines a set of rules for encoding documents in a format which is both human-readable and machine readable.

II. General Instructions

A. Background

A.1. ERS is a constitutional trust fund established as mandated by Article XVI, Section 67, Texas Constitution, and further organized pursuant to Subtitle B, Title 8, Texas Government Code, as well as 34 T.A.C., Sections 61.1, *et seq.* ERS administers a retirement and disability pension plan for Members. 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, or GBP, which includes health benefits, life insurance and other optional benefits, for the benefit of Participants.

B. Request for Proposal Summary

B.1. **Introduction and TPA Service Period.** ERS is soliciting Proposals from Respondents to provide health care administration (claims processing, network management and utilization review), benefits and services for HealthSelect and Consumer Directed HealthSelect under the GBP for the following:

- (a) a self-funded, managed care POS health plan; and
- (b) a self-funded HDHP using a PPO platform.

B.1.a. During the Contract Term, the provision of third-party administrative services is anticipated to begin on or around September 1, 2017 and extend through August 31, 2023 unless terminated, renewed or extended as provided for in the Contract.

B.2. **Definitions.** Respondent shall refer to Article I, Definitions, for a list of definitions applicable to certain terms used in the RFP.

C. Schedule of RFP Process

C.1. The RFP process is scheduled to be conducted in accordance with the following schedule. ERS reserves the right to change any deadlines provided in this RFP, including those specifically provided below, at any time.

June 23, 2016		Publication of RFP on ERS' Server, with notice posted to ESBD.
From the time the RFP is published through July 6, 2016		ERS will accept questions from prospective Respondents regarding the RFP.
July 6, 2016	4:00 p.m. (CT)	Submission deadline for all email RFP questions.
July 14, 2016	5:00 p.m. (CT)	ERS will complete the posting of all relevant RFP Questions and Answers to ERS' Server.
August 11, 2016	10:00 a.m. (CT)	Proposal submission deadline
TBD		Site Visits, Face-to-Face Interview and Best and Final Offer Submission, if applicable.

On or After December 2016		TPA Selection
Upon Contract Execution		Contract Term begins; begin implementation of third-party administrative services
September 1, 2017		Begin third-party administration of Plans

D. General Information

- D.1. **Agent of Record.** ERS shall not designate an agent of record or any other such company employee or commissioned representative to act on behalf of either ERS or Respondent. Any requests for ERS to provide such designation shall be rejected.
- D.2. **Vendor Performance Tracking System.** In accordance with Section 2155.089, Texas Government Code, ERS may use the Texas Comptroller's Vendor Performance Tracking System to report vendor performance after the Contract is completed or otherwise terminated.
- D.3. **Prohibited Communications.** Other than as allowed for in this RFP, all Respondents (including prospective Respondents) and their representatives shall not contact ERS employees or officials regarding any aspect of the RFP, including by telephone, email or in person, throughout the RFP process, from RFP posting to Contract award. All communications must be directed to ivendorquestions@ers.state.tx.us. Failure of a Respondent or its representatives to follow this process may be grounds for disqualification.
- D.4. **RFP and RFP Addenda Postings.** Respondent is responsible for reviewing and responding to the RFP materials available on ERS' Server. ERS' Server provides interested Respondents with an electronic version of the RFP, its attachments and responses to questions received by ERS. Notice of the RFP was also posted on ESBD. To access the RFP on ERS' Server, Respondent shall email a request to: ivendorquestions@ers.state.tx.us. In the request, Respondent must reference the "TPA RFP" in the subject line. Upon receipt of Respondent's request, a User ID and password will be provided that will permit Respondent to access the RFP. It is Respondent's responsibility to check ERS' Server.
- D.4.a. In the event it becomes necessary, at ERS' discretion, to revise this RFP, or if ERS determines that any additional information is needed to clarify the provisions of this RFP, this information will be posted on ERS' Server in the form of an Addendum. ERS will also publish notice of such posting on ESBD. Respondent should check ERS' Server and the ESBD frequently for updates. Respondent is required to acknowledge each Addendum on the appropriate signature page (See Appendix A).
- D.5. **RFP Questions.** Email questions are allowed during the time period stated in the schedule above. RFP questions should be submitted to: ivendorquestions@ers.state.tx.us with the subject line: "TPA RFP." Emails without this notation in the subject line may not receive a response. **Upon receipt of Respondent's email, ERS will send an acknowledgement to Respondent that its question has been received.** However, if an acknowledgment is not received, Respondent is solely responsible for verifying ERS' receipt of its questions by sending a follow-up email with the same subject line as above. ERS reserves the right not to respond to questions received after the stated submission deadline.
- D.5.a. Please note that this question and answer process is not designed to facilitate contract negotiations. Questions related to Appendices B, C, D, and F will neither be answered nor posted. Contractual negotiations are addressed in a separate process. See Section VI.A.2.a. of the RFP regarding contractual deviations for additional information.
- D.6. **Doing Business with ERS.** General information regarding doing business with ERS can be found by accessing the following link to ERS' website: <http://www.ers.state.tx.us/vendors/>.

- D.7. **Enrollment and Claims Data.** Refer to the Experience Data attached hereto as Appendix J. Appendix J presents historical enrollment, financial, utilization and cost data from the GBP's health plans.
- D.7.a. At the time the RFP is published, no statistical data on the HDHP is available as the HDHP is a new plan option and will not be effective until September 1, 2016.
- D.7.b. To assist in the analysis of this information, electronic information and instructions for reading the files are included in Appendix J. In addition to the exhibits, Appendix J contains (i) a GBP enrollment file, (ii) a file containing recent HealthSelect claims to be re-priced by Respondent as described in Article IX of this RFP and (iii) a file containing five provider network-related exhibits which are to be completed by Respondent as described in Article IX of this RFP. Exhibit R of Appendix J includes additional information regarding the electronic files.
- D.8. **Confidentiality and Nondisclosure Agreement.** The Experience Data contained in Appendix J is confidential. To obtain the Experience Data, ERS will require Respondent to execute a Nondisclosure Agreement. The Nondisclosure Agreement is contained in Appendix K, and Respondent's executed Nondisclosure Agreement shall be emailed to ERS at ivendorquestions@ers.state.tx.us. Upon receipt by ERS of an executed Nondisclosure Agreement, ERS will arrange for Respondent to obtain the Experience Data information.

E. Proposal Submission

- E.1. **Proposal Submission Deadline.** All Proposals must be received by ERS no later than 10:00 a.m. CT on August 11, 2016. ERS reserves the right to determine that any Proposal received after the final date and time is nonresponsive.
- E.2. **Content.** All Proposals must address all of the requirements of this RFP. Failure to comply with any such requirements may result in a Proposal being deemed nonresponsive.
- E.3. **Format.** All bid materials shall be packaged collectively in one (1) sealed container. Paper copies of the Proposal shall be submitted in separate loose leaf binders on one-sided 8-1/2 x 11 inch paper in at least 12 point type and shall be tab-indexed corresponding to the sections listed in the Deliverables Checklist in Article XI. Plastic spine-bound or wire bound submittals are highly discouraged. Include only the information requested.
- One (1) printed original labeled "Proposal Original" and three (3) additional printed copies, each labeled "Proposal Duplicate," shall be submitted with all requested supporting documentation. The order of submission shall be in accordance with the RFP Deliverables Checklist in Article XI of this RFP.
 - Two (2) digital copies of the entire Proposal shall be submitted in Word format via CDs or DVDs and labeled **HealthSelect TPA RFP – Proposal Duplicate**.
 - In addition to submitting the Proposal Original and three (3) printed copies and two (2) digital copies on CDs or DVDs as outlined above, Respondent is required to submit the following to ERS in order to protect and prevent inadvertent access to or disclosure of confidential and/or proprietary information:
 - Submit one (1) CD or DVD that contains all information that Respondent deems confidential and/or proprietary;
 - Submit one (1) CD or DVD that contains all information that Respondent deems public; and
 - Submit a paper schedule documenting everything that Respondent deems to be confidential and/or proprietary. See Section II.F.1.b., Public Information Act (Labeling of Confidential and/or Proprietary Information), for more information on this requirement.
 - ERS is not responsible for receipt of any Proposal that is not labeled, packaged or delivered properly. All bid materials shall include complete, properly executed, and detailed supporting documentation as required.
 - Respondent shall mail or deliver its sealed Proposal to ERS at the following address so that it is received by ERS by the submission deadline noted above:

Office of Procurement and Contract Oversight
 Employees Retirement System of Texas
Physical Address: 200 E. 18th Street, Austin, Texas 78701
Mailing Address: P.O. Box 13207, Austin, Texas 78711-3207

- The mailing label for the Proposal shall be clearly marked as: **HealthSelect TPA RFP**.
- Failure to provide the correct number of Proposals and in the format requested may result in Respondent being eliminated from further consideration. All Proposals shall be valid throughout the entire RFP process and any resulting Contract Term.

E.4. **Signature Requirements.** Respondent's Authorized Representative (as reflected on the Incumbency Certificate) shall execute, in *blue ink*, the Signature Pages attached herein within **Appendix A** which is a part of this RFP. The signatures of Respondent's Authorized Representative on the Proposal's signature pages and all other related documents submitted by Respondent reflect Respondent's agreement with the truth and accuracy of all statements, warranties and representations contained in the Proposal and other documents submitted by Respondent. The signatures further reflect Respondent's authorization for ERS to rely on same for all purposes in connection with the RFP/Proposal process.

E.4.a. Each section of the RFP includes statements of fact regarding how ERS expects the Plans to be administered and the Plans' requirements. ERS will presume that Respondent agrees with and will comply with each ERS requirement unless Respondent specifies its deviations therefrom in its Proposal in accordance with the RFP instructions.

F. Public Information Act

F.1. ERS is required to provide access to certain records in accordance with the provisions of the PIA. Respondent is required to make any information pursuant to the RFP and 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.

F.1.a. During the evaluation process, ERS shall make reasonable efforts as allowed by law to maintain Proposals in confidence and shall release Proposals only to personnel involved with the evaluation of the Proposals and implementation of the Contract unless otherwise required by law. However, ERS cannot prevent the disclosure of public documents and may be required by law to release documents that Respondent considers to be confidential and proprietary.

F.1.b. **Labeling of Confidential and/or Proprietary Information.** In order to protect and prevent inadvertent disclosure of confidential information submitted in support of its Proposal, in addition to the CDs or DVDs discussed above (see Section II.E.3.). Respondent shall supply, in good faith and with legally sufficient justification, **a separate schedule of all pages considered by Respondent to contain any confidential and/or proprietary information.** Respondent shall mark its confidential and/or proprietary information each time it submits information to ERS, whether in its initial Proposal or in any supplemental information submitted to ERS. Upon conclusion of the evaluation process, ERS will request Respondent to submit updated and final versions of the following: (a) one (1) CD or DVD that contains ALL information that Respondent deems confidential and/or proprietary; (b) one (1) CD or DVD that contains ALL information that Respondent deems public; and (c) a final paper schedule documenting everything that Respondent deems to be confidential and/or proprietary. By execution of the Signature Pages (attached herein within Appendix A), Respondent warrants and represents that all information that it, in good faith and with legally sufficient justification, considers to be properly excepted from disclosure under the PIA will be clearly labeled as confidential upon submission to ERS. Respondent's signature further reflects that all documents submitted and not marked "confidential" shall be considered to be public information. By submitting a Proposal, Respondent acknowledges and agrees that all information submitted by Respondent in response to this RFP that is not clearly marked as "confidential" information is public information and may be fully disclosed by ERS without liability and without prior notice to or consent of Respondent or any of its subcontractors or agents.

F.1.c. Respondent further understands and agrees that, upon ERS' receipt of a PIA request for Respondent's information, ERS will provide the requestor the information provided on Respondent's "Public Information" CD or DVD. If Respondent fails to submit its confidential and/or proprietary information as described herein, ERS shall consider all of the information to be public, and it will be released without notification to Respondent upon receipt of a PIA request.

F.1.d. To the extent the public version of Respondent's Proposal contains Protected Materials, Respondent acknowledges that such Protected Materials may be disclosed, publically displayed, published, reproduced and/or distributed by ERS pursuant to the PIA, or as otherwise required by law. Respondent warrants and represents that it owns, or has obtained all necessary permissions with respect to the use of, the Protected Materials and hereby grants ERS an irrevocable,

perpetual, non-exclusive, royalty-free license to display, publish, reproduce, distribute or otherwise use the Protected Materials solely for the purpose of compliance with applicable laws. **Respondent shall indemnify and hold harmless ERS, its trustees, officers, directors, employees, and contractors, as well as any trust managed by ERS, from and against any claim of infringement of the Protected Materials resulting from ERS' use of the Protected Materials as set forth herein.**

- F.1.e. Upon receipt of a PIA request, ERS will submit only the information contained on Respondent's "Confidential and Proprietary" CD or DVD to the Texas Attorney General to issue a ruling on whether the information is excepted from public disclosure. In addition, ERS will provide a requestor with a copy of Respondent's "Public Information" CD or DVD upon request.
- F.1.f. It is Respondent's sole obligation to advocate in good faith and with legally sufficient justification the confidential or proprietary nature of any information it provides to ERS. Respondent acknowledges and agrees that ERS shall have no obligation or duty to advocate the confidentiality of Respondent's material to the Texas Attorney General, to a court, or to any other person or entity. Respondent acknowledges and understands that the Texas Attorney General may nonetheless determine that all or part of the claimed confidential or proprietary information shall be publicly disclosed.
- F.1.g. In addition, Respondent specifically agrees that ERS may release Respondent's information, including alleged confidential or proprietary information, upon request from individual Members for their own information, agencies or committees of the Texas Legislature where needed for legislative purposes, as provided for in the PIA, or to any other person or entity as otherwise required by law.

G. General Provisions

- G.1. **Retention of Proposals.** All Proposals submitted become the sole property of ERS and will be retained in accordance with ERS' records retention requirements (currently seven years following the termination of a contract).
- G.2. **Notification of Withdrawal of Proposal.** A Proposal may be withdrawn prior to the date and time specified for Proposal submission with a formal written notice signed by an Authorized Representative of Respondent and accepted by ERS.
- G.3. **Reserved Rights.** ERS retains the right to select the Respondent that is in the best interests of ERS, the GBP, its Participants, and the State. By statute, ERS is not required to select the lowest bid but shall take into consideration other relevant criteria as further described in Article III of this RFP, Proposal Evaluation Criteria.
 - G.3.a. ERS reserves the right to rebid the solicitation if deemed by ERS to be in the best interests of ERS, the GBP, its Participants and/or the State. ERS is under no legal obligation to execute a Contract on the basis of this RFP.
 - G.3.b. ERS reserves the right to waive any immaterial deviation or defect in a Proposal. ERS' waiver of an immaterial deviation or defect shall in no way modify the RFP documents or excuse Respondent from full compliance with the RFP requirements.
 - G.3.c. ERS reserves the right to unilaterally revise any or all RFP or Contractual Agreement provisions at any time prior to ERS' execution of a Contract when ERS deems it to be in the best interests of ERS, the GBP, its Participants, and/or the State.
- G.4. **Costs Incurred for Proposal Preparation.** Respondent understands, agrees and acknowledges that ERS will not pay, nor be liable for, any costs incurred by Respondent in the preparation of a Proposal.
- G.5. **Disclosure of Interested Parties.** The Contract is subject to Section 2252.908 of the Texas Government Code. As such, Respondents that are selected as Finalists will be required to complete Form 1295 on the Texas Ethics Commission's electronic system located at https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm. Respondent will be notified by ERS if completion of Form 1295 is required.
- G.6. **Posting of Contract.** The Contract is subject to Section 2261.253 of the Texas Government Code. In accordance with this section, ERS will post on its external website the executed

Contract, including applicable non-confidential exhibits . The executed Contract will remain posted on ERS' external website until the Contract expires or is completed.

- G.7. **Board Rules.** The Board has sole rulemaking authority in connection with the GBP pursuant to Chapter 1551, T.I.C. In the event of a conflict of laws or regulations, ERS' interpretation of the applicability and controlling status of the law or rules shall control. The Board Rules are located at Title 34, Part 4, T.A.C. The Board Rules, including any amendments thereto, are part of the Contract for all purposes as if they were contained verbatim therein. Respondent agrees to comply with all such Board Rules, and all applicable laws and regulations, both state and federal, in connection with the RFP process and performance of all services, responsibilities and obligations related to the Contract.
- G.8. **Benefit Determination.** The determination of the amount of benefits to which any Participant is entitled shall initially rest with the TPA. However, the final determination of the extent of the benefit to which any Participant is entitled shall be made solely and exclusively by the Board or its designee in accordance with Chapter 1551, T.I.C., as amended, except as qualified or limited by applicable federal law.
- G.9. **The Employee Retirement Income Security Act of 1974.** As a State governmental plan, the GBP is not subject to ERISA; however, Respondent shall assume the same fiduciary responsibilities that apply to ERISA plan administrators for all claims processing and payments, adjudication and appeals.
- G.10. **Changes Required by Statute, Regulation, Court Orders, or Program Funding.** ERS acknowledges that certain factors may change conditions with regard to the TPA's benefits and administration. Some factors that may affect Respondent include, but are not limited to:
- Changes in federal and state statutes, regulations, and new court decisions and administrative rulings;
 - Changes in anticipated funding by the Texas Legislature; and
 - Changes in plan design.
- G.10.a. Respondent agrees to make a good faith effort to comply with any additional responsibilities or changes to the Plans imposed as a result of the above factors, and other similar factors that may arise, requiring plan design changes and/or an increase or decrease of Respondent's fees and to cooperate with ERS to effect any such changes and to execute any agreements that may be required as a result. However, should a mandated change materially affect Respondent's obligations under the Contract, ERS reserves the right to negotiate with Respondent regarding any fee increase (or decrease) that may be appropriate under the circumstances, as provided in the Contract.
- G.11. **ERS Actuary.** ERS retains a consulting actuary to advise the Board and ERS' staff and management on insurance and other financial matters related to the GBP, including as specified in Section 1551.210 of the T.I.C.. The consulting actuary also assists and advises the Board on benefit plan designs, application reviews, rating analysis, and certain audit-related activities as described herein. Respondent shall work and cooperate with ERS' consulting actuary as necessary to perform the requirements of the RFP and Contract.
- G.12. **Consolidated Omnibus Budget Reconciliation Act, Public Law 99-272.** Respondent shall comply with the COBRA provisions, Public Law 99-272, and administer the required maximum period of continuation coverage for eligible Participants. The Respondent shall provide the services described herein for COBRA Participants. ERS will manage the notification of COBRA eligibility, enrollment, and collection of premiums.
- G.13. **Calendar and Fiscal Year.** The Calendar Year and Fiscal Year shall be determinative for all Contract reporting requirements.

H. Historically Underutilized Businesses

- H.1. **Historically Underutilized Businesses (HUBs).** In accordance with Texas Government Code, Chapter 2161, Subchapter F and T.A.C., Title 34 Part 1, Chapter 20, Subchapter B, ERS makes a good faith effort to assist HUBs in receiving agency contract awards and expects Respondent to make a good faith effort to use HUBs as subcontractors.
- H.1.a. As appropriate, Respondent shall provide the following information in the submitted Proposal response materials:

- If Respondent is certified as a Texas HUB, provide the TBPC VID/Certification Number.
- If an engagement is awarded and Respondent plans to engage a subcontractor for all or any of the contract services, Respondent shall identify all proposed HUB subcontractors. The required forms with video instructions can be found at the following website:

<http://www.window.state.tx.us/procurement/prog/hub/hub-subcontracting-plan/>

H.1.b. **HUB Subcontracting Plan (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 cancelled checks paid to subcontractors.

III. Proposal Evaluation

A. General Evaluation Information

A.1. Proposals submitted in response to the RFP shall be evaluated and selected on the basis of the evaluation criteria and selection process as outlined in this Article.

B. Preliminary Review

B.1. ERS shall date- and time-stamp each Proposal when received. ERS has chosen not to conduct a public reading of Respondents' names after acceptance of Proposals.

B.2. For the preliminary review, ERS will evaluate the Proposals based on the following evaluation criteria on a pass/fail basis:

- Minimum Requirements; and
- Compliance with the RFP.

B.3. If a Proposal fails either of the above criteria, it will be deemed nonresponsive and ineligible for subsequent phased scoring.

C. Proposal Review

C.1. Proposals that pass the preliminary review will be evaluated as follows:

Evaluation Criteria	Weight
Total Cost based on Financial Requirements and Specifications and Price Proposal	60%
Operational Capabilities and Services	40%

C.2. The Legal Requirements and Regulatory Compliance sections of Respondent's Proposal will be evaluated as follows:

- Contractibility on a pass/fail basis; and
- Responses to the Legal Requirements and Regulatory Compliance Sections VI.B., VI.C., and VI.D. on a pass/fail basis.

These sections may be evaluated during the Proposal Review phase, but, depending on relevant information submitted in the Proposal and the status of any Clarifications and/or contract negotiations, as applicable, these sections may not be finally evaluated until the Finalists Evaluation phase. Please see Sections III.D.1.d. and III.D.1.e. for more information.

C.3. Based on the above criteria, the top-ranked Finalists will move forward to the Finalists Evaluation phase. The scores for the Proposal Review phase will carry forward to the Finalists Evaluation phase. ERS is not obligated to notify Respondents that have not qualified for the Finalists Evaluation phase.

D. Finalists Evaluation

D.1. For each of the Finalists, ERS will perform the following further due diligence:

D.1.a. **Site Visit.** ERS reserves the right to perform site visits at ERS' expense to Respondent's operational center, call center, and/or data center facilities by ERS' designated staff. Respondent will be notified of the site visit dates and will be provided with an agenda for the site visit. The site visit will be scored on a pass/fail basis. Further, new or clarified information gathered may affect Finalists' scores.

D.1.b. **Face-to-Face Interview and Best and Final Offer.** Finalists will be required to attend a face-to-face interview session at an ERS-designated location. ERS may also hold separate in-person meetings with Finalist regarding Financial Requirements and Specifications and/or the Price Proposal, network issues, legal/contractual matters, and/or information technology-related

matters prior to or in conjunction with the face-to-face interview. Each face-to-face interview will include an oral presentation by the Finalist and a question and answer session in which the Finalist will answer questions regarding Finalist's Proposal. Finalist may also be required to provide their BAFO prior to or at this time. Any Respondent selected as a Finalist will receive an email informing them that they have been chosen as a Finalist, which will include the date and time the Finalist interview(s) will be held and the location of any interviews. Each Finalist will receive additional instructions to outline ERS' expectations. When scoring the face-to-face interviews and BAFOs (if relevant), new or clarified information gathered may affect Finalists' scores.

- D.1.c. **Finalist Past Performance.** Finalist's Past Performance will be scored on a pass/fail basis and consists of the following due diligence:
 - D.1.c.i. **Reference Checks.** ERS has the discretion to check any of the references provided at Section IV.C. ERS is not limited to contacting references provided by Respondent, but may also contact other appropriate persons or entities in connection with ERS' due diligence process. If Finalist has performed similar or the same services for ERS in the past ten (10) years, ERS may also rely on its own experience with Finalist as part of this check. While a Finalist's Past Performance will not be scored until the Finalists Evaluation phase, ERS reserves the right to check references during the Proposal Review phase.
 - D.1.c.ii. **Vendor Performance Tracking System.** ERS will review Finalist's vendor performance as reported in the Texas Comptroller's Vendor Performance Tracking System in accordance with Section 2262.055 of the Texas Government Code.
 - D.1.d. **Contractibility.** ERS will only select for award a Finalist that has signed Contractual Agreements acceptable to ERS. Contractibility is scored on a pass/fail basis. A "pass" for Contractibility is based upon a Finalist signing Contractual Agreements acceptable to ERS, either by signing the Contractual Agreements and any amendments provided by ERS during the evaluation process (if applicable) without deviations or with deviations accepted by or negotiated with ERS. Failure to reach agreement on any of the Contractual Agreements may result in a "fail." ERS will not fail a Finalist based solely on the fact that Finalist provided deviations to the Contractual Agreements submitted with the Proposal. As stated above at Section III.C.2, ERS may evaluate Contractibility during the Proposal Review phase or the Finalists Evaluation phase, depending on the relevant information submitted in the Proposal and the status of any Clarifications (defined below) and/or contract negotiations, as applicable. Regardless, ERS, reserves the right to begin Contractibility evaluation (including asking Clarification questions, discussed below at Section III.D.1.f., and negotiating with Respondents) prior to the Finalists Evaluation phase.
 - D.1.e. **Other Legal Requirements and Regulatory Compliance.** Responses to Sections VI.B., VI.C., and VI.D. of Legal Requirements and Regulatory Compliance will be evaluated on a pass/fail basis. As stated above at Section III.C.2, ERS may score these Sections during the Proposal Review phase or Finalists Evaluation phase, depending on relevant information submitted in the Proposal and the status of any Clarifications (defined below) and/or contract negotiations, as applicable. Regardless, ERS reserves the right to begin evaluating these responses (including asking Clarification questions, discussed below at Section III.D.1.f.) prior to the Finalists Evaluation phase.
 - D.1.f. **Clarification Request Process.** As a result of the Proposal Review or any of the due diligence during the Finalists Evaluation, there may be a need to ask follow-up or Clarification questions. ERS may schedule a conference call or an in-person meeting with the Respondent to ensure the Respondent understands the Clarification questions either before or after requesting a written answer in response. The responses will be incorporated into the review process as Clarifications and may affect the relevant scores and/or be incorporated into any of the Contractual Agreements, as applicable. Mutually agreed Clarifications of the RFP terms and conditions shall be attached to the executed Contract as Exhibit C. ERS reserves the right to ask Clarification questions during any phase of the evaluation.

E. Contractor Selection

- E.1. After Finalists Evaluation is completed, a recommendation will be made to the Board. The Board will receive information about the RFP review and evaluation process, consider the information presented, and then may award the Contract to the chosen Respondent during a public meeting, which is anticipated to take place in December of 2016. Information regarding Board meetings,

including how the public can access Board presentations, may be found on ERS' website at www.ers.state.tx.us.

IV. Organizational Information

A. Instructions

- A.1. In order for Respondent's Proposal to be considered and accepted, Respondent must provide answers to all of the questions presented in the RFP. Each question must be answered specifically and in detail. Reference should not be made to a prior response, or to another document, unless the question specifically provides that option. Be sure to review all sections of this RFP and each of the Contractual Agreements before responding to any of the questions to ensure that you have a complete understanding of all of ERS' requirements. Each section of the RFP includes statements of fact regarding how ERS expects the Plans to be administered and the Plans' requirements. ERS will presume that Respondent agrees with and will comply with each ERS requirement unless Respondent specifies its deviations therefrom in its Proposal in accordance with the RFP instructions.
- A.2. Answers to the questions included in this RFP should be detailed enough to satisfactorily explain Respondent's position on each particular issue.
- A.3. Respondent acknowledges, understands and agrees that its responses to the provisions of the RFP are material and are being relied on by ERS in connection with the selection of the TPA to provide the services as specified in the RFP.
- A.4. It is important that the Respondent carefully define any key words or phrases used in answering these questions. Terms defined in the Definitions should be used as defined therein.
- A.5. Each response must be preceded by the question to which the response pertains.
- A.6. If Respondent proposes more than one entity to contract with ERS, Respondent must provide answers for each entity. Answers will apply to all contracting entities unless otherwise specified by Respondent in its Proposal.
- A.7. Respondent understands and accepts that it is bound by and must comply with various statutory, regulatory and fiduciary duties and responsibilities and, therefore, Respondent expressly agrees that it shall accept and abide by such duties and responsibilities when acting on behalf of ERS pursuant to the Contract. Respondent shall administer the Plans in a manner consistent with the requirements of the Contract, applicable laws and regulations, both state and federal, the Board Rules, and at the direction of the Board, ERS' Executive Director, and ERS' staff.
- A.8. The only fees, compensation or expenses that the TPA will receive in connection with the Contract and the administration of the Plans will be from the Administrative Fees agreed to by ERS. Therefore, Respondent shall recover any costs related to the Contract requirements only through Respondent's Administrative Fee as presented in its response to Section IX.B.

B. General Information

- B.1. **Contracting Entity.** Provide the following information for the entity or entities that will be contracting with ERS. This must include the entity holding any license required to provide the services.

Entity full legal name:	
Physical address of principal place of business:	
Mailing address (if different):	
Telephone number:	
Website Address:	

- B.1.a. What will be the entity name on the W-9 Request for Taxpayer identification Number and Certification form?
- B.1.a.i. What will be the entity name on the Demand Deposit Account and the bank where ERS will submit the Administrative Fee?

B.1.b. **Organizational Charts.** Provide the following organizational charts:

- A company-wide organizational chart that identifies any department that will have responsibility for the services provided under the Plans;
- An organizational chart for the Information Technology department. If Respondent outsources its information technology functionality to third-party vendors, state the name and address of any such vendor and specify the exact functions outsourced;
- An organizational-wide chart that identifies any affiliate, subsidiary, or other related entity that will be involved in the provision of the services provided under the Plans (including any entity to which fees will be sent); and
- An organizational chart containing the titles of all staff members performing any function related to the services provided under the Plans.

B.1.c. **Authorized Representative(s).** Provide the following information for Respondent's Authorized Representative(s). This shall include the individuals listed on the Incumbency Certificate discussed at Section VI.A.2.

Name:	
Title:	
Mailing address:	
Email address:	
Telephone number	
Facsimile number:	

B.1.d. **Organizational Contacts.** Provide the following information for Respondent's personnel:

- Primary contact for purposes of this RFP (including the individual responsible for preparing Respondent's Clarifications);
- Person responsible for the preparation of the Price Proposal;
- Account Management Team Lead;
- Chief Security Officer;
- HIPAA Privacy Officer; and
- Legal Counsel for purposes of the RFP, for general Contract performance, and for representing Respondent at administrative hearings, litigation and subrogation.

Name:	
Title:	
Mailing address:	
Email address:	
Telephone number	
Facsimile number:	

B.2. **Site Visit Information.** In the event that Respondent is selected as a Finalist, ERS may request a site visit to Respondent's operational center, call center, and/or data center facilities. To better assist ERS with future travel arrangements, Respondent shall provide the following information for the operational and information systems facilities:

Physical address of the operational headquarters facility:	
Physical address of the call center facility:	
City and state of the information systems data center facility (the facility were ERS' data will be housed):	

B.3. **Previous State Employment.** If any of the individuals who will perform the services specified in this RFP or in the Contract have been employed by ERS at any time during the two (2) years preceding the Proposal submission deadline or, in the case of a former Executive Director of ERS during the preceding four (4) years, state the following:

Name of individual:	
Nature of previous employment:	

Date of termination:	
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C. References

- C.1. ERS reserves the right to contact any of the entities provided in response to this section when evaluating a Finalist's Past Performance, as discussed in Sections III.D.1.c. – III.D.1.c.i. ERS is not limited to contacting references identified by Respondent, and may also contact other persons or entities ERS deems necessary when conducting its due diligence in connection with the RFP review process.
- C.1.a. Submitting a Proposal officially authorizes ERS to contact all persons or entities, including those provided by Respondent as client references, to discuss the services and other considerations that Respondent has provided for such persons or entities, and also authorizes the persons and entities to provide such information to ERS and acknowledges that Respondent agrees that neither ERS nor any person or entity contacted by ERS shall be liable to Respondent in any respect in connection with such contact. **Therefore, in consideration of ERS' review of Respondent's response to provide services for ERS, Respondent shall hold harmless, defend, indemnify and release ERS, its officers, agents, employees, actuaries, the State and any person or entity contacted by ERS from any and all claims, damages, liability and causes of action in connection with any communication, written or verbal, related to Respondent.**
- C.2. **Top Clients.** Provide a list of Respondent's top five (5) clients based on enrollment for which Respondent provides third-party health administrative services similar to the services required in the RFP. Respondent must have been performing services for these clients for at least two (2) years. For these top five (5) clients, Respondent shall provide the following:
- Company Name:
Address:
Account Primary Contact:
Title:
Email Address:
Telephone Number:
Facsimile Number:
Number of participants enrolled in the plan:
Services Provided for Client:
- C.3. **Relevant Clients.** List all clients that are governmental plans with membership in excess of 100,000, for whom Respondent has provided third-party health administrative services within the past five (5) years. For each client, include the information requested below.
- Company Name:
Address:
Account Primary Contact:
Title:
Email Address:
Telephone Number:
Facsimile Number:
Services Performed for Client:
- C.4. **Client Due Diligence.** Provide the name of every entity that has terminated a contract with Respondent for any reason in the past five (5) years by providing the information below:
- Company Name:
Address:
Account Primary Contact:
Title:
Email Address:
Telephone Number:
Services Performed for Client:
Date contract terminated:
Reason contract terminated:

V. Minimum Requirements

A. Minimum Requirements

- A.1. Respondent must meet all of the following Minimum Requirements. Failure to do so shall result in the rejection of Respondent's Proposal.
 - A.1.a. ERS will not accept deviations to the Minimum Requirements.
 - A.1.b. Respondent shall maintain its principal place of business in the United States.
 - Confirm
 - A.1.b.1. Please provide the principal place of business if different from the address provided at Section IV.B.I.
 - A.1.c. Respondent shall confirm that it holds, and will continue to hold, all required business and professional licenses and/or certifications necessary to provide health care third-party administrative services during the Contract Term.
 - Confirm
 - A.1.c.i. If Respondent is required to maintain any business or professional licenses and/or certifications, please describe any such licenses and/or certifications and submit a copy of each with your Proposal, including Respondent's current Texas third-party administrator's license.
 - A.1.d. Respondent shall confirm that, at the time of Proposal submission, it has been providing administrative, claim processing, network management and utilization review services for a single organization with (i) a participation of at least 100,000 participants, and (ii) organizations with an aggregate enrollment of at least 3,000,000 participants for a minimum of five (5) years.
 - Confirm
 - A.1.e. Respondent shall confirm that, at time of Proposal submission, it has a provider network capable of effectively servicing the Plans' membership (approximately 450,000 participants) in all Texas counties (both urban and rural) without significant access disruption.
 - Confirm
 - A.1.f. Respondent shall confirm that it has a current net worth of at least \$1 billion, can advance up to three (3) days of claim payments totaling approximately \$20 million before being reimbursed by ERS, and has at least \$100 million in cash and cash equivalents available (on average) as demonstrated by audited financial statements or reviewed financial statements as of the close of Respondent's most recent Fiscal Year.
 - Confirm

VI. Legal Requirements and Regulatory Compliance

A. Contractual Matters

- A.1. ERS will evaluate Contractibility based upon Respondent signing Contractual Agreements acceptable to ERS. Contractibility will be evaluated on a pass/fail basis. See Section III.D.1.d. for further information regarding the scoring of Contractibility.
- A.2. **Incumbency Certificate.** Respondent shall execute the Incumbency Certificate attached hereto as Appendix I. The Incumbency Certificate shall list at least two (2) Authorized Representatives.
- A.2.a. **Contractual Agreement, Business Associate Agreement, and Data Security and Breach Notification Agreement.** Respondent must submit an executed Contractual Agreement, BAA and DSBNA, attached as Appendices B, C and D, or deviations to the same. **ERS prefers that the Contractual Agreement, BAA and DSBNA be signed and returned without deviation with the Proposal submission.** However, if Respondent in good faith determines that it does not agree with provisions within the Contractual Agreement, BAA or DSBNA in the forms attached as Appendices B, C and D, Respondent may submit deviations to the terms. If deviations are submitted, they must include specific language rather than vague suggestions that certain provisions require discussion. Such specific language should be shown as redlined changes within the form provided. Any such deviations will be considered by ERS; however, ERS will not be obligated to accept or agree to any such deviations.
- A.2.b. Any Respondent submitting a signed Contractual Agreement, BAA or DSBNA with its Proposal shall have the Contractual Agreement, BAA and DSBNA executed by its Authorized Representative as specified in Section II.E.4. of the RFP.
- A.2.c. Respondent agrees to act in good faith and to cooperate with ERS in the execution of the Contract and all exhibits thereto. ERS specifically reserves the right to revise any or all RFP or Contract provisions set forth at any time prior to ERS' execution of a Contract where ERS deems it to be in the best interests of ERS, the GBP, its Participants and the State.
- A.2.d. On or before the recommendation and approval by the Board, Respondent shall execute Contractual Agreements provided by, and satisfactory to, ERS.
- A.3. **Contract Term and Chronology of Responsibility.** The Contract shall be for a term beginning upon execution of the Contract by ERS and extending through August 31, 2023 unless terminated, renewed or extended as provided therein.
- A.3.a. ERS and Respondent agree and acknowledge that there are duties and obligations specified by the Contract to be performed prior to execution of the Contract and following the Contract Term, and each agrees to perform all such duties and obligations, and all damage provisions included herein and in the Contract shall thereby be in effect. Such prerequisites, duties and obligations include, but are not limited, to the following:
- Selection of the TPA by the Board, which is anticipated to occur at the Board's December 2016 meeting;
 - Execution of the Contract by ERS' Executive Director;
 - Negotiation and execution of the Clarifications, which must be executed by both parties;
 - Any and all activities and services required by Respondent to effectively implement the requirements of the Contract; and
 - Coordination and cooperative work between Respondent and other GBP vendors, as applicable.
- A.4. **Information Security.** Respondent shall comply with the Privacy Act of 1974 as amended by the Computer Matching and Privacy Protection Act of 1988, the Identity Theft Enforcement and Protection Act, Chapter 521, Tex. Bus. & Com. Code, and information security standards as outlined in Tex. Admin. Code Title 1, Part 10, ch. 202. Further, Respondent shall comply with the requirements for handling and use of personal information as more fully outlined in Appendix D, Data Security and Breach Notification Agreement, and Appendix C, Business Associate

Agreement, and use processes to support the secure handling of files. Compliance is required for data handling and transfer (data in transit) and storing data (data at rest). The execution of the DSBNA and BAA will be required prior to final execution of a Contract.

- A.5. **Performance Guarantees.** The Contract will include Performance Guarantees (as attached to the RFP as Appendix F) and other legal remedies to ensure proper administration of the Plans. Performance Guarantees may include, but are not limited to, provisions in Articles I through IX of the RFP. Respondent shall refer to Appendix F for a comprehensive listing of the Performance Guarantees. Respondent may submit deviations to the Performance Guarantees. If deviations are submitted, they must include specific language rather than vague suggestions that certain provisions require discussion. Such specific language should be shown as redlined changes. Any such deviations will be considered by ERS; however, ERS will not be obligated to accept or agree to any such deviations.
- A.5.a. ERS reserves the right to add or modify Performance Guarantees as a result of identifying or developing key processes during the RFP process and Contract Term.
- A.5.b. Respondent shall state the amount placed at risk for the GBP Self-Funded Basic Coverage Program Performance Guarantees, which shall be at a minimum 10% of total annual Administrative Fees or an amount larger highlighting the Respondent's commitment to the GBP.
\$ _____
- Note:** At ERS' discretion, Performance Guarantees will be allocated to the various severity levels based on the total amount at risk. Assessments for any single Fiscal Year will not exceed the total amount at risk.
- A.6. **Terms of Use.** Respondent's Terms of Use shall not apply to ERS, its staff or any GBP Participant, in whole or in part, unless ERS has agreed in writing that the Terms of Use apply.

B. Prohibited Interest

- B.1. Except as a Participant in the GBP, a Board member or employee of ERS may not have a direct or indirect interest in the gains or profits of any Contract executed by ERS pursuant to this RFP, and may not receive any payment or emolument for any service performed for Respondent.
- B.1.a. In the event that a Participant in the GBP, Board member or employee of ERS receives any payment from Respondent for any services performed for Respondent, for being awarded the Contract or for any gains or profits from any Contract executed by ERS pursuant to this RFP, ERS may terminate its relationship with Respondent immediately, and ERS reserves the right to seek any legal, equitable or contractual relief to which it may be entitled. Under such circumstances, Respondent shall complete any outstanding transactions with ERS as soon as possible. In its discretion, ERS may choose not to consider any further proposals from Respondent.
- B.1.b. By submitting its Proposal, Respondent warrants and represents that it does not have, nor shall it permit, any conflicts of interest that would impair its ability to perform the services required by the Contract in the best interests of ERS, the GBP, its Participants and the State. Article 16 of the Contractual Agreement shall have additional requirements in this regard.
- B.1.c. **Notice of Prohibition Against Contracting with Certain Vendors.** This Contract is subject to Section 2261.252(b) of the Texas Government Code. Per Section 2261.252(b), ERS cannot enter into this Contract with a Respondent in which certain ERS employees and officials have a financial interest (as defined by statute). ERS will make the determination of whether any such scenario exists after receipt of Proposals.

C. Legal Services and Litigation

- C.1. Respondent shall provide legal services and litigation support. Legal services and litigation support include, but are not limited to, Respondent assisting and supporting ERS in administrative hearings and court proceedings and providing its own legal representation in administrative hearings, lawsuits, and subrogation-related suits when appropriate. Respondent shall coordinate its legal services and legal support with the ERS' Legal Services division.

- C.2. For the past five (5) years, describe any completed, pending or threatened state or federal litigation, whether civil or criminal, including all suits, actions, or prosecutions, and any state or federal regulatory or other proceedings, investigations, disciplinary actions, violations of the rules of any self-regulatory organization, license revocations and/or governmental inquiries against Respondent (including its officers, directors, parent companies, affiliates, subcontractors and any persons identified by Respondent who will be performing any services required under the RFP and Contract) that resulted in a felony conviction and/or included any allegations of criminal conduct, fraud, corrupt practices, violations of fiduciary duties, and/or intentional torts involving any allegations of moral turpitude by providing the information requested below, as applicable, for each such matter.

Case number: [REDACTED]
Date filed: [REDACTED]
Full style of matter: [REDACTED]
Court: [REDACTED]
County, District and State: [REDACTED]
State or Federal Regulatory Body, Attorney General or other law enforcement or applicable governmental body: [REDACTED]
Brief summary of the dispute: [REDACTED]
Current status: [REDACTED]
Resolution: [REDACTED]

Respondent shall not refer ERS to any third-party websites or other sources in order for ERS to obtain this information.

- C.3. Respondent agrees that it shall notify ERS whenever Respondent becomes involved in litigation that directly or indirectly involves the Plans and/or the Participants.

- C.4. Provide a schedule and describe in detail previous contract implementation breakdowns, performance assessments, contract disputes resulting in suit or settlement and/or contract breaches for the **past five (5) years** (if any) by Respondent, and discuss all measures Respondent took to rectify the situation or remedy the breach. Please separate by governmental and non-governmental clients indicating the reason for the assessment and the amount paid. **List in most recent chronological order.**

Governmental: [REDACTED]
Non-governmental: [REDACTED]
Action taken to resolve issue: [REDACTED]
Assessment amount paid: [REDACTED]

- C.5. Does Respondent have any pending agreements, negotiations, and/or offers to merge or sell Respondent's organization? This should include any joint ventures or other financial arrangements regarding a pending change in ownership of Respondent's organization that could affect the services described in Respondent's Proposal or affect Respondent's organizational financial liability to meet its obligations under a Contract with ERS.

Yes No

If the answer to this question is "Yes," describe. [REDACTED]

- C.6. Does Respondent have any obligation or arrangement to purchase another firm that would involve substantial commitment of assets or capital?

Yes No

If the answer to this question is "Yes," describe, including an outline of the anticipated timelines. [REDACTED]

D. Regulatory Compliance

- D.1. As a business associate of ERS, Respondent agrees that it shall comply with all privacy and security protections as provided in Tex. Health & Safety Code Ann. Chapter 181 (West Supp. 2015) and in HIPAA.

- D.1.a. Describe in detail Respondent's policies, procedures and/or systems used to ensure compliance with HIPAA. [REDACTED]
- D.1.b. Provide a full description of any HIPAA violations alleged against Respondent during the past five (5) years. For each HIPAA violation, Respondent's description shall include, but not be limited to:

The identity of the entity that made the complaint.	[REDACTED]
The date the complaint was made.	[REDACTED]
A description of the complaint.	[REDACTED]
The date the complaint was resolved.	[REDACTED]
Any fines or penalties assessed against Respondent.	[REDACTED]
The regulatory body that assessed any such claim.	[REDACTED]
How the complaint was resolved.	[REDACTED]

- D.1.c. Provide a description of any HIPAA breach involving notification to the affected individual during the past five (5) years. These may be summarized, but should give ERS a clear understanding of the number of breaches, the number or affected participants per breach, the types of actions that led to the breaches, and any mitigation completed by Respondent to prevent such breaches in the future. [REDACTED]
- D.1.d. For the five (5) year period preceding the Proposal, provide a brief description of any violations alleged against Respondent with regard to any state or federal privacy laws and/or regulations. [REDACTED]
- D.1.e. Respondent agrees that it is and shall stay in compliance with the requirements of all state and federal privacy rules and regulations.
- D.2. Respondent warrants and represents that it is not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from contracting with any federal, state or local department or agency.
- D.3. Respondent must be authorized to do business in Texas and be in good standing in the state in which it was incorporated or formed.
- D.3.a. Provide Respondent's Texas Franchise Tax Account Status report and, if not incorporated or formed in Texas, evidence of good standing in its jurisdiction of incorporation or formation.
- D.3.b. Respondent will provide the following information:

State in which Respondent incorporated or formed:	[REDACTED]
Year in which Respondent incorporated or formed:	[REDACTED]
Year in which Respondent became authorized to do business in Texas, if Texas is not its jurisdiction of incorporation or formation:	[REDACTED]
Federal Identification Number:	[REDACTED]
Texas Identification Number:	[REDACTED]

Respondent will be required to submit an Application for Texas Identification Number should it be awarded the Contract if it doesn't already have one. That application may be obtained at:

<http://www.window.state.tx.us/taxinfo/taxforms/ap-152.pdf>

- D.3.c. Has Respondent ever had its license to conduct business in any state revoked, cancelled, suspended or forfeited? Yes No
- If yes, explain. [REDACTED]

VII. Scope of Work

A. Instructions

- A.1. Respondent shall provide true and correct answers to all of the questions in this RFP. Each question shall be answered specifically and should be detailed enough to satisfactorily explain Respondent's position on each particular issue. It is Respondent's responsibility to respond to these questions in such a way that ERS has a full and complete understanding of Respondent's intent. **It is important that Respondent carefully define any key words or phrases used in answering these questions that are not otherwise defined in the Contractual Agreements or the RFP.** Respondent's Proposal shall use the terms defined in the Contractual Agreements and the RFP only as they are so defined.
- A.2. References should not be made to a prior response, or to another document, unless the question involved specifically provides such an option.
- A.3. Respondent acknowledges, understands and agrees that its responses to these questions and all other provisions of the RFP are material and are being relied on by ERS in connection with the selection of a Respondent to provide the services, benefits, equipment, coverages, supplies, and products as specified in the RFP.
- A.4. Deviations from the Scope of Work, which are strongly discouraged, must be specifically identified in the appropriate section in order to be considered. Deviations may affect the relevant scored items. ERS shall interpret any lack of deviation as Respondent's full agreement to the provisions of the RFP requirements and Contractual Agreements unless specifically and unequivocally stated in detail. Any deviations identified are for ERS' consideration and may be the basis of negotiations with ERS. However, ERS is not obligated to accept or agree to any such deviations. If ERS accepts the proposed deviations, ERS will convey this acceptance in writing to Respondent and the approved deviations will become part of the Contract.

Note: If Respondent considers any of the requested information to be confidential and/or proprietary, Respondent shall place them on the separate schedule and also place them on Respondent's confidential and proprietary CD/DVD as required in Sections II.E.3. and II.F.1.b. However, Respondent shall provide the requested documents for appropriate evaluation of Respondent's Proposal.
- A.5. Confirm Respondent understands these Instructions and Respondent's Proposal comports with these Instructions.

- Confirm
- Unable to Confirm; Respondent shall provide a detailed explanation.

B. Plan Structure and Administration

B.1. Eligibility

- B.1.a. Any determination or interpretation of eligibility and effective dates shall be made solely by ERS, and may include retroactive participation and effective date determinations due to such occurrences as administrative error, reinstatement of a terminated employee who has been reinstated due to legal or administrative action, and other situations deemed appropriate by ERS. ERS' Executive Director has exclusive authority by law to determine all questions relating to enrollment and eligibility, and the payment of claims arising from plans or coverage provided under the GBP.
- B.1.b. **Termination.** A Participants' coverage terminates under those conditions specified in the MBPD, Board Rules, and state and federal laws and regulations.

B.2. Enrollment Period

- B.2.a. ERS conducts two (2) enrollment periods on an annual basis -- Summer Enrollment ("SE") and Fall Enrollment ("FE").

- B.2.b. The SE period for active employees and retirees not eligible for Medicare to make changes to their GBP benefits elections will be held typically during the month of July. The effective date for these election changes is September 1st. Respondent shall have its enrollment materials and any other necessary documents prepared for SE no later than the first week in May of each year or as otherwise directed by ERS.
- B.2.c. During each SE, Members may elect coverage through one of the Plans or an available HMO, if applicable. Members may also add or drop dependents from their coverage. Respondent shall be required to administer the Plans in accordance with all state and federal laws and regulations that ERS determines are applicable to the GBP.
- B.2.d. The FE period for Medicare-eligible retirees to make changes to their GBP benefits elections will be held typically during the month of November. The effective date for these changes is January 1st. Respondent shall have its enrollment materials and any other necessary documentation prepared for FE no later than the first week of September of each year or as otherwise directed by ERS.
- B.2.e. **Fair/Event Schedule.** ERS has a varied number of fairs each year. The schedule for FY2017 has not yet been developed. For FY2016, ERS has scheduled 35 SE fairs over a five (5) week period, and 25 FE fairs over a four (4) week period. With the addition of Consumer Directed HealthSelect, ERS may require more enrollment fairs.
- B.2.f. There are a number of obligations associated with SE/FE that Respondent shall be required to perform such as having a dedicated call center set up to take enrollment questions during the applicable enrollment period and developing custom communication materials.

B.3. Participant Transfers

- B.3.a. Participants who are enrolled in a HMO that is no longer able or willing to provide services or whose contract with ERS is terminated shall be allowed to enroll in (a) another HMO, (b) POS Plan, or (c) the HDHP. The newly selected plan, however, shall not have liability for any claims incurred prior to the effective date of any Participant's enrollment in its plan.
- B.3.b. A Participant enrolled in an HMO who moves outside that HMO service area may enroll in any HMO available in that area, or enroll in one of the Plans. Request for a plan change must occur within thirty-one (31) days of the date of the change in the location of residence or employment or as further defined by a QLE. If ERS determines there is no HMO available in the area, the Participant shall select to enroll in one of the Plans.

B.4. GBP Self-Funded Basic Coverage Program

- B.4.a. The Contract shall involve no insurance or reinsurance. Respondent's services shall, at minimum, include, but not be limited to: claim processing, administrative services, network management, and utilization review services as described in this RFP.
- B.4.b. Currently, the State pays 100 percent of the contribution rate for eligible Members and 50 percent of the contributions for eligible dependents enrolled in the GBP. Participants share costs through copayments, co-insurance and in some instances, deductibles.
- B.4.c. Respondent shall submit a Proposal to administer **both** the POS and HDHP Plans.
- B.4.d. Once established by ERS, Respondent shall not deviate from the Schedule of Benefits plan design unless Respondent obtains prior written approval by ERS' Director of Benefit Contracts or designee.
- B.4.e. **Schedule of Benefits.** Appendix M contains the description of the current HealthSelect Schedule of Benefits Respondent must administer for the HealthSelect POS plans and the Consumer Directed HealthSelect.
- B.4.f. It is ERS' intent to abide by applicable controlling federal laws and regulations as determined by ERS. Respondent's Proposal shall specify what it believes applicable law and regulations require regarding Participant versus the Plan cost allocation in connection with the benefit design.

- B.4.g. The HDHP is a self-funded PPO Plan and a component of Consumer Directed HealthSelect to be established effective September 1, 2016. Each employee and non-Medicare eligible retiree who is eligible to participate in the GBP's current health insurance offerings may choose instead to participate in Consumer Directed HealthSelect if the individual is an eligible individual under IRC Section 223(c)(1). Enrollment in Consumer Directed HealthSelect qualifies a Member to participate in the HDHP and to receive a contribution to a HSA. The HSA will be administered by a separate administrator selected by ERS. The HSA Administrator will be solely responsible for administration of the HSA.
- B.4.h. The HealthSelect POS Plan is based on a three-tiered benefit structure: in-area/network, in-area/non-network and out-of-area. The network service area, referred to as "in-area," covers the entire State and is used by both HealthSelect and Consumer Directed HealthSelect. Respondent warrants and represents that it will develop, by May 1, 2017, a provider network adequate to provide statewide network coverage. Respondent shall be required to submit a data file of current providers as specified elsewhere in this document to reflect Respondent's ability to meet this requirement. However, ERS reserves the right to revise the benefits and/or financial arrangements should that become necessary due to legislative, budgetary, or other factors.
- B.4.i. As of December 2015, approximately, 83.1 percent of Participants are enrolled in the HealthSelect POS Plan, which offers health benefit coverage throughout Texas and the United States. The remainder of Participants are enrolled in commercial HMOs, a Medicare Advantage PPO and a Medicare Advantage HMO. It is estimated that approximately 7,500 employees and non-Medicare eligible retirees currently enrolled in the HealthSelect POS Plan will enroll in the HDHP effective September 1, 2016. Due to the availability of optional health plans under the GBP, ERS makes no guarantees on the minimum number of Participants that may choose to enroll in the Plans during FY 2018 and subsequent years.

B.5. Coordination with Other GBP Vendors

- B.5.a. Respondent shall coordinate with vendors from other GBP programs as required by ERS. The names of the current vendors associated with these programs may be found at www.ers.state.tx.us. The other GBP programs that Respondent will have to coordinate with currently include, but are not limited to:
 - B.5.a.i. **Flexible Spending.** TexFlex is an Internal Revenue Code Section 125 cafeteria plan that allows Participants to establish health care reimbursement accounts and to pay certain unreimbursed charges with pre-tax funds. Respondent shall have the capability to have an electronic interface function in place (transmit and receive eligibility/claims data) as appropriate, with the TexFlex administrator to allow for auto-substantiation of claim payments.
 - B.5.a.ii. **Pharmacy Benefit Manager.** The Plans' prescription drug programs are administered through PBMs selected by ERS through a separate RFP process. Regardless of the PBMs used to administer these programs, Respondent shall be required to coordinate with the designated PBM as follows:

Respondent shall work with the PBM to transfer and receive files (at least weekly) indicating deductible accumulations (for HDHP) and total out-of-pocket max accumulations (for all Plans). Respondent shall also work with the PBM to share drug claims for Participants to be used in conjunction with Disease/Condition Management Services.
 - B.5.a.iii. **Dental Plans.** Respondent shall coordinate with the Dental program vendors to exchange patient dental care information only as necessary to administer dental benefits pertaining to maxillofacial surgical procedures for the correction of damage caused by unexpected injury to sound natural teeth.
 - B.5.a.iv. **Health Savings Account Provider.** Respondent shall coordinate with the HSA Administrator if required by ERS in order to exchange Participant information as necessary to administer the HSA plan in connection with Consumer Directed HealthSelect.
 - B.5.a.v. **Consulting Actuary.** ERS retains a consulting actuary to advise the ERS staff and management on insurance and other financial matters related to the GBP. The consulting actuary also assists and advises the Board on benefit plan designs, application reviews, rating analysis, and certain audit related activities as described herein. Respondent shall work with ERS' consulting actuary as necessary to perform the requirements of the RFP and Contract.

- B.5.a.vi. As necessary, Respondent shall establish nondisclosure and business associate agreements with other GBP vendors to facilitate proper and efficient administration of the Plans.

B.6. Structure

- B.6.a. **Category of Participation.** Members who live or work in Texas or who are retired and are not Medicare-eligible are classified as “in-area.”
- B.6.b. Members who live outside of Texas are classified as “out-of-area” unless they work in Texas and select “in-area” coverage. Other out-of-area Members are retirees and disabled Participants who are eligible for Medicare and who have been classified as out-of-area.
- B.6.c. A Member’s classification applies to the Member’s dependent family members, with certain exceptions. Members who are in-area by virtue of the county where they live or work may select out-of-area coverage for their dependents if those dependents reside outside of Texas. Members who live outside of Texas and have out-of-area coverage may have in-area coverage for their dependents if the dependents reside in Texas. In addition, ERS allows Medicare-eligible retirees who reside in Texas to elect to have their dependents who are not Medicare-eligible classified as in-area.
- B.6.d. In-area and out-of-area status is not assigned to HDHP Participants. However, in-network and non-network benefits do apply under the HDHP.

B.7. Retirees and Medicare-eligible Participants

- B.7.a. **Non-Medicare Eligible Retirees and Participants.** Retirees and dependents participating in HealthSelect who are not eligible for Medicare are required to participate based on their county of residence. However, employees who are in-area based upon the county where they work may choose to continue to receive in-area benefits upon retirement based upon the county where they were employed at the time of retirement.
- B.7.b. **Medicare Eligible Retirees.** Medicare-eligible retirees (including any higher education retirees who do not qualify for Medicare Part A) are classified as out-of-area Participants as of the first of the month in which they attain the age of 65 regardless of where they live or work. In addition, Participants who became Medicare-eligible due to disability are classified as out-of-area Participants at the time they become Medicare-eligible. Those Participants who became Medicare-eligible due to disability will remain classified as in-area Participants until they reach age 65. In addition, ERS allows Medicare-eligible retirees who reside in Texas to elect to have their under age 65 dependents, who are not Medicare-eligible, classified as in-area.
- B.7.c. **In-Area Coverage.** Within the network service area, HealthSelect POS Participants access the health care system under a POS option. Under POS, an in-area Participant has an option each time the Participant requires health care to seek such care through the network providers or from any other eligible provider that the Participant chooses (non-network). This provision does not apply to out-of-area coverage.
- B.7.d. **Special Situations.** In-area Members select out-of-area coverage for their dependent(s) if the dependent(s) lives out-of-area by contacting Respondent to change the dependent’s address or by completing ERS’ GBP Supplemental Information Form, which is then provided to Respondent. Respondent must be capable of making this change within their system.
- B.7.d.i. Members who have in-area coverage based on their work county may retain in-area coverage upon retirement, provided they are no longer actively employed by the State, until they reach age 65 or become Medicare-eligible. This is accomplished during the retirement process.
- B.7.d.ii. Members who are classified as having out-of-area benefits and have a dependent under age 65 who wishes to continue with in-area benefits may contact Respondent to make arrangements for the dependent to continue with in-area benefits. Once in-area coverage is established for the dependent, a new medical ID card shall be issued for that dependent. This new medical ID card will provide in-area benefits information and a different group number.
- B.7.e. **Return to Work Retirees.** Employees who retired from State service and returned to work at a State Agency or higher education institution that participates in the GBP have the option to elect coverage as an active employee.

B.8. Benefits

- B.8.a. **HealthSelect POS.** HealthSelect POS benefits are presented in the MBPDs. While it is the intention of ERS to use the benefit design presented in Appendix M, modifications may be required subsequent to the Contract award, and shall be administered by the TPA.
- B.8.b. **High Deductible Health Plan.** Consumer Directed HealthSelect, including the HDHP, will be implemented effective September 1, 2016. The HDHP MBPD has not been developed and, therefore, cannot be made available at this time. HDHP Participants will access the HealthSelect network under a PPO arrangement.
- B.8.c. **Coverage, Limitations and Exclusions.** ERS intends for HealthSelect benefits, coverages, limitations and exclusions to be consistent with and administered in substantially the same manner as those currently in effect. Unless otherwise specified herein, Respondent shall provide the coverages, benefits, limitations and exclusions described in the current MBPDs.
- B.8.d. **Plan Design In-Area.** Participants using network providers receive a higher level of reimbursement than those in-area Participants who do not use network providers.
- B.8.e. **Primary Care Physician.** HealthSelect requires a PCP to direct the health care to in-area Participants using the network. Functioning as a gatekeeper, the PCP directs and coordinates a Participant's health care. To be eligible for network benefits, a Participant must first use a network PCP. All services, supplies and referrals must be authorized by the PCP, with the following exceptions:
- Females may self-refer to a network OB/GYN for all treatment that an OB/GYN may provide;
 - All Participants may self-refer to a network optometrist/ophthalmologist for all eye exams and diagnostic services;
 - All Participants may call Respondent's behavioral health department for treatment referrals; and
 - Participants in the HDHP will not have to use a PCP.
- B.8.f. Participant's selection of a network PCP is flexible and a Participant is allowed to change PCPs. In most cases, such change should be effective within twenty-four (24) hours.
- B.8.g. The network PCP panel must include family/general practitioners, internists, pediatricians, and obstetricians/gynecologists.
- B.8.h. **Network Benefit Administration.** Network benefit administration has the following characteristics:
- All preauthorization and cost containment activities are provider-initiated.
 - Except for required copayments, coinsurance, deductibles, and ineligible charges, network providers shall not balance bill any Participant.
 - Participants are not required to submit claim forms when care is rendered through the network.
- B.8.i. For in-area Participants who use non-network providers, a PCP visit or referral is not required. However, benefits are paid at lower levels than apply to network benefits care, Participants may be required to file claims, and Participants can be balance billed.
- B.8.j. **Out-of-area Coverage.** HealthSelect Participants who reside outside Texas or the United States access the health care system and receive health benefits in accordance with an indemnity plan. Participants may access levels of care through the types of providers listed in the MBPD. Participants are required to satisfy preauthorization and other cost containment provisions specified herein. While providers may assist them in their compliance with these requirements and submission of claims forms, Participants retain ultimate responsibility for such compliance and submission of claims. HDHP Participants access the health care system and receive health benefits in the same manner regardless of residence.
- B.8.k. **Deductible and Coinsurance Carryover.** Participants covered on September 1, 2017, who present satisfactory evidence (e.g., EOB) that they have met all or a portion of their Calendar Year 2017 coinsurance maximum, inpatient copayments maximums, total out-of-pocket maximums, and/or deductible shall be considered to have satisfied like dollar amounts for the remainder of Calendar Year 2017.

- B.8.l. **Coordination of Benefits.** The method of COB with Medicare/Medicaid and other insurance coverage shall be as described in the MBPDs. HealthSelect employs a true COB process using the total allowable expense approach. It does not function as a Medicare carve-out or Medicare supplement. COB follows the normal rules of COB adopted by TDI.
- B.8.m. HealthSelect calculates regular plan benefits in the absence of other coverage and then pays the lesser of regular plan benefits or the amount remaining to be paid after payment by the primary carrier. COB savings are calculated on a claim-by-claim basis and applied to payments for non-coordinated items within that claim.
- B.8.n. The NAIC guidelines are currently used to determine the order of payment by carriers, which include using the “birthday rule” for dependent children of parents not separated or divorced. For the dependent of separated or divorced parents, the order of benefits is determined based on legal custody and court decree.
- B.8.o. Respondent shall describe its COB process as it relates to the requirements described in the RFP and MBPDs. Respondent shall collect other health insurance information for the purposes of COB. Respondent is required to coordinate benefits with any group plan (other than a GBP-sponsored plan) under which a Participant has coverage. Respondent is not relieved of the duty to provide covered services as a result of such COB. If a Participant is eligible to receive benefits under another group plan for services, Respondent shall be responsible to coordinate benefits.
- B.8.p. Retirees who become Medicare-eligible shall have their HealthSelect benefits determined assuming they have purchased Medicare Part B, whether or not they actually pay for Medicare Part B. HealthSelect shall pay secondary benefits only. This provision shall be implemented in each individual case upon the date of discovery of Medicare-eligibility.
- B.8.q. Once a retiree reaches age 65 and is eligible for Medicare, Medicare becomes the primary payer and HealthSelect becomes secondary coverage. Therefore, Respondent shall administer HealthSelect as secondary coverage for eligible Participants who retired after September 1, 1992. If a Participant retired prior to September 1, 1992, and was age 65+ as of September 1, 1992, and Medicare Part B was not purchased, HealthSelect will pay primary.
- B.8.r. **Medicare.** It is estimated that virtually all retired employees eligible for Medicare are enrolled in Part A. Certain community/junior colleges do not participate in Social Security, although the employees of such institutions hired on or after April 1, 1986, participate in Medicare. As a result, some of their present and future retirees do not have Medicare Part A coverage. Some of the higher education retirees not covered by Social Security, however, may have Medicare Part A as a result of previous employment or through their spouse’s coverage. With respect to all retirees, HealthSelect provides benefits secondary to Medicare Part A, if the retiree is enrolled in Medicare Part A. If the retiree is not enrolled in Medicare Part A, HealthSelect pays primary.
- B.8.s. **Subrogation and Reimbursement.** Subrogation and reimbursement may apply when another party (person or organization) is or may be considered responsible for payment resulting from a Participant’s injury or sickness for which benefits under HealthSelect shall be or have been provided. Respondent shall provide subrogation services, which will include, but not be limited to, investigating claims to determine potential third-party liability, contacting Participants to obtain information related to third-party liability, initiating demands and assessments to protect HealthSelect’s interests, supporting intervention in litigation when necessary, and enforcing remedies as ERS may direct for violation by Participants of their subrogation and reimbursement obligations (including, but not limited to, suspension or termination of coverage).
- B.8.t. When a provider settles with or is found liable for medical malpractice, Respondent will seek recoupment of benefits paid in connection with services negligently rendered by the provider prior to seeking subrogation from the Participant. Respondent shall incorporate a provision in Respondent’s contracts with providers to implement this provision.
- B.8.u. Respondent shall be responsible for all costs associated with subrogation activities and litigation support.
- B.8.v. The process for subrogation is set forth in Section 10 of the current MBPD.
- B.8.w. **Grievance and Appeals.** The process for grievance and appeals is set forth in Section 8 of the current MBPD.

- B.8.x. **Nondiscrimination.** Respondent shall not practice discriminatory selection, or encourage segregation, among the total group of eligible Participants by excluding, seeking to exclude, or otherwise discriminating against any of the following classes of people:
- Women – as prohibited by Title VII of the Civil Rights Act of 1964, as amended, Executive Order 11246 of 1965, as amended.
 - Pregnant Women – as prohibited by the Pregnancy Discrimination Act of 1978, as amended, PL 95-555.
 - Racial Minorities – as prohibited by Title VII of the Civil Rights Act of 1964, as amended.
 - Aged and Retired – as prohibited by the Age Discrimination in Employment Act of 1967, as amended.
 - Handicapped and those with catastrophic and terminal illnesses – as prohibited by Sections 503 and 504 of the Rehabilitation Act of 1973, as amended.
 - Disabled – as prohibited by the Americans with Disabilities Act of 1990, as amended, subject to the specific provisions of Title V, Section 501(c) thereof.
- B.8.y. Respondent shall not limit or discourage enrollment of any Participant by “quota” or other enrollment restrictions, unless approved by the Board.

C. Provider Network Requirements

C.1. General Requirements

- C.1.a. ERS requires that the network area for the Plans be subject to stringent requirements of provider accessibility, credentialing and contracting, local medical management and utilization management, and quality assurance.
- C.1.b. Respondent warrants and represents that it has in place a preferred provider network that will offer access to all Participants Statewide, in all Texas counties.
- C.1.c. How does Respondent ensure that there are an adequate number of network providers that will accept new patients?
- C.1.d. Respondent is responsible for having a network available that can provide access to all covered benefits under the MBPD.
- C.1.e. Describe the service area(s) covered by Respondent’s managed care network as of the date of submission of the Proposal.
- C.1.f. Does Respondent operate provider networks in other areas of the country that would be available to Participants living or visiting out-of-State? If so, specify the locales that such networks serve.
- C.1.f.i. If Respondent’s network service area does not cover the present HealthSelect service area, provide a proposed action plan for additional network recruiting. Provide timelines for accomplishing these tasks by May 1, 2017.
- C.1.g. Describe Respondent’s network management policies and procedures.
- C.1.g.i. If Respondent contracts with a network management company, provide the name of the entity and the details of the arrangement.
- C.1.h. How often are online and provider versions of the provider directories updated?
- | | |
|---------------|--|
| Online | |
| Provider Copy | |
- C.1.i. Is Respondent’s network owned or leased from another entity? If leased from another entity, fully describe that entity and the contractual relationship between Respondent’s organization and the owner of the network. The RFP requests information relating to network usage fees at Section IX.D.3.a.viii.
- C.1.j. Disclose any network medical facility in which Respondent, or any parent or affiliate organization, maintains a majority ownership and/or controlling interest.

- C.1.k. Are Respondent's out-of-State networks leased or proprietary? Is Respondent approved by TDI for reciprocity arrangements? If "yes," where? Describe such arrangements, if any.
- C.1.l. **Provider Accessibility and Availability.** Respondent must provide documentation on CD or DVD using ERS-required format to describe its existing provider network. Separate documentation must be provided for each of the following: (i) hospitals, (ii) PCPs, (iii) specialty care physicians, and (iv) behavioral health providers. The current HealthSelect provider directory is included in Appendix L.
 - C.1.l.i. Failure to properly identify the data may result in a delay in the review of Respondent's response or rejection of the Proposal for failure to comply with the RFP instructions.
 - C.1.l.ii. **Note:** The documentation required is more detailed than what is generally listed in Respondent's provider directory.

Should Respondent have any questions regarding formatting requirements, send inquiries to the ivendorquestions@ers.state.tx.us.
- C.1.m. ERS will use GeoAccess software to evaluate provider network availability and accessibility using TDI access requirements as well as GBP-specific access standards. ERS will also conduct a disruption analysis to determine the number of Participants who may potentially have to change PCPs as a result of current network physicians not being included in Respondent's provider network.
- C.1.n. ERS requires Respondent to provide a GeoAccess report for the proposed provider network based on the access standards for PCPs and general service hospitals specified in VII.D.2.I. and VII.D.2.I.i., using distance from the employee's residence (or ZIP code). Respondent shall submit the listing of ZIP codes where access standards are not met. Respondent shall have adequate access, which will be determined by ERS based on this and other information provided in Respondent's proposal.

C.2. Formatting Requirements

- C.2.a. The format may not be altered. **No other format will be accepted. The required format is an Excel spreadsheet.**
- C.2.b. All required data fields must be completed. If not, the Proposal will **not** be considered complete. **Blank records, abbreviated names or extra fields are not acceptable.**
- C.2.c. Only those specialty codes provided by ERS are valid, as listed in this section.
- C.2.d. Format Examples – (Excel spreadsheet)

C.3. Reporting of Providers

Note: The information requested in this section should only be provided for your primary contracted network providers in the State.

- C.3.a. The following format **must** be used to create the hospital network. The hospital network must be submitted in a separate file on a CD or DVD.

Table 1 - Facility Reporting Format

ITEM NO.	FIELD NAME	FORMAT	LENGTH	FIELD DESCRIPTION
1	TAX ID # (TIN)	Numeric	30	Federal Tax Identification Number assigned by the IRS.
2	NATIONAL PROVIDER IDENTIFIER (NPI)	Numeric	10	Unique identification number for covered health care providers.
3	PLACE OF TREATMENT	Numeric	3	Describes place where healthcare services are provided. See Place of Service Code Set in Table 2 below as provided by CMS.
4	NAME	Character	50	Name
5	ADDRESS1	Character	55	Street Name

6	ADDRESS2	Character	55	Additional Street Information
7	CITY	Character	28	City Location
8	ZIP	Numeric	5	Zip code of address

Table 2 – Place of Treatment Codes

Place of Service Code(s)	Place of Service Name	Place of Service Code(s)	Place of Service Name
1	Pharmacy	34	Hospice
3	School	41	Ambulance - Land
9	Prison/Correctional Facility	42	Ambulance – Air or Water
11	Office	49	Independent Clinic
12	Home	50	Federally Qualified Health Center
13	Assisted Living Facility	51	Inpatient Psychiatric Facility
14	Group Home	52	Psychiatric Facility-Partial Hospitalization
15	Mobile Unit	53	Community Mental Health Center
17	Walk-in Retail Health Clinic	54	Intermediate Care Facility/ Individuals with Intellectual Disabilities
18	Place of Employment	55	Residential Substance Abuse Treatment
19	Off Campus-Outpatient Hospital	56	Psychiatric Residential Treatment Center
20	Urgent Care Facility	57	Non-residential Substance Abuse Treatment Facility
21	Inpatient Hospital	60	Mass Immunization Center
22	On Campus-Outpatient Hospital	61	Comprehensive Inpatient Rehabilitation
23	Emergency Room – Hospital	62	Comprehensive Outpatient Rehabilitation
24	Ambulatory Surgical Center	65	End-Stage Renal Disease Treatment
25	Birth Center	71	Public Health Clinic
26	Military Treatment Facility	72	Rural Health Clinic
31	Skilled Nursing Facility	81	Independent Laboratory
32	Nursing Facility	99	Other Place of Service
33	Custodial Care Facility		

C.3.b. **Primary Care Physicians.** The following format **must** be used to create the primary care physician network. The primary care physician network must be submitted in a separate file on a CD or DVD.

Table 3 - Primary Care Physician Reporting Format

ITEM NO.	FIELD NAME	FORMAT	LENGTH	FIELD DESCRIPTION
1	TAX ID # (TIN)	Numeric	30	Federal Tax Identification Number assigned by the IRS.
2	NATIONAL PROVIDER IDENTIFIER (NPI)	Numeric	10	Unique identification number for covered health care providers.
3	LAST NAME	Character	50	Physician's Last Name
4	FIRST NAME	Character	30	Physician's First Name
5	MI	Character	2	Physician's Middle Initial

6	ADDRESS1	Character	55	Primary Street Address of Physician's Office (NO P. O. Boxes)
7	ADDRESS2	Character	55	Additional Address Information (Suite #, Floor, etc.)
8	CITY	Character	28	Physician's City Location
9	ZIP	Numeric	5	Physician's STREET Address ZIP code
10	SPEC	Character	4	Use the values for PCP type: FP =Family Practice GP =General Practice IM =Internal Medicine PD =Pediatrician
11	STATUS	Character	3	O =Open Practice C =Closed Practice
12	AFF	Character	3	Affiliated with a group: Y=Yes or N=No
13	GROUP	Character	30	Name of group practice

C.3.c. **Specialty Care Physicians, including Ancillary Providers.** The following format **must** be used to create the specialty care physician network. The specialty care physician/ancillary provider network must be submitted in a separate file on a CD or DVD.

Table 4 - Specialty Care Physicians Reporting Format

ITEM NO.	FIELD NAME	FORMAT	LENGTH	FIELD DESCRIPTION
1	TAX ID # (TIN)	Numeric	30	Federal Tax Identification Number assigned by the IRS.
2	NATIONAL PROVIDER IDENTIFIER (NPI)	Numeric	10	Unique identification number for covered health care providers.
2	LAST NAME	Character	50	Physician's Last Name
3	FIRST NAME	Character	30	Physician's First Name
4	MI	Character	2	Physician's Middle Initial
5	ADDRESS1	Character	55	Primary Street Address of Physician's Office (NO P. O. Boxes)
6	ADDRESS2	Character	55	Additional Address Information (Suite #, Floor, etc.)
7	CITY	Character	28	Physician's City Location
8	ZIP	Numeric	5	Physician's STREET Address ZIP code
9	SPEC	Character	4	See Table 5 below.
10	AFF	Character	3	Affiliated with a group: Y=Yes or N=No
11	GROUP	Character	30	Name of group practice

Table 5 - Specialty Values List

Two-Digit Code	Specialty
AI	Allergy and Immunology
AN	Anesthesiology
CD	Cardiovascular Disease
D	Dermatology
EM	Emergency Medicine
GE	Gastroenterology
GS	General Surgery
GYN	Gynecology

N	Neurology
NEP	Nephrology
NP	Neuropathology
NPM	Neonatal-Perinatal Medicine
NTR	Nutrition
OBG	Obstetrics & Gynecology
ON	Oncology
OPH	Ophthalmology
ORS	Orthopedic Surgery
ENT	Otolaryngology
PSY	Psychiatry
PM	Physical Medicine & Rehab
PUD	Pulmonary Diseases
RHU	Rheumatology Urology
OTH	All Other Specialties
ANCIL	Ancillary Provider

C.3.d. **Behavioral Health Providers.** The following format **must** be used to create the behavioral health provider network on a CD or DVD.

Table 6 – Behavioral Health Providers Reporting Format

ITEM NO.	FIELD NAME	FORMAT	LENGTH	FIELD DESCRIPTION
1	TAX ID # (TIN)	Numeric	30	Federal Tax Identification Number assigned by the IRS.
2	NATIONAL PROVIDER IDENTIFIER (NPI)	Numeric	10	Unique identification number for covered health care providers.
2	LAST NAME	Character	50	Physician's Last Name
3	FIRST NAME	Character	30	Physician's First Name
4	MI	Character	2	Physician's Middle Initial
5	ADDRESS1	Character	55	Primary Street Address of Physician's Office (NO P. O. Boxes)
6	ADDRESS2	Character	55	Additional Address Information (Suite #, Floor, etc.)
7	CITY	Character	28	Physician's City Location
8	ZIP	Numeric	5	Physician's STREET Address ZIP code
9	SPEC	Character	4	Use the values for Specialty type: LCSW = Licensed Clinical Social Worker LCDC = Licensed Chemical Dependency Counselor LPA = Licensed Psychological Associate LPC = Licensed Professional Counselor LMFT = Licensed Marriage & Family Therapist PSY = Psychiatry PSYD = Doctor of Psychology (certified as a health service provider) SLP = Licensed Speech Language Pathologist
10	AFF	Character	3	Affiliated with a group: Y=Yes or N=No
11	GROUP	Character	30	Name of group practice

D. Provider Contracting and Network Management

D.1. Provider Network Management Requirements

- D.1.a. **Provider Network Management Requirements.** Respondent shall provide all services specified in this Section D., including, but not limited to, the following:
- D.1.a.i. Respondent warrants and represents that, throughout the Contract Term, it shall provide initial and ongoing recruitment, credentialing and contracting with a sufficient number of qualified and duly licensed health care providers, in good standing with the State, to provide the full range of covered benefits and services in the network service areas. Respondent shall provide ongoing management of network providers in accordance with applicable laws, regulations, credentialing criteria, and provider contracting provisions.
- D.1.a.ii. Respondent shall provide initial and ongoing provider education to ensure that network providers are familiar with and knowledgeable of the benefits (including any benefit design changes) and other Plan provisions.
- D.1.a.iii. Respondent shall provide ongoing review of the fees paid to network providers and recommend adjustments as appropriate, subject to consultation with and approval by ERS.
- D.1.a.iv. When requested by ERS, chosen Respondent shall recruit additional providers for the network on a general, regional or specific basis with the assumption that providers in that field are available for recruitment.

D.2. General Network

With regard to Respondent's network (whether owned by Respondent or not), please answer the following:

- D.2.a. How are providers selected and qualified for participation in the network?
- D.2.b. Are primary care practices required to comply with clinical guidelines developed by Respondent's organization or other parties? Yes No
- D.2.c. Discuss the current financial arrangements with network providers and what percent of Respondent's contracts are paid using one of the following methods:
- Hospitals and other institutional providers:**
- Discount off charges
- Case rates, including but not limited to, episode based bundled payments
- Diagnostic Related Groups
- Per Diem
- Primary care physicians and specialists:**
- Capitation
- Fee schedules
- Discount off charges
- Other
- Behavioral health providers (psychiatrists, psychologists, licensed clinical social worker):**
- Capitation
- Fee schedules
- Discount off charges
- Other
- D.2.d. Describe any risk sharing arrangements between Respondent's organization and providers relative to in-network referrals and use of out-of-network providers.
- D.2.e. Within the past three (3) years, how many physicians have been terminated from the network based upon a decision by Respondent?
- D.2.e.i. Within the past three (3) years, how many physicians have been terminated from the network based upon a decision by the provider?

- D.2.f. If ERS is able to negotiate a separate unique provider agreement for Participants, would Respondent be able to administer this unique provider agreement along with its standard provider agreement? Yes No
- D.2.g. If ERS has a direct contract with a medical provider that provides better discounts than those available through Respondent's provider contract, Respondent must administer ERS' provider contract terms as if it were an in-network provider.
- D.2.g.i. If Respondent is not able to administer this unique provider agreement arrangement along with its standard provider agreement, Respondent shall explain why it's unable to do so.
- D.2.h. Describe Respondent's ability to implement a capitated payment structure.
- D.2.i. Has Respondent's network been reviewed by any other external agency or industry organization (i.e., NCQA)? If so, provide a copy of the applicable documentation.
- D.2.j. For Participants residing in-area, network provider accessibility shall be assured through Respondent's adherence to requirements concerning providers accepting new patients, appointment waiting time and driving time and/or distance. All distances should be based on driving distance.
- D.2.k. **Appointment Waiting Time.** The maximum acceptable waiting periods for physician appointments shall meet standards established by the TDI and accepted by ERS. Respondent is responsible for complying with any revisions to these standards. Current standards are:
- Urgent care shall be provided within twenty-four (24) hours of contact by the Participant or a person acting on behalf of the Participant;
 - All other routine appointments shall be offered within three (3) weeks from the date the Participant or a person acting on behalf of the Participant contacts the physician or provider for an appointment; and
 - Preventive health services shall be offered to a child within two (2) months and to an adult within three (3) months from the date the Participant or a person acting on behalf of the Participant contacts the provider for an appointment.
- D.2.l. **Driving Distance.** In urban areas, the network must have two (2) PCPs, common specialties, and one (1) general service hospital within fifteen (15) miles of each in-area Participant's residence. (This does not apply to out-of-area Participants opting into in-area status.) ERS shall apply reasonable standards for less common specialists and tertiary care and specialty hospitals.
- D.2.l.i. In rural areas, the network should have adequate providers to allow reasonable access considering the number and location of providers practicing in the area. ERS shall review rural area networks based on one (1) PCP and one (1) hospital within thirty (30) miles and specialty care within seventy-five (75) miles from site of eligibility.
- D.2.m. **Provider Contracts.** Respondent must have a valid contract with each provider submitted in its Proposal. The provider contract shall include, but not be limited to, agreements regarding accessibility, adherence to medical protocols, utilization management and quality assurance standards, reporting requirements, claims procedures and fee arrangements. The following requirements apply to network provider contracts:
- D.2.m.i. Network providers shall not balance bill any Participants, ERS, the GBP or the State. If any network provider initiates any actions whatsoever, including correspondence, telephone calls, collections activities or personal visits, to collect from ERS, or any Participants, the GBP or the State, amounts over and above allowable deductibles, copayments or coinsurance amounts, for services rendered, excluding services not covered under the Plan, Respondent shall initiate and maintain such necessary action to stop the provider or employee, agent, assignee, trustee, or successor in interest from maintaining that action against ERS, any Participant, the GBP or the State.
- D.2.m.ii. Unless prohibited or limited by applicable law, at least forty-five (45) days prior to the effective date of Respondent's termination of any provider's contract without cause, Respondent shall notify ERS and shall make reasonable efforts to notify affected current Participants in writing. The written notice shall include the name of the terminated provider, the names of other providers available to the Participants, and the effective dates of the changes. Upon any such termination with cause, Respondent shall notify ERS as soon as possible upon determining to terminate the provider, but in no event later than the next business day. Following termination with cause, Respondent must also use reasonable efforts to notify affected Participants in writing of such

termination. If the provider initiates termination of its contract with Respondent, Respondent will immediately notify ERS and make reasonable efforts to notify affected current Participants in writing. In the event that a terminated provider later signed a contract with Respondent, Respondent shall notify the affected Participants and provide this information.

- D.2.m.iii. Respondent must require all network providers to carry sufficient professional and general liability insurance coverage.
- D.2.m.iv. Describe the professional and general liability insurance requirements for each type of health care provider in Respondent's network.
- D.2.m.v. Respondent provider contracts shall require the provider to comply with the requirements of this RFP and the Contract.
- D.2.m.vi. Does Respondent have contracts with primary care physician groups which require that specialty care referrals be made to a specified subset of the network's specialists? If so, give details.
- D.2.m.vii. Does Respondent have contractual relationships of any kind with health care providers other than those in Respondent's managed care networks? If so, describe such relationships fully. ERS is particularly interested in relationships that provide discounted fees and no balance billing for Participants using non-network providers.
- D.2.m.viii. How does Respondent assure that a practitioner will make an adequate portion of his/her practice available to Participants?
- D.2.m.ix. Does Respondent use Specialty Care Facilities for the provision of certain high-cost, highly specialized procedures? If so, please provide the following information:
 - How are such facilities selected and credentialed?
 - Where are such facilities located?
 - What procedures are referred to these facilities?
- D.2.m.x. What minimum provisions are included in Respondent's health care provider contracts concerning the following:
 - Provider's notice to not accept new patients?
 - Provider's intent to terminate?
 - Respondent's intent to terminate?
 - Providers will not balance bill Participants, ERS or the State?
 - Provider's required continuation of care to existing network Participants following provider's termination from the network?
- D.2.n. When a provider settles or is found liable for medical malpractice, Respondent will seek recoupment of benefits paid in connection with services negligently rendered by provider prior to seeking subrogation from the Participant. Respondent will be expected to incorporate a provision in Respondent's contracts with providers to implement this provision.
- D.2.o. Respondent must include in its provider contracts a provision stating that providers may not condition treatment of Participants on any requirement that Participant agrees not to discuss provider's services in any forum.
- D.2.p. With regard to network providers, please state the following:
 - What is the average turnover of network providers annually?
 - Among these, what percentage was attributable to termination?
 - Provide the reasons for termination of provider contracts.
- D.2.q. Respondent shall maintain a complete and accurate claims reporting system and provide for the retention, maintenance, and storage of all payment records with provision for appropriate reporting to ERS. Respondent shall maintain all such records in accordance with Article 15 of the Contract.
- D.2.r. Respondent must provide for an independent audit of every claim in excess of \$25,000. ERS shall have reasonable access to such audit and to any information in connection with such audit findings.

- D.2.s. Respondent shall maintain and make available to ERS, both through hard copy and online access, appropriate provider payment profiles for the correct pricing of services and timely payment upon request.
- D.2.t. Respondent shall accumulate claim payment statistics and develop reports in the normal course of Respondent's business or at least monthly or as required by ERS. Respondent shall provide copies of all such reports and any audits in connection with the reports to ERS.
- D.2.u. Respondent shall provide online access to statistical information associated with the Plans. The information will include current Fiscal Year information and the full twelve (12) months of the previous Fiscal Year. Respondent shall furnish all necessary software and hardware at no additional cost to ERS. Article 21 of the Contract shall have additional requirements in this regard.
- D.2.v. **Provider Credentialing/Recredentialing.** The network shall be comprised of providers who have been subjected to a rigorous credentialing process conducted by Respondent. Respondent acknowledges it has sole responsibility for credentialing, recredentialing and contracting with all network providers. Respondent warrants and represents it has acted and shall continue to act in good faith and has used and will continue to use its best efforts during the Contract Term to diligently screen and investigate the credentials of all health care providers prior to allowing them to participate in Respondent's network. This includes all health care providers participating in the network during the entire Contract Term. Respondent warrants and represents that it will contract only with licensed health care providers in good standing in their profession and with the appropriate state and/or federal licensing and regulatory agencies.
- D.2.v.i. Provide a detailed description of Respondent's credentialing and recredentialing processes for all health care providers. This should include, but not be limited to, the following:

Description of Respondent's credentialing and recredentialing processes.	
Does Respondent independently verify hospital staff privileges, licenses and board certification?	
Does Respondent obtain peer evaluation as a part of the credentialing and recredentialing process?	

- D.2.w. **Local Medical Management.** Respondent shall designate a medical director (a physician licensed in the State and in good standing) to the HealthSelect program with final authority on medical necessity decisions. Further, Respondent must provide evidence of interaction between the medical director and network providers via such arrangements as medical protocol committees and utilization review groups.
- D.2.x. **Provider Assistance.** Respondent will require that network providers cooperate with reasonable requests by the Participants to prepare and provide routine execution of forms documenting medical status, the copying and providing of medical records, and the ordering and documentation of prescription drug refills as consistent with applicable laws. Providers shall comply with all applicable laws regarding fees for medical and mental health records including, but not limited to, Tex. Health & Safety Code § 161.202.

D.3. Tiered Network

- D.3.a. **Tiered Network.** The current provider network is a commercial network for the HealthSelect POS plan and is managed by the current third-party administrator. Respondent shall have experience in the development and management of a traditional provider network. In addition, ERS is interested in exploring a tiered provider network throughout the State designed to provide Participants with financial incentives for choosing more cost-effective physicians and hospitals.
- D.3.b. Does Respondent currently have an active tiered or high performance provider network in Texas?
 Yes No
- D.3.b.i. If yes, what is the basis for the establishment of those providers in Respondent's highest ranking group?
- D.3.c. If Respondent is currently administering any evidence-based benefits for any Texas clients, describe these programs and their initial results.

D.4. Utilization Management and Medical Services Management

D.4.a. **Utilization Review.** Respondent shall be responsible for cost containment procedures, which will include, but not be limited to, preauthorization and utilization review activities. Respondent's network providers will be responsible for all preauthorization activities such as:

- Inpatient hospital admission;
- Skilled nursing care in a skilled nursing facility;
- Private-duty nursing;
- Home health care;
- Hospice care;
- Home infusion therapy; and
- Compliance with medical protocols.

D.4.b. Provide a detailed description of all aspects of the utilization review process that will apply to Participants. Respondent's response should include at least the following:

D.4.b.i. Is utilization review performed by Respondent's staff or through a contract with a third party? If contracted to a third party, identify the name, address and telephone number of the third party.

D.4.b.ii. Describe the location and hours of operation of the facility or facilities from which utilization review activities will be conducted.

D.4.b.iii. Respondent's utilization review unit shall provide referrals and authorization of medically necessary services.

D.4.c. Describe the number of licensed professionals and support staff by title who administer the utilization review program and, for each, the required credentials and qualifications.

Job Title of Licensed Professional/Staff	Number of Professionals/Staff for this Job Title	Required Credentials/Qualifications

D.4.d. Respondent shall comply with the applicable statutory requirements concerning utilization review included in Chapter 4201, T.I.C.

D.4.d.i. Describe the manner in which Respondent shall comply with the applicable statutory requirements concerning utilization review included in Chapter 4201, T.I.C.

D.4.d.ii. Respondent shall obtain all information required to make a utilization review decision, including pertinent clinical information. Respondent shall have a process to ensure that utilization reviewers are appropriately qualified to perform the review and apply clinical review criteria consistently.

D.4.d.iii. Utilization management services will be conducted by appropriately trained and experienced individuals. The utilization management staff must consult with appropriate specialists and sub-specialists in conducting utilization review of hospital, physician, mental health services, and other outpatient services.

D.4.e. Respondent shall provide a toll-free telephone number and adequate telephone lines for Participants and providers to access the utilization management program.

D.4.f. For the period January 1, 2013 through December 31, 2015, what percentage of utilization review referral and authorization requests were referred to a medical director?

Year	Percentage Referred to Medical Director
2013	
2014	
2015	

D.4.g. Describe the process available for any health care providers to appeal denied claims.

- D.4.h. How are utilization review protocols established?
- D.4.i. How often are utilization review protocols revised?
- D.4.j. Describe Respondent's preauthorization process, if applicable.

D.5. Medical Services Management

- D.5.a. Respondent shall prospectively and concurrently perform reviews by appropriately qualified medical personnel for medical necessity, appropriate level of care and length of stay for scheduled hospital admissions, emergency hospital admissions, medical, surgical, mental health, and other health care services.
- D.5.b. Respondent shall use documented clinical review criteria that are based on sound clinical evidence and that are evaluated periodically to assure ongoing efficacy. Respondent may develop its own clinical review criteria or may purchase or license clinical review criteria from qualified vendors. Respondent shall make available its clinical review criteria upon request.
- D.5.c. Respondent shall provide physician to physician communication. A licensed clinical peer of the same medical specialty shall evaluate the clinical appropriateness of adverse determinations.
- D.5.d. In compliance with the patient privacy provisions of HIPAA, results of any adverse determination will be forwarded in writing within one (1) business day to the Participant (patient) and the provider. All letters will include procedures for the Participant to initiate an appeal.
- D.5.e. Respondent shall identify case management opportunities and provide case management services for Participants with specific health care needs which will assist Participants and providers in the coordination of services across the continuum of health care services, optimizing health care outcomes and quality, while minimizing cost.
- D.5.f. Respondent shall have a mechanism to proactively identify and target for intensified management those cases having the potential to incur large expenditures. The large case management program shall:
 - Identify potential large cases before expenses mount;
 - Mobilize local health care resources to meet the Participant's long-term care needs; and
 - Coordinate the individual health needs of Participants through multiple levels of care and transition the Participant through appropriate levels of care as recovery milestones are met.
- D.5.g. Respondent shall provide case managers who will be appropriately trained, experienced individuals, and who are licensed to work with Participants and providers to coordinate all services deemed necessary to provide the Participant with a plan of medically necessary and appropriate health care. Describe Respondent's case management programs.
- D.5.h. Respondent shall offer self-care initiatives to Participants such as health education, nurse help line, health risk assessment, reminders, and motivation and wellness services to assist Participants with health care decisions.
- D.5.i. **Disease/Condition Management Services.** Respondent shall provide Disease/Condition Management Services.
 - D.5.i.i. What Disease/Condition Management Services does Respondent offer?
 - D.5.i.ii. Respondent shall provide evidence of the effectiveness of its Disease/Condition Management Services. Evidence shall include Participant health improvement and the impact on costs.
 - D.5.i.iii. Respondent shall be required to provide a progress report of Plan-specific Disease/Condition Management Services, at minimum, each fiscal quarter throughout the Contract Term.
 - D.5.i.iv. How does Respondent identify Participants, initiate the management, and encourage the participation in Respondent's Disease/Condition Management Services and then report on results?
 - D.5.i.v. How is return on investment calculated for Respondent's Disease/Condition Management Services?

- D.5.j. Respondent shall provide a toll-free line staffed by licensed nurses to answer medical questions from Participants. The nurse line shall be available twenty-four (24) hours a day, seven (7) days a week.
- D.5.k. The Participant shall not be responsible for satisfaction of these requirements if care is obtained through a network provider after initial consultation with a PCP. ERS requires that network providers be responsible for obtaining all necessary re-certifications and prior authorizations and for paying any assessed penalties for not obtaining necessary authorizations.
- D.5.l. **Wellness Services.** Respondent shall provide Wellness Services.
- D.5.l.i. What Wellness Services does Respondent offer?
- D.5.l.ii. Respondent shall provide evidence of the effectiveness of its Wellness Services. Evidence shall include Participant health improvement and the impact on costs.
- D.5.l.iii. Respondent shall be required to provide a progress report of Plan-specific Wellness Services, at minimum, each fiscal quarter throughout the Contract Term.
- D.5.l.iv. How does Respondent identify Participants, initiate the management, and encourage the participation in Respondent's Wellness Services and then report on results?
- D.5.l.v. How is return on investment calculated for Respondent's Wellness Services?
- D.5.m. **Quality Assurance.** Respondent shall have in place processes to monitor the provider network, the quality of patient care and Participant satisfaction. This shall include conducting ongoing quality assurance reviews each Fiscal Year to be monitored via Participant surveys and other reporting mechanisms.
- D.5.m.i. Describe Respondent's Quality Assurance program.
- D.5.m.ii. What quality assurance processes are provided in Respondent's system to ensure accurate processing of benefits?
- D.5.m.iii. Describe Respondent's customer satisfaction survey process. Your answer should include, but not be limited to, how often they are conducted, how Participants are identified, and how member satisfaction is typically measured.
- D.5.m.iv. Respondent shall provide a copy of the results of Respondent's most recent customer satisfaction survey.
- D.5.m.v. Respondent shall provide an ongoing review of complaints received from Participants and providers and respond as necessary and appropriate, monitor the denials of benefits made under the utilization management program to maintain the appropriateness of the program, and provide information about the utilization management program to ERS as requested.

D.6. General Health Care Management

- D.6.a. ERS is interested in Respondent's experience in working with clients to improve the cost efficiency of their health benefits programs. For the period January 1, 2013 to the present date, describe Respondent's experience in providing cost containment enhancements.
- D.6.b. Respondent shall review health insurance applications for all GBP non-Medicare health plans submitted for continued coverage of disabled dependents beyond age 26 using standard medical guidelines and will provide coverage recommendations to ERS for processing.
- D.6.c. Does Respondent have the capability to integrate medical information (e.g., ICD-10 and CPT codes derived from the Plan's medical claims system) with prescription drug data? If so, please describe in detail the programs Respondent offers.
- D.6.d. Respondent shall provide the following in-network professionals at one or more onsite clinics pursuant to Chapter 671 of the Texas Government Code during normal business hours at no additional charge: either a licensed advance practice registered nurse or a licensed physician assistant and a supervising physician (not onsite). At the request of ERS, Respondent shall

submit reports on information and data related to the onsite clinics at no additional expense to ERS, the GBP or the employers providing the locations for such clinics.

E. Programs & Optional Services

E.1. Introduction and Objectives

E.1.a. ERS is interested in increasing its participation in program(s) within the State in which the GBP, in cooperation with provider groups, health plans, and other health systems, would work jointly to achieve greater program efficiencies and effectiveness through the refinement and customization of benefit programs offered to Participants in the following ways:

- Support integrated, efficient and effective systems of care, delivery and payment;
- Promote a patient-centered approach to service delivery and payment;
- Improve Participant outcomes; opportunities to develop, share and systemically sustain best-practices;
- Encourage and reward the prevention and management of disease;
- Promote the value of care over the volume to measurably lower costs;
- Support payment and processes that are transparent, easy to understand, and simple to administer for Participants, providers, purchasers and other stakeholders;
- Balance the interests of Participants, payers and providers while pursuing necessary change thereby yielding shared savings;
- Provides greater efficiencies with opportunities to reduce or eliminate provider costs; and
- Standardize business processes to facilitate improved technical data exchange.

E.1.b. ERS is interested in programs that incorporate a combination of one or more of the strategies listed below:

- ACOs or groups of providers that come together in a formal manner to accept responsibility for health services provided to all Participants or a defined set of Participants.
- Global payment systems or episode-based bundled payments which pay fixed dollar amount payments for a specified range of services to Participants over a set period of time.
- Payments for coordinating the care of Participants with complex or chronic conditions to prevent complications and reduce costs.
- Performance-based incentives for health care providers that achieve target levels of performance.
- Program to provide remote access to health services (remote health program also known as “telemedicine”).
- Programs which address health, well-being, and management of Participants with potentially complex and costly health conditions, including diabetes and pre-diabetes.

E.1.c. Respondent warrants and represents that all programs comply with applicable state and federal laws and regulations, including those related to anti-kickback prohibitions.

E.1.d. If Respondent is proposing to offer additional services other than those outlined in this RFP including, but not limited to, any products, services, ideas, or facilities (including any discounts) it shall provide them in response to this Article.

E.2. Medical Home Programs

E.2.a. Through the current HealthSelect third party administrator, ERS has standing contracts with multiple Patient-Centered Medical Homes across Texas and intends to continue these arrangements regardless of chosen TPA. The large PCMHs are paid claims under a fee-for-service reimbursement strategy. This program is made up of integrated multi-specialty provider teams. The model generally focuses on wellness, advanced technology uses, evidence-based medicine, expanded hours, and awards shared savings to provider groups when quality standards and cost trends are met.

E.2.b. Is Respondent capable of working with ERS in managing the medical home program for Participants? Yes No

E.2.c. What definition does Respondent currently use for a medical home (i.e., joint principles or something else)?

- E.2.d. If Respondent currently offers additional medical home programs, provide the following information:
 - E.2.d.i. Describe the terms and how Respondent currently ensures that participants receive quality medical care in its medical home program. [REDACTED]
 - E.2.d.ii. Discuss Respondent's experience in managing a medical home program. [REDACTED]
 - E.2.d.iii. Describe Respondent's process to access provider capabilities to be a medical home. [REDACTED]
 - E.2.d.iv. How will Respondent initially engage Participants, provider groups, health plans, and health systems in project initiatives, if such involvement is needed?
 - E.2.d.v. What incentives does Respondent use to encourage ongoing program participation?
 - E.2.d.vi. What are the health and risk factor metrics that Respondent suggests to be included in a medical home program?
 - E.2.d.vii. Describe the skills, experience and expertise that indicate why Respondent is well qualified to pursue this work.
 - E.2.d.viii. How does Respondent propose to measure the extent of achieved project objectives and goals?
 - E.2.d.ix. What would represent success of the project, and what historical outcomes does Respondent offer to reflect potential for success with the GBP?
 - E.2.d.x. Essential to the medical homes program is accountability for performance. In return for the accountability, the GBP is considering rewarding accomplishments with shared savings, additional reimbursements and/or some other incentives. What reimbursements strategies does Respondent currently have in place? Discuss rationale.
 - E.2.d.xi. How long would it take to get this type of model in operation following onset of the Contract?
 - E.2.d.xii. If there is a different health care program design that could produce similar or greater cost savings for the GBP population that is superior to those described herein, please discuss the program.
 - E.2.d.xiii. What is the reimbursement structure?
 - E.2.d.xiv. Does Respondent have the ability to pay a care coordination fee to a medical home provider on a per capita basis? Yes No
 - E.2.d.xv. Discuss if any participation in the medical home program as discussed herein presents any legal or regulatory concerns, including but not limited to, payment strategies.
- E.2.e. Respondent represents and warrants that all PCMH programs and arrangements comply with applicable state and federal laws and regulations, including those related to anti-kickback prohibitions

E.3. Accountable Care Organization

- E.3.a. Does Respondent offer a program to contract with an ACO? Yes No
- E.3.b. If yes, discuss the advantages and disadvantages of offering an ACO for a group such as the GBP. [REDACTED]
- E.3.c. Please describe in detail any ACO or other demonstration projects that Respondent has in Texas.
- E.3.d. How does Respondent determine provider payments and payment levels to support an ACO?
- E.3.e. Does participation in the ACO present any legal or regulatory concerns, including but not limited to, payment strategies? Yes No

E.3.f. Respondent represents and warrants that all ACO programs and arrangements comply with applicable state and federal laws and regulations, including those related to anti-kickback prohibitions.

E.4. Remote Health Program (TeleMedicine)

E.4.a. Is Respondent capable of working with ERS in the establishment of a remote health program for Participants? Yes No

E.4.b. What definition does Respondent currently use for a remote health program?

E.4.c. If Respondent currently offers a remote health program, please provide the following information:

E.4.c.i. Describe the terms and how Respondent currently ensures that participants receive quality medical care.

E.4.c.ii. Discuss Respondent’s experience in managing a remote health program.

E.4.c.iii. How will Respondent **initially** engage Participants, provider groups, health plans, and health systems in project initiatives, if such involvement is needed?

E.4.c.iv. What incentives does Respondent use to encourage participation in its remote health program?

E.4.c.v. What are the health and risk factor metrics that Respondent suggests to be included in a remote health program?

E.4.c.vi. Describe the skills, experience and expertise that indicate why you are better qualified to provide a remote health program than other Respondents.

E.4.c.vii. How does Respondent propose to measure the extent to which the remote health program has achieved its objectives and goals?

E.4.c.viii. What would represent success of the remote health program, and what historical outcomes does Respondent offer to reflect potential for success with the GBP?

E.4.c.ix. How long would it take to get the remote health program in operation following execution of the Contract?

E.4.c.x. What is the reimbursement structure for Respondent’s remote health program?

E.4.c.xi. Discuss if participation in the remote health program presents any legal or regulatory concerns, including but not limited to, payment strategies and provider licensure issues.

E.5. Optional Services

E.5.a. Describe in detail any products, services, ideas, or facilities (including any discounts) which may enhance the health care services but are not essential in providing the required services. Respondent shall provide an accurate and detailed description of any additional enhancements to services offered by Respondent, including the implementation history for each service.

Services	Date of Implementation	Cost Savings	Other Benefits to System

- E.5.b. Provide pricing on a per Member basis for any options specified above. ERS will not be obligated to select any of the options provided. If any option is selected by ERS, it will be specifically stated in writing which option(s) are selected.

Services	Additional Cost (if applicable) Per Member

F. Communication Requirements

This Section describes Respondent’s communication requirements with employers, Participants, retirees, GBP, State Agencies, ERS and other constituents, as further described herein.

F.1. Program Specific Overview

- F.1.a. Respondent’s communication materials designed for Participants cannot, and Respondent represents and warrants that it shall not, advertise or promote coverage, services, products or materials, other than those relating to Respondent’s participation in the GBP. Prior approval of all communication material’s design and content shall follow a formal process that requires ERS’ documented authorization. Respondent is not permitted to disseminate materials or information relating to the GBP program without prior written ERS approval. The final materials used by Respondent shall not differ in form or utility from those approved by ERS.
- F.1.b. In all cases, Respondent’s communication materials, whether disseminated via the Internet, written, or in person, shall be in ERS’ required format according to deadlines to be set by ERS and approved by ERS prior to dissemination. Respondent will be required to submit to ERS, for prior approval, draft copies of all proposed communications to include, but not be limited to: PowerPoint presentations, all scripts to be used by Respondent’s customer service representatives and/or for presentations and newspaper/press releases, for SE/FE or for any other GBP-specific purpose (as required in the latest version of the *Marketing Guidelines for GBP & ERS Vendors*). The final materials used by Respondent shall not differ in any way from those approved by ERS without ERS’ permission. **Respondent shall provide all finalized communication materials as directed by ERS’ Benefits Communications representative.**
- F.1.c. **Prohibition.** Respondent shall not discuss, advertise, distribute, or in any manner allude to coverage, products, or materials other than those approved by ERS. This prohibition also applies to the GBP-specific websites to be used by Participants.
- F.1.d. **Customized GBP-specific Materials.** Respondent shall have the ability to develop and customize communication materials designed for active employees, retirees, dependents, State Agencies and higher education employers. Respondent shall provide this material electronically to ERS in a format that allows for electronic view of formatting and electronic editing.
 - F.1.d.i. GBP-specific materials shall be designed to ERS’ specifications, which may include electronic, printed, and mailed newsletters, handouts, brochures, booklets, tutorials, video presentations, required letters and enrollment materials and forms. Respondent shall not distribute these communication materials until they have gone through a formal review process at ERS as discussed in Sections VII.F.1.k. and VII.F.1.l. below.
 - F.1.d.ii. Once communications are approved by ERS, Respondent may not alter the materials in any way without ERS’ permission.
 - F.1.d.iii. In addition to the ERS-specific materials, ERS may suggest refinements to other materials and will work with Respondent to modify materials as needed. These include operating documents such as system-generated Participant letters, MBPDs, claim approval and denial letters, other claims processing documents, promotional items and all other program communications.
 - F.1.d.iv. Describe Respondent’s ability to produce Participant-specific communications.
 - F.1.d.v. Respondent shall customize communications as deemed necessary by the ERS BCOM representative.

- F.1.d.vi. How do the Participant-specific customizations impact cost or quality of communications for ERS? [REDACTED]
- F.1.e. **Plain Language Requirement.** Respondent is responsible for a wide variety of communication materials explaining the Plans to Participants. ERS requires Respondent to comply with TDI's plain language requirements as outlined in the T.A.C., Title 28, Part 1, Chapter 3, subchapter G § 3.602, and as amended in the future, for all communication materials. Material submitted to ERS for approval should be at the 8th-grade reading level with limited use of jargon. The material shall conform to ERS' branding and communication guidelines. In addition, the material shall be subject to editing and customization, including legal disclaimers and other standard language.
- F.1.f. Communication to Participants shall be clear and understandable, using terminology familiar to Participants, customized, as required by ERS, to conform with the benefit plan design and must be approved by ERS prior to dissemination. All Respondent communication materials shall meet ADA and Section 508 requirements for accessibility, including any amendment thereto.
- F.1.g. Communication material shall be available in both print and electronic forms. Certain communication material, such as provider directories, may be made available electronically, only as long as printed materials can be provided upon request to Participants. Accommodations shall be made for individuals with visual and/or hearing impairments in the development, production, and deployment of all communication materials, including information disseminated via the Internet that complies with ADA and Section 508.
- F.1.h. Provide copies of your generic communications used for plans similar to the Plans. Respondent's response should include, but not be limited to, enrollment marketing packets.
- F.1.i. Provide mock-up ID cards for use with the Plans (i.e., in-area, out-of-area, and HDHP).
- F.1.j. **Respondent Training Requirement.** Respondent's Account Management Team shall have designated and GBP-knowledgeable staff and resources available to provide training as needed to ERS staff, employers and Participants. Training may be conducted in person in individual or group settings or via webcast or conference call. Training related to Respondent's internal operations shall be provided to ERS Customer Benefits, Benefit Contracts, and BCOM staff upon ERS' request. Staff training shall occur on an as-needed basis as specified by ERS throughout the year based on changes to operations or Plan design. Respondent should have resources sufficient to accommodate benefits coordinator training, SE/FE fairs, ERS hosted fairs, and employer fairs each year. ERS must approve training agendas and materials for external training. Training will be designed to meet specific learning goals. Respondent should be able to provide web-based training in addition to in-person training.
- F.1.k. **Respondent Communication Materials.** BCOM shall assign a communications account manager to manage communication material for review and approval. Respondent shall assign a communications representative to work with the BCOM divisional designee(s), and this representative must be familiar with the applicable GBP program(s). Respondent shall provide communication strategy, maintain a log of communication activities, attend regularly scheduled meetings with ERS to discuss communications, regularly review, revise and update, where necessary, all information contained on its website that relates to or may be used by any Participant. All communication materials must be approved by the BCOM divisional designee at least fifteen (15) business days prior to Respondent sending, disseminating or otherwise providing such written or oral communications to any person or entity. On occasion, Respondent may obtain approval from the BCOM divisional designee(s) for a faster turn-around time, but this will be solely at the BCOM divisional designee's discretion.
- F.1.k.i. Respondent shall meet with ERS staff to devise a communication strategy that may or may not include documents submitted with the RFP.
- F.1.k.ii. Respondent shall assign a dedicated communications specialist to meet and work with ERS staff to strategize, track, and produce the communication materials.
- F.1.l. **Communication/Marketing Material Review Process.** Communication materials are considered "approved" when a final, watermarked "printer's proof" or "test email" is delivered to ERS and subsequently approved by the BCOM's divisional designee, in writing with a watermarked final version. Respondent may not alter a final watermarked version in any way without ERS' permission.

- F.1.m. **Advertising and other Communications.** Respondent is required to obtain ERS' approval for all proposed newspaper, web, and social media advertisements used to promote GBP benefits programs.
- F.1.n. **Media Releases.** Unless required by law, Respondent is not authorized to make or participate in any media releases pertaining to this procurement, the bid, the Contract, or the services to which they relate without the prior written approval of ERS, and then only in accordance with explicit written instructions from ERS. If required by law, Respondent shall first give written notice to ERS of such requirement. If contacted by the media, Respondent agrees to notify ERS' Media Relations Officer and AD of Benefit Contracts, or designee, in lieu of responding immediately to such media inquiries.
- F.1.o. **Media Inquiries.** Respondent shall provide ERS with its process and protocols for responding to general media inquiries. Respondent shall notify ERS when it anticipates media coverage that could raise questions among Participants and other constituencies **before** the coverage is expected to occur. When appropriate, Respondent will work with ERS to develop answers to potential questions from Participants and other constituents before coverage occurs.
- Information about Participants in the GBP is considered confidential under Texas law. For media inquiries specifically related to Participants, Respondent shall follow the process outlined below:
- Respond to the media representative in a timely way, but only acknowledge receipt of the inquiry and provide an expected timeframe to respond more fully.
 - Immediately provide a high-priority written notification to ERS' Media Relations Officer and AD of Benefit Contracts or designee, outlining all details related to the media's inquiry and all known facts of the related circumstances.
 - Wait for instructions or, as needed, work with ERS to determine how to respond.
 - Respond to the media as determined by ERS. (In many cases, ERS may respond to the media directly and request that Respondent not respond at all.)
- F.1.p. **Quality Control.** Respondent shall ensure that all communication materials submitted to ERS will reflect quality production, accuracy, timeliness, and thorough review. All GBP-approved benefit and legal documents, website content, GBP-specific media responses, required reports (to include *ad hoc* reports), and dated materials shall reflect the following criteria:
- Appropriate Fiscal Year or Calendar Year;
 - Accurate data related exclusively to the GBP, unless otherwise specified by ERS;
 - Appropriate GBP-specific language and standards as outlined in the ERS Editorial Style Guide & Brand Guidelines; and
 - Other information if requested by ERS.
- F.1.q. All such materials shall be provided within the required timelines as directed by ERS staff and/or its consultants and may not be released to outside sources without prior ERS consent.
- F.1.r. Following ERS' review and once edited materials have been provided to Respondent, Respondent shall conform to all documents by ERS' designated deliverable dates.
- F.1.s. **Participant Requests for Communication Materials.** Respondent shall, at its expense, respond to all Participant requests for mailed materials no later than three (3) business days following a Participant's request.
- F.1.t. **Respondent Name Change.** If a name change occurs for Respondent and results in a cost to ERS in publication, Respondent shall be billed for the amount of the expense.

F.2. State Agency Communications

- F.2.a. **State Agency Contacts.** Many of the two hundred seventy-five (275) State Agencies have a staff member dedicated to benefits enrollment and education called a benefits coordinator. Respondent shall have resources dedicated to responding to BCs and other State Agency contacts. Respondent shall provide escalated customer service as well as training and educational presentations/materials to State Agencies throughout the year upon request.
- F.2.b. Respondent shall process requests from State Agencies for printed plan communication materials for their employees at benefit fairs. Respondent shall also process requests from Participants for printed communication materials upon request. In addition, Respondent may be asked to provide materials to other organizations such as the Executive Women in Texas Government, the Texas Association of State Human Resource Managers, the Texas Public Employees Association, the

Retired State Employees Association and the Texas State Employees Union, at Respondent's expense.

F.2.c. **Presentations and Events.** Respondent shall have a GBP-knowledgeable representative available to attend numerous ERS-sponsored events throughout the year to include, but not be limited to:

- SE/FE fairs (additional resources will be needed during the two (2) enrollment periods);
- Wellness fairs;
- Benefit seminars hosted by ERS throughout Texas;
- Various association events and conferences; and
- Benefit webinars.

F.2.c.i. ERS may ask that Respondent work directly with State Agencies, ERS, and other vendors to coordinate SE/FE and other fairs.

F.2.c.ii. Respondent shall provide no fewer than two (2) knowledgeable representatives at every fair in locations throughout Texas who are well versed in the products and services to be offered to the Participants at all GBP SE and FE Fairs/Information meetings where the audience attendance is at least 100. For SE and FE Fairs/Information meetings that are projected to have less than 100 attendees, Respondent shall provide no fewer than one (1) representative knowledgeable about the program unless otherwise specified by ERS.

F.2.c.iii. The dedicated resource(s) must be experienced presenters able to communicate effectively to large groups. Many events will require the representative(s) to set up and staff an information table to offer GBP-approved communication materials and individualized customer service.

F.2.c.iv. ERS' BCOM divisional designee(s) will designate those events for which Respondent's attendance is required. Respondent acknowledges and accepts that additional obligations and enhancements to these requirements may become necessary should benefit plan changes or other circumstances warrant.

F.2.c.v. Respondent should be prepared to accommodate requests for attendance to non-ERS-sponsored events to promote the Plans.

F.2.c.vi. Respondent shall work with ERS, GBP employers and other vendors to coordinate attendance and resources for SE/FE and other fairs.

F.2.c.vii. Describe Respondent's capabilities for staffing benefit fairs, wellness fairs, and other presentation and events.

F.2.d. **Enrollment Campaign.** Respondent shall create custom communication materials for each enrollment campaign. This material includes, but is not limited to:

- An enrollment presentation to be recorded and posted on the ERS website and delivered upon request at enrollment events;
- Targeted enrollment communication brochures;
- Welcome Letter to new Participants;
- Brochures explaining Plan changes and updates; and
- General Plan information.

F.3. Annual Enrollment Communications

F.3.a. **Annual Enrollment Periods.** Please refer to Section VII.B.2. of the RFP for specific enrollment period information.

F.3.b. **Annual Enrollment Communications.** ERS currently conducts the following comprehensive communications tactics for each enrollment period discussed previously in Section VII.B.2. of the RFP:

- Multiple statewide enrollment fairs that include participation by vendors of specific GBP Programs;
- Enrollment presentations that are specific to each audience (non-Medicare and Medicare-eligible) to be delivered at enrollment fairs, and recorded and posted on ERS' website;
- Targeted enrollment communication booklets;

- Premium rate sheets;
- Personalized enrollment statements with information on each Participant and his/her dependents' current enrollments and programs they're eligible to participate in;
- Brochures/handouts explaining Plan changes and updates;
- Mail-in enrollment forms;
- Information on how to make enrollment changes/elections online, with the help of their State Agency BC, via phone or by mail; and
- General Plan information.

ERS' BCOM divisional designee(s) will provide the dates and times of the SE/FE fairs when they become available.

F.4. Ongoing Participant Communications

- F.4.a. Respondent shall provide a dedicated communication specialist(s) to meet and work with ERS staff to produce the communication materials during the implementation process.
- F.4.b. Respondent shall have the ability to provide customizable communication materials, as well as make certain communication materials available in printed copies. ERS' current ongoing communication materials include, but are not limited to:
- MBPD;
 - Welcome packets, including Welcome Letter;
 - Respondent's GBP-specific website;
 - Enrollment Presentations;
 - IVR scripting;
 - Scripted responses used by CSRs;
 - Participant communication and general information pieces;
 - Standard messaging for various systems' downtime;
 - Provider directory, including a specific disclaimer stating that the list of providers is subject to change;
 - Fact Sheet with Schedule of Benefits;
 - Annual HIPAA exemption notice and benefit changes summary;
 - Articles for ERS newsletter;
 - Brochures;
 - News updates for ERS website;
 - Wellness Services, Disease/Condition Management Services, and cost-management pieces;
 - Value-added benefits pieces;
 - *Ad hoc* publications;
 - Token giveaways for enrollment fairs and events;
 - News releases, contract award announcements and other Plan-related statements; and
 - SBCs for each health Plan.
- F.4.c. Respondent will work with ERS staff to produce the MBPDs subsequent to the Contract award. The web version shall not differ from that approved by ERS and must be published on Respondent's GBP-specific website.
- F.4.d. Respondent shall disseminate only GBP-specific approved materials at all events.
- F.4.e. ERS shall retain the right to change or modify such material to accommodate ERS' specific needs.
- F.4.f. **Confidential Information.** Materials that contain protected health information (as defined by HIPAA) or other confidential information such as the Participant ID number, including, but not limited to, Explanations of Benefits and ID cards, must be mailed in an envelope or other mailing service device designed to secure the confidential information from casual viewers.
- F.4.g. **Master Benefit Plan Documents.** Each year, Respondent shall provide to the AD of Benefit Contracts or designee the MBPDs along with any supplemental information and/or amendments.
- F.4.h. **MBPD Approval/Delivery Requirements.** Respondent shall work with ERS to finalize all Plan documents. ERS has final authority over the contents of all Plan Documents and the Plans' designs.
- F.4.h.i. ERS requires the MBPDs be printed; therefore, the final printed product shall not differ from that approved by ERS and published on Respondent's GBP-specific website.

- F.4.h.ii. For FY 2018, ERS will provide Respondent with a Word version of the current MBPDs and Respondent shall provide draft MBPDs with tracked changes by April 1, 2017 or as otherwise directed by ERS. For subsequent years, Respondent shall take the current year's MBPDs and prepare updated MBPDs for the new Fiscal Year by April 1 or as otherwise directed by ERS. The proposed MBPDs shall show tracked changes. Respondent shall make final MBPDs available on the GBP-specific website no later than August 31 of each year unless otherwise directed by ERS.
- F.4.i. Respondent shall follow ADA guidelines and provide an HTML version and printable version for download by the Participant.
- F.4.j. All Participants shall have access to the MBPDs as directed herein or as instructed by ERS. Respondent shall be prepared to mail the MBPDs upon the request of a Participant no later than five (5) business days of the request. Respondent understands, agrees and acknowledges that the Contract between ERS and Respondent shall control over the MBPDs in connection with the contractual relationship between ERS and Respondent.
- F.4.k. **Welcome Packets.** Respondent's packets shall be produced and mailed to approximately 415,000 Plan Participants and 85,000 Medicare-eligible Participants at ERS' direction. Respondent shall coordinate with other appropriate GBP vendors as appropriate to provide supplementary program information to be included in the Welcome Packets. New enrollment packets shall be mailed by Respondent throughout the year. A proposed sample of a Respondent packet shall be included in Respondent's Proposal. This packet should contain, but not be limited to, the following materials:
- Welcome Letter;
 - Fact Sheet;
 - Benefits Summary;
 - Information on Disease/Condition Management Services, Wellness Services and cost management features;
 - Information on value added benefits;
 - Respondent's customer service contact information;
 - HIPAA exemptions; and
 - Sample EOB.
- ERS and Respondent will discuss appropriate timelines during implementation.
- F.4.l. **Welcome Letter.** The Welcome Letter should contain information about Respondent and announce any Plan changes from the previous year. The communication piece shall contain instructions on how to access information and forms using the web and include the customer service address, phone numbers, and hours of operation. Respondent shall not use a postcard or flyer format for this communication piece.
- F.4.m. **Fact Sheet.** The Fact Sheet shall consist of no more than two (2) front and back, 8.5 x 11 size pages. Sample Fact Sheets shall be included with Respondent's Proposal. Once the Fact Sheet contents are approved by the BCOM divisional designee, Respondent shall distribute to employees through BCs (date to be announced) and shall be mailed directly to retirees and other direct pay Participants by Respondent within five (5) business days of their request. Respondent agrees to reflect all Fact Sheet information on the GBP-specific website as further outlined herein.
- F.4.m.i. The Fact Sheet shall include, but not be limited to, the following information:
- Respondent's Customer Service contact information, including the phone number, email and physical address, hours of operation, and ERS' website address.
 - The Schedule of Benefits as illustrated in Appendix M of the RFP.
 - Reflect Respondent's Privacy Policy.
- F.4.n. **Provider Information.** No provider may be listed on Respondent's website or distributed to the program Participants through Respondent's customer service unless a signed contract is in place. In the event Respondent provides incorrect information and a Participant seeks medical treatment based on that information, Respondent agrees to recognize and be financially responsible for any services rendered by that provider, under the terms of the Contract, as if the provider had been under contract.

- F.4.o. **Provider Directories.** Respondent must use its best efforts to keep its provider directories up-to-date at all times. Respondent shall not be required to provide printed versions of its provider directories, but copies (or materials which become stale dated at the time of printing) shall be provided to the GBP Participant upon request and such hard copy material(s) shall be received by the Participant no later than seven (7) business days from the date of request. A current published provider directory shall also be accessible at all times online.

F.5. Web Specifications

- F.5.a. **GBP Configurable Website.** Respondent shall publish and maintain a GBP-specific configurable website for the Participants and prospective Participants in a format acceptable by ERS. Neither Respondent nor its subcontractors can advertise or link to products or services without the express prior written permission of the BCOM divisional designee.

The configurable website shall be directly linked to the ERS home page. The configurable website shall be in final form and linked as required by ERS on an annual basis no later than the first week of May for SE and the first week of September for FE or as otherwise directed by ERS.

- F.5.b. Respondent shall ensure that its Plan website and Respondent's authenticated health portal will be functioning by the date specified by ERS.

- F.5.c. If Respondent currently maintains an internet website, provide the URL address.

- F.5.d. **Proposed Website Materials.** Respondent shall provide ERS with a test site for review on an annual basis the first week of May for SE and the first week of September for FE or as otherwise directed by ERS. Respondent will be required to submit a URL address, all screen shots, and instructions on how to access Respondent's test website at ERS' request.

- F.5.e. **All Respondent "Test" websites.** Respondent shall provide a configurable test website, capable of being linked to the ERS website home page. Following ERS' approval of test websites and prior to being linked to the ERS website, Respondent shall provide documentation of a test plan, test scripts (e.g., to ensure all links are working), completion of testing, and final sign off. Respondent's test website shall transition from a test phase to fully operational and be linked to the ERS website with all information and components as reflected below and/or agreed upon between ERS and Respondent.

- F.5.f. Respondent's GBP-specific home page shall include the following primary access links:

- Respondent's Privacy Policy;
- Customer Service contact information;
- Benefits Summary, Summary of Benefits and Coverage, and MBPDs;
- Link to account specific information using a PIN to access via Respondent's portal;
- Disease/Condition Management Services;
- Wellness Services;
- On demand, real time provider search using specified search criteria, including location, specialization and the acceptance of new patients;
- Search function;
- Program brochure;
- Forms, as needed;
- A page for frequently asked questions;
- A glossary of frequently used terms;
- A news page for information articles;
- An alert feature;
- A section specifically for employers; and
- Link to ERS website.

- F.5.g. Respondent's custom home page shall include both Respondent's logo and ERS' logo as required by the latest version of the *Marketing Guidelines for GBP and ERS Vendors*.

- F.5.h. The final-approved Respondent website shall provide real-time data related to the provider network. The Participants shall be capable of obtaining the same information using the website as they would if they were to contact a Respondent customer service representative.

- F.5.i. **Respondent Access Portal.** Respondent shall provide an easy to use Participant portal that provides access to a secure website that allows Participants to:
- Search medical coverage information;

- View and print EOB for claims;
- Download forms;
- Take a health risk assessment;
- Acquire a temporary ID card;
- Enroll in e-statements;
- Compare treatment costs;
- Provide information on any value-added products offered; and
- Provide health and wellness information.

F.5.j. **Respondent Website Technical Specifications.** Respondent shall adhere to all website access, format, content, and technical requirements outlined in both the ADA and Section 508.

F.5.k. **Section 508 Requirement.** Respondent shall comply with Section 508. Participants with disabilities must have access to and use of information and data that is comparable to the access to and use of information and data by Participants who do not have disabilities. All Participants should get a full and complete understanding of the information contained on Respondent's website as well as the full and complete ability to interact with the site.

F.5.k.i. Is Respondent Section 508 compliant? If yes and if Respondent has a report evidencing its organization's Section 508 compliance, please provide it.

F.5.k.ii. Is Respondent currently using the WCAG 2.0 or does Respondent have plans to use these guidelines in the future?

F.5.k.iii. If not currently using WCAG 2.0, provide a date when Respondent would be able to implement the WCAG standards in the future.

F.5.l. **Internet Accessibility Specifications.** In addition to ADA and Section 508 requirements, Respondent shall adhere to the following website guidelines:

- Respondent's website should be supported on HTML5 compliant browsers and compatible with a wide spectrum of web browsers, including:
 - Internet Explorer 9.0 or newer;
 - Google Chrome;
 - Mozilla Firefox; and
 - Apple Safari 9.0 or newer.
- A method shall be provided that permits users to skip repetitive navigation links.
- Documents should be organized so they are readable by a screen reader.
- Tables must have appropriate column and row headers. Markup shall be used to associate data cells and header cells for data tables.
- Site must be understandable when JavaScript is turned off.
- If you use Flash content, alternatives to access the information must be provided.
- All images must have alternate text that is descriptive.
- Online forms allow people using assistive technology to access the information, field elements, and functionality required for completion and submission of the form, including all directions and cues. This should not be mouse dependent.
- When a timed response is required, the user shall be alerted and given sufficient time to indicate more time is required.
- Recommend that testing be done for broken links. All links should have appropriate text to convey where the link will go. Do not use "click here."

F.5.l.i. If applicable, Respondent must ensure the products procured by ERS under the Contract comply with the State Accessibility requirements for electronic and information resources specified in 1 T.A.C. Chapter 213.

F.6. Respondent Website Content

F.6.a. All content for the GBP configurable website shall be approved by ERS prior to publication. The website must be functioning prior to SE/FE and no later than the first week of May for SE and the first week in September for FE, or as otherwise directed by ERS. The final materials used by Respondent shall not differ in form or utility from those approved by ERS. Respondent's configurable website shall:

- F.6.a.i. Provide self-service transactions for the Participants to:
- View the PCP selection and an 18-month history of claims;
 - View a deductible, coinsurance, and total out-of-pocket maximums total paid to date;
 - View and print a claims EOB;
 - Retrieve annual 1095-B statements, indicating months of coverage throughout each tax year;
 - Print a temporary ID card and claim form;
 - Compare treatment costs;
 - Complete and submit a Health Risk Assessment;
 - Locate a PCP based on specific geographic requirements;
 - Lodge a service complaint, and escalate unresolved complaints and to request a telephone call back within one (1) business day;
 - See and print an annual summary of out-of-pocket expenses for Plan services, suitable for submission to the Internal Revenue Service for income tax purposes and to the flexible benefits administrator for Section 125 claims;
 - Communicate with CSRs using live chat;
 - Search the full website using a key word and/or phrase; and
 - Provide a “return to home” button, which returns the viewer to the ERS home page.
- F.6.a.ii. **Participant and Consumer Information Sources.** Respondent shall provide a variety of tools and information sources for Participants. This includes, but is not limited to, the following:
- New Participant and SE/FE information;
 - Interactive web-based benefit “cost estimator tools” to allow cost modeling of GBP program choices (HealthSelect v Consumer Directed HealthSelect v HMO);
 - Examples of cost scenarios to help Participants understand how the health plan works;
 - Comprehensive Provider Directory;
 - Sample cost information for the most common physician, hospital and pharmacy services in Texas;
 - Participant information services (including web-based) to track deductible, coinsurance and out-of-pocket maximum status; and
 - Non-web information similar to web tools for those without web access.
- F.6.a.iii. **Home Page Information.** The custom home page shall include the following information:
- Information that welcomes new Participants and introduces the Participant to Respondent and summarizes the basic coverage benefits;
 - A direct link to ERS’ website. Respondent shall indicate the current dates for FE and SE periods and remove all references to FE/SE enrollment periods as directed by ERS;
 - Information on how to access emergency care;
 - Helpful Phone Numbers and websites; and
 - Transitional benefits guideline.
- F.6.a.iv. **Link to Respondent’s Privacy Plan**
- F.6.a.v. **Link to Customer Service Page** to include the following information:
 Phone numbers and hours of operation;
 Physical address of Plan site;
 Link to Respondent’s Complaint Process;
 An email address or a link to a mailbox for Participants to send customer complaints and questions directly to Respondent. Respondent should respond to email complaints/inquiries by the end of the next business day. A tracking system for email complaints shall be in place that is similar to the tracking of telephone complaints that provide complaint responses to ERS;
 Any applicable interactive forms (i.e., claims forms); and
 Link to Plans’ Appeals/Grievance process.
- F.6.a.vi. **Link to Benefits** to include the following information:
- Welcome Letter;
 - Fact Sheet;
 - Plan flyers and brochures;
 - Informational videos;
 - MBPDs; and
 - SBCs.
- F.6.a.vii. **Link to Prescription Drug Information** as determined by ERS and provided by the PBM.
- F.6.a.viii. **Link to Provider Look-Up and/or Provider Directory** to include following information:
- Instructions on selecting a PCP.

- Provider Look-up shall be updated real-time. Users should be able to search by ZIP code and get a map and directions to the provider's office. It should indicate that the provider is: a PCP, specialist, or ancillary provider, e.g., physical therapist and indicate provider number, network affiliation; i.e., independent vs. group practice and if he or she is accepting new patients. Each PCP shall have an assigned unique office or provider code number. Respondent shall include a disclaimer that providers are subject to change.
- Instructions on how to change designated PCP.

F.6.a.ix. **Link to Disease/Condition Management Services** to include the following information:

- List those Disease/Condition Management Services currently provided;
- Provide a description for each Disease/Condition Management Services referenced;
- Indicate how GBP Participant may get more information on any offered program(s); and
- Provide enrollment information/form.

F.6.a.x. **Link to Wellness Services** to include the following information:

- List those Wellness Services currently provided;
- Provide a description for each Wellness Services referenced;
- Provide a Health Risk Assessment form;
- Indicate how Participant may get more information on any offered program(s);
- Provide enrollment information/form; and
- Provide separate section for Wellness coordinators at State Agencies.

F.6.b. Respondent shall not reference any web address other than the ERS-specific website.

F.6.c. Respondent shall only provide a GBP-dedicated toll-free customer service number.

F.7. Printing of Additional Communication Materials

F.7.a. The Respondent may be asked to design and/or print certain other ERS communication materials related to eligibility and enrollment, which may include, but are not necessarily limited to, New Employee Benefits Guides, Annual Enrollment Guides (SE and FE) and Personal Benefits Enrollment Statements. These materials are in addition to the other communication materials that the Respondent must produce as part of the Contract and must be approved by ERS in advance of such printing in accordance with ERS' previously described format review process.

F.7.b. The specifications for the 2016 printing of the New Employee Benefits Guide, Annual Enrollment Guide (SE), Annual Enrollment Guide (FE) and Personal Benefits Enrollment Statement are attached as Appendix N of the RFP. Note that these specifications will change from year to year so those attached are for illustrative purposes only.

F.7.c. In the event the Respondent contracts with one or more subcontractors to provide these design and/or print services, the Respondent shall exercise reasonable due diligence to ensure that each subcontractor has the commitment, capability, resources, security, and competence reasonably necessary to perform all such services in a good and workmanlike manner in accordance with applicable professional and contractual standards. The Respondent is solely responsible for all services required to be performed to carry out the terms of the Contract, and the Respondent specifically assumes all liability for any and all such services provided by subcontractors, if any. Section 28.11 of the Contractual Agreement has additional requirements in this regard.

F.7.d. ERS reserves the right to participate in the design and/or printing process, including, but not necessarily limited to, participating in the following activities:

- Setting print/fulfillment bid specifications; and
- Performing quality control checks during the printing process.

G. Implementation and Project Management Requirements

G.1. Implementation Requirements

G.1.a. The Respondent approved by the Board should be prepared to attend an implementation kick-off meeting as soon as possible following the Board's approval to include, but not be limited to, discussion of Respondent's customer service, finance requirements, account management requirements, communication requirements, and SE/FE meeting responsibilities.

G.1.b. **Implementation Period.** The period of time beginning with the selection of Respondent by the Board and ERS' execution of the Contract, to the point at which Respondent assumes full

responsibility for the duties specified hereunder, shall be known as the "Implementation Period." Respondent and the ERS Project Manager shall work together to prepare a mutually agreed-upon schedule for completion. Any schedule agreed upon must provide that the Contract, and any requirements necessary for TPA to perform all obligations required under the Contract, must be fully tested, implemented and ready for service to ERS, the Plans and their Participants absolutely no later than August 1, 2017.

G.1.b.i. During the Implementation Period, Respondent will:

- Maintain an appropriate, sufficient and qualified Implementation Team. ERS reserves the right to require Respondent to add additional staff or to remove staff from the Implementation Team.
- Not permit any current or prospective business, projects or other matters to interfere in any manner with the smooth and timely implementation of the Plans.
- Understand and agree that time is of the essence in the performance of the Contract and in the implementation of the Plans.
- Acknowledge and agree that ERS, the GBP, its Participants and the State shall suffer irreparable harm if the Plans are not fully and completely implemented on or before August 1, 2017.
- To the extent the liquidated damages, Performance Guarantees, and/or other provisions of the Contract require prior notice, Respondent hereby waives such prior notice during the Implementation Period.
- ERS may immediately assess against Respondent the agreed upon liquidated damages, and/or the amounts placed at risk as referenced in the *Performance Guarantees in Appendix F* or implementation of other legal remedies available to ERS in the Contract, without prior notice, in the event Respondent fails, refuses or if it reasonably appears that Respondent will fail or refuse to complete or perform or will not be capable of completing or performing any aspect of the Contract in connection with the timely and smooth implementation of the Plans.
- All communication materials dealing with the implementation, including Participant communication materials, call center staff training materials, IVR, and website design are subject to ERS' review and approval.

G.1.c. **Implementation Team.** Within three (3) business days following the Board selection, Respondent shall provide to the Benefit Contracts AD, or designee, a complete listing of Respondent's Implementation Team. The list shall identify an account "key point of contact" responsible for the implementation, coordination, and maintenance of the business relationship and continuity pertaining to all business matters in support of the Contract during the Implementation Period.

Respondent's Implementation Teams' contact list should reflect key contact information (office, fax, and cell phone numbers, email and physical addresses). The required representatives for the Implementation Team are listed in Sections VII.G.1.d. – VII.G.1.f. below. Respondent shall ensure a smooth transition, without exception, of all ERS communication processes and requirements as follows:

- Respondent shall inform, via email notification, the Benefit Contracts AD, or designee, in advance of any planned periods of unavailability by the Implementation Team's key point of contact.
- In any instance where an Implementation Team key point of contact is not available to ERS, Respondent shall immediately secure and provide details of alternate coverage sufficient to meet ERS' expectations.
- Should staffing adjustments or additional team members become necessary to support the account functions, Respondent shall dedicate such appropriate staff as required by and acceptable to ERS.

G.1.c.i. Respondent shall notify the AD of Benefit Contracts or designee with any anticipated changes to the ERS' Implementation Team structure.

- G.1.d. **Implementation Team Leadership.** The Implementation Team shall be led by an Implementation Project Manager to coordinate and expedite all Contract requirements as outlined and prioritized by ERS, to ensure complete continuity, without exception, of all interactive functions, deliverables, and objectives for the Plans prior to and during the Contract's onset.
- G.1.e. Respondent must assign a communications lead on staff who is designated to the ERS program. Communication requirements are fully described in Section VII.F.
- G.1.f. **Implementation Project Manager.** At a minimum, the Implementation Team shall have both a dedicated Implementation Project Manager and a back-up Implementation Project Manager with availability to ERS staff throughout the Implementation Period and be accessible to ERS during regular business hours (7:00 a.m. – 5:00 p.m. CT), or as otherwise deemed necessary by ERS, during the Implementation Period. The Implementation Project Manager shall serve as ERS' primary contact throughout the Implementation Period and will have immediate access to those able to make binding decisions for Respondent. Respondent shall provide the names, positions and qualifications of the Implementation Team and Implementation Project Manager to ERS within three (3) business days from Contract award.

G.2. Project Management

- G.2.a. ERS' Enterprise Planning Office is responsible for project management services that will ensure the proper planning, procedures and protocols are in place to implement the Plans prior to the September 1, 2017 go-live date.
- G.2.b. ERS engages an ERS Project Manager to manage the implementation activities from ERS' perspective. It is ERS' expectation that the ERS Project Manager will work with Respondent's Implementation Project Manager as the primary point of contact regarding all implementation activities and endeavors; all information will be disseminated through these two individuals. Typically, the ERS Project Manager and Respondent's Implementation Project Manager communicate daily, or at an appropriate frequency as determined by ERS, to identify any changes, impacts, risks, and updates to the project status, schedule, and risk and issues log. These are then communicated to the team members as needed.
- G.2.c. ERS requires the following regarding Respondent and its project management services:

 Respondent will have an Implementation Project Manager who will be responsible for the oversight and management of implementation activities from Respondent's perspective. Respondent's Implementation Project Manager will be ERS' primary point of contact during the implementation.
 There will be one master project schedule from which both Respondent and ERS will work; the schedule must be in a format accessible by ERS, which is currently Microsoft Project or Excel. Respondent will be responsible for the management, retention, and transference of all implementation documentation. This includes, but is not necessarily limited to: project schedule; meeting minutes and risk and issues log.
 ERS stores all project documentation within SharePoint, which is not accessible by Respondent. However, Respondent is expected to provide all project documentation to the ERS Project Manager within a timeframe to be determined mutually between Respondent and ERS for uploading into the SharePoint environment.
 Respondent will ensure all items that are to be operationalized after project go-live have been transferred to the appropriate party with the level of information necessary to ensure full understanding. Items for transference to operations will also be thoroughly captured in the project documentation.
- G.2.c.i. Respondent shall provide information regarding its project management services as requested below. In addition, if Respondent is selected as a Finalist, it will be asked to expand further on its project management services.
- G.2.d. Describe how Respondent's Implementation Project Manager proposes to work with the ERS Project Manager and Implementation Team. How will the individuals on the team work together? What functional areas will be represented? If Respondent uses a specific approach or methodology, please describe it.
- G.2.e. What type of logistical issues or concerns from a project management perspective does Respondent believe this project will face? (i.e., location of Respondent's Implementation Project Manager (offsite/onsite), resource team locations, communications, and subcontractors for

printing or other outsourced services). Provide an explanation, including how these are mitigated.

- G.2.f. Based on Respondent's understanding of the project scope, does Respondent anticipate needing to make any system and/or process changes to accommodate ERS? What are the Respondent's internal processes and timelines associated with making any changes during implementation, both anticipated based on scope understanding or identified during implementation?
- G.2.g. Following ERS' initial review of the Proposals, if Respondent is selected as a Finalist, Respondent shall be prepared to provide a comprehensive description of Respondent's project management services including the following elements:
- **Project Approach/Methodology.** Include a complete description of Respondent's proposed approach and methodology for the project. This section should convey Respondent's understanding of the proposed project.
 - **Project Team Structure/Internal Controls.** Provide a description as to how ERS' Project Manager will work with Respondent's Implementation Project Manager. Provide a description of the proposed project team structure and internal controls to be used during the course of the project including any subcontractors.
 - **Proposed Implementation Schedule.** Include all project requirements and the proposed tasks, services, and activities necessary to accomplish the scope of the project defined in this RFP. This schedule must contain sufficient detail to convey Respondent's knowledge of the subjects and skills necessary to successfully complete the project. Include any proposed required involvement by ERS staff. Respondent may also present any creative approaches that might be appropriate and may provide any pertinent supporting documentation.
 - **Outcomes and Performance Measurement.** Describe the impacts/outcomes Respondent proposes to achieve including how these outcomes would be monitored, measured and reported to the ERS Project Manager.
 - **Risks and Mitigation.** Respondent must identify potential risks and mitigation that are considered significant to the implementation success. Include a description of how Respondent's Implementation Project Manager will effectively communicate these risks to the ERS Project Manager. How would Respondent mitigate any risks identified?
 - **Deliverables.** Fully describe deliverables to be submitted under the proposed Contract.

H. Operational Specifications and Requirements

This Section describes Respondent's operational specifications including account management, administrative requirements and functions, customer service, and the statistical reporting requirements.

H.1. Account Management Requirements

- H.1.a. ERS strongly believes that the account service relationship is the critical link in developing and maintaining a strong working relationship dedicated toward the achievement of Plan objectives. As such, Respondent shall be committed to providing ERS with a service attention that is at the highest levels in the industry and fully consistent with ERS' expectations. ERS shall define the criteria for measurement and evaluation of service performance.
- H.1.b. **Account Management Team.** Respondent shall establish and maintain throughout the Contract Term an Account Management Team that will work directly with ERS staff. This Account Management Team shall include an account executive, account manager, customer service manager, wellness coordinator, experienced practicing attorney, benefits/operational manager, person responsible for preparing reports, information systems manager, financial manager, and a communications manager. The account manager should be dedicated exclusively to ERS and the GBP; however, all other personnel may be designated to work on ERS and GBP matters as necessary for TPA to fully, timely and effectively perform all services, obligations and responsibilities required under the Contract. Approval of the Account Management Team rests with ERS.

- H.1.b.i. Respondent shall provide ERS with access to a designated clinical consultant and/or medical consultant to advise and support ERS on analyzing emerging clinical and utilization trends within the scope of reviewing both standard and *ad hoc* reports.
- H.1.b.ii. Respondent shall provide individuals with specialized knowledge of standard and non-standard banking arrangements and relations with third-parties.
- H.1.c. The experience and professional qualifications of Respondent's Account Management Team are critical elements in awarding this Contract. ERS may, at any time, request the removal or reassignment of Respondent's staff, or the staff of any subcontractor, in connection with Respondent's performance under this Contract.
- H.1.d. Any licenses and/or certifications that Respondent and/or its staff are required to maintain will be kept current during any period of time that Respondent has a contract in place with ERS.
- H.1.d.i. Describe any license(s) and/or certifications that Respondent and/or its agents (including employees, independent contractors and subcontractors) are required to maintain.
- H.1.e. The Account Management Team shall be thoroughly familiar with all of Respondent's functions that relate directly or indirectly to the ERS account.
- H.1.f. Respondent agrees to allow ERS to complete a formal performance evaluation of the assigned Account Management Team annually as deemed appropriate by ERS.
- H.1.g. The Account Management Team shall provide all services specified in this RFP and be available Monday through Friday from 8:00 a.m. to 6:00 p.m., CT, excluding national holidays.
- H.1.h. Provide a description of the proposed Account Management Team's structure (including any subcontractors), its philosophy and internal controls to be used during the course of the project.
- H.1.i. If Respondent contracts with a management company for some or all of its administrative services, please specify:

Name of Company:	
Physical address:	
Mailing address:	
Email address:	
Telephone number:	
Facsimile number:	
Services provided:	
Reimbursement Method:	

- H.1.j. How many other clients are now, and will be in the future, assigned to the proposed Account Management Team?

Number of Clients Currently Assigned to Respondent's Account Management Team	Number of Clients that will be assigned to Respondent's Account Management Team in the Future

- H.1.k. **Account Executive Team.** Respondent shall also designate an Account Executive Team composed of Respondent's executive management personnel assigned to the GBP's account.
- H.1.l. **Respondent's Contact List.** No later than the tenth (10) business day following the Board selection, Respondent shall provide to ERS' Benefit Contracts' AD, or designee, a complete listing of Respondent's account management and account executive contacts assigned to support the Contract. The list shall be consistent with the organizational charts that Respondent is required to provide with its Proposal and specified in Section IV.B.1.b above, and it should identify a dedicated account manager responsible for the ongoing maintenance of the business relationship and continuity pertaining to all business matters in support of the Contract post-implementation, and other personnel identified in Sections VII.H.1.b. – VII.H.1.b.ii. and VII.H.1.k. above. Respondent's contact list should reflect key contact information (office, fax, and cell phone numbers, email and physical addresses) for each representative. Respondent shall

ensure a smooth transition, without exception, of all ERS communication processes and requirements as follows:

- Respondent shall inform, via email notification, the Benefit Contracts' AD, or designee, in advance of any planned periods of unavailability by the Account Management Team's key point of contact.
- In any instance where an Account Management Team key point of contact is not available to ERS, Respondent shall immediately secure and provide details of alternate coverage sufficient to meet ERS' expectations.
- Should staffing adjustments or additional team members become necessary to support the account functions, Respondent shall dedicate such appropriate staff as required by and acceptable to ERS.

H.1.m. Respondent shall provide a minimum of two (2) per Fiscal Year face-to-face reviews to ERS on the utilization and performance of the Plans. The reviews shall include, but not be limited to, a presentation of the following information:

- Health program statistical outcomes;
- Industry trends and best practices;
- Plan recommendations; and
- Other cost saving recommendations.

H.2. Subcontractors

H.2.a. Does Respondent propose to use subcontractors in the performance, delivery and provision of any services and products requested hereunder? Yes No

H.2.b. If applicable, provide the information below for each subcontractor and specify what services may be performed by each subcontractor. Any planned or proposed use of subcontractors by Respondent shall be clearly disclosed and documented in Respondent's Proposal, including specification of the services that may be performed by each subcontractor. Further, Respondent shall provide complete information, prior to and, if requested by ERS, after execution of the Contract, regarding each subcontractor used by Respondent to meet the requirements of the Contract. List each in the following format:

Name:	
Physical address	
Mailing address:	
Email address:	
Telephone number:	
Services performed:	
Length of time contracted with subcontractor:	

H.2.c. Respondent shall accept the following requirements:

- Respondent warrants and represents that it shall be solely responsible and liable for all subcontracted activities in support of the benefits and services outlined in any executed agreement with ERS; and
- If Respondent subcontracts any part of the outlined benefits and services, the subcontractor(s) are subject to reviews and acceptance by ERS throughout the Contract Term.

H.2.d. Respondent warrants and represents that it shall be completely responsible and liable for all services performed and for fulfillment of its obligations under the Contract, even if such services are delegated to a subcontractor. No subcontract shall relieve Respondent of responsibility for the services. Respondent shall manage all quality and performance, project management and schedules for subcontractors. Respondent shall be held solely responsible and accountable for the completion of all work for which Respondent has subcontracted. Respondent is solely responsible for the acts and omissions of its subcontractors and for assuring that subcontractors meet all of the requirements of the Contract and all amendments thereto.

H.2.e. Respondent shall be responsible for ensuring that its subcontractors are licensed, if applicable, and that they will comply with all applicable laws and regulations, both state and federal, and requirements of any organization or entity with any oversight authority over them.

- H.2.f. **Subcontractor Staff Requirements.** Subcontractors providing services under the Contract shall meet the same service requirements and provide the same quality of service required of Respondent.
- H.2.g. Subcontractors must reside in the United States. All work performed by subcontractors must be performed in the United States.
- H.2.h. **Primary Contact.** Respondent shall be the primary contact for ERS and subcontractors.
- H.2.i. **Background Checks.** ERS retains the right to check subcontractor's background or otherwise gather information regarding subcontractor to make a determination to approve or reject the use of a submitted subcontractor. Any negative responses may result in ERS' disqualification of the subcontractor.
- H.2.j. **Right to Request Removal.** ERS reserves the right to request the removal of Respondent's subcontractor staff deemed unsatisfactory to ERS.
- H.2.k. **Subcontractor Expense.** Subcontracting shall be at Respondent's expense.

H.3. General Requirements

- H.3.a. Respondent shall provide Benefit Contracts AD or designee with written notice in accordance with the Performance Guarantees currently in existence prior to effecting any changes to its operations, program, and/or website modifications that may impact the administration, delivery, promotion or operations of the program that may affect ERS, the Plans, and/or Participants. When available, changes to personnel connected with the administration of the Plans will be provided to ERS. ERS will decide if the changes will be approved for use.
- H.3.b. Respondent shall provide general administrative, legal, technical and statistical support to assist ERS in the operation of the Plans.
- H.3.c. Respondent shall provide the GBP with priority placement in all aspects of Contract performance provided by Respondent.
- H.3.d. ERS requires Respondent to meet with ERS staff and/or Board as requested to discuss the status of the Plans in terms of utilization patterns and costs, as well as to propose new ideas that may benefit the GBP and its Participants.
- H.3.e. Respondent is expected to present actual claims experience and offer suggestions as to ways the benefits could be modified in order to reduce costs or improve the health of Participants. Suggestions must be modeled against actual membership and claims experience to determine the financial impact as well as the number of Participants impacted.
- H.3.f. Respondent shall also present benchmark data by using its entire book of business, a comparable client to the GBP, and/or some other industry norm.
- H.3.g. Respondent shall provide ERS access to a dedicated reporting and analytical team to advise and support ERS to include, but not be limited to:
- Provide claims specific information and files;
 - Create statistical reports;
 - Develop templates for ERS data;
 - Benchmarking analysis;
 - Trend analysis;
 - Provide data for a regional map on the website; and
 - Develop, review, and fact check ERS publications (i.e., Cost Containment and Fraud Report).

A sample of the Cost Containment and Fraud Report is located at:

http://www.ers.state.tx.us/About_ERS/Reports/.

- H.3.h. Describe Respondent's interactive web-based benefit "cost estimator tools" that allow cost comparison of GBP program choices (HealthSelect v. Consumer Directed HealthSelect v. HMO). Please also elaborate on any additional tools offered that are not specifically described in that section.

H.3.i. Describe Respondent’s interactive web-based benefit tools that help Participants understand how the health plan works, including those that allow comparison of Provider costs among network Providers. With respect to these Provider cost comparison tools, discuss whether and, if applicable, how Respondent ensures that Provider cost estimates remain valid so that an estimate obtained by a Participant is largely the same as the cost ultimately charged by the Provider to that Participant for that service.

H.3.j. **Meetings.** Respondent shall develop meeting agendas, coordinate meetings and provide documentation of actions in the form of meeting minutes for designated meetings with ERS at a scheduled time agreed upon by ERS and Respondent to include, but not be limited to:

- Implementation, if applicable;
- Operational;
- Analytical; and
- Communications.

H.3.j.i. Respondent shall use ERS’ meeting agenda template and provide meeting agendas one (1) day prior to the scheduled meetings.

H.3.j.ii. Respondent shall provide the meeting minutes within four (4) business days from the day of the scheduled meeting for ERS’ review and approval.

H.4. Customer Service

H.4.a. Respondent’s Customer Call Center shall be located within the United States and preferably in the State.

H.4.b. **Call Center/Customer Service Team.** Respondent shall provide a high quality and experienced customer service unit by establishing and providing for staffing of one (1) customer service team dedicated exclusively to ERS. The Customer Service Team shall be adequately staffed and fully trained in the Plans’ benefit designs and able to manage GBP-related questions and provide for resolution of complaints, clarifications, and escalated issues, and to assist in claim submissions. Respondent shall have the ability to track and report performance of call center metrics. The Customer Service Team must be functioning prior to implementation or at the direction of ERS.

H.4.c. The hours of operation for Respondent’s Customer Service Team shall be, at a minimum, Monday through Friday from 7:00 a.m. to 7:00 p.m., CT. Respondent shall also provide Saturday coverage from 7:00 a.m. to 3:00 p.m., CT, and emergency service coverage outside of the required business hours, excluding national holidays.

H.4.d. Respondent shall provide a dedicated Call Center/Customer Service unit.

H.4.e. Respondent shall ensure its Customer Service unit will be functional prior to the next open enrollment period or at the direction of ERS.

H.4.f. **Call Center Specialists.** Respondent shall designate as many call center specialists as necessary whose sole responsibility shall be to respond to and resolve, within a reasonable timeframe as determined by ERS, Plan-related customer service needs. Respondent shall jointly monitor and adjust staffing levels as work and service requirements demand. Respondent warrants and represents that it shall provide thorough training of the Customer Service Team. Any training deficiencies noted by ERS shall be immediately rectified by Respondent to ERS’ sole satisfaction.

H.4.g. **Back-up Staffing.** Respondent shall designate additional staff, as needed, to update and maintain Plan-related records and accounts. This staff will also provide additional support for Respondent’s Customer Service Team.

H.4.h. Describe the features of Respondent’s Customer Service unit by reflecting the following:

Describe Respondent’s call center telecommunications system in detail.	
Describe the manner in which the customer service unit may be accessed (i.e., web chat, phone, email).	

Describe the Customer Service unit's hours of operation.	
Describe how after hours calls are handled.	
Can Respondent provide a separate toll-free telephone number for Participants? If no, please explain. If yes, explain how the caller is routed to the appropriate customer service representative.	

H.4.i. Briefly describe the training that each Respondent employee or representative receives to provide Respondent customer services by providing the following:

Employee Category	Training received, including length of time training is received
Claim Processors	
Customer Service Representatives	
Supervisors	
Management Staff	
Other Staff (please specify):	

H.4.j. **Call Center Management Criteria.** Respondent shall establish toll free lines (telephone and facsimile). Respondent shall also employ appropriate and adequate customer service staff to maintain service levels, abandonment rate and blockage rate as referenced in the Appendix G, *Call Center Metrics*, and Appendix F, *Performance Guarantees*. Respondent shall provide in its Proposal the methodology and sample source documents used by Respondent to arrive at the reporting requirements for the call center metrics referenced in Appendix G, *Call Center Metrics*.

H.4.k. With regard to automated customer service support using voice response for routine questions, please provide the following:

Does Respondent currently provide any automated customer service support using voice response for routine questions? If yes, please give details of this service	
If Respondent does not currently provide any automated customer service support using voice response for routine questions, please specify a date in the future, if any, that Respondent will be providing these services. If Respondent will not be providing this type of service in the future, please answer this question "N/A."	

H.4.l. Does Respondent record all phone calls and notify all parties that their conversations are being electronically recorded and stored? Yes No

H.4.m. How long does Respondent store electronically recorded phone calls?

H.4.n. How does Respondent ensure that its customer service representatives are providing timely and accurate information?

H.4.o. Does Respondent's customer service inquiry system allow representatives to record comments so that another customer service representative can review previous notes in order to assist Participants? Yes No

H.4.p. Does Respondent have the ability to monitor live customer service calls? Yes No

H.4.q. With regard to customer service inquiries, please describe how patterns of customer service inquiries are monitored and tracked.

H.4.r. Respondent shall have the ability to send recorded telephone call records to ERS upon request.

- H.4.s. Identify and describe the various reporting capabilities of the call center system. [REDACTED]
- H.4.t. Describe Respondent’s calculation methodology applicable to the proposed call center metrics requirements referenced in Appendix G. [REDACTED]
- H.4.u. Does Respondent expect to make major changes to its customer service organization or facilities within the next two (2) years (i.e., moving to a different location, reorganizing or merging units)? If so, provide an explanation. [REDACTED]
- H.4.v. With regard to written inquiries received by Respondent, provide the following:

Describe Respondent’s procedure for managing written inquiries.	[REDACTED]
What is Respondent’s current response time standard with respect to questions requiring written communication?	[REDACTED]

- H.4.w. Describe Respondent’s procedure for handling customer service complaints and inquiries by providing the following:

How does Respondent monitor first call resolution?	
How does Respondent monitor Participant inquiries that do not get resolved during the initial call?	
What customer complaint tracking system does Respondent use?	
How long has Respondent’s customer complaint tracking system been operational?	
Does Respondent have plans within the next 36-months to implement a new complaint tracking system? If the answer to this question is “Yes,” please provide the date when Respondent plans to have this new system operational.	
Describe Respondent’s problem resolution policies and procedures. Respondent’s description should include, but not be limited to, Respondent’s procedures for escalation of complaints.	
Describe Respondent’s internal processes to deal with Participant grievances.	
Describe any procedures for handling customer service complaints and inquiries that were not requested above, if any.	

- H.4.x. Describe the types of access (automated, interactive, etc.) Respondent provides to Participants in order that Participants can obtain the necessary information regarding health care services, coverages, benefits, equipment, supplies, products and providers.
- H.4.y. If Participants can upload documentation in support of Respondent transactions through Respondent’s website, describe what file types are permitted for uploading. If Participants are not able to do this, please answer this question “N/A.”
- H.4.z. **Access for Hearing Impaired.** Respondent’s Call Center shall be equipped with Telephone Device for the Deaf (“TDD”) or Teletype (“TTY”) in order to serve the hearing impaired population.

- H.4.aa. How does Respondent's customer service system support Participants with disabilities?
- H.4.bb. **Language Accessibility.** Respondent's Call Center shall have staff available to provide language translation services to meet the service level objectives defined in Appendix G, *Call Center Metrics*, and Appendix F, *Performance Guarantees*. This may be provided by using a language translation organization.
- H.4.cc. Describe how the Participant is assisted if they speak languages other than English.
- H.4.dd. **Benefits Coordinator Access.** Respondent shall provide the necessary resources and technology to adequately assist BCs with questions and concerns.
- H.4.ee. **Enrollment Verification.** To assist Respondent in verifying enrollment, ERS provides online access to its enrollment system, PeopleSoft. Online access is available through Respondent's Internet provider and shall be operational one (1) week prior to implementation. Staff trained on ERS' enrollment system shall be available during all customer service open hours.
- H.4.ff. Respondent shall accept oral verification of a GBP Participant's coverage by an authorized representative of ERS or verify the Participant's coverage through utilization of ERS Online. Coverage shall be updated in Respondent's system prior to receipt of the next ERS weekly enrollment information.
- H.4.gg. Describe Respondent's ability to make immediate/emergency enrollment updates upon phone or email request from ERS.
- H.4.hh. Are the updates real-time and how quickly can a provider view the enrollment update?
- H.4.ii. Describe the hours that Respondent's staff is available to handle immediate/emergency updates.

H.5. Administrative Requirements

- H.5.a. **Audits.** ERS may contract with one or more auditing firms to conduct periodic audits of Respondent. Respondent shall cooperate with and support the efforts of the auditors. Neither ERS nor the auditors will be required to indemnify Respondent for any costs incurred in connection with these audits. Article 15 of the Contractual Agreement has additional requirements regarding audits.
- H.5.b. **Administrative Audit.** As Plan administrator for the GBP, ERS may access, request, and audit documents related to the Plans and Participant records as required for purposes of administering the GBP.
- H.5.c. **Annual Audit of Respondent.** Pursuant to Chapter 1551.062(b)(2) of the T.I.C., ERS shall commission an annual audit of Respondent's claims administration by an independent auditor to determine the adequacy, timeliness, and accuracy of Respondent's procedures and performance for the prior year. ERS may, in its discretion, conduct other audits of Respondent when and in the manner ERS deems necessary.
 - H.5.c.i. ERS will determine the scope of the audit, and Respondent shall fully support the activities of and in good faith cooperate with the auditor. Respondent shall not designate any "black out" periods. In addition, if ERS or any of its duly authorized representatives or designees request records, data, information, report analysis rebuttals, and/or other information of Respondent, timely release of all information requested shall be required by Respondent.
 - H.5.c.ii. Respondent's support shall include maintaining readily available data that is accessible electronically as well as through hard copy. Neither ERS nor the auditor shall reimburse or indemnify Respondent for any cost incurred or any claim that may arise in connection with or relating to these audits.
- H.5.d. ERS or any of its authorized representatives shall have access to any GBP-related information during the Contract Term and until the expiration of at least seven (7) years after the final payment is made under the Contract or another date as specified by ERS. This includes access to and the right to examine any pertinent books, documents, papers, and records of Respondent involving transactions relating to the Contract. In the event there arises any claim, dispute, or

litigation concerning the Contract, the period of access and examination described above may continue until the disposition of such claim, dispute, or litigation has been deemed final.

- H.5.e. **Online Access.** Respondent shall provide to ERS' authorized representatives online access to any information reasonably related to the Plans, the Participants, and the services, coverages, benefits, supplies and products specified hereunder. Such online access, at a minimum, must give ERS the ability to view, download and print such information. Thus, any information regarding the services, coverage, benefits, supplies or products that Respondent is required to perform, deliver or provide in connection with the GBP shall be fully accessible and available to ERS via online access.
- H.5.f. **1095-B Requirements.** Respondent confirms that it will generate and mail IRS 1095-B forms to all Plan Participants by the required deadline of January 31 each Calendar Year. Additionally, Respondent confirms that it will submit necessary 1095-B transmittal reports to the IRS each year by the required deadline. This responsibility includes, but may not be limited to, the following:
- Generating and mailing all 1095-B Participant forms to each enrolled Member who had even one month of coverage throughout a Calendar Year. Forms will be generated using all information already provided on the monthly and weekly enrollment files that go to Respondent.
 - 1095-B forms shall be sent with a cover letter (approved by ERS) advising Members what the forms are and why they are necessary.
 - Respondent shall also make the 1095-B forms available online in Respondent's portal by January 31 of each year.
 - Respondent shall submit all necessary 1094-B reporting information to the IRS.
 - Respondent shall handle reissuance requests for any 1095-B forms.
 - Respondent shall work with ERS to resolve discrepancies or errors that arise upon submitting reports to the IRS. Respondent shall also resubmit any corrected errors to the IRS for acceptance.
- H.5.g. **Site Visits.** During the RFP process and the Contract Term, at ERS' discretion, ERS staff may conduct site visits to Respondent's operational and/or call center and/or data center facilities at ERS' sole expense. Respondent shall assist ERS staff with arranging and identifying travel and lodging arrangements in which ERS will verify that the travel arrangements provided by Respondent shall be in compliance with the State travel guidelines and Texas law.
- H.5.h. **Ratings.** Provide copies of ratings and reports on Respondent issued by independent insurance rating organizations or similar entities (e.g., A.M. Best's, Moody's, NCQA, Standard and Poor's).
- H.5.i. **Identification Cards.** Respondent shall issue and deliver ID cards to all Members, including eligible spouses and dependents, who enrolled during SE/FE and subsequent to SE/FE, when a change of information or PCP is reported or requested.
- H.5.i.i. If Respondent assigns its own ID Number to each Member, it shall be capable of cross-referencing its assigned ID number to the Member's ERS employee ID number.
- H.5.i.ii. In order to facilitate the issuance of the ID cards, Respondent shall assign each designated primary care provider with an office code or provider ID number. Respondent shall use the same office code/provider ID number in its printed material and website. PCPs are not required for Participants who select the HDHP.
- H.5.i.iii. Respondent is not required to issue a separate pharmacy benefits ID card if Respondent is also the contracted PBM for the Plans.
- H.5.i.iv. Respondent is responsible for the production and any mailing costs associated with the delivery of ID cards to Participants.
- H.5.j. **Employee Identification Number.** Current Member enrollment reporting is based on each Member's ID number. Texas law mandates the removal of Social Security Numbers from ID cards, and Respondent warrants and represents that it shall not use Social Security Numbers on any communications it sends to Participants.
- H.5.j.i. Respondent's system shall have the capability to manage an eleven (11) digit ID number in its reporting system. Respondent shall be capable of identifying Participants based on the

enrollment information submitted by ERS. Respondent shall be required to issue/reissue ID cards to Participants in accordance with the Performance Guarantees.

H.5.k. **Insurance Coverage.** Respondent must have sufficient liability insurance, to ERS' satisfaction, that is in full force at the time the face-to-face interview takes place and throughout the Contract Term, and must furnish proof of such insurance at the face-to-face interview.

H.5.k.i. Describe the various types of insurance coverage provided to protect ERS, the GBP, its Participants and the State. This should include, but not be limited to:

- Risks covered:
- Name of insurance carrier:
- Levels and limits:
- Deductibles:

H.5.k.ii. Respondent agrees to send ERS an updated declarations page from each such policy upon policy renewal for each year of the Contract.

H.6. General Experience

H.6.a. Provide the date that any health care third-party administrator services were first provided by Respondent on behalf of any health plans. [redacted]

H.6.b. Provide Respondent's total enrollment as follows:

	January 1, 2014	January 1, 2015	January 1, 2016
POS			
HDHP			

H.6.c. Given the preceding information, are there any limits on Respondent's ability to provide services to the Participants? If so, please describe any such limitations. [redacted]

H.6.d. If Respondent is currently providing third-party administrative services to the GBP, indicate the percentage of enrollment total for GBP Participants. [redacted]

H.6.e. If Respondent is not currently providing third-party administrative services to the GBP, indicate the percentage of enrollment total that GBP Participants will represent if Respondent is awarded this Contract. [redacted]

H.6.f. For the period January 1, 2014 to the present date, identify the entities greater than 50,000 lives that Respondent has transitioned to its plan, the date the transition began, and the date the transition was completed:

Entity Name	Date Transition Began	Date Transition Completed

H.6.g. ERS retains the right to have its data excluded from any type of data sharing arrangement. If Respondent sells or reports data from its clients to others, either specifically or in aggregate, provide the following information:

The arrangements for the data sharing;	
The details of what data was shared, including how it is masked; and	
The measures taken to ensure the information is not identifiable and is fully compliant with HIPAA laws and regulations regarding de-identifying information.	

H.7. Claims Processing

- H.7.a. Respondent shall administer and process all claims functions required for the Plans. Respondent shall process and administer all eligible claims in connection with services on and after September 1, 2017, and throughout the Contract Term. Respondent shall have no responsibility under this specific Contract for the administration of claims incurred prior to September 1, 2017. However, following termination of the Contract for any reason, Respondent shall continue to be responsible for processing and paying claims incurred during the Contract Term. General requirements for claims processing include, but are not limited to, the following:
- H.7.a.i. Using ERS enrollment records, Respondent shall create and maintain participation records to be used for the processing of claims and other administrative functions for the Plans. ERS enrollment records, however, shall control in the event of a conflict.
- H.7.a.ii. Respondent shall review claims for eligibility against dates of services covered under the Plans.
- H.7.a.iii. Respondent shall process Participants' submitted claims. Each claim payment must include an EOB for the network, non-network and out-of-area services.
- H.7.b. **Issuance of Excess Payments or Payments for Ineligible Claims.** In the event Respondent issues excess payments or payments for ineligible claims or Participants, it will:
- H.7.b.i. Take all steps necessary to recover the overpayment, including recoupment (offset) from Participants, providers, or subsequent claim payments.
- H.7.b.ii. Respondent acknowledges that ERS does not agree to or authorize non-GBP related cross-plan offsets affecting Plan benefits. Should Respondent's administration of the Plans necessitate cross-plan offsets, **Respondent agrees that it shall hold harmless and indemnify Participants affected by any balance billing, expenses, collection actions or other similar outcomes of a cross-plan offset dispute, and agrees that it shall take all necessary steps to prevent any provider from pursuing or balance billing any such Participant.** As a result of the offset, Respondent agrees that any disputes regarding cross-plan offset shall be subject to all internal and external review procedures required by federal law.
- H.7.b.iii. Assume 100% liability for mispayments which result from policy, Respondent or system errors attributable to Respondent in whole or in part.
- H.7.b.iv. Refrain from initiating litigation to recover such overpayment unless authorized by ERS.
- H.7.b.v. Reimburse the Plans for any covered services to a former Participant reported by ERS as no longer a Participant, if Respondent receives such notification at least two (2) full business days prior to the date of the services.
- H.7.c. **Claim Payments.** Respondent shall process claims using the contracted discount arrangements negotiated with participating providers.
- H.7.d. Respondent shall have an automated process for tracking and resolving incomplete or pended claims.
- H.7.e. Respondent shall proactively attempt to resolve issues with claims requiring additional information for proper adjudication, including Participant eligibility, referral, authorization, coordination of benefits, or workers' compensation information.
- H.7.f. Plan claims filed by Participants shall be processed in accordance with the *Performance Guarantees*, Appendix F.
- H.7.g. Respondent shall have a dedicated, experienced claims processing team that will be permanently assigned to the ERS account during the Contract Term and throughout the runoff period.
- H.7.h. Provide a detailed description of Respondent's claims processing procedures. [REDACTED]
- H.7.i. Discuss the measures Respondent employs to protect Participant identity information (i.e., social security number, protected health information, credit card information, etc.).

- H.7.j. Are customer service representatives separated from the claim processing unit, or do claim processors have customer service responsibilities?
- H.7.k. Do customer service representatives have the authority to approve claims?
- H.7.l. Can the Participants access specific claim information via Respondent's website to determine the status of claims and to make inquiries?
- H.7.m. Describe Respondent's retention process of keeping a history of all the Participant's claims submissions.
- H.7.n. Provide copies of your claim reimbursement forms and EOBs.
- H.7.o. **Reporting.** Respondent agrees that all ERS, GBP and Plan-related information is owned by ERS. All such data required by ERS shall be confidential and will not be public information unless ERS specifically authorizes otherwise. Respondent further agrees not to disclose this or similar information to any other person or entity, including a competing company, either directly or indirectly, unless required to do so by law or specifically authorized by ERS.
- H.7.p. Respondent shall provide monthly and quarterly reports as required by ERS. The reports shall be submitted to ERS as further required herein.
- H.7.q. Respondent's senior account management staff shall provide to ERS a monthly report of cases that have the potential to incur large expenditures impacting the Plans. The report shall include the patient's name, diagnosis, prognosis, and a brief clinical summary. The threshold amount will be determined by ERS during implementation.
- H.7.r. Respondent shall also provide a monthly report on all fraudulent and/or suspicious claims to ERS' Benefit Contracts' division.
- H.7.s. At the request of ERS, Respondent shall submit additional *ad hoc* reports on information and data readily available to Respondent at no additional expense to ERS or the GBP.
- H.7.t. ERS will determine the acceptability of all files and reports submitted based upon timeliness, format and content.
- H.7.u. Respondent shall provide to ERS on a monthly basis a detailed paid claims file including capitation fees via SFTP within a site-to-site VPN tunnel and the file shall be encrypted with ERS' public key (PGP) in a format as required by ERS. The claims file will include, but not be limited to, all health care services for Participants paid during the month. This file will be due to ERS no later than the 15th of the month for the previous month's claim payments. Notwithstanding the foregoing, ERS shall at all times have online access to de-identified data as necessary.
- H.7.v. **Review by an Independent Review Organization.** Any party residing in Texas whose request for preauthorization of the medical necessity of proposed treatment has been denied, and Respondent has sustained the determination, may seek review of that determination by an IRO as further described in the MBPDs whether or not a life-threatening condition is involved. The IRO process will be detailed and shall be implemented as described in the MBPDs.
- H.7.w. **Fraud and Abuse.** Respondent shall use automated systems to detect and prevent fraud and misuse of the program, overpayments, wrongful or incorrect payments, falsification of eligibility, unusual or extraordinary charges and verification of enrollment and unnecessary medical treatment. Respondent shall also conduct thorough, diligent, and timely investigations with regard to fraudulent and suspicious claims and immediately upon discovery, notify ERS' Director of Benefit Contracts and ERS' Deputy Executive Director and General Counsel of any fraudulent or suspicious activity. Respondent understands that ERS may develop further policies in connection with the detection and prevention of fraud or abuse of the Plans. Respondent shall comply with all applicable laws and regulations and shall also comply with all ERS policies and is encouraged to develop additional safeguards as allowed by law. Article 3 of the Contractual Agreement has additional requirements in this regard. At a minimum, Respondent shall perform the following:
- Respondent shall investigate unusual or extraordinary charges to determine all relevant circumstances and report to ERS its findings. Respondent's medical staff shall determine eligible charges, subject to the final authority of ERS on all claims matters.

- Respondent shall provide a toll-free number and an Internet link for Participants to report fraud and abuse.
 - Respondent shall use EOBs for the tracking of phantom billing.
 - Respondent shall monitor the licensure of providers to ensure claims of non-licensed providers are denied.
- H.7.x. Explain the procedures and systems Respondent uses to prevent, deter, detect and investigate fraud and related issues, and how such processes shall be used in connection with the GBP. Your response should include, but not be limited to, the following: how Respondent detects overcharges, unnecessary or extensive hospital confinements, unnecessary medical treatment or other health care provider abuses.
- H.7.y. Discuss how Respondent would communicate with the Participant, physician(s), and ERS once a fraud or abuse problem is suspected or identified.
- H.7.z. Discuss what measures Respondent employs to prevent and detect employee fraud (i.e., background checks, confidentiality agreements, and security monitoring equipment).
- H.7.aa. Provide a copy of your fraud, waste and/or abuse plan.
- H.7.bb. In Respondent's experience, what integration is available with the PBM to coordinate efforts regarding prevention, detection and investigation of fraud, waste and/or abuse?
- H.7.cc. Respondent shall comply with any additional policies that ERS develops in connection with the detection and prevention of fraud or abuse.

H.8. Respondent Program Reporting

- H.8.a. **Actuarial Reporting.** As previously noted, ERS retains a consulting actuary on insurance matters. The consulting actuary assists and advises the ERS staff and Board on benefit plan design, Proposal review, and Respondent's price proposal analysis. ERS staff or the consulting actuary may, from time to time, request that Respondent provide additional information specific to the Plans. Respondent shall cooperate with and act in good faith in working with ERS and/or the consulting actuary and shall be prepared to respond to these requests promptly. In that regard, or for other GBP Program purposes, from time to time ERS may, on an *ad hoc* basis, request that Respondent prepare customized reports on a timely basis at no additional cost to ERS.
- H.8.b. Respondent shall submit to ERS' consulting actuary on a monthly basis and to an ERS agency designee on a timeframe to be defined post Contract award, via SFTP within a site-to-site VPN tunnel using file encryption with ERS' public key (PGP), all claims processed during the previous calendar month. This data shall be used by ERS' Benefit Contracts Underwriting, Data Analysis and Reporting team and the consulting actuary to analyze claims experience and reconcile the weekly invoices. Notwithstanding the foregoing, ERS shall at all times have online access to such information at no additional charge. The detailed claims file shall include, but not be limited to, the information described in Appendix J, *Experience Data*, for each claim record. ERS will work with Respondent regarding the content, coding and format of the detailed claims file.
- H.8.b.i. Respondent will provide detailed claims to ERS and its consulting actuary with no restrictions or qualifications on the use of the data other than as included herein. Subject to Texas law, ERS will agree to treat Respondent's reimbursement provisions as confidential.
- H.8.c. Respondent shall notify ERS' Benefit Contracts AD, or designee, of all GBP-identified issues in connection with reports and/or audit findings, and provide supporting documentation for all such reports.
- H.8.d. Respondent should be able to periodically provide the utilization and cost information contained in the data in Appendix J, *Experience Data*.
- H.8.e. In connection with the detailed claims file described above, Respondent shall also provide a monthly Plan eligibility file, via SFTP within a site-to-site VPN tunnel using file encryption with ERS' public key (PGP), which includes information on all Participants eligible for services in the previous calendar month. The detailed eligibility file shall include, but not be limited to, the information described in Appendix J, *Experience Data*, for each Participant record. ERS will work with Respondent regarding the content, coding and format of the detailed eligibility file.

- H.8.f. Reports shall vary in frequency and scope based on ERS' designation after selection of Respondent and execution of the Contract as reflected herein. However, all reports provided by Respondent shall reflect quality production with attention to detail, accurate data, and meet additional requirements as specified by ERS.
- H.8.g. **Annual Reporting Requirements.** Respondent shall be required to submit GBP utilization and cost data on an annual basis using the ERS-prescribed format by January 15th following the end of the Fiscal Year. For example: by January 15, 2019, Respondent shall be required to provide utilization and cost data for the experience period September 1, 2017 through August 31, 2018. These obligations survive termination of the Contract for any reason, and Respondent is required to provide the required experience information for the previous Fiscal Year regardless of whether Respondent continues as the TPA.
- H.8.h. Respondent shall also be required to provide an annual report via CD or DVD that shows the number of Participants assigned to each of Respondent's PCPs. The report shall include the PCP's last name, first name, license number (issued by the Texas Medical Board), office, ZIP Code and the number of Participants assigned. For example:

Report Layout Example:

Last Name	First Name	NPI	ZIP Code	# of HealthSelect Participants
Brown	John	7777	78701	5
Doe	Jane	8888	75238	20
Smith	Joe	9999	77041	10

- H.8.i. **Quarterly Reporting Requirements.** ERS requires Respondent to provide the following reports as reflected in Sections VII.H.8.i.i. – VII.H.8.i.iii. below using either GBP-specific or book of business statistics. The data shall include the entire previous quarter, and shall be received in the ERS-prescribed format via email by the 20th of the following month at quarter end. The current requirements are:

- H.8.i.i. **Subrogation Reimbursements.** This report tracks subrogation cases that involve ERS' Office of the General Counsel.

Case No.	Name	ID	Agreed Amount	Date Payment Received by TPA	Date Payment Credited to ERS	Case Status

- H.8.i.ii. **Cost Management Activity Report (Fraud).** This report provides a narrative describing the activity of the Fraud Investigations Division with regard to projects the dedicated analyst is currently working, as well as arrests, convictions and other law enforcement activity related to health care fraud.

Activity	Q1	Q2	Q3	Q4	YTD
Referrals					
Cases of Interest					
Opened Cases					
Closed Cases					
Cases Referred to Law Enforcement					
Recoveries Subtotal					
Hospital Audits – Post Payment Audits					
Recovery Claim Count					
Recovery Subtotal					
Subrogation with ERS Legal					
Case Count					
Subrogation Savings Subtotal					
Prepayment Claims Edits: Costs Avoided					
Ineligible Claim Count					
Duplicate Charges					
Non-Covered Charges					

Ineligible Participants					
Incomplete claims documentation, ineligible amount such as late charges and other					
Prepayment Claims Edits Subtotal					
System Claim Count					
Recoveries Subtotal					
Grand Total: Cost Containment Activity					

H.8.i.iii. **Quarterly Disease/Condition Management Services and Wellness Services Report.** ERS requires Respondent to provide a quarterly Disease/Condition Management Services and Wellness Services report. This report should include a Participant's eligibility and enrollment in various Disease/Condition Management Services and Wellness Services offered by Respondent. The report shall provide return on investment information for Respondent's Disease/Condition Management Services and Wellness Services programs.

H.8.i.iv. **Monthly Reporting Requirements.** ERS requires Respondent to provide the following reports as reflected in Sections VII.H.8.i.v. – VII.H.8.i.viii.a. below using either GBP-specific or book of business statistics: Monthly Administrative Performance Report, Hospital Credit, and Invoice Credits. The data shall include the entire previous month, and shall be received in the ERS-prescribed format via email by the 20th of the following month. The required data and format are subject to change as required by ERS.

H.8.i.v. **Hospital Credits.** This report tracks hospital audit recoveries for both hospital audits on a monthly basis and summed by Fiscal Year.

Month	Total Number of Hospital Claims	Amount Applied to Claims
September		
October		
November		
December		
January		
February		
March		
April		
May		
June		
July		
August		
Total		

H.8.i.vi. **Monthly Administrative Performance Report.** This document reflects the specific Contract performance areas upon which Respondent must report each month. The last tab of the document reflects the calculation and methodology used to identify the reported measure. Upon ERS' request, Respondent will be responsible for providing ERS with the source document used in order to allow ERS the opportunity to certify that the self-reported data is accurate. A sample monthly administrative performance report is referenced in Appendix H.

H.8.i.vi.a. Respondent shall provide an accurate accounting of Participant experience and program utilization by reporting the items noted in the *Performance Guarantees*, Appendix F.

H.8.i.vii. **Monthly Provider Network Additions/Terminations Detail Report.** Respondent shall provide a monthly provider network additions/terminations detail report if it is requested by ERS. This information is used by ERS to proactively monitor and respond to changes in the provider network. The following data elements are required in the ERS-prescribed format: Provider Name, Provider Specialty, Full Provider Address, Date Provider Added To or Terminated from the Network.

H.8.i.vii.a. To ensure the accuracy of the self-reported information and reliability of Respondent's internal operational controls, Respondent shall provide documentation verifying the statistics. The

document type and due date shall be specified by ERS and is not intended to convey proprietary and confidential provider contracting information.

H.8.i.viii. **Claims Lag Report.** Respondent shall provide a monthly claims lag report showing monthly paid claims allocated by month of incurral (similar to Exhibit I in Appendix J, *Experience Data*). This report is due to ERS by the 15th day of the month following the month of payment Respondent shall be required to submit claims.

H.8.i.viii.a. Respondent shall provide ERS with monthly reporting of Plan-specific data relating to these requirements. In addition, an auditing firm shall conduct an annual audit of Respondent on behalf of ERS to determine compliance with these and other standards. Respondent's compliance with all Contract requirements will be a factor ERS will weigh when considering renewal.

H.8.j. **Other Reporting Requirements.** Respondent shall submit to ERS varied reports on a monthly or quarterly basis. This data shall be used by ERS to analyze the Plans. Notwithstanding the foregoing, ERS shall at all times have online access to Plan statistical reporting information with search capabilities at no additional charge to ERS. The information shall include current and previous years' data. Other reporting requirements shall include, but not be limited to, the following:

- Bariatric Surgery Statistics; and
- Health Risk Assessment information.

H.8.k. **Special Reporting Requirements.** Respondent shall provide ERS with knowledgeable dedicated personnel resources to provide various reports and analytical data as requested by ERS. This data shall be used by ERS to analyze the Plans. The information shall include current and previous year data. Special reporting requirements shall include, but not be limited to, the following:

- Trend Reporting;
- Annual Statistical Report;
- Cost Management & Fraud Report;
- Utilization and Experience History;
- Statistical information (i.e., Lag report);
- Online access to any Respondent data warehouse;
- Invoice Credit (This report describes the details of credits to the weekly invoice. Respondent shall provide this report upon request.); and
- Other *ad hoc* reports.

H.8.k.i. ERS may request Respondent to provide additional, customized *ad hoc* reports specific to the Plans. Respondent shall cooperate, act in good faith in working with ERS, and shall be prepared to respond to these requests promptly at no additional costs to ERS.

H.8.l. Describe the reports to be provided by Respondent on a regular basis at no charge to its customers by including the following information:

Title of Report	Detailed description of the information provided in the report	Frequency provided (monthly, quarterly, annually)

H.8.l.i. Provide copies of the reports listed above.

H.8.l.ii. Describe how the reports listed above can be used to identify problems and monitor performance.

Title of Report from preceding question	How it is used to identify problems and monitor performance

H.8.m. Describe typically requested *ad hoc* reports, including turn-around time as follows:

<i>Ad Hoc</i> Report	Turn-around time

- H.8.n. Separate from the required claims data file, how will Respondent provide ERS with the capability to conduct online queries, interface with Respondent's database in order to generate *ad hoc* reports and extract specific information?
- H.8.o. Describe any unique reporting capabilities that differentiate Respondent from its competitors.
- H.8.p. Does Respondent perform an internal analysis of client-specific data to develop recommendations for program improvement? Yes No
- H.8.q. Describe the background and training for the personnel involved in this process. Include the experience of the personnel involved in recommending program improvements.
- H.8.r. Provide an outline for proposed client-based expansion for Respondent within the next four (4) years to include company name and anticipated enrollment. If expansion is anticipated, what steps will Respondent take to maintain quality service to the ERS account?

I. Information Systems Requirements

This Section describes system requirements including Operations, Data Interfaces, Data Center and Business Resumptions / Disaster Recovery, and Security Practices.

I.1. Operations

- I.1.a. What type of background checks are performed on all company employees and subcontractors? Are there special requirements for technical staff having access to confidential data?
- I.1.b. Provide a full, un-redacted copy of the most recent SOC report and results performed under the SSAE16 or any other independent auditor report on the effectiveness of internal controls over operations and compliance of service to be provided under this RFP, including disaster recovery planning and testing, and data center facilities. This should include results of an independent, certified external security audit. Respondent shall also acknowledge and agree that ERS is entitled to review all such audit results on a yearly basis. If there is not a service organization control engagement performed, then provide a detailed explanation of how both information technology and operational control activities are assessed/evaluated to meet the services to be provided under this RFP.
- I.1.c. If applicable, provide a copy of Respondent's sponsoring or parent company's most recent SOC report or any other independent auditor report on the effectiveness of internal controls over operations and compliance of service to be provided under this RFP. This should include results of an independent, certified external security audit. Respondent shall also acknowledge and agree that ERS is entitled to review all such audit results on a yearly basis. If there is not a service organization control engagement performed, then provide a detailed explanation of how both information technology and operational control activities are assessed/evaluated to meet the services to be provided under this RFP.
- I.1.d. If Respondent conducts its SSAE 16 control audits with an external firm, please identify the following:

Name of external firm:	
Address of external firm:	
Dates when firm performed the audits:	

- I.1.e. Respondent understands, acknowledges and agrees that all operations, staff and facilities being proposed in support of the Contract will be located onshore within the United States.
- I.1.f. All products and related services, including, but not limited to, access to and retention of ERS and Participant-related data, shall be done and performed solely within the United States.
- I.1.g. Respondent agrees that: (1) data relevant to the administration of this program will not be transmitted outside of the United States (i.e., "offshore"), (2) no one outside the United States will have access to ERS' or Participant's confidential information and (3) ERS' and Participant information is not viewable outside of the United States.

Description of the services performed offshore	Offshore Data Transmission		Offshore Data Accessibility	
	Is data transmitted offshore? If so, indicate countries.	Describe the type of data that is transmitted offshore and what entity(ies) this data is transmitted to.	Is data accessible offshore? If so, indicate countries and how it is accessible.	Describe the type of data that is viewable offshore and who has access to this data and how it is viewable.

I.1.h. Respondent's subcontractors or independent contractors will prevent any person or entity located outside the United States from having access to all ERS, GBP, and program information, including, but not limited to, confidential or Participant-related information and data.

I.1.i. All development activities (including production, quality control and testing) are performed solely within the 50 states of the United States and exclusively in Respondent's facilities.

I.1.j. What are the normal staffing hours (in CT) for the following:

Respondent's technical support team to respond to data and reporting questions:	
Respondent's data center:	

I.1.k. Describe Respondent's standardized methodology for resolving issues and implementing measurable action plans to resolve.

I.1.l. Respondent shall provide the following:

The historical periodic scheduled maintenance schedule for 2015.	
The non-periodic maintenance which happened outside the scheduled period for 2015.	
A detailed report of all unscheduled outages, slowdowns, impairments, and other system events for 2015 which exceeded 5 minutes duration.	

I.1.m. Detail all planned upgrades to Respondent's software affecting ERS data and services between now and June 30, 2019.

I.1.n. Detail all planned upgrades to Respondent's hardware, infrastructure and data centers that will be hosting ERS data and services being used between now and June 30, 2019.

I.1.o. What quality assurance processes are provided in Respondent's system to ensure accurate claims administration?

I.1.p. Describe how Respondent evaluates various aspects of a project to ensure that standards of quality are being met.

I.1.q. How would Respondent manage legal changes such as Texas legislative changes? How would this be managed to avoid developing forked versions of Respondent's solution for ERS?

I.1.r. Indicate how Respondent will manage the ongoing account with ERS.

- I.1.s. In the event ERS provides Respondent with the opportunity to view ERS' enrollment system through web access, Respondent shall have the capabilities in place to support this access, to include, but not be limited to:
- Access ERS' enrollment data via web access sixty (60) days prior to the go-live date, July 1, 2017, and sixty (60) days prior to the go-live date of each Fiscal Year thereafter;
 - Utilize the enrollment information to assist in the verification of coverage; and
 - Provide customer service staff proficient with the web access to ERS enrollment data during all ERS-designated customer service hours.
- I.1.t. Respondent shall comply with Texas Business and Commerce Code 521.001, *et seq.*, known as the Identity Theft Enforcement and Protection Act.
- I.1.u. Respondent shall maintain a complete and accurate reporting system, and provide for the retention, maintenance, and storage of all Respondent, other GBP vendors and Participant records for appropriate reporting to ERS on a quarterly basis. Respondent shall securely maintain all such records in accordance with Article 21 of the Contractual Agreement, and shall make such records accessible and available to ERS for inspection and audit upon ERS' request.
- I.1.v. At all reasonable times, ERS or its representatives shall have fully documented access to all of ERS records in Respondent's possession, custody or control. To the extent that any such records are to be maintained upon a computer system or any other data retention system which is not owned by Respondent, Respondent shall provide ERS with assurances from the owner of such computer facilities, satisfactory to ERS, of continued availability and security of such records at all times. ERS must be permitted to personally inspect such facilities and systems.
- I.1.w. Respondent shall provide monthly updates on planned changes for standard updates to hardware and software components, and specify in detail how any such planned changes or updates will affect the end users. These notifications shall be sent to ERS on a scheduled day each month. Respondent is required to notify ERS of all such changes at least fourteen (14) days in advance of making such changes. All significant software (that is, major software releases, e.g. 3.X to 4.X) or hardware upgrades require a sixty (60) day prior notification to ERS.
- I.1.x. Respondent shall guarantee that the Internet Availability Rate for each Fiscal Year shall be that required in the Performance Guarantees. A copy of the current Performance Guarantees is attached hereto as Appendix F.
- I.1.y. Respondent shall provide testing environments for all circumstances utilized prior to rolling out program changes that run the logic to achieve predicted outcomes of programming prior to pushing-out a new process or enhancement/modification of an existing program.
- I.1.z. Respondent shall be prepared to provide ERS with XML-tagged content for purposes of extracting content on Respondent websites through feeds.
- I.1.aa. Respondent shall provide ERS with priority positioning for delivery of *ad hoc* system service requests, website modifications, and/or issue resolutions. Respondent shall designate a Technical Consultant to lead the management of all technical issues, including, but not limited to, system service requests. The TC shall ensure that all ERS system requests and issues are thoroughly analyzed and given priority positioning to ensure prompt resolution. Respondent shall provide competent, focused attention to ERS' system requests/issues. Respondent shall use its best efforts to implement all ERS system requests and to correct all ERS system issues as soon as reasonably practicable, but in no event later than thirty (30) calendar days from receipt of ERS' written notification to Respondent of the request/issue. ERS shall fully supply any and all information reasonably necessary for Respondent to complete the requested services as outlined herein. If an ERS request cannot be implemented by Respondent within thirty (30) calendar days from the date of ERS' request, then Respondent shall provide ERS with a written explanation as to why the issues cannot be resolved within this time frame and provide ERS with a written plan for implementation, to include a timeline for resolution, within five (5) business days from receipt of Respondent's written notification as noted above. This section does not apply to the liquidated damages provisions of the Contract when ERS has provided notice that the liquidated damages provisions have been invoked, nor does it apply to disaster recovery matters, which are covered specifically in Article 20 of the Contractual Agreement.

An example of a system issue includes, but is not limited to:

Eligibility and/or benefit modifications shall be reviewed, responded to, and approved by the Respondent within fifteen (15) business days of such request. If changes to the modifications are

required, Respondent shall notify ERS and set up weekly updates until ERS agrees that the modifications meet ERS' operating requirements. After eligibility and/or benefit modifications have been mutually agreed upon, Respondent shall complete the eligibility and/or benefit project, including required testing, within forty-five (45) calendar days from ERS' approval.

I.2. Data Interfaces

- I.2.a. Respondent shall have the ability to transmit and receive confidential and sensitive information via encrypted transmission protocols including site-to-site VPN, SFTP, TLS. Confirm that Respondent will only transmit and receive confidential and sensitive information via encrypted transmission protocols including site to site VPN, SFTP, TLS, or other industry accepted encryption methodology.
- I.2.b. Respondent shall have the ability to transmit and receive batch files of public health information and batch files of confidential and sensitive information already encrypted at rest, with 2048 Bit asymmetric keys and using encrypted transmission protocols including site to site VPN, SFTP, TLS.
- I.2.c. Respondent shall have the ability to transmit and receive confidential and sensitive information via encrypted transmission protocols including site to site VPN, SFTP, TLS, or other industry accepted encryption methodology.
- I.2.d. All files sent and received by Respondent containing confidential and sensitive data will be first encrypted at-rest using the file level encryption such as PGP, GPG, or other industry accepted encryption methodology.
- I.2.e. Respondent shall provide its standard data and claims files for ERS' review. This file should include specifications that are required when ERS transfers Participant information.
- I.2.f. Describe how your organization's processes and systems (including test and/or production files) can accommodate the following three scenarios:
 - Terminations by absence of records in the enrollment file;
 - Retroactive enrollment dates, (i.e., Participant's start date is Oct. 7th and benefits are active to Oct. 1st); and
 - Future effective dates on eligibility files (i.e., Participant is going to retire in 30, 60, 90 days).
- I.2.f.i. Please describe the impact the above has on claims processing.
- I.2.g. Respondent shall provide a full description regarding business processes that shall include, but not be limited to, the following key elements:

Support of a point to point VPN with ERS.	
Explanation of how Respondent will utilize the interface files/data that ERS will provide.	
Protocols that Respondent will utilize when there is a file transmission problem or a corrupted bad interface file (or like scenario) with ERS.	
Explanation of how information reported to ERS is to be derived from the source data file.	

- I.2.h. If Respondent supplies an interface to ERS, then Respondent shall provide a full description of the interface file that shall include, but not be limited to, complete definitions of each field of the interface file.
- I.2.i. Provide a copy of Respondent's business policies and procedures.
- I.2.j. What is Respondent's standard interface protocol, and what flexibility does Respondent have with its standard approach? Provide a detailed description.

- I.2.k. What measures does Respondent take to ensure the security of interfaces, which would include, but not be limited to, data files, emails, print screens and email attachments that Respondent is sending/receiving to/from external sources (whether ERS or a third party)?
- I.2.l. ERS is responsible for determining the eligibility of its Participants for this program and for reporting coverage. Respondent receives weekly and monthly Enrollment Interface Files via SFTP and updates its records accordingly. The ERS eligibility file provides Respondent with additions, changes and terminations by absence of Participants. Respondent guarantees that it shall process all processable maintenance eligibility transactions received from ERS as required in Appendix F, *Performance Guarantees*.
- I.2.m. ERS reports future effective dates at the end of SE/FE and throughout the year on each eligibility file. ERS will send these records between 30 and 90 days in advance of the effective date.
- I.2.n. Respondent guarantees that any electronic file transfer or eligibility transaction failure(s) will be resolved as soon as possible, but in no event later than the time required in Appendix F, *Performance Guarantees*.
- I.2.o. The file layouts that ERS uses to report eligibility to Respondent and receive claims data from Respondent on a weekly, monthly, and SE/FE basis are included as Appendix E. Respondent must meet all requests stated in Appendix E or offer their standard file layout for ERS to review for consideration. File layouts shall adhere to the following:
 - File naming conventions as set forth by ERS during Implementation.
 - Claims files must be marked to identify unique claims with claim keys.
 - Replacement files should include previously submitted data for the specified date range.
 - Format should be fixed width with pipe delimited as an alternate method.

Respondent shall be fully capable of accepting and processing all File Interfaces forty-five (45) business days before the go-live date. ERS will define the file layouts as specified in Appendix E. Claims files from Respondent to ERS are to be ready for go-live in October 2017 with September 2017 processed claims.

I.3. Security Practices

- I.3.a. Respondent shall provide ERS with a copy of any information security policies, procedures and standards upon request.
- I.3.b. Does Respondent have a full-time Information Security Officer or Chief Security Officer? If so, how does this role fit in Respondent's organizational chart?
- I.3.c. Does Respondent have dedicated resources for information security efforts? Yes No
- I.3.d. Is Respondent's system capable of supporting an alphanumeric User ID other than Social Security Number?
- I.3.e. What are Respondent's minimum and maximum User ID lengths?

Minimum User ID Length	
Maximum User ID Length	

- I.3.f. Could Respondent support any kind of Federated Identity solution for users of the ERS-based product? Please describe.
- I.3.g. What technology in the data center which provides services to ERS is shared with other data center customers?
- I.3.h. What kind of network security devices are running in Respondent's data center(s) (e.g., data loss prevention tools, intrusion detection systems, intrusion prevention systems)?
- I.3.i. Describe in detail Respondent's practices and controls utilized to limit access and protect confidential and sensitive data in storage and in transit.
- 1.3.i.i. Respondent warrants and represents that confidential and/or sensitive ERS, Participant, Plan and GBP-related data will be encrypted in storage and in transit.

- I.3.j. Are network firewalls and other security equipment checked by independent third parties for vulnerabilities and possible exploits? If so, how often?
- I.3.k. In the event of a security breach, describe the process to notify ERS of the breach of ERS data, Respondent facilities or other types of Information Technology infrastructure breaches.
- I.3.l. Respondent warrants and represents that ERS data stored at Respondent's site will be encrypted at rest.
- I.3.m. Respondent shall describe how often its firewall and router configuration standards are reviewed. Respondent shall provide the last date its firewall and router configuration standards were reviewed.
- I.3.n. Respondent shall describe its processes and procedures for managing and patching known vulnerabilities. Is there a patch management solution in place, so that all system components and software are protected from known vulnerabilities by having the latest vendor supplied security patches installed? How often are systems checked? What was the last date Respondent's data center systems and user workstations were checked?
- I.3.o. Respondent shall describe its processes and procedures in place for responding to low, medium and high severity information security incidents. What is Respondent's process to rank such incidents? Does Respondent's company have forensic security experts on staff or is a third party contracted in the case of a breach?
- I.3.p. What anti-virus protection/programs does Respondent use? Is AV software deployed on all Respondent's and Respondent's contractor systems (such as servers, workstations, laptops) commonly affected by malicious software? Are all anti-virus programs capable of detecting, removing and protecting against all known types of malicious software (for example; viruses, worms, spyware, Trojans, adware and rootkits)? How often are the DAT files updated and are automatic AV scans enabled?
- I.3.q. Describe Respondent's Security Incident Management policies and procedures.
- I.3.q.i. Provide a copy of Respondent's Security Incident Management policies and procedures.
- I.3.r. Are Respondent's portable devices encrypted to protect the data in case of theft or loss?
 Yes No
- I.3.s. Respondent shall ensure the security, confidentiality, integrity, and availability of Participant and GBP information in accordance with all applicable laws and regulations, both state and federal, including the Board Rules.
- I.3.t. TLS version 1.0 or better protocols shall be used for the exchange of personal identifying information over HTTPs. Respondent shall support SFTP protocol with SSH to encrypt the data exchanged in transit.
- I.3.u. Requirements include, but are not limited to, the use of SFTP and PGP encryption protocols. Respondent shall be prepared to accept eligibility data and reporting via SFTP forty-five (45) days prior to go-live.
- I.3.v. Electronic communications including, but not limited to, email and file transfers between Respondent and ERS shall be encrypted to protect Participant's confidential information. Respondent shall establish forced TLS protocols with ERS for email communications.
- I.3.w. To protect the confidentiality of Participant information, Respondent shall provide access to any information reasonably related to the GBP, the Plans, the Participants, and the services, coverage, benefits, supplies and products specified hereunder using TLS version 1.0 and higher encryption protocols.
- I.3.x. Such access, at a minimum, shall give ERS the ability to view, download and print such information. Thus, any information regarding the services, supplies or products that Respondent shall perform, deliver or provide in connection with the Plans shall be fully accessible and available to ERS using TLS version 1.0 and higher encryption protocols.

- I.3.y. ERS does not allow VPN split tunneling for client VPN's. Respondent shall ensure that it will not allow VPN split tunneling on client VPN's, including those possibly used for technical support. Respondent shall confirm it will follow highly restricted access policies behind any ERS-related point to point VPN setup in support of this Contract.
- I.3.z. All ERS, Participant, Plan and GBP-related data, as maintained by Respondent, shall at all times remain the property of ERS notwithstanding the fact that such records may be stored upon or within one (1) or more computer or data retention systems owned, operated, or leased by Respondent. ERS is entitled to a full data model for such data.
- I.3.aa. All computing devices (i.e., laptop, desktop, servers) and storage devices which contain, process, or interact with ERS data shall be encrypted at rest. If ERS data is to be transmitted, the transmission shall be encrypted as well. Respondent must be capable of remotely deleting all ERS data, if needed.
- I.3.bb. Respondent shall provide non-repudiation services up to and including second factor authentication for Respondent's employees, contractors, and service providers capable of accessing ERS data outside Respondent's physical facilities using a VPN or other remote access methods.
- I.3.cc. The information entrusted to ERS is a valuable asset belonging to the Participants. The confidentiality of such information must be protected from unauthorized or accidental disclosure, modification, use, or destruction. Prudent steps must be taken to ensure its confidentiality, integrity, and availability are never compromised, including by any subcontractor upon whom Respondent relies in performing or providing services or products to or on behalf of ERS. Respondent shall maintain an Information Security Policy, acceptable to ERS, that outlines its management's direction and support for its Information Security program. This policy shall provide a uniform set of information security policies and procedures for protecting ERS and Participant data. Respondent's Information Security Policy documentation and independent audits of Respondent's adherence shall be available to ERS upon ERS' request.

I.4. Business Resumption and Data Center Facilities

- I.4.a. Respondent warrants and represents that the systems that ERS would use during a disaster undergo annual disaster recovery tests.
- I.4.b. Respondent warrants and represents that it has an alternate secure site to provide services if the assigned primary site is unavailable for a test or disaster declaration.
- I.4.c. Respondent's primary and alternate sites must both be located in the 48 continental United States.
- I.4.d. Respondent warrants and represents that it shall maintain contingency plans and procedures which provide business continuity in the event of a strike, natural disaster, act of God, or other events that might interrupt, delay or shut-down service that is related to Respondent's administrative, customer service support functions, computer systems and equipment, including that of any subcontractor upon whom Respondent relies in performing or providing services or products to or on behalf of ERS. Article 20 of the Contractual Agreement has additional requirements in this regard.
- I.4.e. Describe Respondent's contingency plans and procedures for providing business continuity in the event of a strike, natural disaster, act of God, or other events that might interrupt, delay or shut-down service that is related to Respondent's administrative, customer service support functions, computer systems and equipment, including that of any subcontractor upon whom Respondent relies in performing or providing services or products to or on behalf of ERS.
- I.4.f. Respondent warrants and represents that all systems in ERS' environment are physically secured in an access-restricted environment.
- I.4.g. Respondent shall identify any person or entity with access to its data center and how this access is monitored.
- I.4.h. Respondent warrants and represents that its data center shall conform to the Uptime Tier III or Tier IV standards.

- I.4.i. How does Respondent ensure that its data center conforms to the Uptime Tier III or Tier IV standards?
- I.4.j. Provide details regarding the redundant links for internet access that Respondent has in place for its data center, including redundant last-mile connectivity and diverse physical data center network penetrations.
- I.4.k. Respondent acknowledges, accepts and agrees that ERS must be permitted to personally inspect Respondent's data center facilities and systems on an annual basis or when ERS deems it necessary.
- I.4.l. Who is Respondent's data center provider(s)?
- I.4.m. Briefly describe Respondent's data back-up and recovery procedures for the system(s) to be used in the services proposed to ERS.
- I.4.n. Respondent shall maintain duplicate or back-up computer encrypted data files in a secure, hardened facility that provides environmental and access controls. Respondent shall utilize 256 Bit symmetric key AES encryption standards or better for tapes or equivalent backup media.

J. Accounting and Funding

J.1. Funding and Reimbursement Methodology

- J.1.a. **Funding Methodology.** Each month ERS will collect the State and Participant contributions and hold such contributions in a fund that is designed solely for the payment of claims-related expenses incurred by Participants. Remittance of funds to Respondent will be made only in accordance with the following:
 - J.1.b. **Reimbursement of Claims.** Under the self-funded arrangement, ERS requires Respondent to process and pay all claims submitted under the Plans as described herein.
 - J.1.c. Respondent agrees that it will open and administer a Demand Deposit Account on ERS' behalf with a Qualified Public Depository. Respondent retains ownership and control of the DDA; however, the funds in the DDA will only be used for reimbursement of claims. The claims must first be paid by Respondent through the issuance of drafts or through electronic funds transfer from Respondent's account prior to reimbursement from ERS. The balance of the DDA is the accumulation of claims that have been presented for payments and have not been reimbursed. Respondent will be responsible for any bank charges and/or overdraft fees.
 - J.1.d. Before 8:00 a.m. CT on each business day, Respondent shall notify ERS electronically of the balance of the DDA that is pending for reimbursement. ERS will instruct its custodian bank to transfer the funds via Fedwire to the DDA to settle the claim reimbursement on the same day if it is a business day on which ERS is fully open for business and if it is at all reasonably practicable to do so. Although Respondent shall be responsible for maintaining sufficient funds to provide for the cost incurred, Respondent shall not be responsible for the sufficiency or collection of Plan contributions. Due to the timing of the claims reimbursements, Respondent may be required to advance up to three (3) days (or more, depending on the applicable State holiday schedule) of its own resources for claims payments. Three (3) days of claims payments is projected to average around \$20 million.
 - J.1.e. **Payment of Administrative Fee.** Each month the total Administrative Fee will be determined by multiplying the number of Members enrolled by the Administrative Fee. ERS will remit the Administrative Fee to Respondent for a particular month within thirty (30) days following receipt by ERS of the invoice for such month. ERS will pay based on internal enrollment systems, and Respondent shall be responsible for reconciling any billing discrepancies of the Administrative Fee. No corrections or changes to the Administrative Fees paid shall be made as a result of this reconciliation without ERS' consent.

J.2. Invoice Reporting

- J.2.a. **Claim Reimbursement.** In each funding request (or invoice) to ERS for claim reimbursements, the claims should be summarized into four categories: active employees, retirees, nominees

(direct pay participants who are not active employees, retirees or COBRA participants), and COBRA participants.

- J.2.b. The funding request should be delivered to ERS electronically by 8:00 am CT as specified in Section VII.J.1.d.
- J.2.c. The details of the claim reimbursements should be delivered to ERS electronically no later than 24 hours after the funding request is submitted to ERS.
- J.2.d. **Administrative Fee.** In each invoice to ERS for the Administrative Fee, the fees should be summarized into four categories: active employees, retirees, nominees (direct pay participants who are not active employees, retirees or COBRA participants), and COBRA participants.
- J.2.e. The invoice for Administrative Fees should be delivered to ERS no later the fifteenth (15th) day following the end of the month for which it is applicable.

J.3. Financial Standing

- J.3.a. Respondent warrants and represents that it is in good financial standing, not in any form of bankruptcy or the zone of insolvency, and is current in the payment of all taxes and fees, including, but not limited to, state franchise taxes. In this regard:
 - J.3.a.i. Respondent will be required to attest to its financial standing by execution of the signature page attached hereto within Appendix A.
 - J.3.a.ii. Respondent shall provide a copy of its most recent two (2) years audited financial statements and its most recent NAIC annual statement. The financial statements should include, but not limited to, Balance Sheet, Income Statement, Statement of Retained Earnings or Statement of Stockholders' Equity, Statement of Cash Flows, and Notes to the Financial Statements.
 - J.3.a.iii. If applicable, specify the name and address of any sponsoring or parent corporation or others who provide financial support to Respondent. Provide an indication of the type of such support, i.e., guarantees, letters of credit, etc. What are maximum limits of additional financial support? Provide a copy of the sponsoring organization's most recent audited financial statement if any such entity provides financial support to Respondent. The financial statements should include, but not limited to, Balance Sheet, Income Statement, Statement of Retained Earnings or Statement of Stockholders' Equity, Statement of Cash Flows, and Notes to the Financial Statements.
 - J.3.a.iv. Identify the Respondent's independent auditor and, if applicable, the independent auditor for Respondent's sponsoring organization.

VIII. Financial Requirements and Specifications

This Article presents the financial requirements and specifications with which a Respondent is required to comply to administer the Plans.

A. Financial Requirements

- A.1. **Administrative Fee.** In responding to this RFP, Respondent shall propose an Administrative Fee that will be guaranteed for six (6) years.
 - A.1.a. The Administrative Fee proposed by Respondent must cover any and all costs incurred for the performance of all services, responsibilities and obligations as described in the RFP and Contract, regardless of when such services, responsibilities and obligations are or must be performed, prior to and during the entire Contract Term and during the runoff period following termination of the Contract. Respondent shall not be paid any fees, receive any reimbursements for services or earn any compensation in connection with the Contract except for the Administrative Fee.
 - A.1.b. T.I.C. Section 1551.012 exempts the GBP from any State tax, regulatory fee, or surcharge including premium or maintenance taxes or fees. Respondent warrants and represents that the Administrative Fee does not include any provision for such taxes or fees.
 - A.1.c. To the extent that Respondent intends to recover start-up costs through the Administrative Fee, such recovery should be provided in the Administrative Fee and amortized over the six-year Contract Term and specifically described to ERS in Article IX, *Price Proposal*.
 - A.1.d. **Runoff.** For three (3) years following expiration or termination of the Contract for any reason, Respondent shall continue to be responsible for processing and paying claims incurred during the Contract Term. The cost of such runoff administration should be included in any proposed Administrative Fee. Administrative Fees will not be paid following termination of the Contract.
- A.2. **Annual Experience Accounting.** Within one hundred fifty (150) to one hundred eighty (180) days after the end of each Fiscal Year, Respondent will provide ERS with an accounting of Respondent's financial experience under the Contract. The accounting shall include monthly enrollment, paid claims, and Administrative Fees. In addition, Respondent shall provide ERS with such other experience data and accounting information as ERS shall reasonably require. Additional information in this regard will be provided post Contract award.
- A.3. **Health Care Management Incentive.** Under the Contract, Respondent will have an incentive for the efficient and cost-effective management of health care provided to in-area Participants. Generally, the incentive will be a potential charge to Respondent based on actual in-area claims (actual claims) as compared to target claims agreed upon in advance by Respondent and ERS as described more fully below. Respondent understands and acknowledges that if actual claims are more than 102% of target claims then it shall be charged and assessed all sums that Respondent states in its Proposal it will pay for failing to meet the HCMI. This incentive is not an insurance or reinsurance arrangement. The Contract will not include either specific or aggregate stop loss coverage.
 - A.3.a. The HCMI will be structured as follows:
 - A.3.a.i. For Participants residing in-area, Respondent is required to state a target claim cost in response to this RFP. The TCC will include both network and non-network claims expected to be incurred during the Fiscal Year. HDHP Participants and out-of-area Participants (including all retirees eligible for Medicare-primary coverage) will not be included in the determination of the HCMI. The TCC will be expressed as a monthly amount for each Member residing in-area (in-area Member) as specified in Section IX.A.1.c.
 - A.3.a.ii. The TCC for FY 2018 will be calculated and finalized on or before February 1, 2018, based on: (a) a specified, guaranteed formula submitted in the Proposal and accepted by ERS, and (b) actual claims experience for FY 2017 based on data available through November 30, 2017. The provision

for incurred, but unpaid FY 2017 claims as of November 30, 2017, will be determined through good faith negotiations.

- A.3.a.iii. The formula referenced in Section VIII.A.3.a.ii. above must be specified in the Proposal, although it may take into account actual FY 2017 claims experience, FY 2018 enrollment data available through November 30, 2017, and the anticipated impact of benefit/eligibility changes implemented for FY 2018, if any. Enrollment variability may recognize the following changes in composition of the in-area participation: (a) relative proportion of the enrollment in the various employee/dependent categories, (b) age distribution, (c) gender distribution, (d) geographic distribution, and (e) relative proportion of the enrollment in other GBP health plans. The manner in which the variability in these factors will be recognized must be clearly specified. The anticipated impact of any benefit/eligibility changes will be determined through good faith negotiations.
- A.3.a.iv. All in-area locations will be combined for the purpose of determination of the TCC and the ultimate calculation of the gain or loss.
- A.3.a.v. The target claims for FY 2018 will be equal to the sum of the products of each month's actual in-area enrollment and the TCC determined above.
- A.3.a.vi. ERS recognizes that a certain degree of variability in claims experience is inevitable and beyond the influence of Respondent. Accordingly, ERS will establish a claims corridor of 100% to 102% of target claims. Should actual claims fall in this claims corridor, a charge will not be made under the Health Care Management Incentive.
- A.3.a.vii. The actual claims for FY 2018 will be determined based on claims incurred through August 31, 2018, using actual claims paid through February 28, 2019. The provision for incurred, but unpaid FY 2018 claims as of February 28, 2019, will be determined through good faith negotiations.
- A.3.a.viii. The gain or loss for the year will be determined through comparison of target claims and actual claims calculated as described herein.
- A.3.a.ix. Should actual claims exceed 102% of target claims, Respondent will be assessed an amount equal to 100% of the excess subject to a maximum of 2.0% of target claims per Fiscal Year. This assessment is in addition to any other remedy available to ERS.
- A.3.a.x. Similar, yet independent determinations will be made for each year of the Contract.
- A.3.b. Exhibit 1 below presents a tabular display of the requested HCMI structure.
- A.3.c. Respondent's ability to provide a cost-effective managed care network is evaluated in part on the basis of the in-area target claims level to which Respondent is willing to commit. Accordingly, this document requires Respondent's Proposal to include such a target. The target level will be an important factor in the evaluation process. The cost associated with the prescription drug program is not a part of the TCC determination.
- A.4. **Renewal Year TCC.** In addition to submission of a formula with guaranteed factors for FY 2018, Respondent must also submit a formula for determination of the TCC for the second, third, fourth, fifth and sixth years of the Contract. While such a formula may take into consideration actual claims, actual enrollment and the anticipated impact of any benefit/eligibility changes that may be implemented in the second, third, fourth, fifth and sixth years, it must guarantee the maximum trend factors that will be used in developing second, third, and fourth year TCC. FY 2022 and FY 2023 maximum trend factors shall be subject to good faith negotiations between ERS and Respondent.
- A.4.a. The actual trend factors used for renewal year TCC will be determined through good faith negotiations subject to the guaranteed maximum. The anticipated impact of any benefit/eligibility changes effective for the second, third, fourth, fifth and sixth years of the Contract will be determined through good faith negotiations. Any benefit/eligibility changes occurring after the TCC has been established for a given year will result in a revision to such TCC with such revision determined through good faith negotiations.

Exhibit 1

TEXAS EMPLOYEES GROUP BENEFITS PROGRAM

GBP Self-Funded Basic Coverage Program
Health Care Management Incentive Arrangement

The following table displays the in-area health care management incentive arrangement:

Actual Claims Range	Relative Share of Gain (Loss) ¹ In the Actual Claims Range		Maximum Charge to Respondent
	ERS	Respondent	
Less than 102% of Target Claims	100%	0%	0
Greater than 102% of Target Claims	0%	100%	2.0% of Target Claims

¹Gain (Loss) = Target Claims – Actual Claims

B. Funding Sources

- B.1. The cost for coverage provided under the GBP is funded from two (2) sources: Employer contributions and Member contributions. The Texas Legislature appropriates monies to fund group insurance benefits for all eligible State and certain higher education employees, retirees and their dependents.
- B.2. The Texas Legislature will set the State contribution for FY 2018. Resulting budgetary issues could require modifications to any Contract entered into as a result of this RFP. In the event that funding for FY 2018 is projected to be inadequate to support the benefits included in this RFP, ERS shall work with Respondent to administer a benefit plan that matches funding capability. Respondent shall, at the direction of ERS, implement benefit changes for the Plans necessitated by budgetary constraints. Respondent agrees that it shall negotiate in good faith regarding an adjustment in Respondent's fees and/or TCC, if any, which may be requested by ERS because of benefit changes.

IX. Price Proposal

A. In-Area Target Claim Cost

A.1. Formulas

A.1.a. Respondent shall specify the formula it will use to develop the final FY 2018 TCC on or before February 1, 2018. The formula shall comply with the requirements and guidelines stated in Article VIII, Section A.3. and A.4. of the RFP. Enumerate the variables included in Respondent's formula. Variables are limited to actual FY 2017 claims and the composition of FY 2018 in-area enrollment as discussed herein. All other factors including trend, network usage assumptions, plan design adjustments, network utilization/price adjustments and factors used to adjust for demographic and geographic changes must be guaranteed for FY 2018 and will be negotiated in good faith in subsequent years. Note: the Projected FY 2018 TCC requested below should be based on the current HealthSelect benefits. If benefits are revised for FY 2018 or a subsequent year, the adjustment factors for the benefit change will be subject to good faith negotiation.

A.1.b. Respondent shall specify the formula it will use to develop the FY 2019, FY 2020, FY 2121, FY 2022 and FY 2023 TCC. Enumerate the variables included in the formula. Maximum in-area trend factors must be guaranteed as indicated in Section IX.A.1.d. below. The formula shall comply with the requirements stated in Article VIII, Sections A.3. and A.4. of the RFP.

A.1.c. Projected FY 2018 TCC. Based on the formula specified in Section IX.A.1.a. above, Respondent must provide the projected FY 2018 TCC below. Provide detailed documentation regarding the projection.

\$ _____ per in-area Member per month

A.1.d. **FY 2019, FY 2020, FY 2021, Maximum Guaranteed Trends.** Respondent shall specify the maximum guaranteed trends to be used in projecting the TCC for FY 2019, FY 2020 and FY 2021. These are the maximum rates that shall be used for FY 2019 – FY 2021. The actual rates shall be subject to good faith negotiation between ERS and Respondent. FY 2022 and FY 2023 maximum trend factors shall be subject to good faith negotiations between ERS and Respondent.

	<u>Maximum Trend</u>
FY 2019	_____
FY 2020	_____
FY 2021	_____

B. Administrative Fee – GBP Self-Funded Benefit Coverage Program

B.1. Respondent shall provide a single flat monthly Administrative Fee that is guaranteed for the six-year Contract Term FY2018 – FY2023. The single flat monthly Administrative Fee shall include any costs, compensation, expenses, reimbursements or fees of any kind to be paid to Respondent for the performance of any and all services, obligations and responsibilities under the Contract related to both Plans. Respondent understands and acknowledges that it will not receive any payment of any kind unless it is provided for in the Administrative Fee.

B.1.a. GBP Self-Funded Benefit Coverage Program Administrative Fee is \$ _____ per Member per month. Member is defined as a Participant who is an employee, retiree or other person eligible to participate in the GBP as provided under the Act and who is not a dependent.

B.1.b. Allocate on a PMPM basis the Administrative Fee proposed in (Section IX.B.1.a.) above to the following categories

Utilization Review ¹	\$ _____
Claims Processing ²	\$ _____
Network Management	\$ _____

Behavioral Health Program ³	\$ _____
General Administration ⁴	\$ _____
Communications	\$ _____
Disease/Condition Management Services	\$ _____
Wellness Services	\$ _____
Additional Printing Services	\$ _____
Other ⁵	\$ _____
Total Must match Rate Quoted in IX.B.1.a.	\$ _____

Respondent must allocate Administrative Fees as listed in Section IX.B.1.b. ERS may consider contracting with additional vendors in the future to provide specific services such as Disease/Condition Management Services, Wellness Services, additional printing services or utilization review. Respondent understands, acknowledges and agrees that it shall reduce its Administrative Fee by the amount listed in each applicable category should ERS contract with another third-party for such specific service.

¹Includes all cost containment activities.

²Includes all subrogation related costs and related legal expenses and coordination of benefits.

³Includes any amounts paid to a behavioral health subcontractor for administrative services.

⁴Includes actuarial, legal, underwriting, reporting and other technical assistance.

⁵Specify.

C. Provider Reimbursement

C.1. Appendix J, *Experience Data*, includes an EXCEL file titled NETWORKFORMS.XLS. This file contains five (5) forms, which are to be completed by Respondent and submitted electronically with the Proposal. Respondent warrants and represents that the information it is providing in connection herewith is true, correct and accurate in all respects. Respondent understands and acknowledges that its Proposal may be disqualified if ERS determines that Respondent's network-related information is incorrect (i.e., overstated or not verifiable). The forms request information regarding Respondent's provider network and network reimbursement. All responses to this section must be based on the network submitted in response to Article VII.C. Below is a brief description of each of the five (5) forms. Unless specified, information should not be provided for contracted non-network providers.

Forms 1 through 4 require information by region. For purposes of completing these forms the regions are defined as follows:

Service Area	Counties
Austin	Bastrop, Burnet, Caldwell, Hays, Travis and Williamson counties
Corpus Christi	Aransas, Bee, Jim Wells, Kleberg, Live Oak, Nueces, Refugio and San Patricio counties
Dallas	Collin, Dallas, Ellis, Hurt, Kaufman and Rockwall counties
El Paso	El Paso and Hudspeth counties
Fort Worth	Denton, Hood, Johnson, Parker, Tarrant and Wise counties
Houston	Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery and Waller counties
Lubbock	Crosby, Floyd, Garza, Hale, Hockley, Lamb, Lubbock, Lynn and Terry counties
Rio Grande Valley	Cameron, Hidalgo, Jim Hogg, Starr, Webb, Willacy and Zapata counties
San Antonio	Atascosa, Bandera, Bexar, Comal, Guadalupe, Kendall, Medina and Wilson counties

- C.1.a. Form 1 requests information regarding the number of network providers for selected provider types for certain areas of Texas. The form requests both the current number of network providers and Respondent's projected number of network providers as of September 1, 2017 if Respondent were to be selected as the TPA.
- C.1.b. Form 2 requests information regarding the type(s) of reimbursement arrangements used by Respondent in selected areas. Please indicate with an "x" which type(s) of reimbursement are used.
- C.1.c. Form 3 contains selected CPT codes for certain areas of Texas. Provide Respondent's average network allowable charge as of June 1, 2016 for each procedure in each service area. Provide a global, unmodified fee for all procedures other than lab and radiology. For lab and radiology procedures (other than chest x-ray), provide a modifier 26 (professional only) fee. For chest x-ray, provide a global, unmodified fee. If Respondent uses multiple fee schedules in an area, provide the average fee weighted by the percentage of current membership. If Respondent uses capitation in its professional reimbursement methodology for certain physicians, so indicate.
- C.1.c.i. Please note that ERS reserves the right to validate by audit Respondent's submitted reimbursement amounts.
- C.1.d. Form 4 requests information regarding the effective dates of the current physician fee schedules for selected areas of Texas.
- C.1.e. Form 5 is to be completed with Respondent's allowable charge for each of the claims included in the file claims.zip, which is described in Appendix J of this RFP. Instructions for reading the file and a file record description are included in Exhibit R of Appendix J. For each claim, Respondent is to provide (a) the unique record number, (b) provider contracting status as of June 1, 2016, and (c) the charge amount that Respondent would have allowed under its reimbursement arrangement with that provider as of June 1, 2016. Provider contracting status should indicate whether the provider is (1) a contracted network provider, (2) a non-network provider with some alternative contracting status, either directly or indirectly with Respondent, which allows for discounted reimbursement and/or relief from balance billing to Participants (referred to herein as a contracted non-network provider). or (3) a provider with no contracting status with Respondent. The information provided in the claims file should be adequate to determine the allowable charge. Respondent is not to provide payment amounts, only allowable charges. Provide a description of the methodology used to reprice these claims along with a detailed example of repricing an individual claim. If Respondent uses capitation in its reimbursement methodology for certain facilities, so indicate.
- C.1.f. Please note that ERS reserves the right to validate by audit Respondent's submitted allowable charge amounts for these sample claims.

D. Additional Information

- D.1. Based on your Texas book of business **using the network proposed herein** provide the average percentage discount from billed charges to allowed amount (amount due from the Plans and Participants) for the various provider types and in total. The only items that should be excluded from this calculation are ineligible charges (e.g., duplicate charges, non-covered charges), claims in which Medicare is the primary payor, other COB claims and **all** claims paid to non-network providers (including those paid as in-network benefits).

% Discount – Texas			
Provider Type	CY2014	CY2015	CY2016 (YTD)
Physician			
Inpatient Facility			
Outpatient Facility			
Total			

- D.2. For your Texas book of business **using the network proposed herein** provide your average **network** utilization percentage. Note: the utilization percentage should be based on provider status and not on how the benefit was determined. Do not include utilization of contracted non-network providers in the determination of the utilization percentage.

- D.3. Have your provider discounts for **the network proposed herein** been evaluated and compared against those of other vendors by an independent third party within the last 2 (two) years? If so, provide a copy of the most recent evaluation along with supporting documentation. A summary prepared by Respondent will not be considered adequate.
- D.3.a. Provide the following information for arrangements with contracted non-network providers. In providing this information clearly distinguish between non-network providers with whom you contract directly and those with whom you contract indirectly through another vendor.
- D.3.a.i. Summarize the key provisions of those contracts related to participant access. [REDACTED]
- D.3.a.ii. Describe the reimbursement arrangements applicable to contracted non-network providers. Quantify the difference in reimbursement between (i) the level provided under these arrangements, and (ii) the network reimbursement for similar specialties in the same geographic region. [REDACTED]
- D.3.a.iii. Are contracted non-network providers allowed to balance bill for services? [REDACTED]
- D.3.a.iv. If you contract indirectly with non-network providers through another vendor, provide a detailed explanation of the manner in which these arrangements operate including, but not limited to the following.
- (i) Vendors used.
 - (ii) Manner in which reimbursement is determined.
 - (iii) Allocation of savings among the vendor, Respondent and the GBP.
 - (iv) Cost to the GBP.
- D.3.a.v. Provide the tables requested in Section VII.C.3. for contracted non-network providers.
- D.3.a.vi. Provide a detailed explanation of the methodology used to determine reimbursement to non-network, noncontracted providers. [REDACTED]
- D.3.a.vii. Do you engage in fee negotiations with non-network, noncontracted providers? If so provide a full explanation of such negotiations and the impact on balance billing to Participants. [REDACTED]
- D.3.a.viii. Relating to Section VII.C.1.i., please describe network usage fees, if any, and how they will be applied and charged back to ERS.

X. Appendices

Note to Respondents: The Appendices are contained within a zip file. It may be necessary for Respondents to extract each document from the zip file and save it on the desktop.

- A. Signature Pages
- B. Contractual Agreement
- C. Business Associate Agreement
- D. Data Security and Breach Notification Agreement
- E. Weekly/Monthly File Layouts
- F. Performance Guarantees
- G. Call Center Metrics
- H. Sample Monthly Administrative Performance Report
- I. Incumbency Certificate
- J. Experience Data
 - Exhibit A. Average Yearly Health Plan Enrollment History
 - Exhibit B. Average Yearly HealthSelect Enrollment by Coverage Category
 - Exhibit C. Health Plan Enrollment by Plan and 3-digit Zip Code - December, 2015
 - Exhibit D. Health Plan Enrollment Demographics – December, 2015
 - Exhibit E. Health Plan Contribution Rate History
 - Exhibit F. HealthSelect Administrative Fee Rate History
 - Exhibit G. HealthSelect Monthly Claim Count History
 - Exhibit H. HealthSelect Customer Service Inquiry Report
 - Exhibit I. HealthSelect Claims Report
 - Exhibit J. HealthSelect Claim Amount Distribution Report
 - Exhibit K. HealthSelect Claims Experience by 3-digit Zip Code
 - Exhibit L. HealthSelect Inpatient Admissions by Category
 - Exhibit M. HealthSelect Provider Specialty Report
 - Exhibit N. HealthSelect Claims Experience by Major Diagnostic Category
 - Exhibit O. HealthSelect Claims Experience by ICD9 Diagnostic Category
 - Exhibit P. HealthSelect Facility Claims Experience by Diagnosis Related Group
 - Exhibit Q. Network Provider Report
 - Exhibit R. Data Instructions
- K. Nondisclosure Agreement
- L. Current HealthSelect Directory
- M. HealthSelect PY17 Schedule of Benefits
 - M-1: HealthSelect PY17 Schedule of Benefits – Out-of-Area
 - M-2: HealthSelect PY17 Schedule of Benefits – In-Area
 - M-3: HealthSelect PY17 Schedule of Benefits - CDHS
- N. 2016 Printing Specifications for the New Employee Benefits Guides, Annual Enrollment Guides (SE and FE) and Personal Benefits Enrollment Statements

XI. TPA RFP Deliverables Checklist

Order of Return: Respondent is required to submit all Proposal materials in a loose leaf binder and shall be tab-indexed corresponding to the Sections listed below.

PAPER FORMAT	RFP REFERENCE
TAB I GENERAL INSTRUCTIONS	Article II.
<p>Proposal Submission:</p> <p><u>TPA's Proposal - Hard copies:</u> Four (4) hard copies in the following format:</p> <ul style="list-style-type: none"> • One (1) copy labeled "Proposal Original"; and • Three (3) copies labeled "Proposal Duplicate." <p><u>TPA's Proposal – CDs or DVDs:</u> Four (4) CDs or DVDs in the following format (Do Not password protect CDs or DVDs):</p> <ul style="list-style-type: none"> • Two (2) CDs or DVDs will contain the entire Proposal. This CD or DVD will include all Confidential and/or Proprietary information and all Public information. This CD or DVD will be labeled as "HealthSelect TPA RFP Proposal Duplicate." • One (1) CD or DVD will contain only Confidential and/or Proprietary Information. This CD or DVD will be labeled as "HealthSelect TPA RFP Confidential and/or Proprietary Information." • One (1) CD or DVD will contain only Public Information and will be labeled as "HealthSelect TPA RFP Public Information." <p>All Proposal materials shall be packaged collectively in one (1) sealed container and submitted to ERS in the form and manner provided in Section II.E.</p>	II.E.3.
TAB A: Responses to Article II. General Instructions, if applicable	Article II.
<p>TAB B: Requested Materials TAB B-1: Executed RFP Signature Pages (Appendix A) TAB B-2: Separate schedule of all pages containing confidential and/or proprietary information. TAB B-3: HUB Information, if applicable</p>	II.E.4. II.E.3 & II.F.1.b. II.H.1. – II.H.1.b.
TAB II PROPOSAL EVALUATION	Article III.
TAB A: Responses to Article III. Proposal Evaluation	Article III.
TAB III ORGANIZATIONAL INFORMATION	Article IV.
TAB A: Responses to Article IV. Organizational Information	Article IV.
<p>TAB B: Requested Materials TAB B-1: Organizational Charts</p> <ul style="list-style-type: none"> • A company-wide organizational chart that identifies any department that will have responsibility for the services provided under the Plans; • An organizational chart for the Information Technology department. 	IV.B.1.b.

<p>(TAB III., B-1, continued)</p> <ul style="list-style-type: none"> • An organizational-wide chart that identifies any affiliate, subsidiary, or other related entity that will be involved in the provision of the services provided under the Plans (including any entity to which fees will be sent); and • An organizational chart containing the titles of all staff members performing any function related to the services provided under the Plans. 	
TAB IV MINIMUM REQUIREMENTS	Article V.
TAB A: Responses to Article V. Minimum Requirements	Article V.
TAB B: Requested Materials TAB B-1: Copy of Texas third-party administrator's license and copies of any other business or professional licenses and/or certifications.	V.A.1.c.i.
TAB V LEGAL REQUIREMENTS AND REGULATORY COMPLIANCE	Article VI.
TAB A: Responses to Article VI. Legal Requirements and Regulatory Compliance	Article VI.
<p>TAB B: Requested Materials TAB B-1: Executed Incumbency Certificate - (Appendix I) TAB B-2: Execution of the Contractual Agreement is a preferred submission - (Appendix B). If not submitting an executed contract, provide Deviations thereto. TAB B-3: Execution of the Business Associate Agreement is a preferred submission – (Appendix C) <i>If not providing an executed Business Associate Agreement, provide Deviations thereto.</i> TAB B-4: Execution of the Data Security and Breach Notification Agreement is a preferred submission – (Appendix D) <i>If not providing an executed Data Security and Breach Notification Agreement, provide Deviations thereto.</i> TAB B-5: Deviations to the Performance Guarantees, if any. TAB B-6: Respondent's Texas Franchise Tax Account Status report and, if not incorporated or formed in Texas, evidence of good standing in your jurisdiction of incorporation or formation.</p>	<p>VI.A.2. VI.A.2.a. VI.A.5. VI.D.3.a.</p>
TAB VI SCOPE OF WORK	Article VII.
TAB A: Responses to Article VII. Scope of Work	Article VII.
<p>TAB B: Requested Materials TAB B-1: CD or DVD with Respondent's existing provider network. TAB B-2: GeoAccess Report TAB B-3: Documentation of review of Respondent's network by an external agency or industry organization, if applicable. TAB B-4: Respondent shall provide a copy of the results of Respondent's most recent customer satisfaction survey. TAB B-5: Copies of generic communications used for plans similar to the Plans, including enrollment marketing packets. TAB B-6: Mock-up ID cards for in-area, out-of-area, and HDHP. TAB B-7: Sample Welcome Packet TAB B-8: Sample Fact Sheet TAB B-9: Ratings/Reports by independent insurance rating organizations (A.M. Best's, Moody's, NCQA, Standard & Poor's, etc.) TAB B-10: Report evidencing Section 508 compliance, if applicable. TAB B-11: Copies of claim reimbursement forms and EOBs</p>	<p>VII.C.1.i. VII.C.1.n. VII.D.2.i. VII.D.5.m.iv. VII.F.1.h. VII.F.1.i. VII.F.4.k. VII.F.4.m. VII.F.5.k.i. VII.H.5.h. VII.H.7.n.</p>

<p style="text-align: center;">(TAB VI. continued)</p> <p>TAB B-12: Fraud plan</p> <p>TAB B-13: Copy of SOC report and results performed under the SSAE16 or other auditor reports.</p> <p>TAB B-14: Copy of parent or sponsoring company SOC report and results performed under the SSAE16 or other auditor reports, if applicable.</p> <p>TAB B-15: Copies of standard reports</p> <p>TAB B-16: Standard data and claims files</p> <p>TAB B-17: Business policies and procedures</p> <p>TAB B-18: Security Incident Management policies and procedures for the application and for internal systems</p> <p>TAB B-19: Copy of most recent 2 years audited financial statements and most recent NAIC annual statement</p> <p>TAB B-20: Copy of the sponsoring organization's most recent 2 years audited financial statement, if applicable.</p>	<p>VII.H.7.aa. VII.H.8.i.i. VII.I.1.b.</p> <p>VII.I.1.c.</p> <p>VII.I.2.e. VII.I.2.i.</p> <p>VII.I.3.q.i.</p> <p>VII.J.3.a.ii. VII.J.3.a.iii.</p>
<p>TAB VII FINANCIAL REQUIREMENTS AND SPECIFICATIONS</p>	<p>Article VIII.</p>
<p>TAB A: Responses to Article VIII. Financial Requirements and Specifications, if applicable</p>	<p>Article VIII.</p>
<p>TAB VIII PRICE PROPOSAL</p>	<p>Article IX.</p>
<p>TAB A: Responses to Article IX. Price Proposal</p>	<p>Article IX.</p>
<p>TAB B: Requested Materials</p> <p>TAB B-1: Information requested as part of Appendix J, Experience Data, including the forms in Section IX.C.</p> <p>TAB B-2: Most recent evaluation (including supporting documentation) regarding provider discounts for Respondent's proposed network, if applicable.</p> <p>TAB B-3: CD or DVD that includes tables for Contracted non-network providers.</p>	<p>IX.C.</p> <p>IX.D.3.</p> <p>IX.D.3.a.v.</p>

NOTE: Keep this Checklist for your records. Do not return with your submission.

**BUSINESS ASSOCIATE AGREEMENT
BETWEEN EMPLOYEES RETIREMENT SYSTEM OF TEXAS
AND BLUE CROSS AND BLUE SHIELD OF TEXAS,
An Operating Division of HEALTH CARE SERVICE CORPORATION,
A Mutual Legal Reserve Company**

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 Blue Cross and Blue Shield of Texas, an Operating Division of Health Care Service Corporation, a Mutual Legal Reserve Company (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 covered entities 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

Business Associate Agreement

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Business Associate
ERS

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. In any situation under the Business Associate Agreement where a question arises as to the applicability of state or federal law or regulations to the Health Plan, then Health Plan's interpretation of the applicability of such law or rule shall control.
- 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 provisions in this Business Associate Agreement shall prevail.

- 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

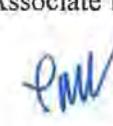
- 4.1 To the extent such agreements are otherwise permitted under the Contract, Business Associate shall include in all agreements or contracts with its agents, contractors, subcontractors or vendors, if such agreements or contracts involve Business Associate's '*disclosure*' to or '*use*' by the agents, 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, § 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

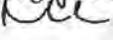
his/her PHI only in the alternative manner or at the alternative location instructed by Health Plan, unless otherwise directed by Health Plan.

- 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. If, at the termination of the Business Associate Agreement, the Parties agree that returning or destroying PHI is not feasible due to state or federal law or regulatory requirements applicable to the Business Associate and Health Plan, or due to Business Associate's record retention policies, 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 Health Plan or 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, as soon as possible but in no event later than five (5) business days 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 any and all investigation performed by Business Associate related to the 'breach;' and


Business Associate


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- (6) Contact information of the most knowledgeable 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 **Business Associate shall maintain or cause to be maintained sufficient insurance coverage as shall be necessary to insure Business Associate and its employees, agents, representatives or subcontractors against any claim or claims for damages arising under this Business Associate Agreement. Such insurance coverage shall apply to all services provided by Business Associate or its agents or subcontractors and shall be sufficient to cover acts or omissions of its agents or subcontractors in the performance of the Contractual Agreement and pursuant to this Business Associate Agreement. Business Associate shall defend, indemnify, save and hold harmless Health Plan and all other parties identified in the Indemnification and Liability Insurance Article of the Contract to the full extent required by that Article of the Contract, and including indemnification for reasonable attorney's fees and costs, administrative penalties and fines, costs expended to notify participants and/or to prevent or remedy possible identity theft, financial harm, reputational harm, or any other claims related to a breach incurred as a result of, or arising directly or indirectly out of or in connection with any act or omission of Business Associate, its employees, agents, representatives or subcontractors, under this Business Associate Agreement, including, but not limited to negligent or intentional acts or omissions. This provision does not replace or supersede the Contractual Agreement's insurance requirements but is intended to be read in conjunction with them. The indemnification obligation of Business Associate shall survive termination of this Agreement.**
- 4.20 In addition to HIPAA, Business Associate shall comply with all applicable state and federal security and privacy laws.
- 4.21 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.
- 4.22 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.
- 4.23 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.
- 4.24 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.




Business Associate


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- 4.25 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.state.tx.us

cc: Paula A. Jones, Deputy Executive Director and General Counsel
Email: paula.jones@ers.state.tx.us

Business Associate:

Blue Cross and Blue Shield of Texas, an Operating Division of Health Care Service Corporation, a Mutual Legal Reserve Company
1001 East Lookout Drive
Richardson, Texas 75082
Attn: Dan McCoy, M.D., President

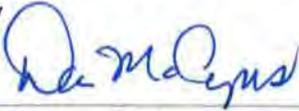
cc: Nancy Pruitt, General Counsel
Email: nancy_pruitt@hcsc.net

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SIGNATURE PAGE TO FOLLOW.]

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

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

By: 
Dan McCoy, M.D.
President

Date: November 29, 2016

EMPLOYEES RETIREMENT SYSTEM OF TEXAS

By: 
Porter Wilson
Executive Director

Date: 12-2-16

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 financial, reputational or other harm to any Health Plan participant 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 participants 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.

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 Blue Cross and Blue Shield of Texas, an Operating Division of Health Care Service Corporation, a Mutual Legal Reserve Company ("*TPA*").

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, TPA agrees to be bound by the provisions contained in this Agreement.

Article 2. Specific Requirements

- 2.1 TPA, 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, issue certificates of compliance with this exhibit to ERS and permit ERS to initiate independent audits to verify compliance with same.
- 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. TPA shall comply 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, TPA 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 not further processed in a way incompatible with those purposes. All other Personal Data must be collected only for purposes as necessary for TPA to perform and fulfill its obligations under the Contract 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 TPA 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 If TPA did not execute a Business Associate Agreement ("*BAA*") in connection with the Contract, but TPA subsequently receives or handles any PHI, TPA agrees to immediately notify ERS. ERS will then determine, in ERS' sole discretion, whether TPA must execute a BAA to address the privacy, security and breach notification requirements related to PHI. If applicable, TPA agrees to act in good faith and to cooperate in the execution of a BAA.
- 2.6 TPA 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,



TPA



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including, but not limited to, maintenance of disaster recovery and business continuity plans. TPA agrees to allow ERS to view these standards and plans upon request onsite at ERS' premises.

- 2.7 TPA 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 at all times, including 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.
- 2.8 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 TPA), 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, General Counsel and Chief Compliance Officer 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. TPA 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 and applicable law. Personal Data will be destroyed only if all legal retention requirements and related business and auditing purposes have been met, and as consistent with the terms of the Contract. In the event there is any litigation or investigative proceedings related to the Personal Data or TPA's performance under the Contract or this Agreement, then the Personal Data must be retained during the pendency of such litigation or investigative proceedings. In the event that it is infeasible or impractical to return or destroy the data, TPA agrees to protect the Personal Data at the same level as under the in-force Contract.

Article 4. Data Breach Monitoring and Notification

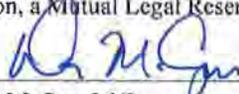
- 4.1 TPA must take proactive steps to monitor for breaches of system security, including, but not limited to, acquisition, access, use or disclosure of Personal Data (each, a "Notification Event"). In the event of such a Notification Event, TPA must notify ERS immediately, but in no event later than five (5) business days

from the time the Notification Event is discovered or reasonably should have been discovered with the exercise of reasonable diligence, whichever is earlier. The primary contacts for notification at ERS are the General Counsel and Chief Compliance Officer and Information Security Officer. At any time upon request of ERS, TPA must notify, at TPA's expense, the affected Participant(s), including those Participants reasonably believed to have been affected, as quickly as possible, but in any event within 72 hours from the time the Notification Event is discovered, unless requested to withhold notification by law enforcement or as necessary to determine the scope of the breach and restore the reasonable integrity of the data system.

- 4.2 If TPA is required to notify at one time more than 10,000 Participants of a Notification Event, pursuant to applicable law, TPA 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.
- 4.3 In addition to indemnification of the Indemnified Parties pursuant to the Contract and any criminal or civil penalties, including injunctive relief, that may apply, **TPA AGREES TO DEFEND, INDEMNIFY, SAVE AND HOLD HARMLESS, AND TO PROVIDE, AT TPA'S SOLE COST AND EXPENSE, ONE (1) YEAR OF CREDIT MONITORING SERVICE TO, ANY PARTICIPANT(S) WHOSE PERSONAL DATA HAS BEEN DISCLOSED PURSUANT TO A NOTIFICATION EVENT.** ERS agrees to use the vendor that TPA has contracted for credit monitoring service since this vendor is able to provide value-added services including pre-breach credit monitoring.

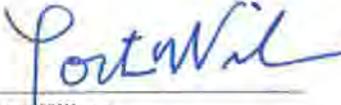
IN WITNESS WHEREOF, the Parties have executed this Agreement to be effective upon execution by both Parties.

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

By: 
Dan McCoy, M.D.
President

Date: November 29, 2016

EMPLOYEES RETIREMENT SYSTEM OF TEXAS

By: 
Porter Wilson
Executive Director

Date: 12-2-16