

**Pharmacy Benefit Manager Services for a
Medicare Part D Employer Group Waiver Plan with a
Wrap Prescription Drug Plan**

Executed Contract

between

**United Healthcare Services, Inc.
and
Employees Retirement System of Texas
(Executed May 17, 2016)**

("RFP/Proposal Process"). To the extent that Clarifications are made a part of this Contract, they are attached hereto and incorporated herein as Exhibit "C."

- 1.6 For and in consideration of the mutual promises, covenants, and consideration herein expressed, the receipt and sufficiency of which is hereby acknowledged, the Contract is entered into by and between PBM and ERS to be effective as of the date set forth herein.

Article 2. Contract Term, Renewal, Amendment and Termination

2.1 The Contract and all aspects of the Contract will be for a term beginning as of the date executed by an authorized representative of ERS as set forth on the signature page hereto ("*Effective Date*") and extending through December 31, 2022 (the "*Contract Term*") unless terminated as provided herein or further extended or renewed by written agreement of the parties. ERS and PBM agree and acknowledge that the Services to be provided under the Contract are anticipated to be transacted primarily between January 1, 2017 and December 31, 2022 (collectively, the "*Service Period*").

2.2 Notwithstanding the immediately preceding paragraph, ERS and PBM agree and acknowledge that there are duties and obligations specified by the Contract to be performed prior to, during and following the Service Period, and the parties each agree to perform all such duties and obligations, and all damages provisions and any applicable performance guarantee ("*Performance Guarantees*") provisions included herein shall thereby be in effect during the Service Period. All contractual provisions related to PBM's obligations that extend beyond the Service Period shall survive the termination or expiration of the Contract. In the event any dispute arises in connection with any aspect of the Contract, PBM and ERS each agree to continue to perform their obligations consistent with the undisputed terms of the Contract until the dispute is resolved and until termination of the Contract in accordance with the terms of the Contract.

2.3 PBM agrees to act as a fiduciary 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 PBM, in ERS' sole opinion, fails or refuses to perform, is negligent in performing, is unable to perform or it reasonably appears that PBM will not perform any of its duties or obligations, in whole or in part, as provided by the Contract; or

(b) Without Cause. In addition to and without restricting or waiving any other legal, contractual or equitable remedies otherwise available to ERS, ERS may terminate the Contract without cause by giving PBM ninety (90) days written notice;

(c) Mutual Agreement. The parties agree that they may also terminate the Contract upon the mutual written agreement of their duly authorized representatives; or

(d) Funding Out. ERS may terminate the Contract, either in whole or in part, without cause, if funds for the Contract are not approved by the Board of Trustees of the Employees Retirement System of Texas.

2.6 In the event that PBM fails or refuses to perform or is negligent in performing any of its duties or obligations as required by the Contract, or fails or refuses to perform consistent with PBM's statements, promises, and commitments made during the RFP/Proposal Process and in the Contract, then ERS, without limiting any other rights or remedies it may have by law, equity or under the Contract, will have the right to impose and collect liquidated damages as provided herein, to invoke any Performance Guarantees when applicable, to institute an action for actual damages and/or injunctive relief and/or to terminate the Contract immediately.

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ERS' termination of the Contract with or without cause shall not limit or waive any remedies ERS may have for PBM's breach of its past, present or future duties and obligations created by the Contract or otherwise required by applicable law.

- 2.7 Amendments. The Contract may be altered, extended, modified or amended only by written agreement properly executed by the duly authorized representatives of ERS and PBM.
- 2.8 This entire Article shall survive any termination, expiration, renewal, extension or amendment of the Contract.

Article 3. Definitions

3.1 Unless provided otherwise herein, the terms used in this Contract shall be as defined in the RFP, the Act, the Rules or the Evidence of Coverage ("**EOC**"). In the event of a conflict, the definition of a term in the Act or in the Rules shall control. Where appropriate to the context, the definition of a term in the singular also applies to the use of the term in the plural. The following definitions are in addition to terms that may be defined elsewhere in the Contract.

- (a) "**Act**" means the Texas Employees Group Benefits Act, Texas Insurance Code, Chapter 1551, as amended, and its predecessor and successor statutes.
- (b) "**Equipment**" means computer systems and equipment including hardware, software, firmware, electronic components and computer-related products that are in any way utilized or relied upon by PBM to perform, deliver or provide Services, coverages, benefits, Equipment, supplies or products to or on behalf of ERS, the GBP, HealthSelect and its Participants. Equipment also means durable medical equipment and other medical devices as defined and covered, to the extent applicable, in the EOC.
- (c) "**Evidence of Coverage**" or "**EOC**" means the document that describes the benefits, coverages and provisions of the HealthSelect Plan and any amendments or changes thereto, in addition to those described in this Contract. For the purposes of this Contract, the term EOC will encompass all supplemental or amended and restated benefit plan documents relating to HealthSelect and the Prescription Drug Plan.
- (d) "**Network**" means a group of Providers, including independent pharmacies or chains of pharmacies, whether at retail or mail, or other Providers, that has been established and credentialed by the PBM and approved to provide prescription drug Services, benefits, coverages, Equipment, supplies and products for HealthSelect Participants. For purposes of this Contract, Network also includes the mail service prescription drug facility(ies) used by PBM to perform any Services under the Contract.
- (e) "**Provider**" means any facility, entity or person with whom contracts have been established by the PBM to perform, provide or deliver prescription drug services, benefits, Equipment, supplies or products to Participants, including those Providers who are a part of the Network.
- (f) "**Rules**" means the administrative rules and regulations adopted by the ERS Board of Trustees pursuant to law and contained in Title 34, Texas Administrative Code, Part IV, which are incorporated herein by reference for all purposes as if restated in full.

Article 4. Rates and Payments; Tax Exempt Status

4.1 Administrative Fees and Compensation

- (a) PBM's administrative fees, if any, and the compensation and/or reimbursement schedule that PBM will in any way receive for or in connection with the Services, coverages, benefits, Equipment, supplies and products that PBM is required to perform, deliver or provide in connection with, arising out of or related to its performance of this Contract shall be only those specifically agreed to and accepted by ERS and that are reflected in the Fee Schedule attached hereto and fully

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incorporated herein as Exhibit "D." ("*Fee Schedule*")

- (b) PBM warrants and represents that the PBM Fee Schedule is effective for the Contract Term, and such rates shall remain unchanged for the Contract Term unless changed by the mutual written agreement of the parties, or as required by law, or as ERS may require from time-to-time based on more favorable pricing and/or Contract terms that may be available to ERS pursuant to the terms of the Contract and that ERS may request in the best interest of ERS, the GBP, its Participants, and the state of Texas. To this end, PBM shall act in utmost good faith to execute any Contract amendments necessary to reflect such mutually agreed upon modifications to the Contract.
- (c) Notwithstanding the foregoing, the parties acknowledge and agree that the pricing terms in the Contract are based on the Plan design and program specifications set forth in the RFP. ERS must approve in writing any material modification of the Plan design or program specifications prior to any implementation thereof. If such modifications, including, but not limited to, modifications to the formulary, as that term is defined in Article 4.1(h)(i) herein, are material and are initiated or approved by ERS, ERS shall notify PBM of the required modifications, and PBM and ERS understand and agree that such material Plan modifications may result in a corresponding increase or decrease in PBM's Fee Schedule as reasonably necessary to reflect such material modification of the Plan design or specifications. Any Plan changes or program specification modifications that are not considered material shall be communicated to PBM and implemented in a timely manner by PBM.
- (d) Notwithstanding the provisions of Article 4.1(a) through (c) above, or any other provision of the Contract including the RFP, PBM warrants and represents that PBM shall maintain the same level of reimbursement (a) for each retail pharmacy in the Network, as represented to ERS by PBM in Exhibit "D," as required by the RFP and as accepted in writing by ERS prior to the Board's selection of PBM, and (b) with respect to information concerning MAC pricing, as represented to ERS by PBM and submitted to ERS during the RFP/Proposal Process, in each case unless otherwise approved in writing by ERS. Notwithstanding the foregoing, PBM may only modify MAC pricing to the extent it is done in the ordinary course of business, so long as any such changes would not reasonably be expected to discourage retail pharmacy participation in the Network. ERS and PBM agree that the pricing source for Average Wholesale Price ("*AWP*") shall be as published by Medi-span. The requirements of this Article, including each of subdivisions (a) through (c) above, shall be applicable throughout the entire Contract Term, unless modified by prior written consent of ERS' Executive Director.
- (e) ERS and PBM agree that PBM shall not receive, charge or seek any administrative fees or any other costs, reimbursements, expenses or fees in connection with the Contract unless they are included in the administrative fees, if any, accepted in writing by ERS. ERS shall promptly pay PBM its administrative fees, if any, in accordance with and as provided by the Contract in connection with PBM's performance of the Services. If applicable, the parties also agree that ERS may select one or more of PBM's additional management programs identified in PBM's Proposal for the fees agreed to by the parties as reflected in Exhibit "D." Subject to the terms herein, PBM warrants and represents that any fees PBM may receive, in whole or in part, from any Pharmaceutical Manufacturer relating to such additional management programs shall be paid to ERS to the extent they are attributable to GBP Participants or to their prescription drug utilization. To this end, these fees shall be included in the definition of Rebate (see Article 4.1(h)).
- (f) Except as otherwise provided herein and in accordance with the RFP, PBM shall pay all eligible claims and reimburse all eligible charges on behalf of eligible HealthSelect Participants before seeking any reimbursement for same from ERS. Thereafter, PBM will promptly be reimbursed by ERS as provided in the RFP.
- (g) PBM shall promptly pay to ERS all consideration specified herein and in the manner required by the Contract, including, but not limited to, any rebate payments, performance guarantees, credits, overpayment reimbursements, actual damages and liquidated damages as described in the Contract.

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PBM shall also promptly pay to ERS any other payments as mutually agreed upon by the parties. In no event shall any such payment be made by PBM later than any time period specified in or in accordance with the Contract, or as agreed upon by the parties. Rebate payments, as defined in this Contract, shall be paid at the applicable rate as further described in the RFP, the Contract and in the PBM Fee Schedule. In addition to the terms of the RFP, any sums or consideration required to be paid to ERS by PBM in accordance with the Contract may be offset by ERS and deducted from any administrative fees or other compensation or reimbursement that may otherwise be owed to PBM by ERS.

- (h) Rebate Payments. PBM shall pay all Federal subsidies, including direct subsidies, coverage gap subsidies and catastrophic re-insurance and all Rebates, as defined in this Contract, to ERS as set forth below and in Exhibit "D" and/or the Clarifications for the Contract Term and any extension or renewal thereof.
 - (i) Formulary – A list of prescription drugs administered by PBM that has been evaluated by the PBM for inclusion on its formulary ("**Formulary**"). As provided in the RFP, the drugs included on the PBM's Formulary may be modified by PBM, with prior approval by ERS' authorized representatives, from time-to-time as a result of factors including, but not limited to, medical appropriateness, manufacturer rebate arrangements and patent expirations. Upon ERS' review and approval, PBM shall implement a Formulary management program, which may include cost containment initiatives, communications with HealthSelect Participants, participating Providers, pharmacies and/or physicians (including communications regarding generic substitution programs).
 - (ii) Rebates and Rebate Payment Timing. PBM has represented to ERS that PBM contracts for Rebates and will be entitled to or otherwise will receive Rebates, as defined in this Contract, from persons or entities that offer Rebates for pharmaceutical products and/or drugs (hereinafter, "**Pharmaceutical Manufacturers**") as a result of the utilization of same by HealthSelect Participants ("**Rebates**"). PBM shall use its best efforts to negotiate commercially reasonable terms for its Rebate agreements. PBM shall pay all Rebates to ERS as set forth herein and in Exhibit "D" based on each Pharmaceutical Manufacturer's drugs or products dispensed to HealthSelect Participants. Such Rebates shall be paid to ERS by PBM promptly, but in no event later than on a quarterly basis until all such compensation has been received by ERS.
- (i) The term "Rebates" is intended to include 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 PBM or PBM's Agents.

4.2 ERS is a Texas governmental public trust fund and is, therefore, a tax-exempt governmental entity. Any fees to be paid by ERS in connection herewith (including any quote, proposal or lease schedule related thereto) do not include taxes of any kind, and have not been, and will not be, increased to compensate for the fact that ERS is tax-exempt. ERS does not agree to pay, and shall not pay, any taxes, including any property taxes of any kind whatsoever, on any lease, products or services related to this Contract or any quote, proposal or lease schedule related thereto. Neither PBM nor any affiliated entity, successor or assign of PBM shall submit any invoice to ERS for payment or reimbursement of any taxes of any kind or nature, including any property taxes of any kind or nature.

4.3 Unclaimed Funds. Any funds unclaimed by Participants, including lost, returned and uncashed checks, reimbursement or otherwise, shall be managed by PBM in accordance with Section 1551.401(g) of the Texas Insurance Code. After making a good faith effort to locate the person entitled to the unclaimed funds, PBM

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shall return the funds to the Plan. Such funds are neither subject to escheatment to any state, nor are they to be turned over to the Comptroller of Public Accounts as "unclaimed property" to be held for the benefit of the recipient because they are trust funds as set forth in Texas Insurance Code § 1551.401.

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

Article 5. Scope of Services and Guidelines

- 5.1 Without limiting the importance of each provision of the RFP and PBM's obligation to comply with the detailed requirements of the entire RFP, PBM warrants and represents that it shall in good faith provide the Services as described in the Contract, as Contract is defined in Article 31 herein.
- 5.2 PBM shall not revise the Services for the Contract Term, unless required by applicable state or federal law or regulations applicable to the GBP, as defined herein, or as determined by ERS, or in accordance with a written agreement between the authorized representatives of PBM, as defined in Section 33.1, and ERS. PBM understands and acknowledges that ERS may revise the Services at any time and agrees to cooperate with ERS and to negotiate in utmost good faith as to any adjustment of the Fee Schedule reasonably related to such Services.
- 5.3 Eligibility, enrollment and participation in HealthSelect shall be governed by the terms set out more fully in the RFP, the Act and the Rules. Any determination of or interpretation of Participant eligibility and effective dates shall be made solely by ERS, and may include retroactive participation and effective date determinations, when deemed appropriate by ERS. The Executive Director of ERS or his designee, by law and as acknowledged in the Contract, has exclusive authority to determine all questions relating to enrollment and eligibility in HealthSelect. However, where the rules and regulations of the Centers for Medicare and Medicaid Services ("*CMS*") conflict, the *CMS* rules and regulations will control.
- 5.4 **Good Faith Performance of Services**
- (a) PBM warrants and represents that it shall act in utmost good faith in performing, delivering and providing all Services, coverages, benefits, Equipment, supplies and products specified in the Contract, 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 PBM and ERS.
- (b) PBM warrants and represents that it shall perform its obligations and duties under this Contract with utmost good faith, loyalty, candor and skill.
- (c) PBM warrants and represents that all Providers in PBM's Network are credentialed and have a signed contract with PBM to provide benefits for HealthSelect Participants in accordance with the Contract.
- (d) PBM warrants and represents that it shall cooperate in utmost good faith with ERS if ERS, in its sole discretion, chooses to implement any alternate retail pharmacy network referenced in the RFP or that may hereafter be requested by ERS.
- (e) From time to time ERS may, on an *ad hoc* basis, request that PBM prepare reports regarding the Medicare Part D Employer Group Waiver Plan Prescription Drug Program ("*EGWP PDP*") in the course of ERS' administration of the GBP. PBM agrees to produce such reports on a timely basis as requested by ERS, and PBM shall not charge ERS any additional fee for or require ERS to execute any additional documents in connection with the preparation of such reports. Any anticipated costs to PBM for preparing such reports must be subsumed into the administrative fees, if any, and compensation of PBM provided in the PBM Fee Schedule attached as Exhibit "D." Such reports, and the information and intellectual property reflected therein, shall be ERS' sole and exclusive property.
- (f) PBM warrants and represents that it shall cooperate and act in utmost good faith in connection with any request for ERS or GBP-specific information by ERS, an authorized ERS representative, and/or

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ERS' consulting actuary in order for ERS and its representatives to administer the GBP and to determine that all or any portion of the terms of the Contract are being performed as required herein.

- (g) PBM warrants and represents that it agrees with and shall comply with each aspect, article, requirement, specification or obligation set forth in the RFP, regardless of whether or not it is specifically addressed herein, unless any RFP requirement was specifically altered or revised by ERS in a written document agreed to by ERS' Executive Director.
- (h) PBM represents and warrants that it shall act in utmost good faith, in a professional and workmanlike manner and in accordance with applicable professional standards in providing all Services, coverages, benefits, Equipment, supplies and products specified in the Contract. PBM will immediately correct any work not in compliance with this warranty.
- (i) PBM represents and warrants that it shall act in utmost good faith in its negotiation of and agreement to any amendments and/or modifications to the Contract that ERS subsequently requests be made by written agreement between PBM and ERS.

5.5 Performance Guarantees

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

5.6 Fraud and Incorrect Billing/Payments

- (a) PBM shall implement a comprehensive plan, as described in the Proposal, including automated systems, to detect and prevent internal and external fraud, malfeasance, criminal and improper activity and other similar abuses and improprieties, including, but not limited to, intentionally perpetrated fraud, theft, embezzlement, misappropriation of funds, commingling, misuse of the EGWP PDP, overcharges, overpayments, wrongful and incorrect payments, deceptive, and duplicate or suspicious billings, and the failure to disclose material information in connection with the GBP (hereinafter collectively "*Improprieties*") by PBM, as that term is defined in this Contract and including, but not limited to, PBM's officers, employees, affiliates, subsidiaries, agents, independent contractors, and subcontractors; HealthSelect Participants; and Providers. Whether or not an Impropriety exists or may have been committed, includes, but is not limited to, by way of example, the following circumstances and/or factors:
 - (i) if a person or entity, either intentionally or negligently, presents or causes to be presented to PBM, ERS or a Provider, a claim for benefits, Services, coverages, Equipment, supplies or products or for any other manner of payment or reimbursement that (a) contains any statement or representation that the person or entity knows or reasonably should have known was false, and/or (b) fails to disclose material information;
 - (ii) if a Provider fails to provide an individual with any benefits, Services, coverages, Equipment, supplies or products that are required to be provided under this Contract, the HealthSelect EOC as it relates to the EGWP PDP, or applicable laws and regulations in connection with the EGWP PDP;
 - (iii) if a Provider providing prescription drug benefits, Services, Equipment, supplies, coverages or products for HealthSelect Participants, in relation to the EGWP PDP, either intentionally or negligently, provides a materially false or misleading representation, or fails or refuses to provide information required to be provided to ERS or PBM by law or this Contract in order to obtain payment or reimbursement or to establish the legitimacy of a claim, charge or billing or to avoid any damages or penalties otherwise payable in connection with the Contract;

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- (iv) if any person or entity misappropriates from or commits any malfeasance in connection with ERS' or a HealthSelect Participant's account, or any Participant information;
 - (v) if a Provider engages in actions that indicate a pattern of wrongful denial of Services, benefits, Equipment, supplies, coverages or products that are required to be provided under this Contract, the EOC as it relates to the EGWP PDP or applicable laws and regulations, or that indicate a pattern of wrongful requests for payment for Services, benefits, Equipment, supplies, coverages or products not performed, delivered, or provided or improperly billed or that are not medically/pharmaceutically necessary; or
 - (vi) if any person or entity commits any act or omission that could reasonably be considered to be a violation of §§ 1551.066, 1551.104, or 1551.351 of the Act, whether or not the Act specifically applies to that person or entity.
- (b) PBM shall enforce and implement all aspects of its comprehensive plan and the requirements of this Contract in order to prevent, detect, investigate and eliminate Improperities. PBM shall conduct investigations on its own, in cooperation with Providers and other Carriers or Administering firms (as those two terms are defined in the Act), when directed by ERS or as PBM otherwise deems in good faith to be appropriate in the exercise of reasonable due diligence, with regard to Improperities, and as further provided in the RFP.
 - (c) PBM shall notify ERS immediately whenever it reasonably believes that any of the Improperities described herein by way of example, or other similar Improperities not so specifically identified, have occurred in connection with the GBP and in connection with PBM's performance under the Contract.
 - (d) PBM shall also provide reports to ERS regarding such Improperities immediately upon their detection by PBM and also as may be requested by ERS.
 - (e) PBM shall comply with all future additional ERS policies or directives, as they are developed by ERS and provided to PBM, in connection with the prevention, detection, investigation and elimination of fraud, abuse and other Improperities in connection with the GBP and as they may apply to PBM.
 - (f) PBM shall further maintain all ERS, GBP and HealthSelect-related information and claims records as required by the Contract, and PBM acknowledges and agrees that ERS or its designated representatives shall have reasonable and timely access to all such information related to ERS, the GBP, HealthSelect and its Participants.
 - (g) PBM warrants and represents that it shall fully assist and cooperate with ERS, the Office of the Attorney General of Texas, any other applicable state or federal agency and law enforcement authorities in the prosecution of administrative and civil actions and/or criminal prosecution of those individuals or entities who have engaged in the commission of Improperities.

5.7 During the Contract Term, including any renewals or extensions thereof, PBM shall provide the Equipment necessary for ERS and its authorized representatives to access those automated system(s) that provide data regarding the GBP records, including, but not limited to, Participant information, enrollment, demographic, individual claims information and group specific data for ad hoc actuarial analysis. The Equipment will be located on ERS' premises, and GBP records should be available to ERS during normal business hours, including the hours from 7:30 a.m. until 5:30 p.m., Monday through Friday, Central Time. PBM agrees to provide ERS staff with the training necessary to use the Equipment and to access and interpret the GBP records. PBM also agrees to provide ERS with a direct contact to interface with PBM to answer questions in connection with HealthSelect.

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

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Article 6. Governing Law

- 6.1 The Contract and the parties' performance of same and all matters in connection with the relationship of the parties shall be governed by and construed and performed in accordance and conformity with the laws of the state of Texas, without regard to conflicts of law provisions.
- 6.2 To the extent that federal or Texas state laws or regulations change or a change of circumstances require ERS to include additional language in its contracts, PBM agrees to act in 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 addition, in the event that ERS determines that additional Contract language or program modifications (including modifications to the PBM Fee Schedule) should be added to the Contract based upon any recommendation acceptable to ERS and made by the Texas State Auditor, or other auditor retained by ERS in connection with the EGWP PDP or pursuant to the Contract, then such changes shall be effectuated in accordance with the terms of this Contract. 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 except to the extent that CMS' interpretation controls.
- 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 PBM agree and consent to Austin, Travis County, Texas as the proper venue for any court proceedings between the parties, and that a Texas state court sitting in Austin, Travis County, Texas shall have jurisdiction over PBM in connection with any action or proceeding arising out of, in connection with or related to the Contract or the parties' relationship.
- 6.4 This entire Article shall survive any termination, expiration, renewal, extension or amendment of the Contract.

Article 7. Sovereign Immunity

- 7.1 The parties agree and acknowledge that nothing contained in the Contract, as defined in Article 31, 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, Equipment, supplies or products under the Contract constitute any waiver, express, implied or otherwise, of sovereign or official immunity to suit or liability of ERS, its trustees, officers, agents or employees or of the state of Texas. As described herein, ERS' sovereign immunity includes, but is not limited to, all immunities, privileges, defenses, rights or actions available to ERS and its employees, trustees, and directors based on ERS' sovereign status and such protections to which it may be entitled as an agency of the state of Texas under Texas law (by comity or otherwise) and under the Eleventh Amendment to the Constitution of the United States of America. The parties further agree that ERS' exercise of any legal, regulatory, equitable or contractual remedies in connection with the Contract shall not constitute a waiver of the immunities identified herein.
- 7.2 This entire Article shall survive any termination, expiration, renewal, extension or amendment of the Contract.

Article 8. Notification of Management Changes and Personnel

- 8.1 Without contravening applicable law, PBM agrees to notify ERS' Executive Director immediately upon being able to lawfully make a public announcement of reaching any form of binding agreement in connection with and prior to any merger, acquisition, business reorganization, or other material change of PBM's management, ownership or business structure or similar Change of Control as that term is defined in Article 22.1 herein.
- 8.2 Before PBM's personnel are assigned to perform any Services, ERS must be provided the name and qualifications of each person PBM proposes to utilize to perform any aspect of the Services. ERS, in its sole discretion, may approve each individual or require that additional names be submitted. Once assigned, if any PBM personnel are determined by ERS to be unsatisfactory for the proper and satisfactory completion of any

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- Services, such person will immediately be removed from ERS' account and cease providing the Services and will be replaced by PBM as soon as reasonably possible.
- 8.3 This entire Article shall survive any termination, expiration, renewal, extension or amendment of the Contract.

Article 9. Liquidated Damages and Performance Guarantees

- 9.1 PBM acknowledges that with respect to the performance of, or a violation of, its duties and obligations under the Contract, it is impossible or impractical to estimate certain damages with any degree of certainty. Therefore, the parties agree that, in addition to ERS' right to terminate the Contract as otherwise set forth herein, PBM shall pay to ERS as fixed, agreed, and liquidated damages, for each instance of delay, non-compliance, or non-performance, the sum set forth in Section 9.7 below in any of the following situations (each, a "**Default**"):
- (a) upon ERS' receipt of information that PBM is not reasonably in compliance with the Contract, or that PBM by its action, inaction, or declaration of intent, will not be in compliance with any of its obligations under the Contract;
 - (b) in the event that PBM fails to perform, deliver or provide the Services within the time (i) specified in the Contract, (ii) otherwise specified by ERS in writing if a deadline specified in the Contract is reasonably changed by ERS and PBM is notified of same within a reasonable time before performance is required, or (iii) otherwise specified by ERS in writing if a deadline is not currently specified in the Contract but later provided to PBM within a reasonable time before performance is required; or
 - (c) if, in the sole opinion of ERS, delivery or performance is inexcusably delayed by PBM, or if it becomes apparent that PBM will not or has no apparent intent or ability to perform, deliver or provide all or any portion of the Services in accordance with the terms of the Contract.
- 9.2 In the event of a Default as described herein, ERS will provide written or electronic notification ("**Notice**") to PBM that the Default must be corrected by the date specified by ERS in the Notice, which date shall be at least five (5) days after such Notice has been given, unless ERS reasonably determines in its sole discretion that more immediate performance is required, in which case any shorter deadline contained in the Notice shall apply. PBM shall correct the Default by the time stated in the Notice. If, however, the Default has not been fully corrected within the time specified in the Notice ("**Notice Period**"), then ERS may, in its sole discretion, enforce the liquidated damages provision of the Contract beginning five (5) days following the Notice Period, or invoke Performance Guarantees if applicable, or both, as further specified below.
- 9.3 The liquidated damages permitted hereunder shall accrue each calendar day and/or ERS may invoke the agreed upon Performance Guarantees, if any, until such time as PBM complies with the Contract or satisfactorily performs, delivers and/or provides the Services or until the time ERS may reasonably obtain performance, delivery or provision of similar services or products from another source. In the event PBM fails or refuses to comply, or it becomes apparent that PBM will not or has no apparent intent or ability to comply with all or any portion of its obligations under the Contract, ERS may be required, because of such non-compliance, to obtain services and/or products from another source. In this event, ERS may elect to charge the full increase in costs to PBM as an element of actual damages and/or to invoke the agreed upon liquidated damages and/or Performance Guarantee provisions, if any. The liquidated damages and/or Performance Guarantees shall be in addition to any other remedy or damages available to ERS.
- 9.4 The parties hereto agree that the liquidated damages and, if applicable, Performance Guarantees provided in the Contract, and any amounts assessed in connection therewith, are neither a penalty nor a forfeiture and shall compensate ERS solely for ERS' inability to use or benefit from the Services, and they are not intended to, and do not include:
- (a) any damages, additional costs or extended costs incurred by ERS for extended or substituted administration of the Contract or by ERS' agents, representatives, consultants, or independent contractors for extended or substituted administration of the Contract;

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- (b) any increases in financing costs resulting from delay in performance; or
 - (c) any additional services relating to, or arising as a result of, PBM's delay in performance.
- 9.5 ERS shall be entitled to claim against PBM, as part of ERS' actual damages, including, but not limited to, direct, indirect and consequential damages, any amounts not specifically included within the liquidated damages and/or Performance Guarantees as set forth herein. Such actual damages shall be computed separately. Together with liquidated damages and/or Performance Guarantees, all such damages shall, in ERS' sole discretion, be either deducted from any monies due to PBM under the Contract, billed to PBM or otherwise collected in accordance with applicable law.
- 9.6 PBM shall not be charged with liquidated damages when, in ERS' determination, the delay in delivery or performance arises out of causes beyond the control and without any fault or negligence of PBM.
- 9.7 The amount of such liquidated damages, as referred to herein, shall be up to and including \$10,000.00 (Ten Thousand Dollars) for each Default or each calendar day beyond the Notice Period or deadline, as applicable, that PBM delays or fails to perform its obligations under this Contract, whichever ERS determines is appropriate.
- 9.8 In the event ERS determines that PBM has made an error in the handling of a HealthSelect Participant's account, PBM shall compensate the Participant for his reasonable out-of-pocket loss by either direct payment to the Participant or credit to his account, at the Participant's election. The cost of such payment or credit shall be borne entirely by PBM and shall not be charged back to the Participant, ERS, HealthSelect, the GBP, or the state of Texas.
- 9.9 This entire Article and ERS' right to any and all remedies, including, but not limited to, liquidated damages, Performance Guarantees, if applicable, actual damages, injunctive relief or other remedies available under the Contract, at equity or pursuant to applicable statutory, regulatory, and common law, shall survive any termination, expiration, renewal, extension or amendment of the Contract.

Article 10. Independent Contractor Status

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

Article 11. Cumulation of Remedies

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

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

Article 12. Historically Underutilized Businesses

- 12.1 If PBM has indicated in its Proposal that subcontracting opportunities for historically underutilized businesses, as defined in Texas Government Code Ann. § 2161.001 (West Supp. 2014), are available, then PBM warrants and represents that such subcontracting will only be permitted and performed in a manner consistent with ERS' and PBM's fiduciary duties.
- 12.2 HSP Prime Contractor Progress Assessment Report. All HUB and non-HUB subcontractor information shall be reported to ERS using the HSP Prime Contractor Progress Assessment Report form. The report shall be submitted to ERS' Purchasing Section. The report shall be submitted monthly even during the months no invoice is submitted to ERS. All payments made to subcontractors shall be reported. ERS may verify the amounts being reported as paid by requesting copies of canceled checks paid to subcontractors.

Article 13. Public Information Act, Confidentiality and Ownership and Use of Intellectual Property

- 13.1 PBM acknowledges that ERS is an agency of the state of Texas and is subject to the Texas Public Information Act, Texas Government Code Ann. ch. 552 (West 2012 & Supp. 2014) (the "*PIA*"). PBM agrees that it is required by Texas law to make any information pursuant to this Contract, and not otherwise excepted from disclosure under the PIA, available in a format that is accessible by the public at no additional charge to ERS.
- 13.2 ERS maintains documents and information that are considered confidential by law. In connection with the Contract, PBM will have access to information that is considered confidential. PBM understands that public availability of individual items of ERS' confidential information does not release its obligation of confidentiality. PBM is not permitted to disregard its obligations of confidentiality by use of items of ERS' confidential information to guide a search of publicly available information. PBM also is not permitted to piece together a series of items of information from unconnected sources and fit these items of information together by use of ERS' confidential information to make a showing that all or part of ERS' confidential information was "public." PBM warrants and represents that during and after the Contract such confidential information shall not be sold, assigned, provided, conveyed, released, disseminated, or otherwise disclosed by PBM, its Agents or any other persons or entities without ERS' express written permission, and that PBM shall instruct its Agents, representatives, subcontractors and/or independent contractors that they shall not so use or disclose such confidential information to any other person or entity, during or after the Contract, without the express written permission of ERS, except as absolutely necessary for PBM to provide the Services or as required by law. PBM warrants and represents that it has a tested and proven system in effect to protect all confidential information as defined herein.
- 13.3 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 "*Participant*"), whether in electronic, tangible or intangible form, the confidentiality of which ERS or its Participants take reasonable measures to protect. Confidential information includes, but is not limited to, information relating to ERS' processes, operations, Participants (including the identities of Participants or prospective Participants), 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 Participants 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

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as "**HIPAA**"), information that is provided or made available to PBM by ERS, its Administering firms and Carriers (as defined in Chapter 1551, Texas Insurance Code), if applicable, and consulting actuaries in connection with the Contract. Confidential information also includes any and all "access devices," as that term is defined by § 552.136 of the PIA, and information relating to computer network security or to the design, operation, or defense of a computer network.

- 13.4 PBM further warrants and represents that it will comply with all applicable Texas and federal laws and regulations, including, without limitation Chapter 1551, Texas Insurance Code Ann. (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. The parties' Business Associate Agreement required by HIPAA is attached and incorporated by reference as Exhibit "F"). PBM warrants and represents that PBM and its affiliates, subsidiaries, employees, officers, directors, principals, agents, representatives, assigns and/or successors shall not, and that PBM shall instruct its independent contractors and subcontractors that they shall not, use, appropriate, sell, assign, convey, provide, release, access, obtain, disclose or otherwise disseminate any confidential or protected health information except as is absolutely necessary for PBM to perform its obligations under the Contract, and in any event shall not do so in violation of any applicable state or federal law or regulation. 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 PBM agrees that the confidential information shall be kept confidential as required herein, and by the above-cited statutes and applicable regulations, and Texas Government Code Ann. §§ 552.0038, 615.045, 815.503 and 840.402 (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 PBM warrants and represents that it shall instruct its Agents that any release of any confidential information to any person or entity, including any Public Servants and any person or entity who has undertaken to advise, consult, or communicate with Public Servants on behalf of or to the benefit of PBM (whether or not PBM sought the benefit), may be authorized only by ERS in writing unless such release is absolutely required to provide the Services, and that such release must be in accordance with the applicable laws and regulations cited herein. If PBM receives a request for any information connected with the Services, confidential or otherwise, from any person or entity, including any Public Servants and any person or entity who has undertaken to advise, consult, or communicate with Public Servants on behalf of or to the benefit of PBM (whether or not PBM sought the benefit), PBM shall immediately send, if possible, a copy of such request to ERS by facsimile, electronic mail or similar means to ensure same or next day arrival at ERS, and in no event shall such notice be sent later than one (1) business day after PBM's receipt of the request, so that ERS can determine if a disclosure is required or permitted. PBM shall maintain and protect from unauthorized disclosure, all confidential information and materials it receives or creates in connection with the Contract.
- 13.7 Except as expressly stated herein, neither PBM nor any Agent of PBM may use or permit to be used, released, conveyed, assigned, provided, transmitted, disclosed or otherwise disseminated to any other person or entity, any confidential information obtained as a result of PBM's or any Agent's duties under the Contract without the prior written consent of ERS, except as is absolutely necessary for PBM to perform the Services or as otherwise required by applicable law. PBM shall establish, maintain, and enforce agreements with its Agents who have access to any confidential information to fulfill PBM's duties and obligations in the Contract and to specifically prohibit any use, sale, assignment, conveyance, provision, release, disclosure or other dissemination of any confidential information, except as otherwise required by law or authorized by ERS in writing.
- 13.8 PBM 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. PBM shall also promptly furnish to ERS full details of the unauthorized use, appropriation, sale, assignment,

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conveyance, provision, release, access, acquisition, disclosure or other dissemination, or attempt thereof, and use its best efforts to assist ERS in investigating or preventing the reoccurrence of such event in the future. PBM shall cooperate with ERS in connection with any litigation and investigation deemed necessary by ERS to protect any confidential information. PBM further agrees to promptly prevent a reoccurrence of any unauthorized use, appropriation, sale, assignment, conveyance, provision, release, access, acquisition, disclosure, or other dissemination of confidential information.

- 13.9 PBM acknowledges that any improper use, appropriation, sale, assignment, conveyance, provision, release, access, acquisition, disclosure or other dissemination of any confidential information to others may cause immediate and irreparable harm to ERS and/or a Participant and may violate state or federal laws and regulations. If PBM or its Agents improperly use, appropriate, sell, assign, convey, provide, release, access, acquire, disclose or otherwise disseminate such confidential information to any person or entity in violation of the Contract, or applicable laws or regulations, ERS will immediately be entitled to injunctive relief and/or any other rights or remedies available to ERS under the Contract, at equity or pursuant to applicable statutory, regulatory and common law without a cure period.
- 13.10 PBM 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 Participant, the sole and exclusive property of ERS and such Participant. PBM 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 PBM 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 PBM (or such third parties as PBM 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, Participant information, Participant 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. PBM 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 PBM 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 PBM under this Contract and (b) to the extent permitted by ERS in its sole discretion, may disclose such materials to third parties. PBM should assume that all reports created

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by it for ERS may be publicly available records, in accordance with Texas law, and may be subject to the PIA and that any discussions regarding the reports and advice rendered by PBM will generally be conducted in open meetings subject to the Texas open meetings laws. PBM acknowledges and agrees that materials it delivers to ERS may be included in board materials provided to the public in connection with an open meeting of the Board or one of its committees. If PBM includes materials that are deemed confidential and/or proprietary or copyrighted materials of any third party source in any report or document delivered to ERS, PBM shall clearly and prominently label such confidential and/or proprietary materials as such and shall include the appropriate trademark, service mark or copyright notices in such trademarked, service marked or copyrighted materials and identify the specific materials subject to trademark, service mark or copyright. PBM acknowledges that trademarked, service marked or copyrighted material may under some circumstances be copied by ERS in response to a request under the PIA. PBM further acknowledges that trademarked, service marked or copyrighted information and other information that PBM claims is confidential and/or proprietary may nevertheless be determined by the Office of the Texas Attorney General to be public information under the PIA and subject to inspection upon request. In assembling materials delivered to ERS, PBM shall use its reasonable best efforts to separate any trademarked, service marked or copyrighted materials, clearly designated as such, from non-trademarked, non-service marked or non-copyrighted materials and confidential and/or proprietary information, also clearly designated as such, from information that is not confidential and/or proprietary. PBM acknowledges that ERS does not have any duty to designate PBM information as confidential and proprietary or to otherwise advocate for such information to be considered confidential and proprietary.

- 13.13 As between PBM and ERS, the Work Product and Intellectual Property Rights therein are and shall be owned exclusively by ERS, and not PBM. PBM specifically agrees that all Work Product shall be considered a "work made for hire" and that the Work Product shall, upon creation, be owned exclusively by ERS. To the extent that the Work Product, under applicable law, may not be considered a work made for hire, PBM hereby agrees that the Contract effectively transfers, grants, conveys, assigns, and relinquishes exclusively to ERS all right, title and interest in and to all ownership rights in the Work Product, 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.
- 13.14 PBM, 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 PBM's signature on any document necessary for any purpose set forth in the foregoing sentence, PBM hereby irrevocably designates and appoints ERS and its duly authorized officers and agents as the PBM's agent and the PBM's attorney-in-fact to act for and in the PBM'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 PBM.
- 13.15 PBM hereby irrevocably and forever waives, and agrees never to assert, any Moral Rights in or to the Work Product which PBM may now have or which may accrue to the PBM'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.

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- 13.16 Upon the request of ERS, but in any event upon termination of the Contract, PBM 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 PBM or furnished by ERS to PBM, 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 PBM, as well as to all documents and things furnished to PBM by ERS or by anyone else that pertains to the Work Product.
- 13.17 PBM hereby warrants and represents to ERS that individuals or characters appearing or depicted in any Work Product have provided their written consent for the use of their persona or personality rights, including name, biographical information, picture, portrait, likeness, performance, voice and/or identity ("**Personality Rights**"), and have been compensated for such Personality Rights, if appropriate. PBM agrees to indemnify, defend and hold ERS harmless from any claims, including, but not limited to, claims for invasion of privacy, infringement of the right of publicity, libel, unfair competition, false advertising, intentional or negligent infliction of emotional distress, copyright or trademark infringement, and/or claims for attorney's fees, resulting from use of the Personality Rights.
- 13.18 To the extent that any pre-existing rights are embodied or reflected in the Work Product, PBM hereby grants to ERS the irrevocable, perpetual, non-exclusive, worldwide, royalty-free right and license to (a) use, execute, reproduce, display, perform, distribute copies of, and prepare derivative works based upon such pre-existing rights and any derivative works thereof, and (b) authorize others to do any or all of the foregoing. PBM agrees to notify ERS on delivery of the Work Product if such materials include any such pre-existing rights. On request, PBM shall provide ERS with documentation indicating a third party's written approval for PBM to use any pre-existing rights that may be embodied or reflected in the Work Product. PBM 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.
- 13.19 PBM 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 PBM in performance hereunder, granting PBM rights sufficient to support all performance and grants of rights by PBM. Copies of such agreements shall be provided to ERS promptly upon request.
- 13.20 If the Work Product or the Intellectual Property Rights therein become the subject of a lawsuit or claim of infringement, or PBM becomes aware that such items are likely to become the subject of a lawsuit or claim of infringement, PBM shall exercise one (1) of the following two (2) options in order to provide ERS with continued and uninterrupted use of the Work Product and Intellectual Property Rights therein: (a) obtain for ERS the right to continue the use of the alleged infringing Work Product at no additional cost to ERS, or (b) obtain alternative, substitute or new works for the allegedly infringing Work Product, which are of equivalent or superior quality to the allegedly infringing Work Product, at no additional cost to ERS, and subject to the acceptance of ERS in its sole discretion.
- 13.21 PBM 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 PBM must receive prior authorization from ERS before any such use. With respect to PBM's use of ERS trademarks, service marks or logos ("**Marks**") for the foregoing purpose, upon receipt of such authorization, PBM shall use the Marks without any modifications, distortions or blurring whatsoever, and PBM must maintain, among other aspects of the Marks, proportions, color, brightness and contrast of the Marks. Furthermore, the Marks cannot be altered in any way, including, but not limited to, custom treatments such as additional lines, graphics, or clip art; special effects such as halos or drop shadows; or embossed into a photographic background. In instances where the Marks are used in conjunction with other logos, PBM agrees not to attempt to join the Marks with, or make it/them look like part of, another logo, and PBM agrees to maintain size and spacing in a way to maximize the impact of each logo as a separate, individual brand. PBM shall not affix its company name, label, logo, or any other

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identifying information to, on or in connection with the Marks, without prior express written permission. PBM agrees to submit an example of any use of the Marks to ERS' Benefits Communications Division for prior approval, which will not be unreasonably withheld. All use of the Work Product or Intellectual Property Rights therein inures to the sole benefit of ERS.

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

Article 14. Records, Audits and Compliance Review

- 14.1 Notwithstanding any other provision of the Contract, except for such records as are provided to a third party by PBM at the request of ERS, PBM must retain copies of ERS-related records in accordance with 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, PBM shall maintain such records indefinitely to the extent there is any legal action, investigation or audit related to the Contract and PBM is notified of same.
- 14.2 Unless there is currently pending or anticipated litigation or audits related to the records, PBM shall destroy all ERS-related records in a commercially reasonable manner following the applicable retention periods, and PBM shall provide to ERS a written certification, guarantee and verification identifying: the records destroyed, date and manner of destruction, and who performed such destruction. With regard to Participants' personally identifying and/or sensitive personal information and, if applicable, protected health information ("**PHI**") (together, "**Personal Data**"), PBM shall comply with the Data Security and Breach Notification Agreement (Exhibit "H") with regard to secure retention, maintenance and irreversible destruction of Personal Data.
- 14.3 The parties agree that ERS has the right to conduct, at ERS' expense and in ERS' sole discretion, compliance reviews of PBM in a number and at times as ERS determines is necessary in order to evaluate and oversee PBM's performance of any and all Services required under this Contract. Such compliance reviews may be conducted in PBM's offices or facilities as may be necessary.
- 14.4 ERS, or its designated representatives, may travel to PBM's offices to audit and inspect PBM's business practices in connection with its performance under the Contract in a number and at times as ERS determines is necessary in order to evaluate and oversee PBM's performance of any and all Services required under this Contract. Such compliance reviews may be conducted in PBM's offices or facilities as may be necessary.
- 14.5 PBM specifically understands, acknowledges and agrees that ERS has an absolute right to conduct compliance reviews and/or audits of PBM in connection with PBM's duties and obligations under the Contract, and that all ERS-related records (and including, without limiting the foregoing, any arrangements, contracts, or related agreements that PBM has with any Pharmaceutical Manufacturers as well as all documents and information necessary for ERS to ensure PBM's compliance with Article 28.3 herein) may be audited by ERS or its authorized representative at any reasonable time at PBM's offices and any other appropriate location during regular business hours. Except as otherwise specified in this Article, the Executive Director of ERS will determine who will act as the authorized representatives of ERS in conducting such audits. PBM shall cooperate with ERS and/or its representatives in connection with an audit of PBM's performance in connection with the Contract. As appropriate, ERS reserves the right to be present during PBM's performance of the Contract to verify that PBM is faithfully and fully performing its contractual duties and obligations. Neither ERS nor the auditors will indemnify PBM for any costs incurred in connection with any audits or compliance reviews performed pursuant to this Article.
- 14.5 ERS shall bear the cost of any audit or compliance review; provided, however, that in the event any final audit or compliance review reveals a material breach of the Contract by PBM resulting in errors in excess of \$50,000 (FIFTY THOUSAND DOLLARS) or ERS imposes liquidated damages, performance guarantees or seeks any remedy or damages under this Contract, PBM shall reimburse ERS all of its actual costs, fees and expenses of whatever nature related to the cost of the related audit or compliance review. Such

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reimbursement shall be in addition to any other rights and remedies available to ERS under the Contract, at equity or pursuant to applicable statutory, regulatory, and common law, including liquidated damages.

- 14.6 In accordance with Section 1551.007, Texas Insurance Code, and notwithstanding any other provision of the Contract related to compliance reviews and/or audits of the PBM:
- (a) ERS is entitled to audit PBM to verify costs and discounts associated with drug claims, PBM compliance with the Contract, and subcontractor Services.
 - (b) Such audit shall be conducted by an independent auditor in accordance with established auditing standards.
 - (c) To conduct the audit, ERS and the independent auditor are entitled to access to all information related to the Services and costs associated with the Services, including access to PBM's Facilities, records, contracts, medical records and agreements with subcontractors.
 - (d) In connection with the audit of retail, independent and mail order pharmacies performing Services, PBM shall provide access to all requested information and agrees that any audit results shall be reported to the Board as required, and at least annually.
- 14.7 PBM is required to return recovered overpayments in any way related to the HealthSelect Program to the GBP.
- 14.8 Any ERS audits of PBM's mail service operation, including a mail order pharmacy owned by PBM or its affiliates, shall be conducted in accordance with established auditing standards by an independent Auditor designated by ERS.
- 14.9 PBM agrees, both individually and on behalf of its subcontractors, that the Texas state auditor may conduct an audit or investigation of PBM and its subcontractors in connection with PBM's receipt of funds from the state directly under the Contract or the subcontractor's receipt of funds from the state indirectly through a subcontract under the Contract. Under the direction of the legislative audit committee, an entity that is the subject of an audit or investigation by the state auditor must provide the state auditor with access to any information the state auditor reasonably and in good faith considers relevant to the investigation or audit.
- 14.10 To the extent that PBM's agreements for Rebates, as defined in this Contract, are subject to confidentiality agreements, any ERS audits of PBM's Rebate agreements conducted pursuant to this Article will be conducted by (a) a public accounting or auditing firm approved by ERS whose audit department is a separate stand-alone business entity, or (b) any other qualified independent third party designated by ERS, and/or (c) the Texas State Auditor ("*Auditor*"). The organization performing the audit must carry insurance for professional malpractice of at least \$1,000,000 per occurrence and \$5,000,000 in the aggregate, unless such Auditor is an agency of the state of Texas or unless the parties agree otherwise. Such audit will include only those portions of any and all agreements as the Auditor reasonably determines is necessary to ensure PBM's compliance with the Contract with respect to Rebates. The audit will be conducted as scheduled by agreement of the parties after Auditor's execution of a reasonable confidentiality agreement, the terms of which are to be reasonably agreed upon by PBM and Auditor. This provision does not apply to other audits or audits unrelated to such confidentiality agreements by and between PBM and any Rebate Payor.
- 14.11 PBM acknowledges and agrees that, notwithstanding any other provision in the Contract, nothing in PBM's Proposal or in the Clarifications in Exhibit "C" shall in any way limit or otherwise reduce ERS' full and complete right to audit and conduct compliance reviews of all aspects of PBM's performance of the Services and any other obligations related to this Contract, and this Article shall prevail in the event that there are any conflicts among any of the Contract terms in this regard.
- 14.12 This entire Article shall survive any termination, expiration, renewal, extension or amendment of the Contract.

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Article 15. Conflicts of Interest

15.1 PBM acknowledges and agrees that it has not and shall not engage in any actions that are or could be perceived to be a conflict of interest, appearance of impropriety or Prohibited Communication (as defined below) in connection with the performance of its obligations under the Contract.

15.2 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 Process and contracting processes are transparent and that all persons or entities seeking to engage in business with ERS are afforded the same opportunities, ERS requires all persons or entities to make the following warranties and representations:

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

- (1) any RFP Advisor (as defined below),
- (2) any member of the Board or the Investment Advisory Committee ("**IAC**"),
- (3) 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 PBM or its Agents knew or should have known that any of the foregoing occurred and did not stop or prevent the communication.

This warranty and representation does not apply to communications scheduled or approved by ERS between PBM and/or (i) the Board, (ii) the 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 PBM and ERS if such communications are expressly permitted under the relevant contract or expressly authorized by ERS' Executive Director or designee.

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

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

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

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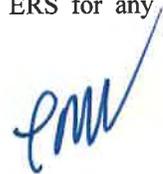


- (g) PBM understands and acknowledges that, except for the receipt of insurance and retirement benefits as a member of ERS, Public Servants, or any person or entity who has undertaken to advise, consult or communicate with Public Servants on behalf of or to the benefit of PBM or PBM's Agents (whether or not PBM or PBM's Agents sought the benefit), or the RFP Advisor shall not have a direct or indirect interest in the gains or profits of the Contract and may not receive any pay or emolument for any service performed for the PBM. In the case that any Public Servant, any person or entity who has undertaken to advise, consult or communicate with Public Servants on behalf of or to the benefit of PBM or PBM's Agents (whether or not PBM or PBM's Agents sought the benefit), or RFP Advisor receives any payment from PBM for (i) any services performed for PBM, (ii) being awarded the Contract, or (iii) any gains or profits of the Contract, then ERS may terminate its relationship with the PBM immediately and may pursue all rights and remedies available to ERS under the Contract, at equity or pursuant to applicable statutory, regulatory and common law. Under such circumstances, the PBM must, if so directed by ERS, complete any outstanding transactions as soon as possible, and thereafter, fully comply with all duties and obligations that survive the termination of the Contract.
- (h) PBM warrants and represents that, as of the Effective Date of the Contract and to the best of its knowledge and belief, there are no relevant facts or circumstances that could give rise to any actual or perceived conflict of interest, appearance of impropriety or Prohibited Communication with regard to the Contract. PBM warrants and represents that, if at any time after the Effective Date of the Contract, PBM discovers or is made aware of an actual or perceived conflict of interest, appearance of impropriety or Prohibited Communication that pre-existed the Contract's Effective Date or arose thereafter, PBM shall immediately disclose such interest, appearance or communication in writing to ERS. In addition, PBM must promptly disclose any relationship that might be perceived or represented as a conflict of interest after its discovery by PBM or by ERS as a potential conflict. Such disclosure must include a description of the actions that PBM has taken or proposes to take to cure, avoid or mitigate such conflicts.

15.3 PBM acknowledges that any violation of this Article may cause immediate and irreparable harm to ERS, programs administered by ERS and/or the state of Texas and may violate state or federal laws and regulations. If PBM or any of its Agents (which includes any person or entity who has undertaken to advise, consult or communicate with Public Servants on behalf of or to the benefit of PBM or PBM's Agents (whether or not PBM or PBM's Agents sought the benefit)) should engage in any actions or failures to act in violation of this Article, ERS will immediately be entitled to injunctive relief and/or to pursue all rights and remedies available to ERS under the Contract, at equity or pursuant to applicable statutory, regulatory, and common law. PBM further agrees, understands and acknowledges that ERS may disqualify PBM from participating in the RFP/Proposal Process or terminate the Contract immediately if ERS obtains information reflecting that PBM is not able to in good faith make any of the warranties and representations in this Article or ERS subsequently learns of any violation of this Article.

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

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

Article 16. Prohibited Solicitation and Marketing

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

Article 17. Employment Verification

- 17.1 By entering into this Contract, PBM certifies and ensures that it utilizes and will continue to utilize, for the Contract Term, 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 Contract Term; and (2) All persons (including subcontractors) assigned by PBM to perform work pursuant to the Contract, within the United States of America.
- 17.2 PBM 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 PBM, and PBM's subcontractors, as proof that this provision is being followed. If PBM does not utilize the E-Verify system, the PBM shall provide (at PBM'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 PBM and PBM's subcontractors.
- 17.3 If the certification at Section 17.1 is falsely made, the Contract may be immediately terminated, at the discretion of ERS and at no fault to ERS, with no prior notification. PBM shall also be responsible for the costs of any re-solicitation that ERS must undertake to replace the terminated Contract, if applicable.

Article 18. Indemnification and Liability Insurance

- 18.1 In addition to any requirements elsewhere in the Contract, PBM shall defend, with counsel selected by ERS in consultation with the Office of the Attorney General of Texas, indemnify, save and hold harmless ERS, its past, present and future officers, directors, trustees, and employees, HealthSelect, the GBP, and the state of Texas and its past, present and future officers, employees, agents and representatives (each an "*Indemnified Party*") from and against any and all claims, damages, losses, causes of action of whatever kind or nature, expenses, judgments, or any other amounts, including,

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but not limited to, reasonable attorneys' and experts' fees and costs, arising from or related to any acts or omissions of PBM and/or PBM's Agents. This includes, but is not limited to, any and all such damages resulting or alleged to result from:

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

18.2 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.

18.3 PBM 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 or umbrella liability coverage in an amount not less than \$10,000,000 per policy year that shall apply to PBM's obligations under the Contract. To this end, attached hereto as Exhibit "G" and incorporated herein for all purposes as if restated in full, are copies of all applicable declarations pages representing PBM's liability and fidelity insurance coverage in connection with PBM's performance under the Contract. Evidence that such coverage is being maintained during the primary term or any renewal of the Contract Term shall be furnished to ERS upon the anniversary date of the policies reflected in Exhibit "G" and otherwise promptly upon ERS' request. Such insurance coverage shall be in addition to PBM's indemnification obligations as provided herein.

18.4 ERS agrees to provide PBM with reasonable notice, in accordance with Article 30 herein, of any claim or cause of action of which it has knowledge and which ERS reasonably believes may be subject to this Indemnification provision.

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

Article. 19 Disaster Recovery

19.1 PBM warrants and represents that it has a tested and proven written disaster recovery plan in place that provides for the recovery of PBM'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.

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- 19.2 PBM agrees to exercise reasonable care and prudence to provide all legally required and any other appropriate security measures for the purpose of preventing the transmission of viruses, worms, spyware, and/or Trojan horses, and for protecting ERS' information, confidential or otherwise, and for protecting ERS from losses caused by the alteration, damage or erasure of electronic data related to this Contract.
- 19.3 PBM 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 SOCI 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. PBM further agrees to be available for reasonable inquiry by ERS of the disaster recovery plan.
- 19.4 This entire Article shall survive any termination, expiration, renewal, extension or amendment of the Contract.

Article 20. Transition; Maintenance of Records and Data

- 20.1 If the Service Period does not begin immediately upon execution of the Contract, then PBM agrees that it will maintain appropriate, sufficient and qualified staff, technical capabilities and resources to provide the Services to ERS upon the inception of the Service Period. PBM further agrees that it will not permit any current or prospective business, projects or other matters to interfere in any manner with the smooth and timely transition from ERS' existing Services provider to PBM. Furthermore, PBM understands and agrees that time is of the essence in the performance of the Contract and in the transition from ERS' existing Services provider to PBM.
- 20.2 Upon request by ERS for any reason, or upon termination or expiration of the Contract, PBM agrees to coordinate and cooperate with ERS and any entity providing all or part of the Services to ERS following such termination (as designated in writing by ERS, the "**Successor Firm**") in the transition of responsibilities and obligations under the Contract (the "**Transition**") to the Successor Firm. Such cooperation shall include making PBM personnel available to answer questions relating to the Services or the Transition and providing other assistance as reasonably requested by ERS or the Successor Firm. Upon termination or expiration of the Contract, or upon request by ERS or its designee, PBM shall promptly, in good faith, and with the standard of care required under the Contract, assign, transfer and/or deliver the ERS-related records and data in its possession to ERS and/or the Successor Firm. The records and data shall be provided to ERS and/or the Successor Firm in the format contemplated by Section 20.3 below in a duly organized manner, as they are kept in the ordinary course of business. Any coordination and cooperation provided by PBM pursuant to this Section 20.2 shall be provided without any additional cost or expense to ERS or any Successor Firm.
- 20.3 PBM hereby acknowledges that the intent of Section 20.2 above is to provide for the smooth and orderly transition from PBM to ERS or a Successor Firm, and PBM will use all reasonable efforts in good faith to prepare and provide for such smooth and orderly transition. In furtherance thereof (and not as a limitation of PBM's obligations under the prior sentence), PBM hereby represents and warrants to ERS that during the Contract Term, PBM will maintain all records and data relating to the Services in a format that can be read, accessed and used by ERS and/or any Successor Firm during the Contract Term and following the Transition, without any requirement for ERS or such Successor Firm to utilize any specialized software or take any other action. PBM shall permit ERS to audit its compliance with this Section 20.3 upon reasonable notice at no additional cost to ERS.
- 20.4 This entire Article shall survive any termination, expiration, renewal, extension or amendment of the Contract.

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Article 21. No Third Party Beneficiaries

21.1 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 22. No Contract Assignment

22.1 PBM shall not assign, or otherwise attempt to transfer or convey the Contract or any of its rights, title, interests and/or obligations hereunder 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 PBM immediately prior to the transaction have less than 50% of the outstanding capital stock or equity interests of the surviving entity immediately after the transaction, or (b) a sale, lease, exchange or other transfer of all or substantially all the assets of PBM. Notwithstanding and without waiving the foregoing, any assignee or legal successor in interest to PBM shall assume and retain all of the obligations of PBM to ERS and the state of Texas as provided under the Contract, as if the same had been expressly entered into by or wholly conveyed to the assignee or successor in interest upon ERS' written agreement to such assignment.

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

Article 23. Privacy and Antitrust Claims

23.1 In addition to any other contractual obligations that PBM has with regard to confidential information and to otherwise maintain the confidentiality of Participants' and ERS' information, PBM warrants and represents that it shall comply with the terms of HIPAA, the Health Information Technology for Economic and Clinical Health Act ("***HITECH***") and the HIPAA Privacy Rule to the extent applicable, and any other applicable federal and state laws and regulations regarding privacy, security and the disclosure of confidential or protected health information ("***PHI***"), as PHI is defined in the HIPAA Privacy Rule.

23.2 PBM agrees to cooperate with ERS in complying with the requirements of HIPAA and HITECH.

23.3 PBM warrants and represents that it shall comply with all obligations HIPAA and HITECH impose on "***Covered Entities***" (as defined by the HIPAA Privacy Rule) in connection with its performance under the Contract.

23.4 PBM is a "Covered Entity" under the HIPAA Privacy Rule. PBM agrees to enter into a Business Associate Agreement with ERS that complies with the requirements of HIPAA, the HIPAA Privacy Rule and HITECH and will require any subcontractors or agent handling PHI to comply with the terms of the Business Associate Agreement, which is attached hereto as Exhibit "F" and fully incorporated herein as if restated in full.

23.5 PBM warrants and represents that it shall comply with all requirements of Exhibit "H," Data Security and Breach Notification Agreement, which is attached hereto and incorporated herein for all purposes as if restated in full. In addition, if PBM subcontracts with any other person or entity for processing or in any manner handling, accessing or review ERS data, then PBM warrants and represents that it shall ensure that such party agrees to adhere to the provisions of the Data Security and Breach Notification Agreement. PBM specifically assumes all liability for ensuring that its affiliates, subsidiaries, representatives, officers, directors, principals, employees, agents, assigns, and any subcontractors and independent contractors abide by the Data Security and Breach Notification Agreement and shall, in any event, be liable for performance of any Services related to the Contract, including any Services performed by subcontractors.

23.6 PBM shall utilize an alternate identification number for ERS Participants rather than social security numbers.

23.7 PBM hereby assigns to ERS any and all present or future claims as may be required by applicable law associated with this Contract that arise under the antitrust laws of the United States, 15 U.S.C.A. §§ 1 et seq. (1973) ("***U.S. Antitrust Laws***"), as may be applicable and that arise under the antitrust laws of the state of

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Texas, Texas Business and Commerce Code Ann. §§ 15.01 et seq. (West Supp. 2014) (“*Texas Antitrust Laws*”), as may be applicable.

- 23.8 PBM warrants and represents that neither PBM nor its Agents has violated the U.S. Antitrust Laws or the Texas Antitrust Laws.
- 23.9 This entire Article shall survive any termination, expiration, renewal, extension or amendment of the Contract.

Article 24. Technology Access Requirement

- 24.1 As applicable, PBM must ensure the products procured by ERS under this Contract (as further defined at Article 31.1), if any, comply with the state of Texas Accessibility requirements for Electronic and Information Resources specified in 1 Texas Administrative Code Chapter 213.

Article 25. Buy Texas

- 25.1 In accordance with Texas Government Code § 2155.4441, if products and/or materials are used in the performance of the service work, Contractor 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 26. ERS Premises

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

Article 27. Additional Warranties and Representations

- 27.1 PBM 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. PBM certifies 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 (“*Stark Law*”), with respect to the performance of its obligations under this Contract.
- 27.2 PBM acknowledges that all of its representations and warranties contained in any part of the Contract are material and have been relied upon by ERS in selecting and continuing to contract with PBM to provide the Services and in entering into the Contract with PBM. PBM shall promptly notify ERS in the event that at any time any representations and warranties provided herein are no longer true and correct.
- 27.3 PBM 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 PBM throughout the entire Contract Term and any extension, amendment or renewal thereof.
- 27.4 In accordance with Texas Family Code Ann. § 231.006, (West 2014), relating to delinquent child support obligations, PBM certifies that it is eligible to receive payments in connection with the Contract and acknowledges that, in addition to other remedies available to ERS, the Contract may be terminated immediately and any such payments withheld if this certification is inaccurate.
- 27.5 PBM 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 PBM or Agents in connection with the performance of the Contract throughout the entire Contract Term and any extension, amendment or renewal thereof.

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- 27.6 PBM warrants and represents that it and to the best of PBM's knowledge its Agents are presently in compliance with all existing state and federal laws and regulations, a violation of which would or could materially adversely affect its ability to fulfill its obligations and undertakings set forth in the Contract.
- 27.7 Neither PBM nor to the best of PBM's knowledge, any Agent of PBM is subject to any present or past civil or criminal litigation, administrative proceeding, inquiry or investigation of or before any court, administrative or regulatory body which could affect ERS and/or could have a material adverse effect on PBM or its ability to discharge its responsibilities under the Contract, or could otherwise be detrimental to ERS' interests nor, to its knowledge, is any such litigation, proceeding, inquiry or investigation presently threatened against any of them or their property.
- 27.8 PBM further warrants and represents that:
- (a) except as otherwise described in the Proposal, neither PBM nor any of its affiliates, subsidiaries, employees, principals, directors or officers, nor, to its knowledge, PBM's agents, assigns, representatives, nor, to its knowledge, PBM's independent contractors, and/or subcontractors who are involved, either directly or indirectly, in PBM's performance of the Contract, are or may, at the time such parties become involved, be the subject(s) of any inquiry, investigation, or prosecution by any state or federal regulatory or law enforcement authority, including, but not limited to, such actions by the United States Department of Justice or the offices of any state's attorney general, the U.S. Department of Labor, the Securities and Exchange Commission, the U.S. Department of Health and Human Services, the Centers for Medicare and Medicaid Services, or any self-regulatory organization with oversight authority over PBM or such parties concerning any violation of state or federal statutes, Rules, regulations or other laws.
 - (b) With respect to the specific matters disclosed to ERS in its Proposal, PBM warrants and represents that, after using its best efforts and following diligent inquiry, it has determined that none of these matters shall prevent PBM from complying with and satisfying its responsibilities, duties, obligations, warranties and representations, including, but not limited to, its indemnification obligations, all as required by the Contract.
 - (c) PBM understands and agrees that, it shall have an ongoing duty, beginning on the date PBM responded to the Proposal and continuing throughout the Contract Term, as it may be amended and/or extended, to promptly disclose to ERS, as soon as such disclosure is not prohibited by federal law, all matters covered by this Article which may arise after the date PBM submitted its Proposal to ERS, and, in the case of PBM's independent contractors and subcontractors, of which it attains actual knowledge.
- 27.9 Notwithstanding any other provision of this Contract, PBM warrants and represents that none of the individuals who are or will be assigned to the ERS account, including but not limited to, account representatives, implementation team, transition team, and/or senior PBM representatives with oversight over PBM's performance of this Contract, are subject to any civil or criminal litigation, administrative proceeding, inquiry or investigation of or before any court, administrative or regulatory body, involving or in any way related to fraud, misrepresentation, moral turpitude, or other similar malfeasance. PBM shall immediately notify ERS if this warranty and representation ceases to be correct with respect to any such individual, and PBM acknowledges that such persons shall then be subject to removal from ERS' account as provided in Article 8.2 of this Contract.
- 27.10 Under Texas Government Code Ann. § 403.055 (West 2013) and Texas Government Code Ann. §§ 2155.004 and 2155.006 (West 2008), PBM certifies that it is eligible to receive the Contract, it acknowledges that the Contract may be terminated and payment withheld if this certification is inaccurate, and in the event PBM is indebted to ERS or the state of Texas or delinquent in paying any taxes owed the state of Texas at the time the Contract is entered into, PBM agrees that any payment owed to PBM under the Contract shall first be applied towards such debt or delinquent taxes until the debt or delinquent taxes are paid in full. PBM warrants and represents that at the time it entered into the Contract, PBM was not indebted to ERS or the state of Texas or delinquent in paying any taxes owed the state of Texas.

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[Handwritten signature]

- 27.11 PBM warrants and represents that it has full power and authority to enter into the Contract, and that the Contract has been duly authorized, executed and delivered by PBM's authorized representative on behalf of PBM and constitutes a valid, binding, and legally enforceable agreement of PBM.
- 27.12 PBM warrants and represents that it and its Agents are in good standing with the state of Texas and all its political subdivisions, departments and agencies.
- 27.13 PBM warrants and represents that it has and shall maintain the capability to adequately carry out any record-keeping and reporting requirements as set forth in the Contract.
- 27.14 PBM warrants and represents that it has adequate financial capital and security to fully indemnify the Indemnified Parties, as provided herein, should same be necessary.
- 27.15 PBM warrants and represents that in selecting subcontractors to provide Services in connection with the Contract, PBM has exercised its best efforts to ensure that all of PBM's representations and warranties in the Contract pertaining to such subcontractors are true and correct, and that PBM and each subcontractor has the commitment, capability, resources, security, and competence reasonably necessary to perform all Services and obligations relating to the Contract in a good and workmanlike manner in accordance with applicable professional standards and the standard of care required by the Contract. PBM further warrants and represents that it shall exercise the same best efforts in selecting any additional subcontractors, who may perform future services relating to the Contract. PBM shall advise each of its past, present or future subcontractors that said subcontractors shall not be entitled to any benefits or consideration from ERS in connection with the Contract. Furthermore, PBM is solely responsible for all Contract Services required to be performed to carry out the terms of the Contract, and PBM specifically assumes all liability for any and all such Services provided by subcontractors, if any.
- 27.16 PBM warrants and represents that all statements and representations made by PBM and/or its Agents to ERS during the RFP/Proposal Process, in the Contract, in connection with the negotiation of the Contract as well as those contained within all documents incorporated into the Contract by reference are, to the best of PBM's knowledge, true and correct as of the effective date of the Contract. PBM understands and acknowledges that these statements and representations are material and have been relied upon by ERS and/or ERS' Board in selecting PBM to provide the Services.
- 27.17 PBM warrants and represents that it shall promptly notify ERS in the event that at any time any representations and warranties provided in the Contract are no longer true and correct. PBM acknowledges that all of its representations and warranties contained in any part of the Contract are material and have been relied upon by ERS in selecting and continuing to contract with PBM to provide the Services and in entering into the Contract with PBM.
- 27.18 PBM warrants and represents that it has a current net worth of at least \$50 million (FIFTY MILLION DOLLARS), and that it has and shall maintain at least \$30 million (THIRTY MILLION DOLLARS) of cash and cash equivalents available throughout the Contract Term in connection with its performance of the Contract.
- 27.19 PBM warrants and represents that none of the Services to be performed pursuant to this Contract by PBM (including, for the avoidance of doubt, any other entity) shall be outsourced or performed, nor shall any records or information made available to PBM by ERS or any of its Participants under this Contract be made available or accessible to or viewed by any person or entity (including any Agent of PBM), 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 U.S., whether or not the information or data is actually sent out of the U.S. or is capable of being viewed by someone outside the U.S.. PBM's breach of this provision shall subject PBM to liquidated damages in the full amount provided in Section 9.7 for each and every Participant record involved in any violation of this Article as well as all other remedies available to ERS under the Contract, at equity or pursuant to applicable statutory, regulatory and common law.

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- 27.20 PBM 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.
- 27.21 PBM warrants and represents that it, and its Agents, to the best of PBM'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 PBM's ability to fulfill its obligations and undertakings set forth in the Contract.
- 27.22 This entire Article shall survive any termination, expiration, renewal, extension or amendment of the Contract.

Article 28. Contract Terms

- 28.1 PBM acknowledges and agrees to the terms set forth herein, and in all Exhibits hereto.
- 28.2 PBM understands and acknowledges that it may be necessary for ERS to make changes affecting the EGWP PDP during the Contract Term, and the parties hereto understand that, in accordance with the terms of this Contract, they shall in good faith undertake to execute any necessary contract amendments to effectuate such changes. To this end, PBM agrees that any Services, coverages, Equipment, benefits, products or supplies to be performed, delivered or provided under this Contract by PBM, described and offered to ERS in PBM's Proposal, and included in the PBM Fee Schedule, whether or not accepted by ERS at the time the Contract was executed, shall remain valid and available for acceptance by ERS throughout the Contract Term.
- 28.3 PBM warrants and represents that if during the Contract Term, PBM enters into any agreement with any other governmental customer, or any commercial customer not affiliated with PBM, of a similar size or smaller, by which PBM agrees to perform, deliver or provide similar Services, coverages, benefits, supplies or products that PBM is providing in accordance with this Contract for the following: lower administrative fees, lower compensation, more generous discounts, more generous Rebates, or more generous financial incentives or terms, then this Contract, at ERS' sole option, shall be amended to accord equivalent financial or benefit advantage to ERS and the GBP Participants. PBM further warrants and represents that it shall notify ERS promptly, pursuant to Article 30 of this Contract, in the event it enters into any such agreement containing any one or more of the above matters, and PBM shall provide ERS with the applicable terms of such agreement.

Article 29. Implementation Plan

- 29.1 PBM agrees and acknowledges that time is of the essence in the performance of this Contract and in assuring a smooth, timely, efficient and effective implementation of PBM's administration of the Prescription Drug Plan in accordance with the Contract. To this end, PBM agrees to the following:
- (a) The period of time beginning on the date ERS notifies PBM that it has executed the Contract following the Board's selection of PBM, and up to January 1, 2017, shall be known as the **"Implementation Period."**
- (b) PBM warrants and represents that it shall be ready, willing and able to fully, completely and competently provide administrative and prescription benefit management Services, coverages, Equipment, benefits, supplies, and products to and on behalf of the HealthSelect Participants, in accordance with the Contract, beginning no later than January 1, 2017 (**"EGWP PDP Program Implementation"**).
- (c) Following selection of the PBM by the Board and upon ERS' execution of the Contract, PBM shall staff an implementation team (**"Implementation Team"**), name a Project Manager and begin implementation of its obligations under the Contract in accordance with the implementation plan PBM submitted in its Proposal (**"Implementation Plan"**). Attached hereto as Exhibit "I" and incorporated herein for all purposes as if restated in full is PBM's Implementation Plan. The names, positions and qualifications of the Implementation Team and Project Manager shall be communicated to ERS no later than ten (10) days following Board selection of PBM.

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- (d) The Project Manager shall serve as ERS' primary contact throughout the Implementation Period, shall have the legal authority to make binding decisions for PBM, and must be readily accessible to ERS seven (7) days a week and twenty-four (24) hours per day during the Implementation Period. The Implementation Team and Project Manager must be acceptable to ERS, and ERS reserves the right to require that any or all of the Implementation Team and Project Manager be replaced with individuals acceptable to ERS.
- (e) During the Implementation Period, PBM warrants, and represents the following:
- (i) It shall maintain appropriate, sufficient and qualified staff, technical capabilities and resources that are fully and solely devoted to the EGWP PDP implementation in a manner that is satisfactory to ERS.
 - (ii) It shall not permit any current or prospective business, projects or other matters to interfere in any manner with the smooth, timely, efficient and effective implementation of the EGWP PDP.
 - (iii) PBM acknowledges and agrees that the EGWP PDP, GBP, HealthSelect, its Participants, ERS and the state of Texas will suffer irreparable harm if the EGWP PDP Implementation is not completed on or before December 1, 2016.
 - (iv) To the extent the Liquidated Damages and/or Performance Guarantee provisions of this Contract require prior notice, PBM hereby waives such prior notice during the Implementation Period. In addition, PBM further agrees that ERS may exercise any and all rights and remedies available to it under this Contract, at equity or pursuant to applicable statutory, regulatory, and common law, during the Implementation Period without any cure period available to PBM.
 - (v) ERS may immediately assess against PBM any Liquidated Damages and/or Performance Guarantees, without prior notice, in the event PBM fails, refuses or is unable to perform, or is negligent in performing, or if it reasonably appears that PBM will fail, refuse or be unable to complete or perform any aspect of this Contract in connection with the EGWP PDP implementation.

Article 30. Notice

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

- (a) PBM at:
1250 S. Capitol of Texas Hwy., Suite 360
Austin, Texas 78746
Phone: (512) 252-3846-Office / (512) 745-9361-Mobile
Email: Kimberly_R_McLeod@uhc.com
Attn: Kimberly R. McLeod, Account Vice President
- (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

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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 31. Entire Contract

- 31.1 This Contractual Agreement (the "**Contract**") includes all exhibits attached hereto and described herein, except to the extent any term or provision of such exhibit may conflict with or is inconsistent with the Contract or the RFP and ERS has not accepted such conflicting terms or inconsistent provisions, in accordance with the Contract, and all such exhibits are incorporated herein by reference for all purposes as if restated in full. Such exhibits include, but are not limited to, the RFP and its attachments; the Proposal and its attachments (to the extent there is no conflict with this Contractual Agreement) and any Clarifications agreed to in writing by ERS and accepted by ERS; the rates, fees, Performance Guarantees, reimbursements, and related costs and compensation presented to and accepted by ERS; all interrogatories in the RFP and any responses thereto in the Proposal; and all other exhibits to the Contract identified herein and incorporated herein by reference throughout this document for all purposes as if restated in full, shall collectively be referred to as and shall constitute the entire Contract between ERS and PBM.
- 31.2 Each of the parties warrants and represents that the Contract and the documents identified herein as part of the Contract constitute a valid and binding agreement enforceable against each party in accordance with their terms. Further, except as otherwise expressly stated in the Contract, the documents identified in this Contract embody the entire agreement between the parties and no other agreement or understanding between the parties, their agents or employees, oral or otherwise, will constitute a part of the Contract, will be binding upon the parties, or will be effective to interpret, change, restrict, or otherwise modify the provisions of the Contract, and any such other prior agreements, statements, or understandings between the parties, their agents, representatives or employees, oral or otherwise, are hereby superseded. ERS and PBM agree that the Contract, including the component parts described herein and within each document, shall govern the responsibilities and obligations of the parties to the Contract.
- 31.3 PBM acknowledges and agrees that its statements and representations to ERS during the RFP/Proposal Process and in the Contract are material and have been relied upon by ERS and/or the Board in selecting PBM to provide the Services described in the Contract. PBM further warrants and represents that throughout the entire Contract Term and any renewal, amendment or extension thereof, that it has a continuing duty to immediately notify ERS in the event any statements or representations made to ERS or any information contained in the Contract or any of its component parts are no longer true, correct or complete or may otherwise be misleading, and PBM must immediately provide ERS with the applicable true, correct or complete information.
- 31.4 The parties acknowledge and agree that if it is determined that there is an inherent or implied conflict among the Contract and any component parts thereof, then the following shall be the order of priority of the documents described herein, with the first document in the list being the ultimate authority to the extent necessary to resolve any conflicts, ambiguities or inconsistencies between them, and then descending down the list that follows, but silence on any matter in a higher order document shall not negate, change, avoid, modify, or prevail over the provisions of a lower order document as to that matter:
- (a) 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) Performance Guarantees (Exhibit "E");
 - (f) The Clarifications (Exhibit "C");

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- (g) Implementation Plan (Exhibit "I");
- (h) The RFP (Exhibit "A"); and
- (i) The Proposal (Exhibit "B").

31.5 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.

31.6 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.

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

Article 32. Execution in Counterparts

32.1 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.

32.2 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 33. Incumbency Certificate

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

Article 34. List of Exhibits

34.1 The following exhibits are attached to this Contract and incorporated herein for all purposes as specified in Article 31 herein:

Exhibit No.	Exhibit Description
Exhibit A	The RFP
Exhibit B	The Proposal
Exhibit C	Clarifications
Exhibit D	Fee Schedule
Exhibit E	Performance Guarantees
Exhibit F	Business Associate Agreement
Exhibit G	Declaration Pages from Insurance Policies
Exhibit H	Data Security and Breach Notification Agreement

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Exhibit I	Implementation Plan
Exhibit J	Incumbency Certificate

THIS SPACE INTENTIONALLY LEFT BLANK
SIGNATURE PAGE TO FOLLOW.

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

PBM

EMPLOYEES RETIREMENT SYSTEM OF TEXAS

*By: John S. Aissis

By: Porter Wilson

Printed Name: John S. Aissis

Printed Name: Porter Wilson

Title: Sr. Associate General Counsel

Title: Executive Director

Date: May 16, 2016

Date: May 17, 2016

*Signature must be notarized.

STATE OF Connecticut §

COUNTY OF Hartford §

This instrument was subscribed, sworn to, and acknowledged before me on May 16, 2016, by John Aissis (Name of Authorized Representative), Sr. Associate General Counsel (Title of Counsel Authorized Representative), of United HealthCare Services, Inc. (PBM), a(n) Connecticut corporation, on behalf of said corporation.

Signature of Notary: Loren J. Bombardieri

Printed Name of Notary: Loren J. Bombardieri

Notary Public in and for the State of Connecticut

My Commission expires: 6/30/2017



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

[AMENDED JANUARY 6, 2016]

PLEASE NOTE THAT ERS' FIRST AMENDED REQUEST FOR PROPOSAL HAS BEEN UPLOADED TO ERS' SERVER. THE AMENDMENT INCLUDES REVISED APPENDICES A (SIGNATURE PAGES) AND N (PBM SPECIALTY DRUG PRICING). APPENDIX A (SIGNATURE PAGES) HAS BEEN REVISED ON PAGE 2 TO NOTE THAT THE "CONFLICTS OF INTEREST" ARTICLE IN THE CONTRACT IS ARTICLE 15. PAGE 7 OF APPENDIX A "ACKNOWLEDGEMENT OF RECEIPT OF AMENDMENT" HAS BEEN REVISED TO INCLUDE RFP AMENDMENT ONE. APPENDIX N (PBM SPECIALTY PRICING) HAS ALSO BEEN REVISED. ANY VENDOR SUBMITTING PROPOSAL(S) SHOULD USE THESE AMENDED APPENDICES.

THE DEADLINE FOR SUBMISSION OF PROPOSALS REMAINS THE SAME. ALL PROPOSAL MATERIALS SHALL BE SUBMITTED BY VENDORS SO THAT THEY ARE RECEIVED BY ERS NO LATER THAN NOON CT ON JANUARY 27, 2016.

December 11, 2015

Qualified PBM

RE: RFP No. 327-95856-151211

Request for Proposal to Provide Pharmacy Benefit Management Services for the HealthSelectsm of Texas Prescription Drug Program and/or Pharmacy Benefit Management Services for a Medicare Part D Employer Group Waiver Plan Prescription Drug Program 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 Pharmacy Benefit Manager ("PBM") to provide any or all of the following PBM programs under the Texas Employees Group Benefits Program ("GBP"):

- a) PBM services for the HealthSelectsm of Texas ("HealthSelect") Prescription Drug Program ("HealthSelect PDP") provided to participants under a self-funded, managed care, point-of-service ("POS") health plan beginning January 1, 2017 for an initial term ending August 31, 2022; and/or
- b) PBM services for the HealthSelectsm of Texas Medicare Pharmacy Plan, an Employer Group Waiver Plan ("EGWP") Prescription Drug Program ("PDP") ("HealthSelect Medicare Rxsm") for Medicare-primary Participants beginning January 1, 2017 for an initial term ending December 31, 2022.

The services requested and described in the RFP have been segregated into two (2) separate programs and/or service options as listed above within the Pharmacy Benefit Manager Program. ERS reserves the right to select one or more PBMs, or no PBM, to provide services for any or all of these programs and/or services.

ERS anticipates receiving high quality Proposals for the services listed above, and we encourage your organization to give full consideration to the development of a Proposal that complies with the RFP requirements.

If you have any questions regarding this process, please submit your inquiry directly to Purchasing at: Purchasing-all@ers.state.tx.us.

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

Sincerely,

ROBERT P. KUKLA
Director of Benefit Contracts

**FIRST AMENDED
Request for Proposal**

RFP No. 327-95856-151211

**To Provide Pharmacy Benefit Management
Services for the HealthSelectsm of Texas
Prescription Drug Program and/or Pharmacy
Benefit Management Services for a Medicare
Part D Employer Group Waiver Plan Prescription
Drug Program**

ERS

EMPLOYEES RETIREMENT
SYSTEM OF TEXAS

December 11, 2015

[AMENDED JANUARY 6, 2016]

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PBM RFP

Deliverables Checklist

Order of Return: The entity submitting a Proposal in response to this RFP ("PBM") is required to submit all Proposal materials in the order prescribed in this checklist.

PAPER FORMAT	RFP REFERENCE
TAB I Instructions	I.
<p>TAB A: Proposal Submission:</p> <p><u>PBM's Proposal - Hard copies:</u> Three (3) hard copies in the following format:</p> <ul style="list-style-type: none"> • One (1) copy labeled "Original"; and • Two (2) copies labeled "Copy." <p><u>PBM's Proposal – CD-ROMs:</u> Three (3) CD-ROMs in the following format (Do Not password protect CDs):</p> <ul style="list-style-type: none"> • One (1) CD-ROM will contain the entire Proposal. This CD-ROM will include all Confidential and/or Proprietary information and all Public information. This CD-ROM will be labeled as "PBM RFP Proposal Duplicate." • One (1) CD-ROM will contain only Confidential and/or Proprietary Information. This CD-ROM will be labeled as "PBM Confidential and/or Proprietary Information." • One (1) CD-ROM will contain only Public Information and will be labeled as "PBM Public Information." <p>All bid materials shall be packaged collectively in one (1) sealed container and submitted to ERS in the form and manner prescribed in Sections I.B.5. – I.B.5.b.</p>	I.B.5 – I.B.5.b
TAB B: Deviations Responses	I.F.1
<p>TAB C: Requested Materials</p> <p>TAB C-1: Executed RFP Signature Pages (Appendix A) [Amended 1/6/2016]</p> <p>TAB C-2: Separate schedule of all pages containing confidential and/or proprietary information.</p>	I.B.4. I.C.2.
TAB II Proposal Evaluation Criteria	II.
TAB A: Interrogatory Responses	II.D.1. – II.D.6.b.
<p>TAB B: Requested Materials</p> <p>TAB B-1: Copy of Certificate of Registration, Certificate of Authority or Certificate of Fact.</p> <p>TAB B-2: Certification of Incorporation or other formation documentation if not incorporated in Texas.</p> <p>TAB B-3: Documentation of Certificate of Account Status and/or good standing in state of Texas and state in which incorporated.</p>	II.D.1. II.D.1.b. II.D.1.d.

TAB III Legal Requirements	III.
TAB A: Interrogatory Responses	III. G.1. – III.G.6.
TAB B: Deviations Responses	III.H.1. – III.H.5.a.
TAB C: Requested Materials TAB C-1: Executed Incumbency Certificate - (Appendix B) TAB C-2: Executed Contractual Agreement [preferred submission] - (Appendices C-1 and C-2). <i>If not submitting an executed contract, provide Deviations thereto.</i> TAB C-3: Executed Business Associate Agreement [preferred submission] – (Appendix D). <i>If not providing an executed Business Associate Agreement, provide Deviations thereto.</i> TAB C-4: Executed Data Security and Breach Notification Agreement [preferred submission] – (Appendix E). <i>If not providing an executed Data Security and Breach Notification Agreement, provide Deviations thereto.</i>	III.A.1. and III.G.6. III.A.2., III.H.2. and III.H.2.a. III.A.2. and III.H.3. III.A.2. and III.H.4.
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NOTE: Keep this Checklist for your records. Do not return with your submission.

I. Instructions

A. Request for Proposal (“RFP”) Summary

A.1. **Introduction.** The Employees Retirement System of Texas (“ERS”) is soliciting proposals (“Proposal”) from qualified pharmacy benefit manager(s) (“Pharmacy Benefit Manager” or “PBM”) to provide any or all of the following plans and/or services under the Texas Employees Group Benefits Program (“GBP”):

- a) Pharmacy benefit management services for the HealthSelectSM of Texas (“HealthSelect”) Prescription Drug Program (“HealthSelect PDP”) provided to eligible individuals who participate in the GBP (“Participant”) under a self-funded, managed care, point-of-service (“POS”) health plan beginning January 1, 2017 for an initial term ending August 31, 2022; and/or
- b) Pharmacy benefit management services for the HealthSelectSM of Texas Medicare Pharmacy Plan, an Employer Group Waiver Plan (“EGWP”) Prescription Drug Program (“PDP”) for Medicare-primary Participants beginning January 1, 2017 for an initial term ending December 31, 2022.

The PBM shall provide services for the level of benefits required in the RFP and meet other requirements that are in the best interests of ERS, the GBP, Participants and the state of Texas (the “State”). All references herein to PBM shall mean the HealthSelect PDP PBM and/or the EGWP PDP PBM.

- A.1.a. ERS reserves the right to make separate awards for the (a) HealthSelect PDP PBM and (b) EGWP PDP PBM. Consequently, the services requested and described in the RFP have been segregated into two (2) distinct plans and/or service options. A PBM may submit a Proposal, including all bid response materials, to provide services for one or both programs. ERS reserves the right to select one or more PBMs, or no PBM, to provide services for one or both programs.
- A.1.b. The PBM agrees to act in good faith in connection with all such negotiations and in performing all of its services, duties and provisions of coverage related to the GBP.
- A.1.c. Issuance of this RFP in no way obligates ERS to award a Contract or pay any costs incurred by the PBM in the preparation of a Proposal.
- A.1.d. For purposes of this RFP, the “HealthSelect PDP” and the “EGWP PDP” shall collectively be referred to as the “PDPs.”

B. Proposal Submission

- B.1. The PBM is encouraged to submit a Proposal, including all bid response materials, to provide the services specified within this RFP and in accordance with the Contractual Agreement(s) attached hereto as Appendix C-1 and/or Appendix C-2 (“Contract”) and any exhibits attached thereto. The PBM shall provide a comprehensive response outlining its capabilities and services for the plan design requested within this RFP. However, should a PBM offer optional services or alternate retail networks in a manner not specifically outlined in this RFP, the PBM may provide this information, including pricing, as part of the information and prices included in Article XI, *Price Proposal and Response Format*.
- B.1.a. ERS encourages each PBM to submit its most competitive fees with its Price Proposal in accordance with Article XI.
- B.2. **Negotiations of Proposed Deviations.** Unless specific to the Minimum Requirements defined in Section II.C., **deviations are not grounds for the dismissal of a Proposal.**
- B.2.a. Deviations from specific RFP Articles or Contract provisions must be identified within the Deviations section of each Article. 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 that acceptance in writing to the PBM and the approved deviations will become part of the Contract.

- B.2.b. A PBM responding to this request shall meet all of the Minimum Requirements as referenced in Section II.C. of this RFP. ERS will not accept deviations to the Minimum Requirements.
- B.3 **Interrogatory Instructions.** The PBM shall provide true and correct answers to all of the interrogatories presented at the end of each Article. Each interrogatory shall be answered specifically and should be detailed enough to satisfactorily explain the PBM's position on each particular issue. It is the PBM's responsibility to respond to these interrogatories in such a way that ERS has a full and complete understanding of its intent. **It is important that the PBM carefully define any key words or phrases used in answering these interrogatories that are not otherwise defined in the Contract or the RFP. References should not be made to a prior response, or to another document, unless the interrogatory involved specifically provides such an option.** The PBM's Proposal shall use the terms defined in the Contract and the RFP only as they are so defined.
- B.3.a. The PBM acknowledges, understands and agrees that its responses to these interrogatories and all other provisions of the RFP are material and are being relied on by ERS in connection with the selection of a PBM to provide the services, benefits, equipment, coverages, supplies and products as specified in the RFP.
- Note: If the PBM considers any of the requested information to be confidential and/or proprietary, the PBM shall place them on the separate schedule as required in Section I.C.2. However, the PBM shall provide the requested documents for appropriate evaluation of the PBM's Proposal.**
- B.4. **Signature Requirements.** The Chief Executive Officer or other authorized officer who is at a Vice President or higher level of the PBM ("authorized representative") shall execute the Signature Pages which are attached as Appendix A of this RFP. The signature of the PBM's authorized representative on the Proposal's Signature Pages and all other related documents submitted by the PBM reflects the PBM's agreement with the truth and accuracy of all statements, warranties and representations contained in the Proposal and other documents submitted by the PBM. The signature further reflects the PBM's authorization for ERS to rely on same for all purposes in connection with the RFP/Proposal process.
- B.5. **PBM's Proposal Package.** The PBM shall provide three (3) printed hard copies and three (3) CD-ROMs of its bid materials as described in Sections I.B.5.a. – I.B.5.b.
- B.5.a **PBM's Proposal - Hard Copies.** The PBM shall provide one (1) printed hard copy labeled "**Original**" and two (2) identical printed hard copies labeled "**Copy**" of its Proposal, each in a functional three-ring binder. All documents are to be printed on front-side of page only. The organization of the hard copies of the Proposal should follow the sequence as provided in the ***Pharmacy Benefit Manager RFP Deliverables Checklist*** provided on pages vii-x of this RFP.
- B.5.b **PBM's Proposal - CD-ROMs.** All of the documents submitted on the CD-ROMs shall be in Microsoft Word or Excel format; only GBP-specific marketing materials and audited financial statements may be in PDF format. All bid materials shall not be submitted in one combined continuous document, but separated into the different tabs as requested in the Deliverables Checklist on pages vii-x of this RFP. Furthermore, the CD-ROMs **should not be password protected** and shall be submitted as follows:
- One (1) CD-ROM will contain the entire Proposal. This CD-ROM will include **all** Confidential and/or Proprietary Information and **all** Public Information. This CD-ROM will be labeled as "***PBM RFP Proposal Duplicate.***"
 - One (1) CD-ROM will contain **only** Confidential and/or Proprietary Information. This CD-ROM will be labeled as "***PBM Confidential and/or Proprietary Information.***"
 - One (1) CD-ROM will contain only the Public Information and will be labeled as "***PBM Public Information.***"
- B.5.c. **Proposal CD-ROMs and Public Information Act Requests.** Upon ERS' receipt of a request pursuant to the Texas Public Information Act ("PIA"), ERS will provide the requestor the information provided on the PBM's public CD-ROM(s) under the applicable provisions above. If the PBM fails to submit its confidential and/or proprietary information as outlined herein, ERS shall consider the PBM's information to be public, and it will, therefore, be released without

notification to the PBM upon receipt of a PIA request. ERS' requirement of a PIA request is further described in Sections I.C.1. – I.C.3. below.

B.6. **Packaging and Mailing the Proposal.** All Proposals and bid materials shall be submitted collectively in one (1) sealed container, and submitted to ERS at the addresses listed below.

B.6.a. ERS might not consider a Proposal unless it is received by ERS at the address noted below, no later than 12:00 Noon Central Time ("CT") on **January 27, 2016.**

For Couriers: Purchasing Dept.
Employees Retirement System of Texas
200 E. 18th Street
Austin, Texas 78701
RE: **PBM RFP Proposal**
RFP No. 327-95856-151211

For U.S. Mail: Purchasing Dept.
Employees Retirement System of Texas
P.O. Box 13207
Austin, Texas 78711-3207
RE: **PBM RFP Proposal**
RFP No. 327-95856-151211

B.7. **Retention of Proposal.** All Proposals submitted become the sole property of ERS.

B.8. **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 by an authorized representative of the PBM and acceptance by the Executive Director of ERS.

B.9. **Reserved Rights.** Pursuant to Texas Insurance Code ("TIC") Section 1551.212, ERS may contract with one or more qualified and experienced administering firms to administer the plans in the *best interest* of the Participants, and ERS is not required to select the lowest bid but shall take into consideration other relevant criteria as further described in Article II of this RFP, *Proposal Evaluation Criteria*.

B.9.a. ERS is under no legal requirement to execute a Contract on the basis of this RFP. Moreover, ERS retains the right to request additional Proposals if it is in the best interest of ERS, the GBP, its Participants and the State.

B.9.b. The Contract may be awarded to the PBM that, in the opinion of the Board, is best qualified to perform the services and overall offers the best value to ERS.

B.9.c. ERS reserves the right to revise any or all RFP and Contract provisions 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. Revisions may include, but are not limited to, changes to the pharmacy networks, the formulary, the PBM compensation arrangements, or other areas likely to impact the HealthSelect PDP or EGWP PDP or that may impact HealthSelect Participants, and if applicable, when the revisions would apply. Furthermore, the PBM agrees to act in good faith and to cooperate with ERS in the execution of any document necessary to effect a change to this RFP or Contract, prior to and following the execution of the Contract by ERS, if ERS deems it to be in the best interests of ERS, the GBP, its Participants and the State.

B.10. **News Release.** Prior written approval by ERS shall be required for any news releases, advertisements, publications, declarations and any other means or media mentioning the State, ERS or the Contract award(s). Additional requirements regarding the management of news releases are further outlined in Sections VI.A.7. – VI.A.7.a.

B.11. **No Solicitation.** PBM shall not use, or otherwise disseminate, copy or make available to any person or entity, information regarding Participants and/or ERS staff to solicit any other insurance coverage, annuity products, or any other services or products unless approved in writing by ERS' authorized representatives. This requirement shall survive the termination of the Contract. The Contract has additional requirements which can be found in Article 16 of the Contract.

B.12. **Inquiries.** ERS will host an open Question and Answer period ("Q&A Period") whereby the PBM can ask ERS questions about the RFP. These questions shall be submitted via email. The Q&A

Period shall be from the time the RFP is posted through December 30, 2015, at 4:00 p.m. (CT). Any questions received after this date and time will not be answered.

- B.12.a. The questions shall be submitted via electronic mail to: purchasing-all@ers.state.tx.us. **The subject line must state "RFP No. 327-95856-151211 - Clarification Questions."** ERS will not respond to any email without this language in the subject line.
- B.12.b. Upon receipt of PBM's email, ERS' purchasing department will send an acknowledgement to PBM that PBM's question has been received. However, if PBM does not receive an acknowledgment, PBM is solely responsible for verifying ERS' receipt of their questions, if applicable, by contacting ERS' Purchasing Dept. by email at purchasing-all@ers.state.tx.us **with the subject line RFP No. 327-95856-151211 - Clarification Questions.** ERS will not respond to any email without this language in the subject line.
- B.12.c. ERS shall post the questions and answers that it deems appropriate on ERS' external server at: <https://ftpsrvr.ers.state.tx.us> (hereinafter "ERS' server") and to the Electronic State Business Daily ("ESBD"). The PBM shall be responsible for checking ERS' server and/or ESBD for updates. ERS' deadline to post responses to the PBM's questions is January 8, 2016 at 5:00 p.m.
- B.13. **PBM Responsibility.** The PBM is responsible for reviewing and responding to the RFP materials available on ERS' server. ERS' server provides interested PBMs with an electronic version of the RFP, its attachments and responses to questions received by ERS. Notices of changes to the original RFP or bid process shall be posted on ERS' server. It is the responsibility of the PBM to check ERS' server and ESBD frequently for updates. In addition, a notice will be posted to ESBD ("ESBD Notice") when the RFP is published and if changes are made to the original RFP or bid process. The ESBD Notice will give the PBM the link to ERS' server.
- B.14. **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/>.
- B.15. **Calendar and Fiscal Year.** The Calendar Year ("CY") begins each January 1st and ends the following December 31st. The fiscal year ("FY") begins each September 1st and ends the following August 31st. The PBM will follow FY dates and quarters for all HealthSelect PDP reporting and CY dates and quarters for all EGWP PDP reports.
- B.16. **Definitions.** A list of definitions applicable to certain terms used in this RFP is referenced in Section 13 – Glossary of the Master Benefit Plan Document ("MBPD"), a copy of which can be found at http://www.caremark.com/portal/asset/ERS_Prescription_Drug_Program.pdf.
- B.17. **Employee Identification Number.** Participant enrollment reporting is based on each Participant's unique employee identification number ("ID"). Texas law mandates the removal of Social Security Numbers from ID cards. See additional requirements to the ID cards referenced in Article VII, *Operational Specifications*.
- B.18. **ERS Actuary.** ERS retains a consulting actuary, currently Rudd & Wisdom, Inc., to advise the Board, 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. PBM shall work with ERS' consulting actuary, as necessary, to perform the requirements of the RFP and Contract.
- B.19. **Vendor Performance Tracking System.** In accordance with Sections 2155.089 and 2262.055, Tex. Gov't Code, ERS will utilize the Texas Comptroller's Vendor Performance Tracking System to report vendor performance after the Contract is completed or otherwise terminated.
- B.20. **Posting of Contract.** The Contract is subject to section 2261.253 of the Texas Government Code. Thus, in accordance with this section, ERS will post on its external website the executed Contract (with confidential information redacted), including any non-confidential appendices. The executed Contract will remain posted on ERS' external website until the Contract expires or is completed.
- B.21. **Disclosure of Interested Parties.** The Contract is subject to section 2252.908 of the Texas Government Code. As such, prior to or at Contract execution, the PBM may be required to comply with any rules adopted by the Texas Ethics Commission under this provision of the Texas Government Code.

- B.22 **Confidentiality and Nondisclosure Agreement.** The Experience Data contained in Appendix H ("Experience Data") is considered confidential by ERS. In order to obtain the Experience Data, ERS will require PBMs to execute a Confidentiality and Nondisclosure Agreement ("Nondisclosure Agreement"). The Nondisclosure Agreement is contained in Appendix O. Upon submitting an executed Nondisclosure Agreement to ERS by emailing it to ivendorquestions@ers.state.tx.us, ERS will make arrangements for PBM to obtain the Experience Data information.

C. Confidential and/or Proprietary Information

- C.1 **Public Information Act.** As reflected in greater detail in Sections I.C.2. – I.C.2.e. below, ERS is required to provide access to certain records in accordance with the provisions of Chapter 552, Tex. Gov't Code, and the Texas Public Information Act ("PIA"), formerly known as the Open Records Act. The PBM is required to make any information created or exchanged with the State pursuant to the Contract, and not otherwise excepted from disclosure under the PIA, available in a format that is accessible to the public at no additional charge to the State.
- C.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.
- C.1.b ERS cannot prevent the disclosure of public documents and may be required by law to release documents that the PBM considers to be confidential and/or proprietary. By execution of the Signature Pages as further referenced in Section I.B.4. above, the PBM warrants and represents that all information that the PBM in good faith considers to be properly excepted from disclosure under the PIA will be clearly labeled as confidential by the PBM upon submission to ERS. The PBM's signature further reflects that all documents submitted by the PBM that are not marked "confidential" shall be considered to be public information. All public information in response to this RFP may be fully disclosed by ERS without liability and without prior notice to or consent of the PBM or any of the PBM's subcontractors or agents.
- C.2 **Disclosure of Information.** In order to protect and prevent inadvertent access to confidential information submitted in support of its Proposal in accordance with the PIA as referenced in Sections I.C.1. – I.C.1.b. above, the PBM is required to supply in good faith and with legally sufficient justification, a separate schedule of all pages considered by the PBM to contain any confidential and/or proprietary information. The PBM shall supply its confidential and/or proprietary information to ERS each time it submits information to ERS, whether in its initial Proposal or in any supplemental information submitted to ERS. The PBM shall submit its confidential and/or proprietary information in accordance with the instructions given in Section I.C.3. below.
- C.2.a By submitting a Proposal, the PBM acknowledges and agrees that ERS shall have no liability to the PBM or to any other person or entity for disclosing information in accordance with the PIA. Furthermore, ERS shall have no obligation or duty to advocate the confidentiality of the PBM's material to the Texas Attorney General, to a court, or to any other person or entity.
- C.2.b The PBM further understands and agrees that, upon ERS' receipt of a PIA request for the PBM's information after the Contract has been awarded, ERS will provide the requestor the information provided on the PBM's "Public Information" CD-ROM. If the PBM 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 the PBM upon receipt of a PIA request.
- C.2.c Upon receipt of a PIA request, ERS will submit the information contained in the PBM's "Confidential and/or Proprietary" CD-ROM to the Texas Attorney General to issue a ruling on whether the information is excepted from public disclosure.
- C.2.d It is the PBM's sole obligation to advocate in good faith and with legally sufficient justification the confidential and/or proprietary nature of any information it provides to ERS. The PBM acknowledges and understands that the Texas Attorney General may nonetheless determine that all or part of the claimed confidential and/or proprietary information shall be publicly disclosed.
- C.2.e In addition, the PBM specifically agrees that ERS may release the PBM's information, including alleged confidential and/or proprietary information, upon request from individual participants, agencies, or committees or 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.

C.3. **Confidential and/or Proprietary Schedule – Public Information Submission.** In order to protect and prevent inadvertent access to confidential and/or proprietary information submitted in support of its Proposal, each PBM submitting a Proposal to this RFP is required to supply one (1) CD-ROM that **only** contains **all** its confidential and/or proprietary information as described in I.B.5.b. above. The PBM shall supply full and complete copies of all information it submits to ERS in this manner each time it submits information to ERS, whether in its initial Proposal or in any supplemental information submitted to ERS. Otherwise, ERS will presume that all information submitted by the PBM that does not comply with this directive is public information subject to disclosure. The documents reflected on the CD-ROM shall correlate in order and by title to those reflected on the separate schedule required in Section I.C.2. above.

D. Schedule of RFP Process

D.1. A schedule of the RFP Process is provided below to outline milestone events associated with this bid solicitation. It is ERS' intent that the RFP process and Contract award shall be conducted in accordance with the schedule outlined below unless otherwise notified by ERS.

<p style="text-align: center;">On or after December 11, 2015</p>	<p>RFP is available on ERS' server</p> <p>An ESB D Notice is posted to ESB D when the RFP is published</p> <p>To access the RFP, the PBM shall email a request to ivendorquestions@ers.state.tx.us</p> <p>A USER ID and Password will be provided only to those bidders requesting access to the secured sections of the RFP. The PBM is prohibited from contacting agency employees, officials, and its consulting actuarial regarding any aspect of the RFP by telephone or in person throughout the bid process other than as directed by ERS.</p>
<p style="text-align: center;">From the time the RFP is published through December 30, 2015 at 4:00 p.m. (CT)</p>	<p>Q&A Period</p> <p>ERS will host an open Q&A Period whereby each PBM can ask ERS questions about the RFP. Questions shall be submitted via email to:</p> <p style="text-align: center;">Purchasing Dept. Email: purchasing-all@ers.state.tx.us Subject Line: PBM RFP No. 327-95856-151211</p> <p>ERS shall post the questions and answers that it deems appropriate on ERS' server at: https://ftpsrvr.ers.state.tx.us and to ESB D. The PBM shall be responsible for checking ERS' server and ESB D for updates.</p>

<p>December 30, 2015 at 4:00 p.m. (CT)</p>	<p>Submission deadline for ALL RFP questions as part of the Q&A Period</p> <p>Any questions received after this date and time will not be answered.</p>
<p>January 8, 2016 5:00 p. m. (CT)</p>	<p>ERS will complete the posting of RFP questions and answers from the Q&A Period to ERS' server and to ESBD.</p>
<p>January 27, 2016 12:00 Noon (CT)</p>	<p>Submission Deadline for RFP Responses</p> <p>The PBM shall submit all bid materials in one (1) sealed container as fully described below and in Sections I.B. and I.C. herein:</p> <ul style="list-style-type: none"> • One (1) fully executed original; • Two (2) identical printed hard copies; and • One (1) identical copy of the entire Proposal provided on a CD-ROM; • One (1) CD-ROM that only contains all Confidential and/or Proprietary Information; and • One (1) CD-ROM that only contains all Public Information. <p>A total of three (3) CD-ROMs to be submitted with the Proposal. Do not password protect the CD-ROMs.</p> <p>Bid materials shall be sent or delivered to:</p> <p>Purchasing Dept. Employees Retirement System of Texas Mailing Address: P.O. Box 13207, Austin, TX 78711-3207 Physical Address: 200 E. 18th Street, Austin, TX 78701 RE: <i>PBM RFP Proposal, RFP No. 327-95856-151211</i></p>
<p>TBD</p>	<p>Finalists are required to participate in a face-to-face interview session that will be announced at an ERS-designated time and location. Finalist interview guidelines will be provided via electronic mail if an interview appointment is extended by ERS.</p>
<p>May 2016</p>	<p>ERS Board selects PBM(s)</p>
<p>Upon Execution of the Contract by ERS</p>	<p>Contract Begins</p>

January 1, 2017	EGWP PDP Go-Live Date
January 1, 2017	HealthSelect PDP Go-Live Date

ERS RESERVES THE RIGHT TO EXTEND ANY AND ALL DEADLINES ABOVE, TO REJECT ANY AND ALL PROPOSALS, TO CONTRACT WITH ONE OR MORE PBMS, OR TO ISSUE A NEW RFP AT ANY TIME, IN ITS SOLE DISCRETION. ERS WILL NOT NOTIFY PBMS UNLESS THEY ARE SELECTED FOR INTERVIEWS OR ENGAGEMENT.

E. Interrogatories

Review the interrogatory instructions referenced in Section I.B.3.

- E.1. PBM shall execute the Signature Pages attached as Appendix A and submit them with its Proposal.

F. Deviations

Review the deviations instructions referenced in Section I.B.2.

- F.1. Affirm that the PBM shall comply with all of the **Instructions** described herein **Article I** of this RFP.

- Affirm Affirm with the proposed Deviations

If applicable, enumerate and provide a detailed description of each of the deviations between the PBM's Response and these requirements.
PBM's Requested Deviations Detail: _____

II. Proposal Evaluation Criteria

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.

Evaluation Criteria	Weight
Financial Considerations/Price Proposal	50%
Operational Capabilities and Services	40%
PBM Service Verification (see II.A.4.d.)	10%

A.2. **Phase One Evaluation Criteria.** ERS shall date and time-stamp each Proposal when received. ERS may return Proposals received after the final date and time to the PBM unopened. ERS has chosen not to conduct a public reading of PBM's names after acceptance of Proposals.

A.2.a. ERS will separately evaluate proposals received for HealthSelect PDP and EGWP PDP services. However, please note the administrative benefit noted in Section II.A.3.a. below. For Phase One, the ERS Evaluation Team will evaluate the Proposals based on the following evaluation criteria on a Pass/Fail basis:

- Minimum Requirements set forth in Section II.C.; and
- Compliance with the RFP.

If a PBM fails either criterion, it will be deemed non-responsive and ineligible for subsequent phased scoring.

ERS will also evaluate the following on a Pass/Fail basis during the Phase One evaluation period:

- PBM's performance as reported in the Texas Comptroller's Vendor Performance Tracking System in accordance with Section 2262.055, Tex. Gov't Code; and
- PBM's performance with ERS if PBM has a current contract with ERS or has had a contract with ERS in the past six years.

A.2.b. ERS may reject any or all Proposals and may or may not waive any immaterial deviations or defects in a Proposal. ERS' waiver of an immaterial deviations or defects shall in no way modify the RFP documents or excuse the PBM from full compliance with the RFP requirements.

A.3. **Phase Two Evaluation Criteria. Financial Considerations/Price Proposal and Operational Capabilities and Services.** Once ERS has determined that a PBM has passed the Phase One Evaluation Criteria as noted in Sections II.A.2. – II.A.2.b. above, ERS will use a tiered approach in evaluating Proposals during Phase Two by selecting the top PBM Proposals submitted that are within the competitive range based on the following pricing elements: discount arrangements, rebate guarantees and the administrative fee. These PBMs will then be evaluated using the Financial Considerations/Price Proposal and Operational Capabilities and Services as noted in Section II.A.1. above.

A.3.a. **Administrative Benefit.** ERS recognizes an administrative benefit in awarding both Contracts to one Vendor. To account for this benefit, the Proposals offering both services will receive up to 5% of the allotted 40% under the Operational Capabilities and Services criteria for each Proposal.

A.3.b. Based on the Phase Two evaluation, the top ranked PBMs will become finalists ("Finalists") and will move forward to the Phase Three Evaluation Criteria.

A.4. **Phase Three Evaluation Criteria - Finalist Process. PBM Service Verification.** The PBM service verification processes are performed only for the selected Finalists, and will include (a) Finalist interviews, (b) reference checks, and (c) site visits.

- A.4.a **Finalist Interview.** Finalists will be selected and required to attend a face-to-face interview session at an ERS-designated location to clarify responses and answer questions regarding PBM's Proposal and, if necessary, negotiate contractual agreements. PBM, if 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 will be held and the location of the interview. The Finalist will receive additional instructions to outline ERS' expectations. Some of the items that Finalists may be asked to provide may include, but are not limited to, a project implementation schedule, change management plan, communications plan, privacy policy, terms of use, insurance information, staffing information, copies of certifications and licenses, and a Best and Final offer. The information and documents will be scored as part of the interview score.
- A.4.b **Reference Checks.** As part of the Finalist interview, Finalists will be required to furnish client information that will be used for reference checks. The identified clients will serve as references regarding the PBM's performance and will be specific to the scope of services defined within the RFP. ERS reserves the right to forgo the performance of reference checks if a Finalist has performed similar or the same services for ERS in the past five (5) years. ERS will then rely on its own experience with the Finalist in lieu of contacting other clients of the Finalist.
- A.4.c **Site Visit.** ERS reserves the right to perform site visits, at ERS' expense, to the PBM's operational center, call center, and/or data center facilities by ERS' designated staff. The PBM will be notified of the site visit dates and provided with an agenda for the site visit.
- A.4.d **PBM Service Verification Scores.** After the PBM Service Verification has been performed, PBM will be evaluated using the Evaluation Criteria below. As indicated above, the PBM's total PBM Service Verification score will account for 10% of the PBM's overall score.

PBM Service Verification Evaluation Criteria	Weight
Face-to-Face Interview	50%
References	30%
Site Visit	20%

- A.4.e **Contractibility.** ERS will evaluate contractibility based upon PBM signing a Contract acceptable to ERS. Contractibility will be evaluated on a Pass/Fail basis. Although Contractibility will not be finally determined until Phase Three, ERS reserves the right to begin Contractibility evaluation (including asking Clarification questions, defined below, and negotiating with PBMs) prior to Phase Three.
- A.4.f In the event of a tie on scoring, ERS may give a preference to a Texas PBM over a nonresident PBM. As defined by Section 2155.444, Tex. Gov't Code, a Texas bidder means a business that is (a) incorporated in this State; (b) that has its principal place of business in this State; or (c) that has an established physical presence in this State.
- A.4.g **Clarification Request Process.** As ERS' staff and Subject Matter Experts ("SMEs") review the PBM's Proposal, including all bid response materials there may be a need to ask follow-up or clarification ("Clarification") questions to the PBM. These Clarification questions will be sent to the PBM both electronically via email and hard copy via U.S. Mail. The Clarification responses will be incorporated into the review process. ERS reserves the right to ask Clarification questions during any phase of the evaluation.

B. Selection Process

Board Recommendation. Based on the information provided to ERS staff throughout the evaluation period and the scores assessed, a recommendation will be made to the Board. The Board will announce its award of the Contract to the selected PBM during a public meeting, which is anticipated to take place at the May 2016 Board meeting. Information regarding Board meetings, including how the public can access Board presentations, may be found on ERS' website at www.ers.state.tx.us.

C. Minimum Requirements

Those wishing to respond to this RFP shall demonstrate their competence to perform the services required by ERS, and shall evidence the ability to satisfy each of the following Minimum Requirements by responding to the Interrogatories in Sections II.D.1 – II.D.6.b. below and providing the requisite supporting documentation as necessary.

Proposed deviations to the Minimum Requirements identified below shall not be considered and submission of such will disqualify the PBM's Proposal. Failure to satisfy the mandatory Minimum Requirements will result in elimination from the evaluation process.

HealthSelect PDP

- C.1. **Authority to do Business in Texas.** PBM must meet all legal requirements for doing business in the State. If PBM is not currently authorized to do business in Texas, PBM shall obtain such authorization prior to the effective date of the Contract.
- C.1.a. **Professional Licensure and Certifications.** PBM shall hold all necessary and appropriate business and professional licenses and/or certifications necessary to provide PBM services. Finalists will be asked to produce documentation prior to the Finalist Interview.
- C.1.b. **HealthSelect PDP Services.** The PBM shall have documented experience providing pharmacy benefit management services for a single organization with member participation of no less than 250,000 or manage a book of business with an aggregate of 5,000,000 covered lives for a minimum of three (3) years at the time of Proposal submission.
- C.1.c. **Pharmacy Network.** The PBM shall demonstrate it has an adequate pharmacy network at the time of Proposal submission:
- For the HealthSelect PDP, the PBM shall provide a pharmacy network capable of effectively servicing the HealthSelect PDP membership (approximately 450,000 lives) without member access disruption.
- C.1.d. **Net Worth.** The PBM shall have a current net worth of at least \$50 million. Since the PBM may be required to advance up to two (2) weeks of claim payments totaling approximately \$30 million before being reimbursed by ERS, the PBM must have at least \$30 million in cash and cash equivalents available (on average) as demonstrated by audited financial statements or reviewed financial statements as of the close of the PBM's most recent Fiscal Year.
- C.1.e. **Financial Stability – Financial Statements.** The PBM shall be in good financial standing, not in any form of bankruptcy, and current in the payment of all taxes and fees, including, but not limited to, state and franchise taxes. In this regard, the PBM shall provide audited financial statements as of the close of the PBM's most recent two (2) Fiscal Years that shall include, at a minimum, a balance sheet, income statement (i.e., profit/loss statement), cash flow statement, auditor's notes and any notes to the financial statements. In addition, upon Contract award, PBM shall provide audited or reviewed financial statements annually.

Consolidated Financial Statements. The PBM's sponsor or parent organization/entity shall not be considered, unless: 1) the PBM's actual financial performance for the designated period is separately identified in and/or attached to the consolidated statements; 2) the sponsor or parent organization/entity provides the state with a document wherein the sponsor or parent organization/entity will be financially responsible for the PBM's performance of the contract and the consolidated statements demonstrate the sponsor or parent organization/entity's financial ability to perform the contract, financial stability and/or such other financial considerations identified in the evaluation criteria; and/or 3) the PBM provides its own internally-prepared financial statements and such other evidence of its own financial stability identified above.

EGWP PDP

- C.2. **Authority to do Business in Texas.** PBM must meet all legal requirements for doing business in the State. If PBM is not currently authorized to do business in Texas, PBM shall obtain such authorization prior to the effective date of the Contract.
- C.2.a. **Professional Licensure and Certifications.** PBM shall hold all necessary and appropriate business and professional licenses and/or certifications necessary to provide PBM services. Finalists will be asked to produce documentation prior to the Finalist Interview.
- C.2.b. **EGWP PDP Services.** The PBM shall have documented experience providing EGWP PDP services, for an organization with a member participation of no less than 20,000 or an aggregate of 100,000 covered lives for a minimum of three (3) years at the time of Proposal submission.
- C.2.c. **Pharmacy Network.** The PBM shall demonstrate it has an adequate pharmacy network at the time of Proposal submission:
- For the EGWP PDP, the PBM shall provide a pharmacy network capable of effectively servicing the GBP Medicare-primary Participants (approximately 74,000 lives) without member access disruption.
- C.2.d. **Net Worth.** The PBM shall have a current net worth of at least \$50 million. Since the PBM will be required to advance up to two (2) weeks of claim payments totaling approximately \$30 million before being reimbursed by ERS, the PBM must have at least \$30 million in cash and cash equivalents available (on average) as demonstrated by audited financial statements or reviewed financial statements as of the close of the PBM's most recent Fiscal Year.
- C.2.e. **Financial Stability – Financial Statements.** The PBM shall be in good financial standing, not in any form of bankruptcy, and current in the payment of all taxes and fees, including, but not limited to, state and franchise taxes. In this regard, the PBM shall provide audited financial statements as of the close of the PBM's most recent two (2) Fiscal Years that shall include, at a minimum, a balance sheet, income statement (i.e., profit/loss statement), cash flow statement, auditor's notes and any notes to the financial statements. In addition, upon Contract award, PBM shall provide audited or reviewed financial statements annually.
- Consolidated Financial Statements.** The PBM's sponsor or parent organization/entity shall not be considered, unless: 1) the PBM's actual financial performance for the designated period is separately identified in and/or attached to the consolidated statements; 2) the sponsor or parent organization/entity provides the state with a document wherein the sponsor or parent organization/entity will be financially responsible for the PBM's performance of the contract and the consolidated statements demonstrate the sponsor or parent organization/entity's financial ability to perform the contract, financial stability and/or such other financial considerations identified in the evaluation criteria; and/or 3) the PBM provides its own internally-prepared financial statements and such other evidence of its own financial stability identified above.

D. Interrogatories

Review the Interrogatory Instructions referenced in Section I.B.3.

Authorization to do Business in Texas

- D.1. Provide a copy of PBM's Texas Certificate of Registration, Texas Certificate of Authority or Texas Certificate of Fact.
- D.1.a. If PBM is currently not authorized to do business in Texas, confirm that PBM agrees to do so as part of the Contract requirements and as required by law.
- Confirm
 Unable to Confirm

- D.1.b. If PBM is incorporated in a state other than Texas, PBM shall provide its Certificate of Incorporation or other documentation of its incorporation/formation.
- D.1.c. If the PBM's Certificate of Registration, Certificate of Authority or Certificate of Fact or any licenses to conduct business in Texas or any other state have ever been revoked, suspended, or forfeited, provide a detailed explanation of the circumstances.
- D.1.d. Provide documentation that PBM is in good standing with the State and in the state in which it was incorporated or formed by providing a Certificate of Account Status, Certificate of Good Standing, or other documentation from the state(s).

Licensure/Certifications

- D.2. Confirm that any license(s) and/or certifications that PBM and/or its staff are required to maintain will be kept current during any period of time that PBM has a contract in place with ERS.

- Confirm
- Unable to Confirm

Services

- D.3. The HealthSelect PDP shall affirm that it has been providing prescription benefit management services for an organization with a member participation of no less than 250,000 or an aggregate of 5,000,000 covered lives for a minimum of three (3) years.

- Affirm
- Unable to Affirm

- D.3.a. The EGWP PDP shall affirm that it has been providing EGWP PDP services for an organization with a member participation of no less than 20,000 or an aggregate of 100,000 covered lives for a minimum of three (3) years.

- Affirm
- Unable to Affirm

Pharmacy Network

- D.4. The HealthSelect PDP shall confirm that it has the capability to effectively provide services for at least 450,000 lives.

- Confirm
- Unable to Confirm

- D.4.a. The EGWP PDP shall confirm that it has the capability to effectively provide services for at least 74,000 lives.

- Confirm
- Unable to Confirm

Net Worth

- D.5. The PDP shall affirm that it has a current net worth of at least \$50 million and can advance up to two (2) weeks of claim payments totaling approximately \$30 million before being reimbursed by ERS, and has at least a minimum of \$30 million in cash and cash equivalents available (on average) as demonstrated by audited financial statements or reviewed financial statements as of the close of the PBM's most recent Fiscal Year.

- Affirm
- Unable to Affirm

Financial Stability – Financial Statement

D.6. Describe any understandings, legal relationships or financial agreements with respect to sponsorship or other financial support of the PBM with any other entity.

HealthSelect PDP	
EGWP PDP	

D.6.a. PBM shall affirm that, upon Contract award, it will submit a copy of its audited or reviewed financial statements on an annual basis as required by this RFP.

- Affirm
- Unable to Affirm

D.6.b. PBM shall complete the following table for the most recent two (2) fiscal years. The PBM shall disclose if the information provided is the PBM's or its sponsor's or parent organization/entity's financial information by checking the appropriate box below.

PBM's Financial Information:

Sponsor or parent organization's financial information:

If the PBM has a sponsoring or parent company, provide the name and address of the sponsoring or parent company, and/or others who provide financial support to the PBM.

Full Legal Name:
 Mailing Address:
 Type of Support:
 Type of Relationship:
 Maximum Limitation:

	Fiscal Year _____	Fiscal Year _____
Current Assets		
Total Assets		
Current Liabilities		
Total Liabilities		
Total Equity		
Cash Flow from Operations		
Cash and Cash Equivalent		

III. Legal Requirements

PBM shall review the information below and provide responses to the interrogatories and deviations.

A. Requirements of the Contractual Agreement, Business Associate Agreement, Data Security and Breach Notification Agreement and Performance Guarantees

- A.1. **Incumbency Certificate.** The PBM shall execute the Incumbency Certificate attached hereto as Appendix B. The Incumbency Certificate shall list at least two (2) persons who are authorized to sign contracts (including any necessary amendments, supplements and exhibits thereto) on the PBM's behalf. The persons listed on the Incumbency Certificate shall be the Chief Executive Officer or other authorized officer who is at a Vice President or higher level and are PBM's authorized representatives.
- A.2. **Contractual Agreement, Business Associate Agreement, and Data Security and Breach Notification Agreement.** The PBM is hereby notified that execution of the Contract, Business Associate Agreement ("BAA") and Data Security and Breach Notification Agreement ("DSBNA"), attached as Appendices C-1, C-2, D and E, are **preferred submissions** of this RFP. ERS prefers that the Contract, BAA and DSBNA be signed and returned without amendments or revisions with the Proposal submission. However, if a PBM in good faith determines that it does not agree with the provisions of the Contract, BAA or DSBNA in the forms attached as Appendices C-1, C-2, D and E, the PBM may elect not to return an executed Contract, BAA or DSBNA with its Proposal, but must instead submit deviations to the Contract's, BAA's and DSBNA's terms which must be provided in accordance with Sections III.H.2. through III.H.4. of this RFP.
- A.2.a. Any PBM submitting a signed Contract, BAA or DSBNA with its Proposal shall have the Contract, BAA and DSBNA executed by its authorized representative as reflected in Sections I.B.4. and III.G.1.
- A.2.b. ERS retains the right to modify the Contract, BAA and DSBNA terms and to add additional terms at its discretion. The PBM agrees to act in good faith and to cooperate with ERS in the execution of the Contract, BAA and DSBNA. ERS specifically reserves the right to revise any or all RFP or Contract, BAA and DSBNA 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.c. ERS will evaluate contractibility based upon PBM signing a Contract acceptable to ERS. Contractibility will be evaluated on a Pass/Fail basis.
- A.2.d. On or before the recommendation and approval by the Board, the PBM shall execute a Contract, BAA and DSBNA provided by, and satisfactory to, ERS.
- A.3. **Contract Term and Chronology of Responsibility.** The HealthSelect PDP Contract shall be for a term beginning upon execution of the Contract by ERS and extending through the 31st day of August 2022 ("Contract Term") unless terminated, renewed or extended as provided therein. The EGWP PDP Contract shall be for a term beginning upon execution of the Contract by ERS and extending through the 31st day of December 2022 ("Contract Term") unless terminated, renewed or extended as provided therein.
- A.3.a. ERS and the PBM 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 by the Board is anticipated for the May 2016 meeting;
 - Execution of the Contract by ERS' Executive Director;
 - Ongoing negotiations of the clarifications and clarification exhibits have been agreed to and accepted or rejected until executed by both parties;
 - The Contract includes this RFP and all exhibits thereto, as set forth in Article 31 therein. The Contract includes important requirements that may not be expressly referenced in this RFP;
 - Any and all activities required by the PBM to effectively implement the requirements of the Contract; and
 - The PBM shall coordinate and work cooperatively with other GBP vendors as applicable.

- A.4 **Termination of Contract.** In the event that the PBM fails or refuses to perform or it appears that the PBM is not capable of performing its duties or obligations as provided by the Contract, ERS, without limiting any other rights or remedies it may have by law, equity or under Contract, shall have the right to terminate the Contract immediately. The PBM understands and acknowledges that, notwithstanding any termination of the Contract, certain obligations of the PBM shall survive the termination of the Contract. Article 2 of the Contract expands on this provision.
- A.5 **Information Security.** The PBM 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, the PBM shall comply with the requirements for handling and use of personal information as more fully outlined in Appendix E, *Data Security and Breach Notification 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 Data Security and Breach Notification Agreement will be required prior to final execution of a Contract.
- A.6 **Performance Guarantees.** The Contract will include performance guarantees (as attached to the executed Contract as Exhibit E, "Performance Guarantees") and other legal remedies to ensure proper administration of the GBP Program. Performance Guarantees may include, but are not limited to, provisions in Articles IV through X of the RFP. PBM shall refer to Appendices F-1 (for the HealthSelect PDP) and F-2 (for the EGWP PDP) for a comprehensive listing of the Performance Guarantees.
- A.6.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.7 **Terms of Use.** PBM shall agree that its Terms of Use shall not apply, shall be null and void and shall have no force or effect as if its Terms of Use did not exist as to any and all ERS Staff and GBP Participants.

B. Clarifications

- B.1 Mutually agreed clarifications of the Contract and RFP terms and conditions shall be attached to the executed Contract as Exhibit C. The PBM agrees to act in good faith in negotiating clarifications (including any exhibits thereto) until mutual agreement has been reached.

C. Liquidated Damages

- C.1 The PBM acknowledges that it is impossible or impractical to estimate certain damages with any degree of certainty. Therefore, the PBM understands and acknowledges that the Contract includes a liquidated damages provision that is in addition to any other remedies that ERS may have in the event the PBM fails or refuses to perform, or is negligent in performing, any obligation it may have in connection with the Contract to the satisfaction of ERS. Article 9 of the Contract has additional requirements in this regard.

D. Prohibited Interest

- D.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 the PBM.
- D.1.a In the event that a Participant in the GBP, Board member or employee of ERS receives any payment from the PBM for any services performed for the PBM, 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 the PBM immediately, and ERS reserves the right to seek any legal, equitable or contractual relief to which it may be entitled. Under such circumstances, the PBM shall complete any outstanding transactions with ERS as soon as possible. In its discretion, ERS may choose not to consider any further proposals from the PBM.
- D.1.b By submitting its Proposal, the PBM 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 15 of the Contract shall have additional requirements in this regard.

D.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 PBM 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.

E. HIPAA

E.1. As a business associate of ERS, the PBM shall comply with all privacy and security protections as provided in Tex. Health & Safety Code Ann. Chapter 181 (West Supp. 2014) and in 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 the same may be amended or supplemented from time to time, "HIPAA").

F. Legal Services and Litigation

F.1. The PBM shall provide legal services and litigation support. Legal services and litigation support include, but are not limited to, the PBM 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. The PBM shall coordinate its legal services and legal support with the ERS Legal Services division.

G. Interrogatories

G.1. Provide the name(s), title(s), mailing/email address(es), and telephone number for **the person(s) authorized to execute the Contract** including Contract exhibits or any additional agreements that may be necessary. **Such person(s) shall be a company vice president or higher level in authority and are PBM's authorized representatives. ERS will not permit the Contract or any exhibits thereto to be signed by anyone other than by a person(s) identified in Appendix B, Incumbency Certificate, and in response to this interrogatory. ERS suggests that several persons be listed in response to this interrogatory.**

	HealthSelect PDP	EGWP PDP
Name:		
Title:		
Mailing address:		
Email address:		
Telephone number:		

G.1.a. Provide the full legal name of the Organization that will be contracting with ERS.

	HealthSelect PDP	EGWP PDP
Organization full legal name:		
Physical address:		
Mailing address:		
Email address:		
Telephone number:		

G.1.b. Provide the firm/attorney names, title, mailing/email address(es), and telephone number for the person who shall serve as the **PBM's Legal Counsel** and/or all such information as it relates to any outside law firm retained by the PBM for purposes of the PBM's RFP Proposal or Contract performance.

	HealthSelect PDP	EGWP PDP
Firm name:		
Attorney name:		
Title:		
Mailing address:		
Email address:		
Telephone number:		

G.1.c 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 the PBM (including its officers, directors, parent companies, affiliates, subcontractors and any persons identified by the PBM who will be performing any services required under the RFP and Contract) by providing the information requested below, as applicable, for each such matter.

HealthSelect PDP:

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

EGWP PDP:

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

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

G.1.d If you did not provide any information for the preceding interrogatory, confirm that the PBM (including its officers, directors, parent companies, affiliates, subcontractors and any persons identified by the PBM who will be performing any services required under the RFP and Contract) has not been the subject of any completed, pending or threatened state or federal litigation, whether civil or criminal, including any suit, action, or prosecution, or any state or federal regulatory or other proceeding, investigation, disciplinary action and/or governmental inquiry for the past five (5) years.

HealthSelect PDP	<input type="checkbox"/> Confirm
EGWP PDP	<input type="checkbox"/> Confirm

G.1.e. Does the PBM have any pending agreements, negotiations, and/or offers to merge or sell the PBM's organization? This should include any joint ventures or other financial arrangements regarding a pending change in ownership of the PBM's organization that could affect the services described in the PBM's Proposal or affect the PBM's organizational financial liability to meet its obligations under a Contract with ERS.

HealthSelect PDP	<input type="checkbox"/> Yes	<input type="checkbox"/> No
EGWP PDP	<input type="checkbox"/> Yes	<input type="checkbox"/> No

G.1.e.i. If yes, describe any pending agreements, negotiations, and/or offers to merge or sell the PBM's organization.

HealthSelect PDP	
EGWP PDP	

G.1.e.ii. Does the PBM have any obligation or arrangement to purchase another firm that would involve substantial commitment of assets or capital?

HealthSelect PDP	<input type="checkbox"/> Yes	<input type="checkbox"/> No
EGWP PDP	<input type="checkbox"/> Yes	<input type="checkbox"/> No

If yes, disclose any obligation or arrangement to purchase another firm that would involve substantial commitment of assets or capital.

HealthSelect PDP	
EGWP PDP	

G.1.e.iii. If applicable, outline the anticipated timelines for the actions reflected in the PBM's responses to interrogatories III.G.1.e. - III.G.1.e.ii.

HealthSelect PDP	
EGWP PDP	

G.1.f. Does the PBM sell or report any data from its clients, either specifically or in aggregate, to any organizations?

HealthSelect PDP	<input type="checkbox"/> Yes	<input type="checkbox"/> No
EGWP PDP	<input type="checkbox"/> Yes	<input type="checkbox"/> No

G.1.f.i. If yes, provide the following:

	HealthSelect PDP	EGWP PDP
The arrangements for the data sharing;		
The details of what data was shared, including how it is masked;		
The measures taken to ensure the information is not identifiable; and		
Affirm that ERS retains the right to have its data excluded from any type of data sharing arrangement.	<input type="checkbox"/> Affirm <input type="checkbox"/> Unable to Affirm; the PBM shall provide a detailed explanation in Section III.H.1.	<input type="checkbox"/> Affirm <input type="checkbox"/> Unable to Affirm; the PBM shall provide a detailed explanation in Section III.H.1.

HIPAA Compliance

G.2. Provide the firm/attorney names, title, mailing/email address(es), and telephone number for the person who shall serve as the *PBM's Privacy Officer*.

	HealthSelect PDP	EGWP PDP
Full Legal name:		
Title:		
Mailing address:		
Email address:		
Telephone number:		

G.2.a. Describe the PBM's policies, procedures and/or systems used to ensure compliance with HIPAA.

HealthSelect PDP	
EGWP PDP	

G.2.b. Provide a full description of any HIPAA violations alleged against the PBM during the past five (5) years. The description shall include, but not be limited to:

HealthSelect PDP:

- The identity of the entity that made the complaint;
- The date the complaint was made;
- A description of the complaint;
- The date the complaint was resolved;
- Any fines or penalties assessed against the PBM;
- The regulatory body that assessed any such claim; and
- How the complaint was resolved.

EGWP PDP:

- The identity of the entity that made the complaint;
- The date the complaint was made;
- A description of the complaint;
- The date the complaint was resolved;
- Any fines or penalties assessed against the PBM;
- The regulatory body that assessed any such claim; and
- How the complaint was resolved.

G.2.b.i. If the answer to the prior interrogatory was "none", the PBM shall confirm that there has not been any HIPAA violation alleged against the PBM for the past five (5) years.

HealthSelect PDP	<input type="checkbox"/> Confirm <input type="checkbox"/> Unable to Confirm; the PBM shall provide a detailed explanation in Section III.H.1. below.
EGWP PDP	<input type="checkbox"/> Confirm <input type="checkbox"/> Unable to Confirm; the PBM shall provide a detailed explanation in Section III.H.1. below.

G.2.c. Describe the PBM's HIPAA compliance efforts regarding 2016 Center for Medicare and Medicaid Services ("CMS") guidance and the PBM's HIPAA audit results from the previous five (5) years.

HealthSelect PDP	
EGWP PDP	

G.2.d. Provide a description of any HIPAA breach involving notification to the affected individual during the past five (5) years.

HealthSelect PDP	
EGWP PDP	

Rules and Regulations Compliance

G.3. For the five (5) year period preceding the Proposal, provide a brief description of any violations alleged against the PBM with regard to any state or federal Privacy laws and/or regulations.

HealthSelect PDP	
EGWP PDP	

G.3.a. Confirm that the PBM is currently in compliance with the requirements of all state and federal Privacy rules and regulations.

HealthSelect PDP	<input type="checkbox"/> Confirm <input type="checkbox"/> Unable to Confirm; the PBM shall provide a detailed explanation in Section III.H.1. below.
EGWP PDP	<input type="checkbox"/> Confirm <input type="checkbox"/> Unable to Confirm; the PBM shall provide a detailed explanation in Section III.H.1. below.

Conflict of Interest

G.4. Confirm that PBM does not have, nor shall it permit, any conflict of interest with regard to the Contract.

HealthSelect PDP	<input type="checkbox"/> Confirm <input type="checkbox"/> Unable to Confirm; the PBM shall provide a detailed explanation in Section III.H.1. below.
EGWP PDP	<input type="checkbox"/> Confirm <input type="checkbox"/> Unable to Confirm; the PBM shall provide a detailed explanation in Section III.H.1. below.

G.4.a. For any individual (including employees, independent contractors and subcontractors) who may have responsibility for any service related to the PBM and who was employed by any State Agency (as that term is defined in Section IV.A.1.e. herein) at any time during the two (2) years preceding PBM's Proposal submission (or during the preceding four (4) years in the case of a former Executive Director of ERS), provide the following information:

- Individual's name:
- State Agency(ies) where individual was employed:
- Individual's job titles with each State Agency:
- Date(s) of employment:
- Date of termination:

Legal Representation

G.5. Identify the PBM's legal support in representing the PBM at administrative hearings, in litigation and subrogation, and in execution of any other duties under the RFP and Contract.

Firm Name: _____
 Attorney Name: _____
 Mailing Address: _____
 Email Address: _____
 Telephone Number: _____

Other

G.6. Provide an executed Incumbency Certificate with your proposed submission (**Appendix B**).

H. Deviations

Review the deviations instructions in Section I.B.2.

H.1. Affirm that the PBM shall comply with all of the **Legal Requirements** described herein **Article III** of this RFP.
 Affirm Affirm with the proposed Deviations

If applicable, enumerate and provide a detailed description of each of the deviations between the PBM's Proposal and these requirements.
 PBM's Requested Deviations Detail:

- H.2. If bidding on the HealthSelect PDP, affirm that the PBM shall comply with all of the provisions provided in **Appendix C-1, Contractual Agreement**, of this RFP.
 Affirm Affirm with the proposed Deviations

If the PBM proposes deviations to the Contractual Agreement, the PBM should not submit executed copies of such documents. Instead, the PBM should submit deviations to such 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 in Appendix C-1. Any such deviations will be considered by ERS; however, ERS will not be obligated to accept or agree to any such deviations.

- H.2.a. If bidding on the EGWP PDP, affirm that the PBM shall comply with all of the provisions provided in **Appendix C-2, Contractual Agreement**, of this RFP.
 Affirm Affirm with the proposed Deviations

If the PBM proposes deviations to the Contractual Agreement, the PBM should not submit executed copies of such documents. Instead, the PBM should submit deviations to such 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 in Appendix C-2. Any such deviations will be considered by ERS; however, ERS will not be obligated to accept or agree to any such deviations.

- H.3. Affirm that the PBM shall comply with all of the provisions provided in **Appendix D, Business Associate Agreement**, of this RFP.
 Affirm Affirm with the proposed Deviations

If the PBM proposes deviations to the Business Associate Agreement, the PBM should not submit executed copies of such documents. Instead, the PBM should submit deviations to such 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 in Appendix D. Any such deviations will be considered by ERS; however, ERS will not be obligated to accept or agree to any such deviations.

- H.4. Affirm that the PBM shall comply with all of the provisions provided in **Appendix E, Data Security and Breach Notification Agreement**, of this RFP.
 Affirm Affirm with the proposed Deviations

If the PBM proposes deviations to the Data Security and Breach Notification Agreement, the PBM should not submit executed copies of such documents. Instead, the PBM should submit deviations to such 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 in Appendix E. Any such deviations will be considered by ERS; however, ERS will not be obligated to accept or agree to any such deviations.

- H.5. If bidding on the HealthSelect PDP, affirm that the PBM shall comply with all of the provisions provided in **Appendix F-1, Performance Guarantees (HealthSelect PDP)**, of this RFP.
 Affirm Affirm with the proposed Deviations

If applicable, enumerate and provide a detailed description of each Appendix F-1, Performance Guarantees, deviations.

PBM's Requested Deviations Detail:

- H.5.a. If bidding on the EGWP PDP, affirm that the PBM shall comply with all of the provisions provided in **Appendix F-2, Performance Guarantees (EGWP PDP)**, of this RFP.
 Affirm Affirm with the proposed Deviations

If applicable, enumerate and provide a detailed description of each Appendix F-2, Performance Guarantees, deviations.

PBM's Requested Deviations Detail:

IV. HealthSelect Prescription Drug Program Plan Design, Eligibility, Network and Program Requirements

This Article presents the plan design, eligibility, pharmacy network, and general program requirements for the HealthSelect PDP. The PBM shall recover any costs related to the RFP and Contract requirements only through the PBM's *Price Proposal and Response Format*, Article XI.

A. ERS and GBP Background Information

- A.1 **ERS Background Information.** ERS was created in 1947 when the Legislature passed and voters approved a constitutional amendment to provide State employees with a benefit plan that would attract and retain talented workers to public service. The law established a retirement fund, using both State and employee contributions, which could be invested to create a trust that would finance a State employee's retirement plan.
- A.1.a Legislative action in the following years increased ERS' responsibilities. The administration of the Judicial Retirement System was transferred to ERS in 1954. In 1963, a new law expanded ERS' membership to elected State officials in both the executive and legislative branches; District Attorneys were later added to this group in 1967.
- A.1.b In 1975, ERS' duties again grew dramatically when the Legislature created a health insurance program known as the GBP, which was implemented to meet the stated purposes of the Act. The Act required uniformity in health, life, and accidental insurance benefits for all employees and retirees of State Agencies (as that term is defined in Section IV.A.1.e. below).
- A.1.c In 1992, the GBP-eligible population greatly increased with the addition of Higher Education Participants from public universities and junior/community colleges, excluding the University of Texas and Texas A & M University Systems. Higher Education employees and retirees are only eligible for participation in the GBP and do not contribute to an ERS retirement account. In 1985, ERS was given the administration of a new retirement plan, The Judicial Retirement System, Plan Two.
- A.1.d In 2015, legislation was passed to require ERS to offer a High Deductible Health Plan ("HDHP") consistent with Internal Revenue Service ("IRS") rules so that an employee/retiree could take advantage of a Health Savings Account. This plan is to be effective on September 1, 2016.
- A.1.e For purposes of this RFP, the term "State Agencies" shall encompass the agencies, higher education institutions and other groups as referenced above and as may be added to ERS' responsibilities in the future.
- A.2 **Group Benefits Program.** GBP benefits are critical for ERS members who provide or have provided essential services for our growing State. By offering these benefits, ERS helps to ensure the State workforce is competent and healthy while attracting and retaining qualified employees for the future. In addition, the GBP supports Texas' doctors, hospitals and pharmacies with more than \$2 billion in payments for health services across the State. The GBP continues to be a model in administration, contracting, cost containment, benefits and customer service for approximately half a million state and higher education employees, retirees and their eligible dependents.

B. GBP Governance

- B.1. **Board Rules.** The Board has sole rulemaking authority in connection with the GBP pursuant to Chapter 1551, TIC. In the event of a conflict of laws or regulations, then 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, Tex. Admin. Code ("Board Rules"). The Board Rules, including any amendments, are a part of any Contract executed in accordance with this RFP for all purposes as if they were contained verbatim therein. The PBM agrees to comply will all such Board Rules, and all applicable laws and regulations, both state and federal.
- B.1.a The determination of the amount of benefits to which any Participant is entitled shall initially rest with the PBM. 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 in accordance with Section 1551.357, TIC, as amended, except as qualified or limited by applicable federal law.
- B.2 **The Employee Retirement Income Security Act of 1974 ("ERISA").** As a State government plan, the GBP is not subject to ERISA; however, the PBM shall assume the same fiduciary responsibilities that apply to ERISA plan administrators for all claims processing and payments, adjudication and appeals.
- B.3 **Changes Required by Statute, Regulation, Court Orders, or Program Funding.** ERS acknowledges that certain factors may change conditions with regard to the PBM's benefits and administration. Some factors that may affect the PBM 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.
- B.3.a The PBM agrees to make a good faith effort to comply with any additional responsibilities or changes to the PDPs 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 the PBM'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 the PBM's obligations under the Contract, ERS reserves the right to negotiate with the PBM regarding any fee increase (or decrease) that may be appropriate under the circumstances, as provided in the Contract.

C. HealthSelect PDP

- C.1. The PBM shall administer the HealthSelect PDP benefits presented in the MBPD, a copy of which can be found at:
- http://www.caremark.com/portal/asset/ERS_Prescription_Drug_Program.pdf.
- The HealthSelect PDP will also provide coverage for prescriptions filled by pharmacies that do not participate in the pharmacy network. Participants who use non-network pharmacies submit a claim for benefits at non-network levels. The PBM shall be capable of administering this facet of the program.
- C.2 The PBM understands and accepts that it is bound by various statutory, regulatory and fiduciary duties and responsibilities; therefore, the PBM expressly agrees that it shall accept and abide by such duties and responsibilities when acting on behalf of the GBP pursuant to this engagement. The PBM shall administer the HealthSelect PDP in a manner consistent with applicable state and federal statutory law, regulations and Board Rules and at the direction of the ERS Board, its Executive Director, and ERS' staff. ERS requires the selected PBM to replicate the benefits and program requirements as presented in this Article.
- C.3. **Claim Payments.** The PBM pays all HealthSelect pharmacy claims based on the enrollment data provided by ERS. As plan administrator for HealthSelect, ERS may access appropriate PBM documents and Participant records as required for purposes of administering the plan.

D. Retail Pharmacy Network

- D.1. **Current Retail Network.** HealthSelect is a statewide POS plan with employees widely dispersed throughout the State in both urban and rural locations. In addition, some Participants reside outside Texas and the United States. The current pharmacy network is designed with this characteristic in mind and with the express intent of providing a wide choice of both independent and chain pharmacies.
- D.2. **Retail Pharmacy Network.** ERS is interested in maintaining its current pharmacy network and is also interested in the PBM's most cost effective network that provides adequate access for the HealthSelect PDP Participants across the State and United States. For purposes of evaluating network adequacy, ERS will consider adequate access to equal one network pharmacy for 85% of the Participants shall be within five (5) miles of a Participant's residence, as determined by ERS. PBM shall provide its network using the table in Appendix L, HealthSelect Retail Pharmacy Network. In the alternative network, the PBM shall provide a retail pharmacy network that satisfies this access standard for 85% of the HealthSelect PDP members. A PBM interested in providing an alternative retail network shall complete the table in Appendix M, PBM's Proposed Alternate HealthSelect Retail Pharmacy Network, that shall represent a more cost effective alternative to the HealthSelect Retail Pharmacy Network. In addition, PBM shall provide its Specialty Drug Pricing by completing the table in Appendix N, PBM's Specialty Drug Pricing.

E. Retail Pharmacy Reimbursement

- E.1. The PBM shall reimburse retail network pharmacies based on an amount determined as the lesser of (i) the pharmacy's usual and customary price ("U&C") or the Maximum Allowable Cost ("MAC") as publicized by the PBM, plus the contracted dispensing fee or (ii) the sum of (a) contractual ingredient cost plus (b) dispensing fee. The payment to the pharmacy shall be equal to the amount determined above less (a) retail copayment, less (b) retail maintenance fee, if applicable, and less (c) the deductible, if applicable.
- E.1.a. The retail maintenance fee is an amount paid by the Participant, in addition to the copayment, for maintenance medications purchased at retail pharmacies. The retail maintenance fee is \$0 for a Tier 1 drug, \$10 for a Tier 2 drug and \$15 for a Tier 3 drug. Additional information regarding the HealthSelect PDP benefit plan is included in the Master Benefit Plan Document ("MBPD").
- E.1.b. The HealthSelect PDP has a \$50 per Participant deductible that applies to retail, extended days' supply, and mail service pharmacies. The deductible is applied prior to the application of the copayment.
- E.2. **Retail Copayment.** The PBM shall ensure that the retail pharmacy charges the Participant the lesser of (a) the pharmacy's U&C price, (b) the MAC plus the contracted dispensing fee, (c) the contractual ingredient cost plus the dispensing fee, or (d) the copayment plus the retail maintenance fee, if applicable, plus the deductible, if applicable. For any prescription for which the Participant payment is limited to (a), (b) or (c) above, there shall be no additional charge to the HealthSelect PDP.

F. Mail Service

- F.1. The selected PBM shall be capable of providing mail services to meet the needs of the HealthSelect PDP Participants.
- F.1.a. The PDP should have a mail service option that allows the Participant to obtain up to a ninety (90) day supply of most covered drugs. A copayment would apply but the Participant would not be charged a Retail Maintenance Fee for maintenance medications. The copayment is based on the day supply requested (1-30 day supply for one (1) retail copayment; 31-60 day supply for two (2) retail copayments; 61-90 day supply for three (3) retail copayments).
- F.1.b. Currently, ERS reimburses the PBM for covered drugs dispensed by mail service based on an amount equal to (a) contractual ingredient cost plus (b) dispensing fee less (c) mail service copayment and/or the deductible, if applicable.

F.1.b.i. The PBM shall submit its proposed mail service reimbursement rates in the PBM's *Price Proposal and Response Format*, Article XI.

F.2. **Mail Service Copayment.** If the amount of the applicable copayment for a mail service prescription exceeds the applicable ingredient cost plus dispensing fee, if any, the PBM shall charge the Participant only the amount equal to the applicable ingredient cost plus dispensing fee, if any.

F.2.a. The mail service pricing formula shall include the following services:

- Properly licensed pharmacists in good standing to oversee filling of prescriptions;
- Handling and postage expense of mail service prescriptions, including special handling requirements for temperature-sensitive medications;
- Braille labels on prescriptions for visually impaired Participants;
- Drug Information Leaflet with each new prescription;
- Access to the PBM's "Drug Information Service";
- Receipts for medications obtained by Participants by mail service with the name of the drug dispensed, the date it was dispensed, the amount paid by the plan for the drug over and above the copayment, and the amount of the copayment;
- Easy-open lids upon request; and
- Cold pack shipping when necessary, including with all insulin orders.

G. **Extended Day Supply Retail Network**

G.1. TIC Section 1560.003 provides that a Participant must be allowed to obtain from a community retail pharmacy a multiple-month supply of any prescription drug under the same terms and conditions applicable when the prescription drug is obtained from a mail order pharmacy, if the community retail pharmacy agrees to accept reimbursement on exactly the same terms and conditions that apply to a mail order pharmacy. HealthSelect PDP Participants have access to certain pharmacies participating in the current pharmacy network that have agreed to participate in the Extended Days' Supply ("EDS") network. In accordance with the statute, ERS allows Participants to obtain a 31-90-day supply of a maintenance medication at a retail pharmacy under the same terms and conditions that would be applicable if the same medication was obtained through the mail service pharmacy. Specifically, (a) a Participant obtaining a 31-90-day supply at retail pays the same deductible and copay that would have been paid in the event that the medication had been obtained through the mail service pharmacy; and (b) the retail pharmacy is reimbursed at the same rate as is applicable to the mail service pharmacy. The PBM proposal shall include an EDS network that meets the requirements of TIC Section 1560.003.

H. **Average Wholesale Price ("AWP")**

H.1. AWP is the term used for any one of the recognized published averages of the prices charged by wholesalers in the United States for the drug products they sell to a Pharmacy. The current source for AWP is the Medi-Span Electronic Drug File (MED-file) v2 from Medi-Span. The PBM may use this source to determine ingredient cost for retail, mail and specialty pharmacy reimbursement.

H.1.a. ERS reserves the right to utilize any pricing index it believes to be in the best interests of the PDPs throughout the Contract Term.

I. **Formulary**

The HealthSelect PDP currently has a three-tier incentive formulary. The categories of drugs covered under the current formulary are presented in Appendix G. **To be eligible for selection, the PBM shall have a viable formulary covering each of the categories listed in Appendix G. The PBM's Proposal shall include the specific formulary that the PBM intends to offer for HealthSelect Participants.** During the Contract Term, the PBM shall not make changes to nor implement a new formulary for the HealthSelect PDP without the express approval of ERS, unless required by law.

J. Therapeutic Substitution

ERS does not allow the PBM to initiate therapeutic substitution under either the retail or mail program. However, ERS may implement such a program at its discretion.

K. Drug Utilization Review

The PBM shall provide comprehensive drug utilization review ("DUR") that meets or exceeds the standards set forth in the Omnibus Budget Reconciliation Act of 1990 (P. L. 101-508) ("OBRA"). The PBM shall provide concurrent (point-of-sale) DUR as well as retrospective DUR. The cost for such program shall be included in the PBM's *Price Proposal and Response Format*, Article XI.

L. Condition Management

L.1. The PBM shall provide Condition Management Programs on behalf of the HealthSelect PDP Participants in order to provide additional cost containment. The cost for such programs shall be included in the PBM's *Price Proposal and Response Format*, Article XI. The Condition Management Programs currently in place in the HealthSelect PDP are applied to:

- Respiratory;
- Diabetes;
- Cardiovascular;
- Digestive Health;
- Hepatitis C; and
- Multiple Sclerosis.

L.1.a ERS requires the PBM to make available, implement, and administer the PBM's Condition Management Programs, as agreed between the PBM and ERS, to the HealthSelect PDP Participants. The PBM may, from time-to-time, recommend modifications to the Condition Management Programs for the HealthSelect PDP that PBM determines to be in the best interest of Condition Management Program Participants. The PBM shall notify ERS and obtain ERS' consent to any modification of the Condition Management Programs prior to implementing or making them available to the HealthSelect PDP Participants.

L.1.b The PBM may use the above-referenced information to profile Participants solely in order to do the following: to offer, implement and administer the Condition Management Programs; to assess patterns of care and outcome measurements; and to provide opportunity analysis for medication adherence improvements.

M. Prior Authorization

The PBM shall provide prior authorization programs in order to provide additional cost containment in the HealthSelect PDP. The prior authorization programs currently in place are listed in the MBPD. The cost for such programs shall be included in the PBM's *Price Proposal and Response Format*, Article XI. All savings attributable to such programs shall accrue solely to the HealthSelect PDP.

N. Compound Drugs

In response to excessive utilization and pricing, ERS implemented a rigorous initiative to control rapidly increasing expenditures for compound drugs. Effective July 1, 2014, ERS ceased coverage of non-FDA approved bulk chemicals in compound drugs, and began to require pre-authorization for all compound drugs costing \$300 or more. The PBM must be capable of administering this policy.

O. Coordination of Benefits

- O.1. The PBM shall provide Coordination of Benefits ("COB") with any group plan under which a HealthSelect PDP Participant has coverage, regardless of whether the PBM also services the other group plan as its PBM. The PBM shall establish integrated exchange of information for other health coverages with ERS' existing HealthSelect third-party administrator ("TPA"). ERS has determined that the HealthSelect PDP COB follows the normal rules of COB adopted by TDI. The cost for such programs shall be included in the PBM's Price Proposal and Response Format. All savings attributable to such programs shall accrue solely to the HealthSelect PDP.
- O.2. **Medicare Part B Coordination of Benefits.** The PBM shall include Medicare Part B coordination at point-of-sale in the PBM's *Price Proposal and Response Format, Article XI*.
- O.2.a. The PBM shall work with the Medicare carrier to determine if a prescription is covered by Medicare Part B. When covered by Medicare Part B, the PBM shall refer the claim to the carrier for payment or seek reimbursement from the medical carrier, if paid in error.

P. GBP Annual Enrollment Periods

- P.1. ERS conducts two (2) enrollment periods on an annual basis, a summer enrollment ("SE") and a fall enrollment ("FE").
- P.1.a. The SE period will be held for active employees and retirees not eligible for Medicare, typically during the month of July, for Participants to make changes to their GBP benefits elections. These changes extend to the following GBP Plans: Health, Dental, Flexible Spending ("HCRA/DCRA"), Short-term and Long-term Disability Plans, optional & dependent life, and Accidental Death & Dismemberment. The effective date for these election changes is September 1st. PBM shall have its documentation prepared for SE no later than the last business day in June of each year or as otherwise directed by ERS.
- P.1.b. The FE period will be held for Medicare-eligible retirees, typically during the month of November, for Participants to make changes to their GBP benefits elections. These changes extend to the following GBP Plans: Health (including Medicare Advantage Plans), Dental, and optional & dependent life. The effective date for these changes is January 1st. PBM shall have its documentation prepared for FE no later than the last business day in October of each year or as otherwise directed by ERS.
- P.1.c. **Fair/Event Schedule.** ERS has a different number of fairs each year. The schedule for FY2016 and FY2017 has not been developed. For FY2015, SE took place on 43 days over a period of five (5) weeks and FE took place on 14 days over a period of three (3) weeks. For SE FY2015, ERS had eight (8) events in the Austin area, two (2) in the larger cities (such as Dallas, Houston and San Antonio), and one (1) in each of the rural cities in which events were scheduled. For FE FY2015, ERS had two (2) events in Austin, Dallas and Houston, and one (1) event in each of the rural areas in which events were scheduled.

Q. Grievances and Appeals

- Q.1. TIC Section 1551.352 provides that the Executive Director of ERS has exclusive authority to determine all questions relating to enrollment in or payment of claims arising from programs or coverages provided under the GBP. In accordance with TIC Sections 1551.355 and 1551.360, and 34 Tex. Admin. Code § 67.5(d), except as qualified or limited by applicable federal law, a decision by ERS under this section may be appealed, provided the decision grants a right of appeal, to the Board of Trustees' designee, as provided by the Affordable Care Act ("ACA").
- Q.1.a. The Board Rules of ERS, Title 34, Part 4, § 81.9 Tex. Admin. Code, describe the Grievance Procedure that is available to a person participating in the HealthSelect PDP. The Board Rules may be accessed at: http://www.ers.state.tx.us/About_ERS/Statutes/.
- Q.1.b. The PBM shall provide support for this function. Among these requirements are the PBM's maintenance of adequate staff to produce grievance rights letters to participants who request ERS' review of a claim determination, to provide applicable pharmaceutical and related opinions records and expertise to ERS, to conduct professional staff reviews, to determine any medical

(pharmaceutical) necessity issues, and to provide legal representation to the PBM in administrative hearings under TIC Chapter 1551 and Chapter 2001, Tex. Gov't Code.

Q.2. Process for Grievance and Appeals.

Q.2.a. The PBM's grievance procedure shall be in compliance with all applicable statutes and regulations. The PBM shall provide support for this function as set forth in Section IV.Q.1.b.

Q.2.b. In accordance with TIC Section 1551.356, appeal rights are not allowed on plan design issues which include, but are not limited to copayments, prior authorization determinations and Quantity Limitation determinations.

Q.2.c. If a claim for benefits under the PDP is denied, for reasons other than plan design issues stated in Section IV.Q.2.b., the Participant may appeal to the PBM. The PBM shall provide the Participant with a written explanation including the specific reasons for the denial. The PBM shall follow all of the requirements in the PDP and in ERS' rules and statutes regarding the review and appeal process.

Q.2.d. **First-Level Internal Appeal.** If the Participant does not agree with a claim denial, he may call or write to the PBM and request that the claim be reviewed. Additional information may be submitted with the request for review.

Q.2.e. **Second-Level Internal Appeal.** If the claim is again denied, the PBM shall furnish written instructions to the Participant on how to file a grievance with ERS. The grievance shall be in writing, signed, and postmarked or received by ERS within ninety (90) calendar days following the date of the PBM's letter to the Participant. The PBM must have a proven process in place to ensure that all letters are properly mailed to Participants on the date reflected on the letter. After a grievance is filed with ERS, ERS shall notify the Participant of the decision in writing. Eligible Participants with proper standing who do not accept ERS' decision may appeal the decision in accordance with the requirements of the ACA, provided the decision grants a right of appeal. This appeal shall be in writing, signed, and postmarked or received by ERS within thirty (30) calendar days following the date the decision is served on the Participant by ERS (see Tex. Admin. Code § 67.7.)

Q.2.f. **External Review.** The PBM shall contract with at least two peer review organizations and provide claim records in connection with external reviews.

R. Pharmacy Network Management

R.1 **Pharmacy Network Management Requirements.** The PBM shall provide all services specified in this RFP including, but not limited to, the following:

R.1.a. The PBM shall provide initial and ongoing recruitment, credentialing, and contracting with a sufficient number of pharmacies, as specified herein, to provide reasonably convenient, accessible, and quality pharmaceutical coverage throughout the State and United States in accordance with applicable state and federal laws, regulations and industry practice.

R.1.b. The PBM shall provide ongoing management of the pharmacy network.

R.1.c. The PBM shall require that its network pharmacies cooperate with reasonable requests by HealthSelect Participants to prepare and provide, without charge to the Participants, any records pertaining to prescriptions or copayment amounts.

R.1.d. The PBM shall provide ongoing review of retail pharmacy reimbursement rates, EDS and mail service and recommend adjustments as appropriate, subject to consultation with and approval by ERS.

R.1.e. The PBM shall provide initial and ongoing education to ensure that network pharmacies are familiar with and knowledgeable regarding the benefits (including any benefit design changes) and other plan provisions.

- R.1.f. The PBM shall conduct an ongoing pharmacy quality assurance review to be monitored via periodic Participant surveys and other reporting mechanisms.
- R.1.g. As it relates to the management of the pharmacy network, the PBM shall provide ongoing utilization management, including preauthorization of services and monitoring, and enforcement of compliance with pharmacy protocol.
- R.1.h. The PBM shall provide 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.
- R.1.i. As it relates to the management of the pharmacy network, the PBM shall provide to a designated representative of ERS, for ERS' approval, a template or form letter or other means of standardized communication prior to sending, disseminating or otherwise providing such written or oral communications to any person or entity reasonably connected to or involved in the PDPs or the GBP. The PBM shall regularly review, revise and update where necessary, all information contained on its website that relates to or may be utilized by the PDPs and any of its Participants.
- R.1.j. In the event ERS elects a brand-to-brand mail service interchange program and a substitution is not rejected by a health care provider when filling a mail service prescription for a Participant, a substitution may be made, at the discretion of the PBM, in accordance with licensed pharmacy practice.

S. Medicare Part D

- S.1. The PBM shall make available to ERS any and all data required to confirm the PBM's calculation of the Retiree Drug Subsidy ("RDS").
- S.1.a. The PBM must meet the Center for Medicare and Medicaid Services ("CMS") requirements for data and eligibility filing.
- S.1.b. The requirements of Section IV.S. apply to all required data, interim requests and final reports for all Fiscal Years for which the contract is in effect, including reports (and supporting data and documentation) due after the termination of the contract.

T. Clinical Management

- T.1. The PBM shall provide ongoing utilization management, including, but not limited to, drug utilization review such as prior authorization, step therapy, and disease management programs described herein.
- T.1.a. The PBM shall provide all cost savings programs to HealthSelect at no additional cost to ERS, the GBP, its Participants or the State. Any fees associated with these programs must be recovered solely through the PBM's Price Proposal and Response Format. Programs funded by outside entities such as pharmaceutical companies may not be used.
- T.1.b. The PBM shall act in the best interests of the HealthSelect PDP as required by the Contract in determining when it should substitute a generic medication for a brand medication in filling a HealthSelect PDP Participant's mail service prescriptions. To this end, if necessary, the PBM shall contact the Participant's health care provider who authorized the filling of the original prescription and obtain the provider's authorization to substitute generic medication as contemplated by the PBM and as permitted by applicable laws and regulations.
- T.1.c. The PBM shall warrant and represent that it provides appropriate coverage management services in accordance with applicable State and federal laws, regulations and protocol regarding pharmacy benefit managers. Such services include reviewing claims to determine whether they are medically and pharmaceutically necessary. These services are used to make coverage decisions that are required when the information needed to determine coverage for a particular drug is not available from the ordinary claims transaction. Each utilization management service adopted by ERS has been determined based on the recommendations and expertise of the PBM. In making coverage decisions for claims incurred by Participants, the PBM gathers the necessary

information from health care providers prescribing the applicable drugs and from PDP Participants, compares that information with the PDP plan design, and informs the health care providers and Participants of the coverage decision.

- T.1.d The PBM shall make copies of its formulary available to each Participant, at no additional cost, upon request of the Participant or ERS. The PBM shall train its employees to assist Participants who call, email or write to the PBM with formulary questions, including, but not limited to answering questions about the process for creating the formulary, and transferring or otherwise making available to Participants a PBM pharmacist to discuss preferred and generic alternatives in the event any formulary change affects the Participant. If a change in the formulary negatively affects a particular Participant's medication, such that a medication that was on the formulary becomes a non-formulary item or a medication changes from a lower cost tier to a higher cost tier, the PBM agrees to contact that Participant individually, in writing, no less than 30 (thirty) days prior to implementation of the effect of the change. Within ten (10) business days of any formulary change, the PBM shall update its formulary listing on its website.

U. Enrollment and Claims Data

- U.1. Refer to the Experience Data referenced as Appendix H, which presents historical enrollment, financial, utilization, cost data and monthly claims information from the GBP's PDP plans.

- U.1.a To assist in the analysis of this information, instructions to obtain electronic information are included in Appendix H, which contains all of the data exhibits. Instructions for reading the files are included in Exhibit E of Appendix H. In addition to the exhibits, Appendix H contains (i) an enrollment file containing information on all non-Medicare-eligible Participants, and, (ii) a set of files containing all PDP claims for non-Medicare-eligible Participants for the period September 1, 2013 to August 31, 2015, respectively. Appendix I-1 includes file layout, data fields, and additional file expectations. The PBM must meet all file requirements stated in this RFP or provide their recommended file layout, including data field descriptions, with their response for ERS' review and consideration.

V. Dispensing Accuracy Rate

- V.1. PBM shall guarantee that the Dispensing Accuracy Rate for the Fiscal reporting period shall be 99.99% or greater. Dispensing Accuracy Rate means (i) the number of all home delivery pharmacy prescriptions dispensed by the PBM including its mail service and specialty facilities within a Fiscal Year less the number of those prescriptions dispensed by the PBM within the same Fiscal Year which are reported to the PBM, and verified by the PBM, as having been dispensed with the incorrect drug or strength, divided by (ii) the number of all home delivery pharmacy prescriptions dispensed by the PBM and its mail service and specialty facilities for the Fiscal Year.

W. Interrogatories

PBM - Benefit Design

- W.1 Describe the range of benefit designs that PBM can administer. Address at least the following:
- Percentage coinsurance;
 - Multiple tier copayments;
 - Annual maximum out-of-pocket limit (in coordination with the HealthSelect TPA);
 - Prescription Drug Deductible; and
 - Dispense as Written ("DAW") Penalty.
- W.1.a. Describe the PBM's proposed EDS network.
- W.1.b. Confirm that retail pharmacies participating in the EDS network will be reimbursed under the same terms and conditions applicable to the mail service pharmacy.
- Confirm
- Unable to Confirm; the PBM shall provide a detailed explanation in Section IV.X.1. below

- W.1.c. Confirm that all costs related to the EDS network are reflected in the PBM's *Price Proposal and Response Format* quoted in Article XI.
 Confirm
 Unable to Confirm; the PBM shall provide a detailed explanation in Section IV.X.1. below.
- W.1.d. Discuss available options PBM can provide for filling and dispensing mail service prescriptions at retail pharmacies. Include all associated costs and whether such costs are reflected in the PBM's *Price Proposal and Response Format* quoted in Article XI.
- W.1.e. Discuss any programs offered by the PBM that will promote lower cost drug alternatives such as the promotion of generics and over-the-counter ("OTC") medications.
- W.1.f. Describe any web tools available to support such cost saving efforts and discuss the associated costs in providing these services. Indicate whether such costs are reflected in the PBM's *Price Proposal and Response Format* quoted in Article XI.
- W.1.g. What is the PBM's pill splitting policy?
- W.1.h. Can the PBM provide blister packs for use by assisted care living facilities in ninety (90) day quantities?
- W.1.i. Confirm that the PBM can administer the compound drug policy described in Article IV.N.
 Confirm
 Unable to Confirm; the PBM shall provide a detailed explanation in Section IV.X.1. below.
- W.1.j. Describe how PBM will administer the compound drug policy under the HealthSelect PDP.

Formulary

- W.2. Discuss the various factors to consider when creating a customized formulary and detail the associated costs. If there are any associated costs in creating a customized formulary, please provide the cost in the *Price Proposal and Response Format*, Article XI.
- W.2.a. Describe the different types of PBM formularies, including the composition of the committee responsible for formulary development.
- W.2.b. Describe how the PBM assures that all Pharmacy and Therapeutic Committee members are qualified, objective and not influenced by a third party.
- W.2.c. Provide an electronic version of the PBM's 2016 formulary and preferred drug list that includes drug class, name, strength, dosage form and 11-digit NDC number for every product on the list. PBM shall refer to the Formulary provided in Appendix G for a list of categories that the Formulary should include.
- W.2.d. With regard to PBM's formulary:
 - What elements are reviewed when determining drugs to be included in the formulary?
 - How often does the formulary change?
 - What is the process for announcing these formulary changes to the client and to patients, including the frequency of the notification?
- W.2.e. Using the detailed claim files located in Appendix H and based on the instructions included therein, indicate which of the HealthSelect PDP claims provided were on the PBM's formulary on November 30, 2015.
- W.2.f. Using the detailed claim files located in Appendix H and based on the instructions included therein, indicate which of the HealthSelect claims provided would have been deemed maintenance medications on November 30, 2015.
- W.2.g. Provide a copy of the PBM's proposed HealthSelect PDP formulary. Provide a side-by-side comparison of the proposed formulary to the current formulary.

W.2.h Describe how the PBM would support custom changes to the formulary at the request of ERS including the CMS requirements for modification to the prescription drug formulary and the expected timeframes and durations that this process requires.

Retail, Mail Service, and Specialty Pharmacies

W.3 With regard to the insurance requirements (including professional, general liability, malpractice, and fidelity) for each type of pharmacy in the PBM's network, including the PBM's mail service facility and retail pharmacies, answer the following:

- What are the minimum required insurance coverages per individual pharmacy or group?
- If the process differs by type of pharmacy (i.e., independent vs. chains), please indicate and describe separately.

W.3.a. If PBM has a pharmacy network outside of Texas and/or the U.S., describe the network, providing information regarding total pharmacies and location of them outside of Texas and/or the U.S. If PBM does not have such a network, PBM shall answer this "N/A."

W.3.a.i. Is there a separate process for filing claims, processing claims and paying claims from PBM's pharmacies outside of Texas and/or the U.S.? If yes, please describe. Yes No

W.3.b. The PBM shall confirm that under each of the retail pharmacy network options that the Participant is required to pay the lesser of (a) the pharmacy's U&C price (b) the MAC plus the contracted dispensing fee (c) the ingredient cost plus the dispensing fee, or (d) the copayment plus the retail maintenance fee, if applicable, plus the deductible, if applicable. Also, for any prescription for which the Participant payment is limited to (a), (b) or (c) above, the PBM shall confirm there shall be no additional charge to the HealthSelect PDP.

Confirm

Unable to Confirm; the PBM shall provide a detailed explanation in Section IV.X.1. below.

W.3.c. Provide a description of the PBM's process to ensure individual pharmacies are abiding by the provision listed in Section IV.W.3.b. above.

W.3.d. With regard to the payment methods used to reimburse retail pharmacies, answer the following:

- What payment methods are used to reimburse retail pharmacies (i.e., including draft, check, and electronic transfer)?
- Does the payment method vary by volume? If so, indicate the payment method by volume.

W.3.e. Describe the credentialing and re-credentialing process and minimum criteria for selecting a network pharmacy.

W.3.f. Provide a representative specimen copy of the PBM's contract with its contracting pharmacies.

W.3.g. Include a current electronic directory of the PBM's pharmacy network including the National Association Board's Pharmacy (NABP) number for each pharmacy, full address and zip code. PBM shall use the tables provided in Appendices L (HealthSelect Retail Pharmacy Network), M (PBM's Proposed Alternate HealthSelect Retail Pharmacy Network, if applicable), and N (PBM's Specialty Drug Pricing) to provide this information.

W.3.h. With regard to communications with PBM's participating pharmacies, answer the following:

- How will the PBM communicate with and educate participating pharmacies about the HealthSelect PDP?
- What is the anticipated frequency of such communication?
- What procedures are in place to ensure that correct, complete and quality information shall be provided to network pharmacies in connection with the HealthSelect PDP?

W.3.i. With regard to physicians and/or pharmacists use of the PBM website, answer the following:

- If the physicians and/or pharmacists have access, what capabilities do they have?
- How does the PBM educate physicians/pharmacists on using the PBM's website?

W.3.j. How does the PBM resolve issues related to pharmacy non-compliance with contractual requirements?

W.3.k. What performance-based systems does the PBM use in connection with retail pharmacies?

- W.3.l. How does the PBM measure its effectiveness in achieving retail pharmacy network compliance?
- W.3.m. How is the network's performance measured?
- W.3.n. How would the PBM involve the retail pharmacies in achieving ERS' objectives in the improvement of patient care and the reduction of overall health care costs?
- W.3.o. What steps are taken to increase generic substitution?

Retail Pharmacy Pricing

- W.4. The RFP specifies the pricing indices in Article IV.H. to be used by the PBM in connection with the HealthSelect PDP (AWP, for example). The PBM shall confirm they can administer the pricing indices in connection with the HealthSelect PDP.
 - Confirm
 - Unable to Confirm; the PBM shall provide a detailed explanation in Section IV.X.1. below.
- W.4.a. Describe any other pricing methods the PBM prefers to use over the indices specified in the RFP and include in the PBM's description the advantages of using the alternative pricing indexes.
- W.4.b. Describe the PBM's MAC program and address the following points:
 - Selection of drugs;
 - Number of drugs covered;
 - Frequency of updates;
 - Available options;
 - Pharmacist's incentives; and
 - MAC reimbursement determination.
- W.4.c. Using the detailed claim files located in Appendix H and based on the instructions included therein, indicate the following:
 - Each prescription that would have been reimbursed based on MAC; and
 - The MAC pricing applicable to each such prescription on November 30, 2015.
- W.4.c.i PBM shall provide the specific discount and MAC pricing in the PBM's response.

Retail Pharmacy Audits

- W.5. Is the right to audit included in the PBM's standard retail pharmacy contracts?
 - Yes No
- W.5.a. If the answer is "No," how does PBM verify that Participants' pharmacies are administering the plan correctly?
- W.5.b. Describe the PBM's retail pharmacy auditing capabilities, including, but not limited to:
- W.5.c. Authenticating prescriptions with claims;
- W.5.d. Uncovering generic dispensing when billing for branded products and proper dispensing of medication in accordance with the prescriber's order;
- W.5.e. If the PBM makes recoveries during the audit process, how would such recoveries be credited to ERS and how often;
- W.5.f. The percentage of retail stores that is audited each year for the PBM's book of business;
- W.5.g. The percentage of total claims that is audited under the PBM's book of business each year;
- W.5.h. The process by which a retail pharmacy may be terminated from the network due to fraud, abuse and other improprieties;
- W.5.i. The frequency of the audits;

W.5.j. The PBM shall submit the most recent copy of a retail pharmacy audit report.

W.5.k. Pharmacy Audits (complete the following for 2015):

Percent of Network Pharmacies Audited:

- Desktop _____ %
- On-Site _____ %
- At Random _____ %
- By Independent Agent _____ %
- Percent of pharmacies needing corrective action _____ %
- Percent of retail pharmacy contracts terminated due to audit: _____ %
- Most prevalent reason for pharmacy termination: _____

W.5.l. The PBM shall confirm that audits do not use extrapolation to determine results.

Confirm

Unable to Confirm; the PBM shall provide a detailed explanation in Section IV.X.1. below

W.5.m. The PBM shall confirm that ERS shall receive 100% of the funds recovered as a result of the audits.

Confirm

Unable to Confirm; the PBM shall provide a detailed explanation in Section IV.X.1. below.

Mail Service Pharmacy Management

W.6. Does the PBM own and operate its own mail service pharmacy(ies)?

W.6.a. What are the locations of the PBM's mail service pharmacies?

W.6.b. Which locations would be responsible for servicing HealthSelect PDP Participants? Include locations that handle specific medication types, if applicable.

W.6.c. What are the hours of operation of the PBM's pharmacy help desk?

W.6.d. If PBM uses subcontractors for mail service pharmacy deliveries, what are the location(s) of the PBM's subcontractors for mail service pharmacy(ies)? (PBM shall include any such subcontractors in response to the subcontractor interrogatory in the Operational Section of this RFP.) If PBM does not use subcontractors for mail service pharmacy deliveries, PBM shall answer this "N/A."

W.6.e. How does the selected PBM propose to transition existing mail service refills from the current PBM?

W.6.f. Would the PBM contact physician offices to transfer existing prescriptions into the PBM's mail service pharmacy?

W.6.g. Briefly outline the daily operations that take place at the PBM's mail service facility. Include highlights of procedures that target quality control measures.

W.6.h. Briefly outline the PBM's mail service program as it relates to cost containment.

W.6.i. With regard to packaging and shipping medications, answer the following:

- How would the PBM package medications and ship them to the Participants?
- What primary shipping service does the PBM use?
- How does the PBM ship medications that are temperature sensitive?
- Describe the PBM's process on how all medications requiring cold packs will be sent regardless of the weather.

W.6.j. Describe online integration, if any, with retail pharmacies to ensure non-duplication and to identify potential adverse drug interactions.

W.6.k. What was the average daily number of prescriptions filled by mail service from January 1, 2015 through December 31, 2015?

- W.6.k.i. Does this represent an increase in volume from the previous year? Yes No
If yes, by how much?
- W.6.l. What is the mail service facility's projected excess capacity to fill prescriptions as of:
- January 1, 2016?
 - January 1, 2017?
 - January 1, 2018?
- W.6.m. How often does the PBM's mail service switch generic manufacturers?
- W.6.n. How are Participants notified of the switch?
- W.6.o. With regard to the mail service dispensing process, answer the following:
- Provide a detailed description of the mail service dispensing process from the time a new prescription arrives until it is mailed.
 - Specify the steps that are completed by mail service staff.
 - Specify the steps that are completed by a licensed pharmacist.
 - In the last six (6) months, what percent of protocol prescriptions, once received, were dispensed in twenty-four (24), forty-eight (48) or seventy-two (72) hours or greater?
- W.6.p. Discuss the PBM's mail service quality assurance program.
- W.6.q. With regard to prescriptions that are lost or stolen, provide the following:
- Describe the procedure the PBM utilizes when a prescription is lost or stolen.
 - Does the PBM charge the Participant for the replacement? If so, when?
 - Does the PBM charge the plan for the lost prescription? If so, when?
- W.6.r. How does a Participant cancel a prescription? Include a discussion of when and how the Participant and plan is credited for such a cancellation.
- W.6.s. Describe the PBM's return policy. Include when and how the Participant is credited and how the plan is credited for the return.
- W.6.t. What is the PBMs policy in substituting A-rated generics through the mail service process?
- W.6.u. What is PBM's policy in substituting less than A-rated generics through the mail service process?
- W.6.v. Explain any state/federal regulations that impact dispensing practices at the PBM's mail service facilities, including those that concern faxing prescriptions, controlled substances, and substitution of less than A-rated generics.
- W.6.w. Identify the mail service facilities affected by these state/federal regulations.

Mail Service Pharmacy Pricing

- W.7. With regard to repackaging drugs, answer the following:
- Does the PBM's mail service repackage drugs? Yes No
 - If yes, how will such repackaging impact payments under the HealthSelect PDP?
 - Describe how repackaging will benefit ERS.
 - Will ERS be charged a higher AWP than in the absence of repackaging?
 - How will ERS verify the AWP if the product is repackaged?
 - Who sets the AWP of a repackaged product?
- W.7.a. Does the PBM, parent organization or any affiliate or subsidiary of PBM own a repackager/labeler company?
- W.7.b. How often are AWP price updates applied to the PBM's adjudication system?
- W.7.c. What would be the rate impact (discount and MAC pricing) for the mail service proposal should ERS institute a mandatory mail service requirement for all maintenance medications?

Mail Service Pharmacy Audits

- W.8. With regard to mail service pharmacy audits, provide the following answers:
- Are on-site audits performed at the PBM's mail service pharmacies?
 - Describe the frequency, types of audits and who performs the audits.
 - Is the mail service pharmacy that shall support ERS' mail service program subject to the same audit programs as the PBM's retail network?

W.8.a. The PBM shall provide a copy of its most recent mail service facility audit. If not available, please explain.

Retail and Mail Service Pharmacy Clinical Management and Managed Care Programs

W.9. Do the PBM's mail service and retail pharmacy networks utilize the same Participant prescription data for DUR purposes?

W.9.a. Discuss how the PBM identifies off-label drug dispensing.

W.9.b. What is the PBM's policy regarding physician notification of potentially serious drug reactions?

W.9.c. Does the PBM offer integrated patient, pharmacy and physician communications?
 Yes No

If yes, describe.

W.9.d. Is a licensed pharmacist available by toll-free telephone line twenty-four (24) hours a day, seven (7) days a week, in the PBM's mail service facility? If not, describe the availability.

W.9.e. Describe the drug information and consultation provided to patients who purchase medication through the PBM's mail service pharmacy.

W.9.f. What verification process does the PBM use to ensure that the pharmacist is entering the proper number of days' supply?

W.9.g. If there is a conflict, does the pharmacist receive a warning or a message indicating that the claim shall not be paid?

W.9.h. Describe the PBM's concurrent DUR program.

W.9.i. Does the PBM expect to make updates to its DUR program in the future? If so, please describe.

W.9.j. How does the PBM ensure retail and mail service pharmacy compliance with DUR messages?

W.9.k. Provide information concerning the personnel dedicated to utilization management and outcomes measurement.

W.9.l. Describe the PBM's prior authorization and/or case management programs, including integration capabilities with the TPA and MA carriers.

W.9.m. The PBM shall describe how it coordinates with the TPA and MA carriers regarding Medicare Part B and D.

W.9.n. How does the PBM determine who is responsible for Medicare Part B and D coverage?

W.9.o. What flexibility does ERS have in deciding which edits are hard and which edits are soft?

W.9.p. Describe communication programs used to educate Participants on appropriate prescription drug utilization, compliance with drug regimens, generics, cost-effective drug therapy, and formularies.

W.9.q. How does the PBM educate physicians about drugs covered under the plan and the availability of lower cost alternatives?

- W.9.r. Describe how the PBM identifies and monitors Participants with high drug utilization.
- W.9.s. Does this include controlled substance usage and potential fraud and abuse circumstances?
- W.9.t. With regard to PBM's disease management programs, provide the following:
- How does PBM identify Participants for their inclusion in the program;
 - How does PBM establish protocols for disease management program guidelines;
 - How does PBM educate physicians, pharmacists and Participants about disease management programs;
 - Does PBM have any disease management program integration capabilities with the TPA and MA carriers;
 - Discuss the PBM's outcomes management program.
- W.9.u. Describe the PBM's clinical intervention programs. Your answer should include, but not be limited to, a description of the medical staff that oversees the development of the PBM's clinical programs.

Mail and Retail Pharmacies - Other

- W.10. Confirm that the PBM will guarantee that ERS shall be charged only the generic price and the plan Participant shall be charged with only the generic copayment if the generic is out of stock and a brand name drug is dispensed.
- Confirm
- Unable to Confirm; the PBM shall provide a detailed explanation in Section IV.X.1. below

Specialty Pharmacy Management

- W.11. Does the PBM offer a specialty pharmacy program that integrates with the medical program?
- Yes No
- If yes, please describe the program.
- W.11.a. Does the PBM contract with, or own, one or more specialty pharmacies?
- Yes No
- If yes, please provide a list of the specialty pharmacies.
- W.11.b. How long has the PBM had the specialty pharmacy program in place?
- W.11.c. What is the total annual purchasing volume of PBM's specialty pharmacy?
- W.11.d. Please use the table provided in Appendix N and provide a list of specialty medications dispensed by the specialty pharmacy.
- W.11.e. How many clients does the PBM currently provide specialty pharmacy services to?
- W.11.f. Please provide three (3) client references for the specialty pharmacy program. (**Note:** The PBM's Proposal to this request officially authorizes ERS to contact these client references to discuss the services and other considerations that the PBM has provided, and authorizes the organizations/entities to provide such information to ERS, and shall release and hold harmless ERS and all such information.)
- W.11.g. Please provide a list of specialty medications dispensed by the specialty pharmacy program.
- W.11.h. What are the locations of the PBM's specialty drug pharmacies?
- W.11.i. Which locations would be responsible for servicing HealthSelect PDP Participants? Include locations that handle specific medication types, if applicable.
- W.11.j. What are the hours of operation of the PBM's pharmacy help desk?

- W.11.k. If PBM uses subcontractors for specialty drug pharmacy deliveries, what are the location(s) of the PBM's subcontractors for specialty drug pharmacy(ies)? (PBM shall include any such subcontractors in response to the subcontractor interrogatory in the Operational Section of this RFP.) If PBM does not use subcontractors for specialty drug pharmacy deliveries, PBM shall answer this "N/A."
- W.11.l. How does the selected PBM propose to transition existing specialty drug refills from the current PBM?
- W.11.m. Would the PBM be willing to contact physician offices to transfer existing prescriptions into the PBM's specialty drug pharmacy?
- W.11.n. Briefly outline the daily operations that take place at the PBM's specialty drug facility. Include highlights of procedures that target quality control measures.
- W.11.o. Briefly outline the PBM's specialty drug program as it relates to cost containment.
- W.11.p. With regard to packaging and shipping medications, answer the following:
 - How would the PBM package medications and ship them to the Participants?
 - What primary shipping service does the PBM use?
 - How does the PBM ship medications that are temperature sensitive?
 - Describe the PBM's process on how all medications requiring cold packs will be sent regardless of the weather.
- W.11.q. Describe online integration, if any, with retail pharmacies to ensure non-duplication and to identify potential adverse drug interactions.
- W.11.r. With regard to the specialty drug dispensing process, answer the following:
 - Provide a detailed description of the specialty drug dispensing process from the time a new prescription arrives until it is mailed.
 - Specify the steps that are completed by specialty drug staff.
 - Specify the steps that are completed by a licensed pharmacist.
 - In the last six (6) months, what percent of protocol prescriptions, once received, were dispensed in twenty-four (24), forty-eight (48) or seventy-two (72) hours or greater?
- W.11.s. Discuss the PBM's specialty drug service quality assurance program.
- W.11.t. With regard to prescriptions that are lost or stolen, provide the following:
 - Describe the procedure the PBM utilizes when a prescription is lost or stolen.
 - Does the PBM charge the Participant for the replacement? If so, when?
 - Does the PBM charge the plan for the lost prescription? If so, when?
- W.11.u. How does a Participant cancel a prescription? Include a discussion on when and how the Participant and plan is credited for such a cancellation.
- W.11.v. Describe the PBM's return policy. Include when and how the Participant is credited and how the plan is credited for the return.

X. Deviations

Review the deviations instructions referenced in Section I.B.2.

- X.1. Affirm that the PBM shall comply with all of the **HealthSelect PDP Plan Design, Eligibility, Network and Program Requirements** as described herein **Article IV** of this RFP.

Affirm Affirm with the proposed Deviations

If applicable, enumerate and provide a detailed description of each of the deviations between the PBM's Response and these requirements.
PBM's Requested Deviations Detail:

V. EGWP Prescription Drug Program Plan Design, Eligibility, Network and Program Requirements

This Article presents the plan design, eligibility, pharmacy network, and general program requirements for the EGWP PDP. The PBM shall recover any costs related to the RFP and Contract requirements only through the PBM's *Price Proposal and Response Format*, Article XI.

A. EGWP PDP

- A.1. **ERS and GBP Background Information and GBP Governance.** PBM shall refer to the information provided in Sections IV.A. and IV.B. for information pertaining to ERS' background and GBP governance.
- A.2. As of January 1, 2013, ERS' EGWP PDP is available for the Medicare-primary Participants. These Participants are no longer eligible to receive their prescription drug benefits through the HealthSelect PDP. The EGWP PDP was originally designed as an Employer Group Waiver Plan with a Wrap ("EGWP + WRAP"). ERS understands that some pharmacy benefit managers may provide EGWP PDP services without using a wrap product. Therefore, for purposes of the RFP, pharmacy benefit managers may submit either an EGWP + WRAP PDP plan or an EGWP PDP without a wrap product so long as the plan submitted by the pharmacy benefit manager complies with all requirements of the RFP, including the specific benefit design.
- A.3. The PBM understands and accepts that it is bound by various statutory, regulatory and fiduciary duties and responsibilities; therefore, the PBM expressly agrees that it shall accept and abide by such duties and responsibilities when acting on behalf of the GBP pursuant to this engagement. The PBM shall administer the EGWP PDP in a manner consistent with applicable state and federal statutory law, regulations and Board Rules and at the direction of the ERS Board, its Executive Director, and ERS' staff, as permitted by CMS. ERS requires the selected PBM to replicate the benefits and program requirements as presented in this Article.
- A.4. The EGWP PDP should provide primary coverage through a self-funded EGWP. Secondary coverage may be provided through a self-funded wrap-around ("Wrap") arrangement. The purpose of the Wrap will be to (a) cover prescription drugs that the EGWP does not cover, prescription drugs not covered under Part D, and brand drugs in the Part D coverage gap; and (b) match the HealthSelect PDP benefit structure. Both the EGWP and the Wrap will be administered by the PBM. As noted in V.A.2. above, PBMs may submit either an EGWP + WRAP PDP plan or an EGWP PDP without a wrap product so long as the plan submitted by PBM complies with all requirements of the RFP.
- A.5. If the plan involves Wrap coverage, the EGWP PDP shall provide a single transaction coordination of benefits ("COB") process in order to provide a single plan from the perspective of the Medicare-primary Participants.
- A.6. The EGWP PDP should be administered in a manner so as to maximize the various sources of federal funds available in connection with EGWP.
- A.7. The PBM shall administer the EGWP PDP benefits presented in the Evidence of Coverage, a current copy of which may be found at the following link:

<http://ers.silverscript.com/ClientDocStore/140/a5711ad3-92b6-4c38-b26a-b4ff1cc5b678/ERS-2015-EOC.pdf>.
- A.7.a. The EGWP PDP will also provide coverage for prescriptions filled by pharmacies that do not participate in the pharmacy network. Participants who use non-network pharmacies submit a claim for benefits at non-network levels. The PBM shall be capable of administering this facet of the program.

A.8 **Claim Payments.** The PBM pays all EGWP PDP claims based on the enrollment data certified by CMS.

A.9 The PBM may propose an alternate approach to the Wrap plan or single transaction COB. However, any alternative must provide a seamless transaction to the Participant where the member cost is limited to no more than the plan's copayment and the plan's net cost is no more than under the EGWP plan.

B. Eligibility

B.1 The PBM shall comply with the Medicare eligibility requirements stated herein.

B.2 For purposes of the EGWP PDP Contract, eligible Participants are those Medicare-primary retirees and their Medicare-primary dependents who are members of the GBP as defined in the statutes, Board Rules and regulations or amendments thereto.

B.3 Eligible Participants for the HealthSelect Medicare Rx plan that decline coverage will not have any prescription drug coverage. An eligible Participant for the HealthSelect Medicare Rx that declines enrollment initially can enroll later.

C. Retail Pharmacy Network

C.1 **Current Retail Network.** HealthSelect is a statewide POS plan with employees widely dispersed throughout the State in both urban and rural locations. In addition, some Participants reside outside Texas and the United States. The current pharmacy network has been designed with this characteristic in mind and with the express intent of providing a wide choice of both independent and chain pharmacies.

C.2 **Retail Pharmacy Network.** ERS is interested in maintaining its current pharmacy network and is also interested in the PBM's most cost effective network that provides adequate access for the EGWP PDP Participants across the State and United States. For purposes of evaluating network adequacy, ERS will consider adequate access to equal one network pharmacy within five (5) miles of a Participant's residence, as determined by ERS. PBM shall provide its network using the table in Appendix L, HealthSelect Retail Pharmacy Network. In the alternative network, the PBM shall provide a retail pharmacy network that satisfies this access standard for 80% of the EGWP PDP members. A PBM interested in providing an alternative retail network shall complete the table in Appendix M, PBM's Proposed Alternate HealthSelect Retail Pharmacy Network, that shall represent a more cost effective alternative to the EGWP retail network. In addition, PBM shall provide its Specialty Drug Pricing by completing the table in Appendix N, PBM's Specialty Drug Pricing.

D. Retail Pharmacy Reimbursement

D.1 The PBM shall reimburse retail network pharmacies based on an amount determined as the lesser of (i) the pharmacy's usual and customary price ("U&C") or (b) the MAC plus the contracted dispensing fee or (ii) the sum of (a) ingredient cost, plus (b) dispensing fee. The payment to the pharmacy shall be equal to the amount determined above less (a) retail copayment, less (b) retail maintenance fee, if applicable, and/or less (c) the deductible, if applicable. For the EGWP PDP this is subject to CMS plan qualifications.

D.2 The retail maintenance fee is an amount paid by the Participant, in addition to the copayment, for maintenance medications purchased at retail pharmacies. The retail maintenance fee is \$0 for a Tier 1 drug, \$10 for a Tier 2 drug and \$15 for a Tier 3 drug. Additional information regarding the EGWP PDP benefit plan is included in the Evidence of Coverage.

D.2.a The EGWP PDP has a \$50 deductible that applies to retail, extended days' supply, and mail service pharmacies. The deductible is applied prior to the application of the copayment.

D.3 **Retail Copayment.** The PBM shall ensure that the retail pharmacy charges the Participant the lesser of (a) the pharmacy's U&C price, (b) the MAC plus the contracted dispensing fee, (c) the ingredient cost plus the dispensing fee or (d) the copayment plus the retail maintenance fee, if applicable, and/or plus the deductible, if applicable. For any prescription for which the Participant payment is limited to (a), (b) or (c) above, there shall be no additional charge to the EGWP PDP.

E. Mail Service

- E.1. The selected PBM shall be capable of providing mail services to meet the needs of the EGWP PDP Participants.
- E.1.a. The EGWP PDP should have a mail service option that allows the Participant to obtain up to a ninety (90) day supply of most covered drugs. A copayment would apply but the Participant would not be charged a Retail Maintenance Fee for maintenance medications. The copayment is based on the day supply requested: 1-30 day supply for one (1) retail copayment; 31-60 day supply for two (2) retail copayments; 61-90 day supply for three (3) retail copayments.
- E.1.b. Currently, ERS reimburses the PBM for covered drugs dispensed by mail service based on an amount equal to (a) ingredient cost plus (b) dispensing fee less (c) mail service copayment and/or the deductible, if applicable.
- E.1.c. The PBM shall submit its proposed mail service reimbursement rates in the PBM's *Price Proposal and Response Format*, Article XI.
- E.2. **Mail Service Copayment.** If the amount of the applicable copayment for a mail service prescription exceeds the applicable ingredient cost plus dispensing fee, if any, the PBM shall return to the Participant an amount equal to the copayment less the sum of the applicable ingredient cost plus dispensing fee, if any.
- E.3. The mail service pricing formula shall include the following services:
- Properly licensed pharmacists in good standing to oversee filling of prescriptions;
 - Handling and postage expense of mail service prescriptions, including special handling requirements for temperature-sensitive medications;
 - Braille labels on prescriptions for visually impaired Participants;
 - Drug Information Leaflet with each new prescription;
 - Access to the PBM's "Drug Information Service";
 - Receipts for medications obtained by Participants by mail service with the name of the drug dispensed, the date it was dispensed, the amount paid by the plan for the drug over and above the copayment, and the amount of the copayment;
 - Easy-open lids upon request; and
 - Cold pack shipping when necessary, including with all insulin orders.

F. Extended Day Supply Retail Network

TIC Section 1560.003 provides that a Participant must be allowed to obtain from a community retail pharmacy a multiple-month supply of any prescription drug under the same terms and conditions applicable when the prescription drug is obtained from a mail order pharmacy, if the community retail pharmacy agrees to accept reimbursement on exactly the same terms and conditions that apply to a mail order pharmacy. EGWP PDP Participants have access to certain pharmacies participating in the current pharmacy network that have agreed to participate in the Extended Days' Supply ("EDS") network. In accordance with the statute, ERS allows Participants to obtain a 31-90-day supply of a maintenance medication at a retail pharmacy under the same terms and conditions that would be applicable if the same medication was obtained through the mail service pharmacy. Specifically, (a) a Participant obtaining a 31-90-day supply at retail pays the same deductible and copay that would have been paid in the event that the medication had been obtained through the mail service pharmacy; and (b) the retail pharmacy is reimbursed at the same rate as is applicable to the mail service pharmacy. The PBM proposal shall include an EDS network that meets the requirements of TIC Section 1560.003.

G. Average Wholesale Price ("AWP")

- G.1. AWP is the term used for any one of the recognized published averages of the prices charged by wholesalers in the United States for the drug products they sell to a Pharmacy. The current source for AWP is the Medi-Span Electronic Drug File (MED-file) v2 from Medi-Span. The PBM may use this source to determine ingredient cost for retail, mail and specialty pharmacy reimbursement. If the PBM, however, uses an alternative pricing index for computing its pharmacy prices, please describe such method.

G.2 ERS reserves the right to utilize any pricing index it believes to be in the best interests of the PDPs throughout the Contract Term.

H. Formulary

The HealthSelect PDP currently has a three-tier incentive formulary. The categories of drugs covered under the current formulary are presented in Appendix G. **To be eligible for selection, the PBM shall have a viable formulary covering each of the categories listed in Appendix G. The PBM's Proposal shall include the specific formulary that the PBM intends to offer for HealthSelect Participants.** During the Contract Term, the PBM shall not make changes to nor implement a new formulary for the EGWP PDP without the express approval of ERS, unless required by law.

I. Therapeutic Substitution

ERS does not allow the PBM to initiate therapeutic substitution under either the retail or mail program. However, ERS may implement such a program at its discretion.

J. Drug Utilization Review

The PBM shall provide comprehensive drug utilization review ("DUR") that meets or exceeds the standards set forth in the Omnibus Budget Reconciliation Act of 1990 (P. L. 101-508) ("OBRA"). The PBM shall provide concurrent (point-of-sale) DUR as well as retrospective DUR. The cost for such program shall be included in the PBM's *Price Proposal and Response Format*, Article XI.

K. Condition Management

K.1. The PBM shall provide Condition Management Programs on behalf of the EGWP PDP Participants in order to provide additional cost containment. The cost for such programs shall be included in the PBM's *Price Proposal and Response Format*. The Condition Management Programs currently in place in the EGWP PDP are applied to:

- Respiratory Program;
- Diabetes Program;
- Cardiovascular Program;
- Digestive Health Program;
- Hepatitis C Program; and
- Multiple Sclerosis Program.

K.2. ERS requires the PBM to make available, implement, and administer the PBM's Condition Management Programs, as agreed between the PBM and ERS, to the EGWP PDP Participants. The PBM may, from time-to-time, recommend modifications to the Condition Management Programs for the EGWP PDP that PBM determines to be in the best interest of Condition Management Program Participants. The PBM shall notify ERS and obtain ERS' consent to any modification of the Condition Management Programs prior to implementing or making them available to the EGWP Participants.

K.3. The PBM may use the above-referenced information to profile Participants solely in order to do the following: to offer, implement and administer the Condition Management Programs; to assess patterns of care and outcome measurements; and to provide opportunity analysis for medication adherence improvements.

L. Prior Authorization

L.1. The PBM shall provide prior authorization programs in order to provide additional cost containment in the EGWP PDP. Information about prior authorization may be found at the following link:

<http://ers.silverscript.com/ClientDocStore/140/a5711ad3-92b6-4c38-b26a-b4ff1cc5b678/ERS-2015-EOC.pdf>.

L.2. The cost for such programs shall be included in the PBM's *Price Proposal and Response Format*, Article XI. All savings attributable to such programs shall accrue solely to the EGWP PDP.

M. Compound Drugs

In response to excessive utilization and pricing, ERS implemented a rigorous initiative to control rapidly increasing expenditures for compound drugs. Effective July 1, 2014, ERS ceased coverage of non-FDA approved bulk chemicals in compound drugs, and began to require pre-authorization for all compound drugs costing \$300 or more. The PBM must be capable of administering this policy.

N. Coordination of Benefits

N.1 The PBM shall provide COB with any group plan under which an EGWP PDP Participant has coverage, regardless of whether the PBM also services the other group plan as its PBM. The PBM shall establish integrated exchange of information for other health coverages with ERS' existing HealthSelect third-party administrator ("TPA"). ERS has determined that the EGWP PDP COB follows the rules of COB adopted by TDI, which may be found at <http://www.tdi.texas.gov/>. The cost for such programs shall be included in the PBM's Price Proposal and Response Format. All savings attributable to such programs shall accrue solely to the EGWP PDP.

N.2 **Medicare Part B Coordination of Benefits.** The PBM shall include Medicare Part B coordination at point-of-sale in the PBM's Price Proposal and Response Format, Article XI.

N.2.a. The PBM shall process claims from various State Agencies on behalf of EGWP PDP Participants who also participate in other state and federal government institutional programs. ERS shall authorize the PBM to process these claims subject to the plan's edits and only in accordance with the approved plan design applicable to claims submitted by a plan Participant. PBM shall pay all claims that meet plan design parameters in accordance with the plan's terms as specified in the Evidence of Coverage, and reject those that do not meet those parameters, including those that are submitted in the wrong format or are missing one or more data elements that are required by the plan design.

N.2.b. Claims should not be rejected solely because they do not meet the plan's timely filing edits. In processing such claims under these parameters, PBM should reimburse the plan Participant at the lesser of (1) the amount the Participant actually paid, or (2) the negotiated network price, minus any applicable deductible, copayment or coinsurance that the EGWP PDP Participant is responsible for under the plan design. The cost for this process shall be included in the PBM's Price Proposal and Response Format.

O. GBP Annual Enrollment Periods

PBM shall refer to information in Sections IV.P.1. – IV.P.1.c. for information pertaining to the GBP annual enrollment periods.

P. Grievances and Appeals

For information regarding Grievances and Appeals for the EGWP PDP, PBMs shall refer to the information in Chapter 7 of the current Evidence of Coverage (which begins on page 80), a copy of which may be found at the following link:

<http://ers.silverscript.com/ClientDocStore/140/a5711ad3-92b6-4c38-b26a-b4ff1cc5b678/ERS-2015-EOC.pdf>.

The PBM shall provide support for this function.

Q. Pharmacy Network Management

Q.1. **Pharmacy Network Management Requirements.** The PBM shall provide all services specified in this RFP including, but not limited to, the following:

Q.1.a. The PBM shall provide initial and ongoing recruitment, credentialing, and contracting with a sufficient number of pharmacies, as specified herein, to provide reasonably convenient, accessible, and quality pharmaceutical coverage throughout the State and United States in accordance with applicable state and federal laws, regulations and industry practice.

- Q.1.b. The PBM shall provide ongoing management of the pharmacy network.
- Q.1.c. The PBM shall require that its network pharmacies cooperate with reasonable requests by EGWP PDP Participants to prepare and provide, without charge to the Participants, any records pertaining to prescriptions or copayment amounts.
- Q.1.d. The PBM shall provide ongoing review of retail pharmacy reimbursement rates and recommend adjustments as appropriate, subject to consultation with and approval by ERS.
- Q.1.e. The PBM shall provide initial and ongoing education to ensure that network Pharmacies are familiar with and knowledgeable regarding the benefits (including any benefit design changes) and other plan provisions.
- Q.1.f. The PBM shall provide ongoing review of the fees paid to network pharmacies and recommend adjustments as appropriate, subject to consultation with and approval by ERS.
- Q.1.g. The PBM shall conduct an ongoing pharmacy quality assurance review to be monitored via periodic Participant surveys and other reporting mechanisms.
- Q.1.h. As it relates to the management of the pharmacy network, the PBM shall provide ongoing utilization management, including preauthorization of services and monitoring, and enforcement of compliance with pharmacy protocol.
- Q.1.i. The PBM shall provide 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.
- Q.1.j. As it relates to the management of the pharmacy network, the PBM shall provide to an authorized representative of ERS, for ERS' approval, a template or form letter or other means of standardized communication prior to sending, disseminating or otherwise providing such written or oral communications to any person or entity reasonably connected to or involved in the PDPs or the GBP. The PBM shall regularly review, revise and update where necessary, all information contained on its website that relates to or may be utilized by the PDPs and any of its Participants.
- Q.1.k. In the event ERS elects a brand-to-brand mail service interchange program and a substitution is not rejected by a health care provider when filling a mail service prescription for a Participant, a substitution may be made, at the discretion of the PBM, in accordance with licensed pharmacy practice.

R. Clinical Management

- R.1. The PBM shall provide ongoing utilization management, including, but not limited to, drug utilization review such as prior authorization, step therapy, and disease management programs described herein.
- R.1.a. When permitted by CMS, the PBM shall provide all cost savings programs to HealthSelect at no additional cost to ERS, the GBP, its Participants or the State. Any fees associated with these programs must be recovered solely through the PBM's Price Proposal and Response Format. Programs funded by outside entities, such as pharmaceutical companies, may not be used.
- R.1.b. The PBM shall act in the best interests of the EGWP PDP as required by the Contractual Agreement in determining when it should substitute a generic medication for a brand medication in filling a HealthSelect Participant's mail service prescriptions. To this end, if necessary, the PBM shall contact the Participant's health care provider who authorized the filling of the original prescription and obtain the provider's authorization to substitute generic medication as contemplated by the PBM and as permitted by applicable laws and regulations.
- R.1.c. The PBM shall warrant and represent that it provides appropriate coverage management services in accordance with applicable state and federal laws, regulations and protocol regarding pharmacy benefit managers. Such services include reviewing claims to determine whether they are medically and pharmaceutically necessary. These services are used to make coverage decisions that are required when the information needed to determine coverage for a particular

drug is not available from the ordinary claims transaction. Each coverage management service adopted by ERS has been determined based on the recommendations and expertise of the PBM. In making coverage decisions for claims incurred by Participants, the PBM gathers the necessary information from health care providers prescribing the applicable drugs and from PDP Participants, compares that information with the EGWP PDP plan design, and informs the health care providers and Participants of the coverage decision.

- R.1.d The PBM shall make copies of its formulary available to each EGWP PDP Participant, at no additional cost, upon request of the Participant or ERS. The PBM shall train its employees to assist Participants who call, email or write to the PBM with formulary questions, including, but not limited to answering questions about the process for creating the formulary, and transferring or otherwise making available to Participants a PBM pharmacist to discuss preferred and generic alternatives in the event any formulary change affects the Participant. If a change in the formulary negatively affects a particular Participant's medication, such that a medication that was on the formulary becomes a non-formulary item or a medication changes from a lower cost tier to a higher cost tier, the PBM agrees to contact that Participant individually, in writing, no less than thirty (30) days prior to implementation of the change. Within ten (10) business days of any formulary change, the PBM shall update its formulary listing on its website.

S. Enrollment and Claims Data

- S.1. Refer to the Experience Data referenced as Appendix H. This appendix presents historical enrollment, financial, utilization, cost data and monthly claims information from the GBP's PDP plans.

- S.1.a. To assist in the analysis of this information, instructions to obtain electronic information is included in Appendix H, which contains all of the data exhibits from this appendix. Instructions for reading the files are included in Exhibit E of Appendix H. In addition to the exhibits, Appendix H contains (i) an enrollment file containing information on all Medicare-eligible Participants, and (ii) a set of files containing all PDP claims for Medicare-eligible Participants for the period September 1, 2013 to August 31, 2015, respectively. Appendix I-2 includes file layout, data fields, and additional file expectations. The PBM must meet all file requirements stated in this RFP or provide their recommended file layout, including data field descriptions, with their response for ERS' review and consideration.

T. Dispensing Accuracy Rate

- T.1 PBM shall comply with CMS requirements with regard to the dispensing accuracy rate.

U. Interrogatories

PBM - Benefit Design

- U.1 Describe the range of benefit designs that PBM can administer. Address at least the following:
- Percentage coinsurance;
 - Multiple tier copayments;
 - Annual maximum out-of-pocket limit (in coordination with the HealthSelect TPA);
 - Prescription Drug deductible; and
 - Dispense as Written ("DAW") Penalty.
- U.1.a. Describe the PBM's proposed EDS network.
- U.1.b. Confirm that retail pharmacies participating in the EDS network will be reimbursed under the same terms and conditions applicable to the mail service pharmacy.
- Confirm
- Unable to Confirm; the PBM shall provide a detailed explanation in Section V.V.1. below

- U.1.c. Confirm that all costs related to the EDS network are reflected in the PBM's *Price Proposal and Response Format* quoted in Article XI.
 Confirm
 Unable to Confirm; the PBM shall provide a detailed explanation in Section V.V.1. below.
- U.1.d. Discuss available options PBM can provide for filling and dispensing mail service prescriptions at retail pharmacies. Include all associated costs and whether such costs are reflected in the PBM's *Price Proposal and Response Format* quoted in Article XI.
- U.1.e. Discuss any programs offered by the PBM that will promote lower cost drug alternatives such as the promotion of generics and OTC medications.
- U.1.f. Describe any web tools available to support such cost saving efforts and discuss the associated costs in providing these services. Indicate whether such costs are reflected in the PBM's *Price Proposal and Response Format* quoted in Article XI.
- U.1.g. What is the PBM's pill splitting policy?
- U.1.h. Can the PBM provide blister packs for use by assisted care living facilities in ninety (90) day quantities?
- U.1.i. Confirm that the PBM can administer the compound drug policy described in Article V.M.
 Confirm
 Unable to Confirm; the PBM shall provide a detailed explanation in Section V.V.1. below.
- U.1.i.i. Describe how PBM will administer the compound drug policy under the EGWP PDP.

Formulary

- U.2. Discuss the various factors to consider when creating a customized formulary and detail the associated cost. If there are any associated cost in creating a customized formulary, please provide the cost in the *Price Proposal and Response Format*, Article XI.
- U.2.a. Describe the different types of PBM formularies, including the composition of the committee responsible for formulary development.
- U.2.b. Describe how the PBM assures that all Pharmacy and Therapeutic Committee members are qualified, objective and not influenced by a third party.
- U.2.c. Provide an electronic version of the PBM's 2016 formulary and preferred drug list that includes drug class, name, strength, dosage form and 11-digit NDC number for every product on the list. PBM shall refer to the Formulary provided in Appendix G for a list of categories that the Formulary should include.
- U.2.d. With regard to PBM's formulary:
 - What elements are reviewed when determining drugs to be included in the formulary?
 - How often does the formulary change?
 - What is the process for announcing these formulary changes to the client and to patients, including the frequency of the notification?
- U.2.e. Using the detailed claim files located in Appendix H and based on the instructions included therein, indicate which of the EGWP PDP claims provided were on the PBM's formulary on November 30, 2015.
- U.2.f. Using the detailed claim files located in Appendix H and based on the instructions included therein, indicate which of the EGWP PDP claims provided would have been deemed maintenance medications on November 30, 2015.
- U.2.g. Provide a copy of the PBM's proposed EGWP formulary. Provide a side-by-side comparison of the proposed formulary to the current formulary.

U.2.h Describe how the PBM would support custom changes to the formulary at the request of ERS including the CMS requirements for modification to the prescription drug formulary and the expected timeframes and durations that this process requires.

U.2.i Confirm that the PBM will provide all CMS required filings related to formulary, Medication Therapy Management ("MTM") and other clinical programs on a timely basis.

- Confirm
 Unable to Confirm; the PBM shall provide a detailed explanation in Section V.V.1.

Retail, Mail Service, and Specialty Pharmacies

U.3. With regard to the insurance requirements (including professional, general liability, malpractice, and fidelity) for each type of pharmacy in the PBM's network, including the PBM's mail service facility and retail pharmacies, answer the following:

- What are the minimum required insurance coverages per individual pharmacy or group? If the process differs by type of pharmacy (i.e., independent vs. chains), please indicate and describe separately.

U.3.a If PBM has a pharmacy network outside of Texas and/or the U.S., describe the network, providing information regarding total pharmacies and location of them outside of Texas and/or the U.S. If PBM does not have such a network, PBM shall answer this "N/A."

U.3.b Is there a separate process for filing claims, processing claims and paying claims from PBM's pharmacies outside of Texas and/or the United States? If yes, please describe.

- Yes No

U.3.c. The PBM shall confirm that under each of the retail pharmacy network options that the Participant is required to pay the lesser of (a) the pharmacy's U&C price (b) the MAC plus the contracted dispensing fee or (c) the ingredient cost plus the dispensing fee, or (d) the copayment plus the retail maintenance fee, if applicable, plus the deductible, if applicable. Also, for any prescription for which the Participant payment is limited to (a), (b) or (c) above, the PBM shall confirm there shall be no additional charge to the EGWP PDP.

- Confirm
 Unable to Confirm; the PBM shall provide a detailed explanation in Section V.V.1.

U.3.d. Provide a description of the PBM's process to ensure individual pharmacies are abiding by the provision listed in Section V.U.3.c. above

U.3.e With regard to the payment methods used to reimburse retail pharmacies, answer the following:

- What payment methods are used to reimburse retail pharmacies (i.e., including draft, check, and electronic transfer)?
- Does the payment method vary by volume? If so, indicate the payment method by volume.

U.3.f Describe the credentialing and re-credentialing process and minimum criteria for selecting a network pharmacy.

U.3.g Provide a representative specimen copy of the PBM's contract with its contracting pharmacies.

U.3.h Include a current electronic directory of the PBM's pharmacy network including the National Association Board's Pharmacy (NABP) number for each pharmacy, full address and zip code. PBM shall use the tables provided in Appendices L (HealthSelect Retail Pharmacy Network), M (PBM's Proposed Alternate HealthSelect Retail Pharmacy Network, if applicable), and N (PBM's Specialty Drug Pricing) to provide this information.

U.3.i With regard to communications with PBM's participating pharmacies, answer the following:

- How will the PBM communicate with and educate participating pharmacies about the EGWP PDP?
- What is the anticipated frequency of such communication?
- What procedures are in place to ensure that correct, complete and quality information shall be provided to network pharmacies in connection with the EGWP PDP?

U.3.j With regard to physicians and/or pharmacists use of the PBM website, answer the following:

- If the physicians and/or pharmacists have access, what capabilities do they have?
- How does the PBM educate physicians/pharmacists on using the PBM's website?

- U.3.k. How does the PBM resolve issues related to pharmacy non-compliance with contractual requirements?
- U.3.l. What performance-based systems does the PBM use in connection with retail pharmacies?
- U.3.m. How does the PBM measure its effectiveness in achieving retail pharmacy network compliance?
- U.3.n. How is the network's performance measured?
- U.3.o. How would the PBM involve the retail pharmacies in achieving ERS' objectives in the improvement of patient care and the reduction of overall health care costs?
- U.3.p. What steps are taken to increase generic substitution?

Retail Pharmacy Pricing

- U.4. The RFP specifies the pricing indices in Article V.G. to be used by the PBM in connection with the EGWP PDP (AWP, for example). The PBM shall confirm they can administer the pricing indices in connection with the EGWP PDP.
 - Confirm
 - Unable to Confirm; the PBM shall provide a detailed explanation in Section V.V.1.
- U.4.a. Describe any other pricing methods the PBM prefers to use over the indices specified in the RFP and include in the PBM's description the advantages of using the alternative pricing indexes.
- U.4.b. Describe the PBM's MAC program and address the following points:
 - Selection of drugs;
 - Number of drugs covered;
 - CMS MAC comparison;
 - Frequency of updates;
 - Available options;
 - Pharmacist's incentives; and
 - MAC reimbursement determination.
- U.4.c. Using the detailed claim files located in Appendix H and based on the instructions included therein, indicate the following:
 - Each prescription that would have been reimbursed based on MAC; and
 - The MAC pricing applicable to each such prescription on November 30, 2015.
- U.4.c.i. PBM shall provide the specific discount and MAC pricing in the PBM's response.

Retail Pharmacy Audits

- U.5. Is the right to audit included in the PBM's standard retail pharmacy contracts?
 - Yes No

If the answer is "No," how does PBM verify that Participants' pharmacies are administering the plan correctly?
- U.5.a. Describe the PBM's retail pharmacy auditing capabilities, including, but not limited to:
 - U.5.a.i. Authenticating prescriptions with claims;
 - U.5.a.ii. Uncovering generic dispensing when billing for branded products and proper dispensing of medication in accordance with the prescriber's order;
 - U.5.a.iii. If the PBM makes recoveries during the audit process, how would such recoveries be credited to ERS and how often;
 - U.5.a.iv. The percentage of retail stores that is audited each year for the PBM's book of business;
 - U.5.a.v. The percentage of total claims that is audited under the PBM's book of business each year;

- U.5.a.vi. The process by which a retail pharmacy may be terminated from the network due to fraud, abuse and other improprieties;
- U.5.a.vii. The frequency of the audits.
- U.5.b. The PBM shall submit a most recent copy of a retail pharmacy audit report.
- U.5.c. Pharmacy Audits (complete the following for 2015):
Percent of Network Pharmacies Audited:
 - Desktop _____%
 - On-Site _____%
 - At Random _____%
 - By Independent Agent _____%
 - Percent of pharmacies needing corrective action _____%
 - Percent of retail pharmacy contracts terminated due to audit: _____%
 - Most prevalent reason for pharmacy termination: _____

- U.5.d. The PBM shall confirm that audits do not use extrapolation to determine results.
 - Confirm
 - Unable to Confirm; the PBM shall provide a detailed explanation in Section V.V.1

- U.5.e. The PBM shall confirm that ERS shall receive 100% of the funds recovered as a result of the audits.
 - Confirm
 - Unable to Confirm; the PBM shall provide a detailed explanation in Section V.V.1

Mail Service Pharmacy Management

- U.6. Does the PBM own and operate its own mail service pharmacy(ies)?
- U.6.a. What are the locations of the PBM's mail service pharmacy(ies)?
- U.6.b. Which locations would be responsible for servicing EGWP PDP Participants? Include locations that handle specific medication types, if applicable.
- U.6.c. What are the hours of operation of the PBM's pharmacy help desk?
- U.6.d. If PBM uses subcontractors for mail service pharmacy deliveries, what are the location(s) of the PBM's subcontractors for mail service pharmacy(ies)? (PBM shall include any such subcontractors in response to the subcontractor interrogatory in the Operational Section of this RFP.) If PBM does not use subcontractors for mail service pharmacy deliveries, PBM shall answer this "N/A."
- U.6.e. How does the selected PBM propose to transition existing mail service refills from the current PBM?
- U.6.f. Would the PBM contact physician offices to transfer existing prescriptions into the PBM's mail service pharmacy?
- U.6.g. Briefly outline the daily operations that take place at the PBM's mail service facility. Include highlights of procedures that target quality control measures.
- U.6.h. Briefly outline the PBM's mail service program as it relates to cost containment.
- U.6.i. With regard to packaging and shipping medications, answer the following:
 - How would the PBM package medications and ship them to the Participants?
 - What primary shipping service does the PBM use?
 - How does the PBM ship medications that are temperature sensitive?
 - Describe the PBM's process on how all medications requiring cold packs will be sent regardless of the weather.
- U.6.j. Describe online integration, if any, with retail pharmacies to ensure non-duplication and to identify potential adverse drug interactions.

- U.6.k. What was the average daily number of prescriptions filled by mail service from January 1, 2015 through December 31, 2015?
- U.6.k.i. Does this represent an increase in volume from the previous year? Yes No
If yes, by how much?
- U.6.l. What is the mail service facility's projected excess capacity to fill prescriptions as of:
- January 1, 2016?
 - January 1, 2017?
 - January 1, 2018?
- U.6.m. How often does the PBM's mail service switch generic manufacturers?
- U.6.m.i. How are Participants notified of the switch?
- U.6.n. With regard to the mail service dispensing process, answer the following:
- Provide a detailed description of the mail service dispensing process from the time a new prescription arrives until it is mailed.
 - Specify the steps that are completed by mail service staff.
 - Specify the steps that are completed by a licensed pharmacist.
 - In the last six (6) months, what percent of protocol prescriptions, once received, were dispensed in twenty-four (24), forty-eight (48) or seventy-two (72) hours or greater?
- U.6.o. Discuss the PBM's mail service quality assurance program.
- U.6.p. With regard to prescriptions that are lost or stolen, provide the following:
- Describe the procedure the PBM utilizes when a prescription is lost or stolen.
 - Does the PBM charge the Participant for the replacement? If so, when?
 - Does the PBM charge the plan for the lost prescription? If so, when?
- U.6.q. How does a Participant cancel a prescription? Include a discussion of when and how the Participant and plan is credited for such a cancellation.
- U.6.r. Describe the PBM's return policy. Include when and how the Participant is credited and how the plan is credited for the return.
- U.6.s. What is the PBM's policy in substituting A-rated generics through the mail service process?
- U.6.t. What is PBM's policy in substituting less than A-rated generics through the mail service process?
- U.6.u. Explain any state/federal regulations that impact dispensing practices at the PBM's mail service facilities, including those that concern faxing prescriptions, controlled substances, and substitution of less than A-rated generics.
- U.6.u.i. Identify the mail service facilities affected by these state/federal regulations.

Mail Service Pharmacy Pricing

- U.7. With regard to repackaging drugs, answer the following:
- Does the PBM's mail service repackage drugs? Yes No
 - If yes, how will such repackaging impact payments under the EGWP PDP?
 - Describe how repackaging will benefit ERS.
 - Will ERS be charged a higher AWP than in the absence of repackaging?
 - How will ERS verify the AWP if the product is repackaged?
 - Who sets the AWP of a repackaged product?
- U.7.a. Does the PBM, parent organization or any affiliate or subsidiary of PBM own a repackager/labeler company?
- U.7.b. How often are AWP price updates applied to the PBM's adjudication system?

- U.7.c. What would be the rate impact (discount and MAC pricing) for the mail service proposal should ERS institute a mandatory mail service requirement for all maintenance medications?

Mail Service Pharmacy Audits

- U.8. With regard to mail service pharmacy audits, provide the following answers:
- Are on-site audits performed at the PBM's mail service pharmacies?
 - Describe the frequency, types of audits and who performs the audits.
 - Is the mail service pharmacy that shall support ERS' mail service program subject to the same audit programs as the PBM's retail network?
- U.8.a. The PBM shall provide a copy of its most recent mail service facility audit. If not available, please explain.

Retail and Mail Service Pharmacy Clinical Management and Managed Care Programs

- U.9. Do the PBM's mail service and retail pharmacy networks utilize the same Participant prescription data for DUR purposes?
- U.9.a. Discuss how the PBM identifies off-label drug dispensing.
- U.9.b. What is the PBM's policy regarding physician notification of potentially serious drug reactions?
- U.9.c. Does the PBM offer integrated patient, pharmacy and physician communications?
 Yes No
- If yes, describe.
- U.9.d. Is a licensed pharmacist available by toll-free telephone line twenty-four (24) hours a day, seven (7) days a week, in the PBM's mail service facility? If not, describe the availability.
- U.9.e. Describe the drug information and consultation provided to patients who purchase medication through the PBM's mail service pharmacy.
- U.9.f. What verification process does the PBM use to ensure that the pharmacist is entering the proper number of days' supply?
- U.9.g. If there is a conflict, does the pharmacist receive a warning or a message indicating that the claim shall not be paid?
- U.9.h. Describe the PBM's concurrent DUR program.
- U.9.i. Does the PBM expect to make updates to its DUR program in the future? If so, please describe.
- U.9.j. How does the PBM ensure retail and mail service pharmacy compliance with DUR messages?
- U.9.k. Provide information concerning the personnel dedicated to utilization management and outcomes measurement.
- U.9.l. Describe the PBM's prior authorization and/or case management programs, including integration capabilities with the TPA and MA carriers.
- U.9.m. The PBM shall describe how it coordinates with the TPA and MA carriers regarding Medicare Part B and D coverage.
- U.9.n. How does the PBM determine who is responsible for Medicare Part B and D coverage?
- U.9.o. What flexibility does ERS have in deciding which edits are hard and which edits are soft?
- U.9.p. Describe communication programs used to educate Participants on appropriate prescription drug utilization, compliance with drug regimens, generics, cost-effective drug therapy, and formularies.
- U.9.q. How does the PBM educate physicians about drugs covered under the plan and the availability of lower cost alternatives?

- U.9.r. Describe how the PBM identifies and monitors Participants with high drug utilization.
- U.9.r.i. Does this include controlled substance usage and potential fraud and abuse circumstances?
- U.9.s. With regard to PBM's disease management programs, provide the following:
- How does PBM identify Participants for their inclusion in the program;
 - How does PBM establish protocols for disease management program guidelines;
 - How does PBM educate physicians, pharmacists and Participants about disease management programs;
 - Does PBM have any disease management program integration capabilities with the TPA and MA carriers;
 - Discuss the PBM's outcomes management program.
- U.9.t. Describe the PBM's clinical intervention programs. Your answer should include, but not be limited to, a description of the medical staff that oversees the development of the PBM's clinical programs.

Mail and Retail Pharmacies - Other

- U.10. Confirm that the PBM will guarantee that ERS shall be charged only the generic price and the plan Participant shall be charged with only the generic copayment if the generic is out of stock and a brand name drug is dispensed?
- Confirm
- Unable to Confirm; the PBM shall provide a detailed explanation in Section V.V.1.

Specialty Pharmacy Management

- U.11. Does the PBM offer a specialty pharmacy program that integrates with the medical program?
- Yes No
- If yes, please describe the program.
- U.11.a. Does the PBM contract with, or own, one or more specialty pharmacies?
- If yes, please provide a list of the specialty pharmacies.
- U.11.b. How long has the PBM had the specialty pharmacy program in place?
- U.11.c. What is the total annual purchasing volume of PBM's specialty pharmacy?
- U.11.d. Please use the table provided in Appendix N and provide a list of specialty medications dispensed by the specialty pharmacy.
- U.11.e. How many clients does the PBM currently provide specialty pharmacy services to?
- U.11.f. Please provide three (3) client references for the specialty pharmacy program. (**Note:** The PBM's Proposal to this request officially authorizes ERS to contact these client references to discuss the services and other considerations that the PBM has provided, and authorizes the organizations/entities to provide such information to ERS, and shall release and hold harmless ERS and all such information.)
- U.11.g. Please provide a list of specialty medications dispensed by the specialty pharmacy.
- U.11.h. What are the locations of the PBM's specialty drug pharmacies?
- U.11.h.i. Which locations would be responsible for servicing EGWP PDP Participants? Include locations that handle specific medication types, if applicable.
- U.11.i. What are the hours of operation of the PBM's pharmacy help desk?

- U.11.j. If PBM uses subcontractors for specialty drug pharmacy deliveries, what are the location(s) of the PBM's subcontractors for specialty drug pharmacy(ies)? (PBM shall include any such subcontractors in response to the subcontractor interrogatory in the Operational Section of this RFP.) If PBM does not use subcontractors for specialty drug pharmacy deliveries, PBM shall answer this "N/A."
- U.11.k. How does the selected PBM propose to transition existing specialty drug refills from the current PBM?
- U.11.l. Would the PBM be willing to contact physician offices to transfer existing prescriptions into the PBM's specialty drug pharmacy?
- U.11.m. Briefly outline the daily operations that take place at the PBM's specialty drug facility. Include highlights of procedures that target quality control measures.
- U.11.n. Briefly outline the PBM's specialty drug program as it relates to cost containment.
- U.11.o. With regard to packaging and shipping medications, answer the following:
- How would the PBM package medications and ship them to the Participants?
 - What primary shipping service does the PBM use?
 - How does the PBM ship medications that are temperature sensitive?
 - Describe the PBM's process on how all medications requiring cold packs will be sent regardless of the weather.
- U.11.p. Describe online integration, if any, with retail pharmacies to ensure non-duplication and to identify potential adverse drug interactions.
- U.11.q. With regard to the specialty drug dispensing process, answer the following:
- Provide a detailed description of the specialty drug dispensing process from the time a new prescription arrives until it is mailed.
 - Specify the steps that are completed by specialty drug staff.
 - Specify the steps that are completed by a licensed pharmacist.
 - In the last six (6) months, what percent of protocol prescriptions, once received, were dispensed in twenty-four (24), forty-eight (48) or seventy-two (72) hours or greater?
- U.11.r. Discuss the PBM's specialty drug service quality assurance program.
- U.11.s. With regard to prescriptions that are lost or stolen, provide the following:
- Describe the procedure the PBM utilizes when a prescription is lost or stolen.
 - Does the PBM charge the Participant for the replacement? If so, when?
 - Does the PBM charge the plan for the lost prescription? If so, when?
- U.11.t. How does a Participant cancel a prescription? Include a discussion on when and how the Participant and plan is credited for such a cancellation.
- U.11.u. Describe the PBM's return policy. Include when and how the Participant is credited and how the plan is credited for the return.

V. Deviations

Review the deviations instructions referenced in Section I.B.2.

- V.1. Affirm that the PBM shall comply with all of the **EGWP PDP Plan Design, Eligibility, Network and Program Requirements** as described herein **Article V** of this RFP.

Affirm Affirm with the proposed Deviations

If applicable, enumerate and provide a detailed description of each of the deviations between the PBM's Response and these requirements.
PBM's Requested Deviations Detail:

VI. Communication Requirements

This Article describes the PBM's communication requirements with Participants, retirees, State Agencies, ERS staff, and other constituents, as further described herein. The PBM shall administer the PDPs in a manner consistent with all applicable laws and regulations, both state and federal, including the Board Rules, and at the direction of ERS' Board, its Executive Director, and ERS staff. Any start-up costs and the cost of the requirements described herein shall be recovered by the PBM by making provisions for such expenses in the PBM's *Price Proposal and Response Format*, Article XI.

The PBM's communication materials designed for Participants cannot, and the PBM represents and warrants that it shall not, advertise or promote coverage, services, products or materials, other than those relating to the PBM'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. In all cases, the PBM is not allowed to disseminate materials or information relating to the GBP without prior written ERS approval. The final materials used by the PBM must not differ in form or utility from those approved by ERS.

CMS rules and regulations may conflict with ERS' communication requirements with regards to the EGWP PDP. In the event of such a conflict, CMS' rules and regulations will prevail over ERS' communication requirements. The PBM shall provide advance written notice of all CMS-required communications, including a list of all known CMS-required communications, triggers, and associated distribution dates.

A. Program Specific Overview

In all cases, the PBM'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. The PBM 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 the PBM's customer service representatives ("CSR") 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*, located in the *ERS Editorial Style Guide and Usage Manual*, located on ERS' website at: http://www.ers.state.tx.us/ERS_Guidelines/). The final materials used by the PBM shall not differ in any way from those approved by ERS without ERS' permission. **The PBM shall provide all finalized communication materials as directed by ERS' Benefits Communications ("BCOM") representative.**

- A.1. **Prohibition.** The PBM 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.
- A.2. **Customized GBP-specific Materials.** The PBM shall have the ability to develop and customize communication materials designed for active employees, retirees, dependents, State Agencies and higher education employers. The PBM shall provide this material electronically to ERS in a format that allows for electronic view of formatting and electronic editing.
 - A.2.a 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. The PBM shall not distribute these communication materials until they have gone through a formal review process at ERS as discussed in Sections VI.A.5.-VI.A.5.a. below.
 - A.2.b Once communications are approved by ERS, the PBM may not alter the materials in any way without ERS' permission.
 - A.2.c In addition to the ERS-specific materials, ERS may suggest refinements to other materials and will work with the PBM to modify materials as needed. These include operating documents such as system-generated Participant letters, Evidence of Coverage ("EOC"), claim approval and denial letters, other claims processing documents, promotional items and all other program communications.

- A.3. **Plain Language Requirement.** The PBM is responsible for a wide variety of communication materials explaining the plan to eligible employees, retirees and their dependents. ERS requires the PBM to comply with TDI's plain language requirements as outlined in the Texas Administrative Code, 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, including those in ERS' *Marketing Guidelines for GBP & ERS Vendors*, located in the *ERS Editorial Style Guide and Usage Manual*, located on ERS' website at: http://www.ers.state.tx.us/ERS_Guidelines/. In addition, the material shall be subject to editing and customization, including legal disclaimers and other standard language.
- A.3.a. Communication to Participants in both PDPs 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 PBM communication materials shall meet the Americans with Disabilities Act ("ADA") and 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 ("Section 508") requirements for accessibility, including any amendment thereto.
- A.3.b. Communication material shall be available in both print and electronic forms. Certain communication material, such as pharmacy 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 of the Rehabilitation Act.
- A.4. **PBM Training Requirement.** The PBM's Account Team, as defined below, shall have designated 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 the PBM internal operations shall be provided to ERS Customer Benefits, Benefit Contracts, and Benefits Communications 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. The PBM 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. The PBM should be able to provide web-based training in addition to in-person training.
- A.5. **PBM Communication Materials.** BCOM shall assign a communications account manager to manage communication material for review and approval. The PBM 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). The PBM shall regularly review, revise and update, where necessary, all information contained on its website that relates to or may be utilized by any Participant. All communication materials must be approved by the BCOM divisional designee at least fifteen (15) business days prior to the PBM sending, disseminating or otherwise providing such written or oral communications to any person or entity. On occasion, the PBM 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.
- A.5.a. **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. The PBM may not alter a final watermarked version in any way without ERS' permission.
- A.6. **Advertising and other Communications.** The PBM is required to obtain ERS' approval for all proposed newspaper, web, and social media advertisements used to promote GBP benefits programs.
- A.6.a. The PBM's failure to receive ERS' approval for the use of GBP-specific communication materials prior to dissemination may result in an assessment of Performance Guarantees as provided in the *Performance Guarantees* in Appendices F-1 and F-2, and/or liquidated damages and/or other legal remedies available to ERS in the Contract.

A.7. **Media Relations, Public Information and Outreach.** As a PBM for the GBP, the PBM may receive inquiries from interested parties relating to the PBM's program administration, benefits and/or services. Although information about and generated under this RFP and the Contract may fall within the public domain, the PBM shall not release information about or related to this Contract to the general public or media verbally, in writing, or by an electronic means without prior approval from ERS' Assistant Director ("AD") of Benefit Contracts, or designee, unless the PBM is required to release requested information by law. In the event such release is required by law, the PBM shall first give written notice to ERS of such requirement.

Aside from any confidential and/or proprietary information, ERS reserves the right to announce to the general public and media:

- Award of the Contract;
- Contract terms and conditions;
- Scope of work under the Contract;
- Deliverables and results obtained under the Contract;
- Impact of Contract activities;
- Assessment of the PBM's performance under the Contract; and
- Any other information related to the Contract or solicitation.

Except where ERS approval has been granted in advance, the PBM shall not seek to publicize and shall not respond to unsolicited media inquiries requesting announcement of the Contract award, Contract terms and conditions, Contract scope of work, government-furnished documents ERS may provide to the PBM to fulfill the Contract scope of work, deliverables required under the Contract, results obtained under the Contract, and impact of Contract activities. If contacted by the media about this Contract, the PBM agrees to notify ERS' AD of Benefit Contracts, or designee, in lieu of responding immediately to such media inquiries.

A.7.a. **Media Inquiries.** The PBM shall provide ERS with its process and protocols for responding to general media inquiries. The PBM 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, the PBM 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, the PBM shall follow the process outlined below:

1. 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.
2. Immediately provide a high-priority written notification to the AD of Benefit Contracts or designee, outlining all details related to the media's inquiry and all known facts of the related circumstances.
3. Wait for instructions or, as needed, work with ERS to determine how to respond.
4. Respond to the media as determined by ERS. (In many cases, ERS may respond to the media directly and request that the PBM not respond at all.)

A.8. **Quality Control.** The PBM 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 and Brand Guidelines; and
- Other information if requested by ERS.

PBM's failure to adhere to these standards may result in an assessment of Performance Guarantees as provided in the *Performance Guarantees*, Appendices F-1 and F-2, and/or liquidated damages and/or other legal remedies available to ERS in the Contract.

A.8.a. 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.

A.8.b. Following ERS' review and once edited materials have been provided to the PBM, the PBM shall conform to all documents by ERS' designated deliverable dates. If the edits, or other mutually agreed-upon resolution of those edits, have not been completed by ERS designated due date, the PBM may risk an assessment of Performance Guarantees as provided in the Performance

Guarantees, Appendices F-1 and F-2, and/or liquidated damages and/or other legal remedies available to ERS in the Contract.

A.9 **Participant Requests for Communication Materials.** The PBM shall, at its expense, respond to all Participant requests for mailed materials no later than three (3) business days following a Participant's request.

A.10 **PBM Name Change.** If a name change occurs for the PBM and results in a cost to ERS in publication, the PBM shall be billed for the amount of the expense.

B. State Agencies Communications

B.1. **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 ("BC"). The PBM shall have resources dedicated to responding to BCs and other State Agencies contacts. The PBM shall provide escalated customer service as well as training and educational presentations/materials to State Agencies throughout the year.

B.1.a The PBM shall process requests from State Agencies for printed plan communication materials for their employees at benefit fairs. The PBM shall also process requests from Participants for printed communication materials upon request. In addition, the PBM may be asked to provide materials to employees, such as the Executive Women in Texas Government, the Texas Association of State Human Resource Managers, the Texas Public Employees Association and the Texas State Employees Union, at the PBM's expense.

B.2 **Presentations and Events.** The PBM 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.

In its Proposal, the PBM shall indicate its capabilities for staffing benefits fairs and similar events to answer Participant questions and provide written materials to attendees. For additional information regarding SE and FE, refer to Section IV.P.

ERS may ask that the PBM work directly with State Agencies, ERS, and other vendors to coordinate SE/FE and other fairs.

B.2.a In accordance with the Performance Guarantees, the PBM shall provide no less 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, the PBM shall provide no less than one (1) representative knowledgeable about the program unless otherwise specified by ERS. Failure to adhere to these standards may result in an assessment of Performance Guarantees as provided in the *Performance Guarantees, Appendices F-1 and F-2*, and/or liquidated damages and/or other legal remedies available to ERS in the Contract.

B.2.b 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.

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

B.2.d The PBM should be prepared to accommodate requests for attendance to non-ERS-sponsored events to promote the PDPs.

- B.3 **Enrollment Campaign.** The PBM 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 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.

C. Annual Enrollment Communications

- C.1 **Annual Enrollment Periods.** As noted in further detail in Section IV.P., ERS currently has two (2) enrollment periods for the GBP: an approximately five-week enrollment period for employees, retirees not eligible for Medicare and their dependents (SE), and an approximately three-week period for Medicare-eligible retirees and their dependents (FE).

- C.2 **Annual Enrollment Communications.** ERS currently conducts the following comprehensive communications tactics for each enrollment period:

- 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 Agencies' BCs, 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.

D. Ongoing Participant Communication

The PBM shall provide a dedicated communication specialist(s) to meet and work with ERS staff to produce the communication materials during the implementation process.

- D.1 The PBM 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:

- Master Benefit Plan Document ("MBPD");
- Evidence of Coverage ("EOC");
- Welcome packet;
- PBM's GBP-specific website;
- Enrollment Presentations;
- IVR scripting;
- Scripted responses used by CSRs;
- Participant communication and general information pieces;
- Participant welcome packets;
- Consumer-targeted educational materials;
- Standard messaging for various systems' downtime;
- Pharmacy directory, including a specific disclaimer stating that the list of pharmacies is subject to change;
- Drug formulary, including a specific disclaimer stating that the formulary is subject to change;
- Articles for ERS newsletter;
- News updates for ERS website;
- Publications listing with audience and publish target dates;
- *Ad hoc* publications;
- Token giveaways for enrollment fairs, events, etc.; and
- News releases, contract award announcements and other PBM-related statements.

- D.1.a. The PBM will work with ERS staff to produce the MBPD and EOC subsequent to the Contract award. The web version shall not differ from that approved by ERS and must be published on the PBM's GBP-specific website.
- D.1.b. The PBM shall disseminate only GBP-specific approved materials at all events. Disseminating unapproved material, or material that is not customized for the Participants, may result in the levying of an assessment of Performance Guarantees as reflected in the *Performance Guarantees*, Appendices F-1 and F-2, and/or liquidated damages and/or other legal remedies available to ERS in the Contract.
- D.1.c. Any cost for these forms and other communication-related materials should be included as a part of the PBM's proposed fees. ERS shall retain the right to change or modify such material to accommodate ERS' specific needs.
- D.2. **Confidential Information.** Materials that contain protected health information (as defined by HIPAA) or other confidential information such as the Participant ID number must be mailed in an envelope or other mailing service device designed to secure the confidential information from casual viewers.
- D.3. **Master Benefit Plan Document and Benefits Books.** Each year, the PBM shall provide to the AD of Benefit Contracts or designee the MBPD for the HealthSelect PDP along with any supplemental information and/or amendments. For CY17, ERS will provide PBM with a Word version of the current MBPD and PBM shall provide a draft MBPD with tracked changes by November 15 or as otherwise directed by ERS. For subsequent years, PBM shall take the current year's MBPD and prepare an updated MBPD for the new Fiscal Year by April 1 or as otherwise directed by ERS. The proposed MBPD shall show tracked changes.
- D.3.a. **MBPD Approval/Delivery Requirements.** The PBM shall work with ERS to finalize all plan documents.
 - D.3.a.i. ERS requires the MBPD be printed; therefore, the final printed product shall not differ from that approved by ERS and published on the PBM's GBP-specific website.
 - D.3.a.ii. The PBM shall provide a final MBPD to the Benefit Contracts' AD no later than November 15, 2016 for Calendar Year 2016 or as otherwise directed by ERS, and make it available on the GBP-specific website no later than December 15, 2016 unless otherwise directed by ERS.
 - D.3.a.iii. The PBM shall provide a final MBPD to the Benefit Contracts' AD no later than July 31st of each Fiscal Year for the HealthSelect PDP or as otherwise directed by ERS, and make it available on the GBP-specific website no later than September 1 of each Fiscal Year unless otherwise directed by ERS.
- D.3.b. The PBM shall follow ADA guidelines and provide an HTML version and printable version for download by the Participant.
- D.3.c. All Participants shall have access to the MBPD as directed herein or as instructed by ERS. The PBM shall be prepared to mail the MBPD upon the request of a Participant no later than five (5) business days of the request. The PBM understands, agrees and acknowledges that the Contract between ERS and the PBM shall control over the MBPD in connection with the contractual relationship between ERS and the PBM.
- D.4. **EGWP PDP - Evidence of Coverage.** The PBM understands, agrees and acknowledges that the Contract between ERS and PBM shall control over the EOC in connection with the contractual relationship between ERS and the PBM.
 - D.4.a. The PBM will be required to provide a proposed EOC each Calendar Year; said EOC shall be a tracked version showing changes made from the previous year's EOC. Once the EOC has been reviewed by ERS and all edits made, the EOC shall be submitted to CMS for approval. All EOC modifications required by CMS shall be provided to ERS, as well as any subsequent EOC revisions occurring during the Calendar Year. The PBM shall inform ERS in writing once the EOC has received CMS approval. ERS requires that printed copies of the CMS-approved EOC be immediately available to requesting Participants within three (3) business days of CMS approving the document, but no later than forty-five (45) calendar days following the start of the

Calendar Year. The final published EOC posted on the PBM's GBP-specific website shall not differ from that which was approved by CMS and provided to Participants in printed form.

D.4.b. The EOC shall include an identical copy of the EGWP PDP Schedule of Benefits, a complete list of limitations and exclusions, including all plan provisions and the CMS-approved member complaint and appeal process. The PBMs are required to include the GBP-specific eligibility rules as found in the Board Rules, Title 34 T.A.C., §81.5.

D.4.c. **EOC Approval/Delivery Requirements.** A proposed, final draft of the PBM's EOC for CY 2017 shall be published and reflected in the PBM's test website available on the last Thursday in November 2016. The CMS-approved EOC shall be complete and all information reflected on the live PBM website within three (3) business days of CMS approving the document, but no later than forty-five (45) calendar days following the start of the Calendar Year. Subsequent years shall have the same requirements with the EOC for each Calendar Year being available on the last Thursday in November or as otherwise directed by ERS, and with the CMS-approved EOC being complete and posted to PBM's website within three (3) business days of CMS approving the document but no later than forty-five (45) calendar days following the start of the Calendar Year. Failure to adhere to these timelines may result in an assessment of Performance Guarantees as provided in the *Performance Guarantees*, Appendices F-1 and F-2, and/or liquidated damages and/or other legal remedies available to ERS in the Contract.

D.4.d. The PBM shall submit its finalized EOC to CMS so that one (1) CD-ROM version (in Word or Excel format, PDF documents will not be accepted) of the PBM's CY 2017 EOC shall be received by ERS' Benefit Contracts division no later than forty-five (45) calendar days following the start of the Calendar year.

- **New Enrollees.** The EOC shall be mailed to all new enrollees who request a printed copy within five (5) business days after the PBM receives the Participant's request. For all other purposes, the EOC's publication on the PBM's website shall be provided as required in this section.
- **Current MA Membership.** Within thirty (30) days following CMS approval, the EOC and applicable amendments shall be published on the PBM's website and shall be mailed within five (5) business days to all currently enrolled Participants if a printed copy is requested.

D.5. **Welcome Packets.** The PBM's packets shall be produced and mailed to approximately 415,000 HealthSelect Participants and 85,000 Medicare-eligible Participants at ERS' direction. New enrollment packets shall be mailed by the PBM throughout the Calendar Year. A proposed sample of a PBM packet shall be included in the PBM's response to this RFP. This packet should contain, but not be limited to, the following materials:

- Welcome Letter;
- Annual Notice of Coverage ("ANOC")
- Brochure that provides the GBP benefit plan description;
- GBP Prescription drug formulary;
- Pharmacy directory;
- Mail service/claim forms;
- PBM's customer service contact information;
- PBM Health Assessment form; and
- Sample EOB.

ERS and the PBM will discuss appropriate timelines during implementation.

D.6. **Welcome Letter.** The Welcome Letter should contain information about the PBM. 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. The PBM shall not utilize a postcard or flyer format for this communication piece.

D.7. **Identification ("ID") Cards.** The PBM shall issue ID cards to all Participants, including eligible spouses and dependents, who enrolled during SE/FE and subsequent to SE/FE, when a change is reported. Reference Sections VII.I.1. – VII.I.1.c. of Article VII., *Operational Specifications*, for further requirements.

D.7.a. If the PBM assigns its own ID Number to each Participant, it shall be capable of cross-referencing the PBM assigned ID Number to the Participant's ERS employee ID Number. The PBM shall not reference any web address other than the ERS-specific website and is required to provide a toll-free customer service number.

- D.7.b. The PBM shall submit an electronic mock-up of a proposed GBP-specific ID card with the PBM's Proposal. Failure to produce GBP-specific ID cards as outlined herein may result in an assessment of Performance Guarantees as provided in the *Performance Guarantees*, Appendices F-1 and F-2, and/or liquidated damages and/or other legal remedies available to ERS in the Contract.
- D.7.c. ID card delivery requirements are fully discussed in Sections VII.I.1. – VII.I.1.c., *Operational Specifications*.
- D.7.d. Pursuant to §1369.153, TIC, an issuer of a health benefit plan that provides pharmacy benefits to Participants shall include on the front of the card:
- The name of the entity administering the pharmacy benefits if the entity is different from the health benefit plan issuer;
 - The group number applicable to the Participant;
 - The identification number of the Participant, which may not be the Participant's social security number;
 - The bank identification number necessary for electronic billing;
 - The effective date of the coverage evidenced by the card; and
 - The copayment information for generic and brand-name prescription drugs.
- In addition to the above referenced information, the issuer of the health benefit plan shall include on each card:
- The logo of the entity administering the pharmacy benefits if the entity is different from the health benefit plan issuer; and
 - The toll-free telephone number for contacting an appropriate person to obtain information relating to the pharmacy benefits provided under the plan.
- D.7.e. The PBM is responsible for the production and any mailing costs associated with the delivery of ID cards to Participants. Additional ID card requirements are located in Sections VII.I.1. – VII.I.1.c. The cost of the ID card requirements described herein shall be recovered by the PBM only by making provisions for such expenses in the PBM's *Price Proposal and Response Format* in Article XI.
- D.8 **Member and Consumer Information Sources.** The PBM shall have a variety of tools and information sources for the Participants. This includes, but is not limited to, the following:
- New Participant and SE/FE information;
 - Examples of cost scenarios to help members understand how the PBM works; and
 - Non-web information similar to web tools for those without web access.

E. Web Specifications

- E.1. **PBM Website Technical Specifications.** The PBM shall adhere to all website access, format, content, and technical requirements outlined in both the ADA and Section 508.
- E.1.a. **Section 508 Requirement.** The PBM 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 the PBM's website as well as the full and complete ability to interact with the site.
- E.1.b. **Internet Accessibility Specifications.** In addition to ADA and Section 508 requirements, the PBM shall adhere to the following website guidelines:
- The PBM's web page shall be compatible with a wide spectrum of web browsers, including:
 - Internet Explorer 9.0 or newer;
 - Google Chrome;
 - Mozilla Firefox; and
 - Apple Safari 7.0 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."

If applicable, the PBM 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.

E.2 GBP Configurable Website. The PBM shall publish and maintain a GBP-specific configurable website for the Participants and prospective Participants in a format acceptable by ERS. Neither the PBM 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 no later than the last week of June for SE and/or October for FE of each year or as otherwise directed by ERS. The PBM's failure to provide the configurable-specific website as outlined herein may result in an assessment of Performance Guarantees as provided in the *Performance Guarantees*, Appendices F-1 and F-2, and/or liquidated damages and/or other legal remedies available to ERS in the Contract.

E.2.a. Proposed Website Materials. The PBM shall provide ERS with a test site for review the last week of April for SE and/or October for FE of each year or as otherwise directed by ERS. The PBM will be required to submit a URL address, all screen shots, and instructions on how to access the PBM's test website at ERS' request.

E.2.b. All Vendor "Test" websites. The PBM 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, the PBM shall provide documentation of a test plan, test scripts (e.g., to ensure all links are working), completion of testing, and final sign off. The PBM'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 the PBM. The PBM's failure to provide the requested website may result in an assessment of Performance Guarantees as provided in the *Performance Guarantees*, Appendices F-1 and F-2, and/or liquidated damages and/or other legal remedies available to ERS in the Contract.

E.2.c. The PBM's GBP-specific home page shall include the following primary access links:

- The PBM's privacy policy;
- Customer Service contact information;
- Account specific information via PBM access portal;
- Program brochure;
- MBPD or EOC, as applicable;
- Plan formulary;
- Drug cost estimator/search tool;
- Plan limitations and exclusions;
- Forms, as needed;
- A page for frequently asked questions;
- A glossary of frequently used terms;
- On demand real time pharmacy information and search capabilities;
- Disease Management Services;
- Search function; and
- Link to ERS' website.

E.2.d. The PBM's custom home page shall include both the PBM's logo and ERS' logo as required by the latest version of the *Marketing Guidelines for GBP and ERS Vendors*, located in the ERS Editorial Style Guide and Usage Manual, located on ERS' website at: http://www.ers.state.tx.us/ERS_Guidelines/.

E.2.e The final-approved PBM website shall provide real-time data related to the pharmacy network and drug formulary. The Participants shall be capable of obtaining the same information using the website as they would if they were to contact a PBM customer service representative.

- E.3 PBM Access Portal. The PBM shall provide an easy to use member portal that provides access to a secure website that allows Participants to:
- Search medication coverage information via formularies;
 - Review online drug pricing to allow for price comparison by Participant;
 - Locate a pharmacy using specified search criteria, including location;
 - Download forms;
 - Acquire a temporary ID card;
 - Enroll in e-statements;
 - Utilize coinsurance calculator; and
 - Utilize member cost-share saving opportunities

F. PBM Website Content

- F.1. All content for the PBM's GBP-specific configurable website shall be approved by ERS prior to publication. The website must be functioning prior to SE/FE and no later than July 1 for SE and October 1 for FE, or as otherwise directed by ERS. The final materials used by the PBM shall not differ in form or utility from those approved by ERS. The PBM's configurable website shall:
- F.1.a. Provide self-service transactions for the Participants to:
- Easily access the formulary, research which drugs are in the formulary and what the member plan cost are for those drugs, throughout the entire FY or CY, as applicable, during the Contract Term;
 - Locate a retail pharmacy based on specific geographic requirements;
 - Order prescriptions on-line and to track the status of a mail-order prescription;
 - See and print an annual summary of out-of-pocket expenses for prescription drugs, both retail and mail, suitable for submission to the Internal Revenue Service for income tax purposes and to the flexible benefits administrator for Section 125 claims;
 - Lodge a service complaint, to escalate unresolved complaints and to request a telephone call back within one (1) business day;
 - Communicate with CSR using live chat, if available;
 - Search the full website using a key word and/or phrase;
 - Review PBM Frequently Asked Questions and Answers; and
 - Provide a "return to home" button, which returns the viewer to the ERS home page.
- F.1.b. **Calendar Year Information.** The custom home page shall include the following information:
- Information that welcomes new Participants and introduces the Participant to the PBM and summarizes the basic coverage benefits;
 - Direct link to ERS' website. The PBM shall indicate the current dates for FE and SE periods and remove all references to FE/SE enrollment periods as directed by ERS; and
 - Helpful Phone Numbers and websites.
- F.1.c. **Link to the PBM's Privacy Plan**
- F.1.d. **Link to Customer Service Page** to include the following information:
- Phone numbers and hours of operation;
 - Physical address;
 - Link to the PBM's Complaint Process;
 - An email address or a link to a mailbox for Participants to send customer complaints and questions directly to the PBM. The PBM 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 PBM's Appeals/Grievance process.
- F.1.e. **Link to Benefits** to include the following information:
- Welcome Letter;
 - MBPD; and
 - EOC.
- F.1.f. **Link to Prescription Drug Information** as determined by ERS and provided by the PBM.

G. Interrogatories

Review the Interrogatory instructions referenced in Section. I.B.3.

General Information

G.1. Provide a copy of all written materials to be used in administering the HealthSelect PDP and/or the EGWP PDP coverage for the Participants. As a minimum, the PBM's response should include the following: SE and/or FE marketing materials (Welcome Packets) and ID Card Information.

HealthSelect PDP	
EGWP PDP	

G.2. Provide any sample communication materials the PBM may have concerning:

	HealthSelect PDP	EGWP PDP
• Merits of generic substitution;		
• The PBM's Preferred drug list;		
• Medical conditions for which generic medications are available; and		
• Formulary literature.		

G.3. Provide a recent formulary change example, including any educational pieces for the Participant, physician and pharmacy.

HealthSelect PDP	
EGWP PDP	

G.4. Describe the PBM's ability to produce Participant-specific communications.

HealthSelect PDP	
EGWP PDP	

G.4.a. How do the Participant-specific customizations impact cost or quality of communications for ERS?

HealthSelect PDP	
EGWP PDP	

G.5. The PBM shall confirm that it will customize communications as deemed necessary by the ERS BCOM representative.

HealthSelect PDP	<input type="checkbox"/> Confirm
EGWP PDP	<input type="checkbox"/> Confirm

G.6. The PBM shall confirm that it will meet with ERS staff to devise a communication strategy that may or may not include documents submitted with the RFP.

HealthSelect PDP	<input type="checkbox"/> Confirm
EGWP PDP	<input type="checkbox"/> Confirm

G.7. The PBM shall confirm that it will assign a dedicated communications specialist to meet and work with ERS staff to produce the communication materials.

HealthSelect PDP	<input type="checkbox"/> Confirm
EGWP PDP	<input type="checkbox"/> Confirm

G.8. Is the PBM Section 508 compliant?

HealthSelect PDP	<input type="checkbox"/> Yes	<input type="checkbox"/> No
EGWP PDP	<input type="checkbox"/> Yes	<input type="checkbox"/> No

G.8.a. If yes, the PBM shall provide a report evidencing its organization's Section 508 compliance.

HealthSelect PDP	
EGWP PDP	

G.9. Is the PBM currently using the Web Content Accessibility Guidelines ("WCAG") 2.0 or does the PBM have plans to use these guidelines in the future?

HealthSelect PDP	<input type="checkbox"/> Yes	<input type="checkbox"/> No
EGWP PDP	<input type="checkbox"/> Yes	<input type="checkbox"/> No

G.9.a. If not currently using WCAG 2.0, provide a date when the PBM would be able to implement the WCAG standards in the future.

HealthSelect PDP	
EGWP PDP	

G.10. The PBM shall confirm that its education plan website and the PBM's member-facing claims will be functioning by the date specified by ERS.

HealthSelect PDP	<input type="checkbox"/> Confirm <input type="checkbox"/> Unable to Confirm; the PBM shall provide a detailed explanation in Section VI.H.1.
EGWP PDP	<input type="checkbox"/> Confirm <input type="checkbox"/> Unable to Confirm; the PBM shall provide a detailed explanation in Section VI.H.1.

G.11. The PBM shall submit a sample of all of its most updated generic communication materials that is used for its current clients.

HealthSelect PDP	
EGWP PDP	

G.12. The PBM shall confirm that it will work directly with ERS and other vendors to coordinate SE/FE and other fairs.

HealthSelect PDP	<input type="checkbox"/> Confirm <input type="checkbox"/> Unable to Confirm; the PBM shall provide a detailed explanation in Section VI.H.1.
EGWP PDP	<input type="checkbox"/> Confirm <input type="checkbox"/> Unable to Confirm; the PBM shall provide a detailed explanation in Section VI.H.1.

G.13. The PBM shall confirm it is capable of cross-referencing the PBM assigned ID Number to the Participant's ERS employee ID Number.

HealthSelect PDP	<input type="checkbox"/> Confirm <input type="checkbox"/> Unable to Confirm; the PBM shall provide a detailed explanation in Section VI.H.1.
EGWP PDP	<input type="checkbox"/> Confirm <input type="checkbox"/> Unable to Confirm; the PBM shall provide a detailed explanation in Section VI.H.1.

G.14. The PBM confirms that it shall not reference any web address other than the ERS-specific website, and confirms that it will provide a toll-free customer service number.

HealthSelect PDP	<input type="checkbox"/> Confirm <input type="checkbox"/> Unable to Confirm; the PBM shall provide a detailed explanation in Section VI.H.1.
EGWP PDP	<input type="checkbox"/> Confirm <input type="checkbox"/> Unable to Confirm; the PBM shall provide a detailed explanation in Section VI.H.1.

H. **Deviations**

Review the Deviations instructions referenced in Section I.B.2.

H.1. Affirm that the PBM shall comply with all of the **Communication Requirements** described herein **Article VI** of this RFP.

Affirm Affirm with the proposed Deviations

If applicable, enumerate and provide a detailed description of each of the deviations between the PBM's Response and these requirements.
PBM's Requested Deviations Detail:

VII. Operational Specifications

This Article describes the PBM's operational specifications including administrative requirements and functions, customer service, state and federal financial reporting, and the statistical reporting requirements as mandated by ERS. The PBM shall administer the PDP in a manner consistent with all applicable laws and regulations, both state and federal, including the rules of ERS, as amended, and at the direction of ERS' Board, its Executive Director, and ERS staff. The cost of the requirements described herein shall be recovered by the PBM only by making provisions for such expenses in Article XI, *Price Proposal and Response Format*.

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, the PBM shall be committed to providing ERS with a service 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.

A. Implementation Operational Requirements

The PBM(s) approved by the Board should be prepared to attend an implementation kick-off meeting following the Board's approval of the Contract. This meeting will include, but not be limited to: discussion of the PBM's customer service, finance requirements, account management requirements, communication requirements, and SE/FE meeting responsibilities.

The PBM(s) shall provide all services specified in this RFP, including, but not limited to, the following:

- A.1. **Implementation Period.** The period of time beginning with the selection of the PBM(s) by the Board and ERS' execution of the Contract to the point at which the PBM(s) assumes full responsibility for the duties specified hereunder, shall be known as the "Implementation Period."

During the Implementation Period, the PBM shall warrant and represent the following:

- It shall maintain appropriate, sufficient and qualified staff, technical capabilities and resources that are fully devoted to the Implementation of the HealthSelect PDP and/or EGWP PDP. ERS reserves the right to require the PBM to add additional staff or to remove staff from the Implementation Team;
- It shall not permit any current or prospective business, projects or other matters to interfere in any manner with the smooth and timely implementation of the HealthSelect PDP and/or EGWP PDP;
- The PBM understands and agrees that time is of the essence in the performance of the Contract and in the implementation of the HealthSelect PDP and/or EGWP PDP;
- The PBM acknowledges and agrees that the GBP, its Participants and ERS shall suffer irreparable harm if the HealthSelect PDP and/or EGWP PDP are not fully and completely implemented on or before December 1, 2016;
- To the extent the liquidated damages and/or other provisions of the Contract require prior notice, the PBM hereby waives such prior notice during the Implementation Period;
- ERS may immediately assess against the PBM the agreed upon liquidated damages, and/or the amounts placed at risk as referenced in the *Price Proposal and Response Format* in Article XI and/or other legal remedies available to ERS in the Contract, without prior notice, in the event the PBM fails, refuses or if it reasonably appears that it 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 HealthSelect PDP and/or EGWP PDP; and
- All communication materials dealing with the implementation, including Participant communication materials, call center staff training materials, Interactive Voice System ("IVR"), and website design are subject to ERS' review and approval.

A.2 **Implementation and Account Teams.** No later than the tenth (10) business day following the Board selection the PBMs shall provide to the Benefit Contracts' AD, or designee, a complete listing of the PBMs' implementation and account team contacts assigned to support the PBM's Contract (respectively, the "Implementation Team" and the "Account 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.

The PBM's Implementation and Account Teams' contact lists should reflect key contact information (office, fax, and cell phone numbers, email and physical addresses) for each PBM Implementation and Account Team representative. The required representatives for the Implementation and Account Teams are listed in Section VII.B.1. below.

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

- The PBM shall inform, via email notification, the AD of Benefit Contracts, or designee, in advance of any planned periods of unavailability by the Team's key point of contact.
- In any instance where a Team key point of contact is not available to ERS, the PBM 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, the PBM shall dedicate such appropriate staff as required by and acceptable to ERS.

A.3 **Implementation Team.** The Implementation Team shall be led by a 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 respective plans under the HealthSelect PDP and/or EGWP PDP prior to and during the Contract's onset.

A.3.a. The PBM must assign a Communications lead who is dedicated to the ERS program Communication requirements as fully described in Article VI.

A.4 **Project Manager.** At a minimum, the Implementation Team shall have both a dedicated Project Manager and a back-up Project Manager with availability to ERS during regular business hours and as the PBM project requires during the Contract Term. The 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 the PBM. The PBM shall provide the names, positions and qualifications of the Implementation Team and Project Manager to ERS within ten (10) business days from the award of the Contract.

A.5. The PBM acknowledges that it is impossible or impractical to estimate with any degree of certainty the impact or damage that the failure of particular implementation activities may have on the GBP and/or its Participants. Therefore, the PBM agrees that implementation failure, judged by ERS to have adversely harmed the GBP and/or its Participants, may immediately subject the PBM to the liquidated damages as described in the Contract and Performance Guarantees provisions as reflected in Appendices F-1 and F-2.

A.6. **Contract Implementation.** To ensure the successful implementation and delivery of the PBM's benefits, coverages, and services to the GBP and its Participants, the PBM shall provide the proposed dollar value at risk by the PBM in Article XI, *Price Proposal and Response Format*.

B. Post-Implementation - Operational Requirements

B.1 **Account Management.** The PBM shall establish and maintain throughout the Contract Term an Account Team that will work directly with ERS staff. This team may include at ERS' request, but is not limited to, a dedicated account executive, a customer service manager, a practicing attorney, a consulting actuary, a person responsible for preparing reports, and a management information systems representative. Approval of the Account Team rests with ERS. The PBM's Account Team shall provide all services specified in this RFP including, but not limited to, the following:

- B.1.a. The PBM shall provide an account executive team ("Account Executive Team") and make staffing adjustments, as required by and acceptable to ERS. The results from the formal performance evaluation of the assigned Account Team may be used in this determination. An ERS Account Executive Team shall be established no later than thirty (30) calendar days following the Board selection, and be available Monday through Friday from 8:00 a.m. to 5:00 p.m., central time, excluding national holidays.
- B.1.b. The PBM shall provide a minimum of two (2) face-to-face reviews with the Account Executive Team annually to ERS on the utilization and performance of the HealthSelect PDP and/or EGWP PDP. The reviews shall include, but not be limited to, a presentation of the following information:
- Program enhancement recommendations;
 - Plan and Industry trends and best practices; and
 - Other cost saving recommendations.
- B.2 **Meetings.** The PBM 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 the PBM to include, but not be limited to:
- Operational; and
 - Communications.
- B.2.a. The PBM shall notify the Director of Benefit Contracts, or designee, in writing, no less than ninety (90) calendar days prior to anticipated major changes to its network(s), the formulary, pharmacy reimbursement or other areas likely to impact the HealthSelect PDP and/or the EGWP PDP.
- B.2.b. In addition to the above requirement, the PBM shall notify ERS' Director of Benefit Contracts, or designee, in writing, twenty-two (22) business days prior to implementing any material changes to its account management, policies, servicing methodologies, and business connected with the ERS account.
- B.2.c. The PBM's pharmaceutical experts shall advise and consult with ERS on an as-needed basis regarding coverage of newly approved drug therapies and generics when going off patent, which could have a substantial cost impact on the HealthSelect plan.
- B.3 **PBM Personnel Changes.** The experience and professional qualifications of the PBM's account management personnel are critical elements in awarding this Contract; therefore, substitutions of or other changes in assigned personnel shall require the prior approval of ERS' Executive Director or designee. In any event, ERS may, at any time, request the removal or reassignment of the PBM's staff, or the staff of any subcontractor, in connection with the PBM's performance under this Contract.
- B.3.a. The PBM shall provide general administrative, legal and statistical support to assist ERS in the operation of the HealthSelect PDP and/or EGWP PDP and shall recover any associated costs by making provisions in the PBM's *Price Proposal and Response Format*, Article XI.
- B.3.b. The PBM shall provide ERS with priority positioning for delivery of *ad hoc* system service requests, website modifications and/or issue resolutions. The PBM shall designate a Technical Consultant ("TC") 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. The PBM shall provide competent, focused attention to ERS' system requests/issues. The PBM 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 the PBM of the request/issue. ERS shall fully supply any and all information reasonably necessary for the PBM to complete the requested services as outlined herein. If an ERS request cannot be implemented by the PBM within thirty (30) calendar days from the date of ERS' request, then the PBM shall provide ERS with a written explanation as to why the issues cannot be resolved within this time frame and provide a written plan for implementation to include a timeline for resolution, within five (5) business days from receipt of the PBM's written notification as noted above. This section does not apply to disaster recovery matters, which are covered specifically in the Contract.

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 PBM within fifteen (15) business days of such request. If changes to the modifications are required, the PBM 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, the PBM shall complete the eligibility and/or benefit project, including required testing, within forty-five (45) calendar days from ERS' approval.

- B.3.c. The Account Team shall be thoroughly familiar with all of the PBM's functions that relate directly or indirectly to the GBP account.
- B.3.d. In addition to the TC, the PBM shall provide ERS with access to a designated clinical consultant and/or pharmacy consultant to advise and support ERS on analyzing emerging clinical and utilization trends within the scope of reviewing both standard and *ad hoc* reports.
- B.3.e. The PBM shall provide the GBP with priority placement in all aspects of Contract performance provided by the PBM.
- B.3.f. ERS requires the PBM to meet with ERS staff and/or Board of Trustees as requested to discuss the status of the HealthSelect PDP and/or EGWP PDP accounts in terms of utilization patterns and costs, as well as to propose new ideas that may benefit the GBP and its Participants.
- B.3.g. The PBM is expected to present actual HealthSelect PDP and/or EGWP PDP 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 HealthSelect PDP and/or EGWP PDP membership and claims experience to determine the financial impact as well as the number of Participants impacted.
- B.3.h. The PBM shall also present benchmark data by using the PDP's entire book of business, a comparable client to ERS and/or some other industry norm.
- B.3.i. The PBM shall provide a high quality and experienced customer service unit. The health plan staff members shall be fully trained in the HealthSelect PDP and EGWP PDP benefit designs, and the PBM shall have the ability to track and report performance of call center metrics.
- B.3.j. The PBM shall provide ERS access to a designated 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; 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/.

C. PBM Customer Service Call Center

The PBM's Customer Service Call Center (the "Call Center") shall be located within the United States, and preferably in the State.

- C.1. **Call Center/Customer Service Unit.** The PBM shall establish and provide staffing of one (1) customer service team dedicated to ERS' HealthSelect PDP and/or EGWP PDP. The customer service unit must be functioning prior to SE/FE, or at the direction of ERS. The unit shall be adequately staffed and fully trained to manage PDP-related questions and provide resolution of complaints, clarifications, escalated issues and to assist in claim submissions.
 - C.1.a. The hours of operation for the PBM's call center/customer service unit shall be, at a minimum, Monday through Friday from 7:00 a.m. to 7:00 p.m. central time. The PBM shall also provide Saturday coverage from 7:00 a.m. to 3:00 p.m., central time, and emergency service coverage outside of the required business hours, excluding national holidays.
 - C.1.b. **Call Center Specialists.** The PBM 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. The PBM warrants and represents that it shall provide thorough training of staff members and additional team members in support of the HealthSelect PDP and/or EGWP PDP. Any training deficiencies noted by ERS shall be immediately rectified by the PBM to ERS' sole satisfaction.

- C.1.c. **Back-up Staffing.** The PBM shall dedicate additional staff, as needed or at ERS' request, to update GBP-related records and accounts to provide additional help for the PBM's customer service team during and following SE/FE.
- C.1.d. **Call Center Management Criteria.** The PBM shall establish toll-free lines (telephone and facsimile). The PBM shall also employ appropriate and adequate customer service staff to maintain *Performance Guarantees* for service level, abandonment rate and blockage rate as referenced in Appendix J, *Call Center Metrics*, and Appendices F-1 and F-2, *Performance Guarantees*, of this RFP. This criteria includes that PBM shall guarantee that 80% of calls are answered within twenty (20) seconds. The PBM shall provide in its Proposal the methodology and sample source documents utilized by the PBM to arrive at the reporting requirements for the call center metrics referenced in Appendix J, *Call Center Metrics*.
- The PBM shall make available to ERS staff the ability to listen to and monitor calls to and from the PBM call center(s) and shall record, maintain and archive all such GBP-specific calls throughout the Contract Term and for a least twenty-four (24) months following each call, and shall make all such calls accessible and available to ERS for inspection and audit within twenty-four (24) hours of ERS' request and delivered either by secure email or via overnight courier mail at no additional expense to ERS.
- C.1.e. **Access for Hearing Impaired.** Access for ERS' deaf and hearing-impaired Participants should be directed to 7-1-1 Relay Texas on publications and website.
- C.1.f. **Language Accessibility.** The PBM's Call Center shall have a Spanish queue staffed sufficiently with Spanish-speaking agents to meet the service level objectives defined in Appendix J, *Call Center Metrics* and Appendices F-1 and F-2, *Performance Guarantees*.
- C.1.g. **Quality Assurance Review.** The PBM shall conduct an ongoing quality assurance review each Fiscal Year and/or Calendar Year to be monitored via Participant surveys and other reporting mechanisms.
- C.2. The PBM 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.
- C.3. The PBM shall use commercially reasonable efforts to personally contact and notify a HealthSelect PDP Participant and/or EGWP PDP Participant immediately when such Participant's mail service prescription is not filled for any reason. The PBM further agrees to contact a HealthSelect PDP Participant and/or EGWP PDP Participant immediately if it is determined that a medication the Participant ordered has been discontinued or is out-of-stock at the PBM's mail service facility, and to provide the anticipated time to dispense the medication is more than seven (7) calendar days. In such case, the PBM shall contact the Participant's health care provider to obtain the provider's approval for dispensing an alternative medication. The PBM warrants and represents that it has in place a tested and proven process to enable the PBM to immediately contact the HealthSelect PDP Participant and/or EGWP PDP Participant and inform the Participant of the provider's determination.
- C.4. The PBM shall provide receipts for medications obtained by HealthSelect PDP Participants and/or EGWP PDP Participants by mail service. Such receipts shall include the name of the drugs dispensed, the prescribing physicians name, the date dispensed, the amount paid by the health plan for the drugs and the amounts of the copayment reflecting the application of the annual deductible (if applicable).

D. Administrative Requirements

D.1 **Audits.** ERS may contract with an independent auditing firm to conduct audits of the PBM. The PBM shall cooperate with and support the efforts of the auditors. Neither ERS nor the auditors will be required to indemnify the PBM for any costs incurred in connection with these audits. Article 14 of the Contract has additional requirements regarding audits.

D.1.a **Administrative Audit.** As plan administrator for the GBP, ERS may access, request, and audit documents related to the PDP and Participant records as required for purposes of administering the GBP.

D.1.b **Annual Audit of the PBM.** Pursuant to Chapter 1551.062(b)(2) of the TIC, ERS shall commission an annual audit of the PBM's claims administration by an independent auditor to determine the adequacy, timeliness, and accuracy of the PBM's procedures and performance for the prior year. ERS may, in its discretion, conduct other audits of the PBM, when and in the manner ERS deems necessary.

D.1.c ERS will determine the scope of the audit, and the PBM shall fully support the activities of and in good faith cooperate with the auditor. (The PBM shall not designate any "black out" periods of time when any audit may be conducted on behalf of ERS.) 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 the PBM, timely release of all information requested shall be required by the PBM.

The PBM'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 the PBM for any cost incurred or any claim that may arise in connection with or relating to these audits.

D.1.d ERS or any of its duly 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 the PBM 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.

D.2 **Online Access.** The PBM shall provide to ERS and its designated representatives online access to any information reasonably related to the HealthSelect PDP and/or EGWP PDP, its 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 the PBM is required to perform, deliver or provide in connection with the GBP shall be fully accessible and available to ERS via online access.

D.3 **Fidelity and Liability Coverage.** The PBM shall maintain the following fidelity and liability insurance coverage throughout the term of the Contract, and any extension, amendment, or renewal 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 or umbrella liability coverage in an amount not less than \$10,000,000 per policy year that shall apply to the PBM's obligations under the Contract. Evidence that such coverage (declaration page of policy) is being maintained throughout the Contract Term shall be submitted to ERS no later than fifteen (15) business days following the effective date and each subsequent anniversary date of such policy.

D.4 **Historically Underutilized Businesses.** ERS makes a good faith effort to assist Historically Underutilized Businesses ("HUB") in receiving agency contract awards. As appropriate, the PBM shall provide the following information in the submitted Proposal response materials:

- If PBM is certified as a Texas HUB, provide the TBPC VID/Certification Number.
- If an engagement is awarded and PBM plans to engage a subcontractor for all or any of the contract services, the PBM 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-forms/>

- D.5 **Site Visits.** At ERS' discretion, agency personnel may conduct site visits at ERS' sole expense. The PBM shall assist ERS staff with arranging and identifying travel and lodging arrangements in which ERS will verify that the travel arrangements provided by the PBM shall be in compliance with the State travel guidelines.

E. Subcontractors

Any planned or proposed use of subcontractors by the PBM shall be clearly disclosed and documented in the PBM's Proposal submission. The PBM shall be solely responsible for all services performed and for fulfillment of its obligations under the Contract even if such services are delegated to a subcontractor. The PBM 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.

The PBM 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.

The PBM shall provide complete information, prior to and after execution of the Contract, regarding each subcontractor used by the PBM to meet the requirements of the Contract.

The PBM shall accept the following requirements:

- The PBM shall be solely responsible for all subcontracted activities in support of the benefits and services outlined in any executed agreement with ERS; and
- If the PBM subcontracts any part of the outlined benefits and services, the subcontractor(s) are subject to reviews and acceptance by ERS throughout any contracted term.

F. Claims Processing

- F.1 To assist the PBM in verifying plan enrollment, ERS provides online access to its enrollment system, PeopleSoft. Online access is available through the PBM's internet provider and shall be operational one (1) week prior to the start of each enrollment period. Staff trained on ERS' enrollment system shall be available during all customer service open hours.

The PBM 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' PeopleSoft system. Coverage shall be updated in the PBM's system prior to receipt of the next ERS weekly enrollment information.

- F.1.a. The PBM shall administer and process all claim functions required for the HealthSelect PDP and/or EGWP PDP. The PBM shall process and administer all eligible HealthSelect PDP and/or EGWP PDP claims in connection with prescriptions dispensed on and after January 1, 2017 and throughout the Contract Term. The PBM selected in accordance with this RFP shall have no responsibility under this Contract for the administration of claims incurred prior to the effective date of Contract. The ongoing support and technical assistance will include, but not be limited to:

- Using ERS enrollment records, the PBM shall create and maintain participation records to be used for the processing of claims and other administrative functions for HealthSelect PDP and/or EGWP PDP. ERS enrollment records, however, shall control in the event of a conflict.
- The PBM shall review claims for eligibility against dates of services covered under the HealthSelect PDP and/or EGWP PDP.
- The PBM shall process HealthSelect PDP and/or EGWP PDP Participants' submitted claims. Each claim payment must include an EOB for the HealthSelect PDP and/or EGWP PDP network and non-network claims. The PBM must submit all claim forms and sample EOBs to ERS as an attachment to the Proposal for ERS' review and approval.
- The HealthSelect PDP and/or EGWP PDP claims filed by Participants shall be processed within fifteen (15) calendar days of submission to the PBM unless additional information and/or investigation are required.
- In the event ERS elects a Brand-to-Brand mail service interchange program and a substitution is not rejected by a health care provider when filling a mail service prescription for a Participant, a substitution may be made, at the discretion of the PBM, in accordance with a licensed pharmacy practice.

- F.1.b. In the event the PBM issues excess payments or payments for ineligible claims or Participants, it will:

- Take all steps necessary to recover the overpayment, including recoupment (offset) from Participants, pharmacies or subsequent claim payments.
 - Assume 100% liability for mispayments which result from policy, PBM or system errors attributable to the PBM in whole or in part.
 - Refrain from initiating litigation to recover such overpayment unless authorized by ERS.
 - Provide ERS with detailed reports on a monthly basis that itemize the amounts of each overpayment; the reason for the overpayment; a listing of payees with outstanding overpayment recoveries due; an accounting of: (a) prior balances of recoveries due, (b) current month overpayments, (c) recoveries, (d) new balances, and (e) percentage of overpayment dollars recovered; and an aging of receivables report for 30, 60, 90 and 91+ days.
 - Reimburse the HealthSelect PDP and/or the EGWP PDP for any covered drug dispensed to a former HealthSelect Participant and/or EGWP PDP Participant reported by ERS as no longer a plan Participant, if the PBM receives such notification at least two (2) full business days prior to the date of the services.
- F.1.c. The PBM shall investigate unusual or extraordinary charges to determine all relevant circumstances and report its findings to ERS. The PBM's staff shall determine eligible charges, subject to the final authority of ERS on all claims matters.
- F.1.d. HealthSelect PDP and/or EGWP PDP claims filed by Participants shall be processed within fifteen (15) calendar days of submission to the PBM unless additional information and/or investigation are required.
- F.2. **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 the HealthSelect PDP and/or the EGWP PDP shall be or have been provided. The PBM 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 either PDP'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).
- F.2.a When a Pharmacist settles with or is found liable for medical malpractice, the PBM will seek recoupment of benefits paid in connection with services negligently rendered by the Pharmacist prior to seeking subrogation from the Participant. The PBM shall incorporate a provision in the PBM's contracts with Pharmacists to implement this provision.
- F.2.b The PBM shall be responsible for all costs associated with subrogation activities and litigation support. The PBM's provision for such costs should be included in its administrative fee.
- F.3. **Fraud and Abuse.** The PBM shall use automated systems to detect fraud and misuse of the program, overpayments, wrongful or incorrect payments, falsification of eligibility, unusual or extraordinary charges and verification of enrollment and unnecessary and/or wrongful drug prescribing practices and abuses. The PBM 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 of any fraudulent or suspicious activity. The PBM shall also provide a monthly report on all such fraudulent and/or suspicious claims to ERS' Benefit Contracts division. The PBM understands that ERS may develop further policies in connection with the detection and prevention of fraud or abuse of the GBP and HealthSelect. The PBM 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. The Contract has additional requirements in this regard. At minimum, PBM shall perform the following for detecting fraud and abuse:
- The PBM shall provide a toll-free number and an Internet link for Participants to report fraud and abuse;
 - The PBM shall utilize EOBs for the tracking of phantom billing;
 - The PBM shall monitor claims utilized to identify excessive claims/number of prescribers and number of pharmacies for narcotic/addictive drugs; and
 - The PBM shall monitor the licensure of pharmacies to ensure claims of non-licensed providers are denied.

- F.3.a The PBM 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. The PBM shall maintain all such records throughout the Contract Term and for at least seven (7) years following the end of the Contract, and shall make such records accessible and available to ERS for inspection and audit upon ERS' request. In the event the PBM is scheduled to destroy payment records, the PBM must contact ERS for approval prior to the destruction of the payment records. If ERS approves destruction, verification of the destroyed records shall be required at ERS' direction. In the event there arises any claim, dispute or litigation concerning the Contract, the period of access and examination described above shall continue until the disposition of such claim, dispute, or litigation is final. The Contract has additional requirements regarding audits and maintenance and destruction of records.

G. PBM Program Reporting

- G.1 **Actuarial Reporting.** As previously noted, ERS retains a consulting actuary on insurance matters. The consulting actuary assists and advises the ERS staff on benefit plan design, Proposal review, and the PBM's Price Proposal analysis. ERS staff or the consulting actuary may, from time to time, request that the PBM provide additional information specific to the HealthSelect PDP and EGWP PDP. The PBM 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 the PBM prepare customized reports on a timely basis at no additional cost to ERS.

- G.1.a The PBM 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 utilizing file encryption with ERS' public key (PGP), all claims (retail, mail, and Participant-submitted) 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 items described below for each claim record. Please note that ERS will work with the selected PBMs regarding the content, coding and format of the detailed claims file.

- Member Identification Number;
- Patient Identification Number;
- Patient Date of Birth;
- Patient Gender;
- Patient Relationship Code (member, spouse, etc.);
- Employee Class Code (active employee/retiree code);
- Other Coverage Code;
- Patient RDS Eligibility Indicator;
- Pharmacy NABP Number;
- Pharmacy NPI;
- Pharmacy Name;
- Pharmacy Chain Name;
- Pharmacy Address;
- Pharmacy City;
- Pharmacy State;
- Pharmacy ZIP Code;
- Pharmacy Type (retail, mail, specialty pharmacy, etc.);
- Date of Service;
- Date Pharmacy Paid;
- Record Status Code (paid, adjusted, etc.);
- Claim Media Type (electronic, paper, etc.);
- NDC Number;
- GPI Number;
- GCN Number;
- Therapeutic Class Code – AHFS;
- Drug Name;
- Medicare Part B/D Code;
- Prescriber ID;
- Prescriber Name;
- Number of Refills Authorized;
- Fill Number;

- Dispense as Written (DAW)/Product Selection Code;
- Quantity Dispensed;
- Unit of Measure;
- Days' Supply;
- Drug Type (brand, generic, etc.);
- EGWP Brand Drug Indicator;
- Maintenance Drug Indicator;
- Compound Drug Indicator;
- Specialty Drug Indicator;
- Medicaid Identifier;
- Drug RDS Eligibility Indicator;
- Formulary Status;
- Pharmacy Usual & Customary Charge;
- Average Wholesale Price per Unit;
- WAC per Unit;
- MAC per Unit;
- Basis of Reimbursement Determination (AWP, MAC, usual charge, etc.);
- GBP Health Plan Code (HealthSelect, MA PPO, etc.);
- PDP Code (HealthSelect PDP, EGWP, Wrap);
- Unique Claim Number;
- Pharmacy Rx Number;
- Ingredient Cost Paid;
- Dispensing Fee Paid;
- Total Amount Paid by all Sources;
- Amount Attributed To Sales Tax;
- Patient Pay Amount;
- Amount of Copayment;
- Amount of Coinsurance;
- Amount Attributed To Product Selection (member pay the difference);
- Amount Applied to Periodic Deductible;
- Accumulated Annual Deductible Amount;
- Net Amount Paid to Provider;
- COB Indicator (Patient is GBP primary, secondary, etc.);
- COB Primary Payer Amount Paid; and
- COB Primary Payer Copay.

The PBM 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. ERS will agree to treat the PBM's pharmacy reimbursement provisions (dispensing fee, discounts and MAC pricing) as confidential.

- G.1.b. The PBM 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.
- G.1.c. The PBM shall provide statistical information associated with the PDPs during face-to-face meetings. The information will include current Calendar Year or Fiscal Year information and the full twelve (12) months of the previous Calendar Year or Fiscal Year, depending upon which PDP is being reported. Examples of statistical analyses as may be periodically requested by ERS include, but are not limited to:
- Top 100 Drugs by expenditure;
 - High Utilization Reports;
 - Executive Management Summary; and
 - Separation of experience by mail and retail, mail service and specialty pharmacy.
- G.1.d. Additionally, the PBM may be requested to provide a prescription drug database with search capabilities, and provide any related training necessary as requested by ERS staff. All necessary software, hardware, and system access shall be furnished by the PBM at no additional cost to ERS.
- G.1.e. The PBM shall provide certain reports that are required to administer a self-funded plan including, but not limited to, IRS Form 1099.

G.2. **Annual Reporting Requirements.** The PBM shall be required to submit GBP utilization and cost data on an annual basis using the ERS-prescribed format within 45 days of the end of the Fiscal Year and/or Calendar Year. For example:

- The HealthSelect PDP is due by October 15, 2018, the PBM shall be required to provide utilization and cost data for the experience period September 1, 2017 through August 31, 2018; and
- the EGWP PDP is due by February 15, 2018, the PBM shall be required to provide utilization and cost data for the experience period January 1, 2017 through December 31, 2017.

These obligations survive termination of the Contract for any reason, and the PBM is required to provide the required experience information for the previous FY and/or CY regardless of whether the PBM continues as a PBM under the GBP.

G.3. **Quarterly Reporting Requirements.** ERS requires the PBM to provide the following reports as reflected in Sections VII.G.4. – VII.G.4.b. below using either GBP-specific or book of business statistics: Subrogation Reimbursements and Cost Management Activity Report (Fraud). The data shall include the entire previous quarter, and shall be received in the ERS-prescribed format via email by the 20th of the month following at quarter end. The current requirements are:

G.3.a. **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 pharmacy fraud.

Activity	Q1	Q2	Q3	Q4	YTD
Referrals					
Cases of Interest					
Opened Cases					
Closed Cases					
Cases Referred to Law Enforcement					
Recoveries Subtotal					
Prepayment Claims Edits: Costs Avoided					
Ineligible Claim Count					
Duplicate Charges					
Non-Covered Charges					
Ineligible Members					
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					

G.4. **Monthly Reporting Requirements.** ERS requires the PBM to provide the following reports as reflected below using either GBP-specific or book of business statistics. The data shall include the entire previous month, and shall be received in the ERS-prescribed format via email by the 20th of the month following period end. Failure to provide the required data may result in an assessment of Performance Guarantees as provided in the *Performance Guarantees*, Appendices F-1 and F-2, and/or liquidated damages and/or other legal remedies available to ERS in the Contract. The current requirements are:

G.4.a. **Monthly Administrative Performance Report.** This document reflects the specific Contract performance areas as specified in the *Performance Guarantees*, Appendices F-1 and F-2, upon which the PBM must report each month. The last tab of the document reflects the calculation and methodology used to identify the reported measure. On an annual basis, the PBM will be responsible for providing ERS with the source document utilized 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 Appendices K-1 and K-2.

ERS shall utilize information reported by the PBM to proactively monitor trends and to identify/address variances on the targeted PBM performance requirements. ERS shall specify the reporting timelines and formats. The formats shall include a column indicating a performance standard for the item being reported that ERS shall use as a benchmark to monitor compliance and to analyze the reported statistics.

The document type and due date shall be specified by ERS.

The statistics required to be reported by the PBM include, but are not limited to:

- The number of written and emailed complaints received from the Participants, and the average length of time to resolve those complaints. Complaints shall be resolved within five (5) days.
- The number of and percentage of ID cards are mailed within seven (7) business days of the PBM's receipt of enrollment data from ERS or Participant's request.
- The number of and percentage of MBPDs mailed within five (5) business days of the PBM's receipt of enrollment data from ERS or Participant's request.
- The number of and percentage of EOCs mailed within five (5) business days of the PBM's receipt of enrollment data from ERS or Participant's request.
- Average Speed of Answer ("ASA") time, in seconds, for calls in the queue.
- Service Level.
- Average call-blockage rate.
- Pharmacy network additions and terminations by primary care, specialty and facility.
- GBP-specific dollars recovered through fraud investigation activity.

The PBM shall provide an accurate accounting of member experience and program utilization by reporting the items noted in the Performance Guarantees, attached hereto as Appendices F-1 and F-2. Further, in accordance with the Performance Guarantees, PBM shall provide monthly, quarterly, and annual reporting in an ERS-prescribed format, via email, by the 20th of the month following the period end, or by the date determined by ERS.

G.4.b. **Monthly Pharmacy Network Additions/Terminations Detail Report.** This information is utilized by ERS to proactively monitor and respond to changes in the pharmacy network. The following data elements are required in the ERS-prescribed format: Pharmacy Name, Full Pharmacy Address, Date Pharmacy Added To or Terminated from the Network. This information must be broken out into Retail Pharmacy Network, Mail Service Pharmacy Network, and EDS Pharmacy Network categories.

To ensure the accuracy of the self-reported information and reliability of the PBM's internal operational controls, the PBM 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.

G.5 **Management Reporting Requirements.** As required in the Performance Guarantees, ERS may, from time to time on an *ad hoc* basis, request that the PBM prepare customized reports on a timely basis at no additional cost to ERS in an ERS-prescribed format on or before the date prescribed by ERS. The PBM shall be required to provide data analysis and GBP-specific reports as specified by ERS. A list of the PBM's current client reports shall be included in the PBM's Proposal. In addition to providing the PBM's current client reports list, PBM shall include a description of the methods used to access all reports electronically.

- G.6 Following contract award, ERS will determine the required administrative reports and specify reporting frequency. The PBM's required reporting shall include, but not be limited to, the following:
- Performance Guarantees;
 - Utilization and Experience History;
 - Statistical Information (i.e., Lag report); and
 - Fraud, Waste and Abuse.

Reports shall vary in frequency and scope based on ERS' determination after selection of the PBM and execution of the Contract. However, all reports provided by the PBM shall reflect quality production with attention to detail, accurate data, and meet additional requirements as specified by ERS. Costs associated with reporting shall be included in the PBM's *Price Proposal and Response Format*, Article XI.

- G.7 **Other Reporting Requirements.** The PBM shall submit to ERS varied reports on a monthly basis. This data shall be used by ERS to analyze the HealthSelect PDP and/or EGWP PDP. Notwithstanding the foregoing, ERS shall at all times have online access to HealthSelect PDP and/or EGWP PDP statistical reporting information with search capabilities at no additional charge to ERS. The information shall include current and previous years' data.

- G.8 **Special Reporting Requirements.** The PBM shall provide ERS with knowledgeable, dedicated personnel resources to provide various reports and analytical data for the HealthSelect PDP and/or EGWP PDP as requested by ERS. This data shall be used by ERS to analyze the PDPs. 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;
- Direct Subsidy (provided by CMS to all Medicare Part D members which is provided on a monthly basis);
- Low Income Premium Subsidy (provided by CMS to economically disadvantaged members to help with monthly prescription benefit premiums which is provided on a monthly basis);
- Low Income Cost Share (provided by CMS to economically disadvantaged members to help with prescription drug costs and co-pays which is provided annually, 12-15 months after Calendar Year ends);
- Catastrophic Discount Program (the subsidy that reimburses the self-funded EGWP for 80% of the claim cost once the member exceeds the catastrophic threshold which is provided annually, 12-15 months after Calendar Year ends);
- Coverage Gap Discount Program (works with drug manufacturers who give a 50% rebate for claims that are filled while the member is in the "GAP" between the initial coverage phase and the catastrophic phase during the Calendar Year which is provided on a quarterly basis, begins the third quarter of a Calendar Year for the first quarter discounts and continues quarterly thereafter);
- Pharma Rebates (which are the same as the HealthSelect PDP and provided on a quarterly basis); and
- Other *ad hoc* reports.

ERS may request the PBM to provide additional, customized *ad hoc* reports specific to the PDPs. The PBM 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. Coordination with Other GBP Vendors

The PBM shall coordinate with all other GBP Vendors as required by ERS. The other GBP Vendors that the PBM will have to coordinate with currently include, but are not limited to:

- H.1 **HealthSelect TPA.** The GBP self-funded health benefits plan, HealthSelect, is administered through a TPA selected by ERS. UnitedHealthCare Services, Inc. is currently the TPA for HealthSelect. The PBM selected hereunder shall be required to coordinate with the HealthSelect TPA to exchange patient health care information, including, but not limited to, claims data files with out-of-pocket accumulations on a pre-determined schedule, and to educate network physicians and pharmacies only as necessary to administer prescription drug dispensing and usage needs.

- H.2 **Medicare Advantage PPO:** Humana Insurance Company ("Humana") currently provides a Medicare Advantage Plan with a statewide Preferred Provider Organization to Participants and their spouses eligible for Medicare. The PBM may be required to coordinate Medicare participation with Humana.
- H.3 **Medicare Advantage HMO:** KS Plan Administrators d/b/a KelseyCare ("KelseyCare") currently provides an HMO Medicare Advantage Plan to Participants and their spouses eligible for Medicare. The PBM may be required to coordinate Medicare participation with KelseyCare.
- H.4. **Flexible Spending.** TexFlex is an Internal Revenue Code Section 125 cafeteria plan that allows Participants to establish healthcare reimbursement accounts and to pay certain unreimbursed charges with pre-tax funds. The selected PBM shall have the capability to have an electronic interface function in place (transmit and receive eligibility/claims data) as appropriate, with the TexFlex administrator (currently ADP, LLC) to allow for auto-substantiation of claim payments.
- H.5. The PBM shall establish non-disclosure agreements with other GBP Vendors, as necessary.

I. Other Administrative Requirements

- I.1. **Identification ("ID") Cards.** PBM is required to mail ID cards to Participants as follows:
 - I.1.a. **Initial Cards for HS PDP Participants.** When the Participant is reflected on the eligibility file thirty (30) calendar days or more prior to the effective date, the PBM shall mail identification ("ID") cards to the Participants no later than the 20th of the month immediately preceding the effective date. When the Participant is reflected on the file less than thirty (30) calendar days prior to the effective date, the ID cards shall be mailed to the Participants no later than seven (7) business days of PBM's receipt of the eligibility file.
 - I.1.b. **Initial Cards for EGWP Participants.** The PBM shall mail ID cards to Participants no later than seven (7) business days of the PBM's receipt of plan enrollment information from ERS, thereby guaranteeing that the card information has been accurately loaded onto the PBM's system and the card has passed through quality assurance checks, maintaining an accuracy rate of 99% or better.
 - I.1.c. **Reissuance of ID Cards (Both PDPs).** Any ID card that has to be re-issued must be mailed to Participants no later than seven (7) business days of the PBM's receipt of plan enrollment information from ERS, thereby guaranteeing that the card information has been accurately loaded onto the PBM's system and the card has passed through quality assurance checks, maintaining an accuracy rate of 99% or better.

J. Interrogatories

Review the Interrogatory instructions referenced in Section I.B.3.

General Information

- J.1. Discuss the key advantages of contracting with the PBM to administer the HealthSelect PDP and/or the EGWP PDP and describe particular differentiators that set the PBM's organization apart from other industry competitors.

HealthSelect PDP	
EGWP PDP	

- J.2. Describe what position and actions the PBM took during the past year on the following market industry events:

	HealthSelect PDP	EGWP PDP
Switch to OTC medications of various prescription products;		
The continued growth of Specialty drugs;		
Implementation of Affordable Care Act Provisions;		
Recent increase in utilization and cost of compound drugs and topical analgesics; and		
The introduction of new and expensive specialty drugs; i.e.,		

PCSK9 inhibitors and Hepatitis C drugs.		
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J.3. Describe fully any recommendations the PBM has to improve the cost efficiency of the HealthSelect PDP and/or the EGWP PDP. Include in the PBM's response at least the following:

J.3.a. Description of the network, including numbers of pharmacies and areas of the State where access to a network pharmacy could be a customer service concern.

HealthSelect PDP	
EGWP PDP	

J.3.b. Describe the PBM's experience in providing cost containment enhancements to former and current clients.

HealthSelect PDP	
EGWP PDP	

J.3.c. Discuss audit methods to ensure that all manufacturer revenue has been passed through from the PBM to ERS.

HealthSelect PDP	
EGWP PDP	

J.4. How long has the PBM provided:

- Retail pharmacy network administration services;
- Mail services;
- Integrated retail and mail services;
- Extended Days' Supply Network Services; and
- Specialty drug services?

J.5. Describe procedures for notifying Participants of changes in the pharmacy network. How much notice is provided to Participants in the event the PBM terminates its Contract with a pharmacy? How much notice does the PBM require the pharmacy to give the organization prior to the pharmacy terminating its Contract with the PBM?

HealthSelect PDP	
EGWP PDP	

J.6. Is the PBM currently a fiduciary for any other plan(s)?

- Yes
 No

If yes, describe how the PBM acts as a fiduciary.

HealthSelect PDP	
EGWP PDP	

J.7. Describe the PBM's plan to ensure minimal member disruption in converting to PBM's formulary from ERS' current formulary.

HealthSelect PDP	
EGWP PDP	

J.8. Describe how the PBM notifies Participants at the time of refill alerting them that their refill will be processed with a product from a different manufacturer and that the appearance of the drug may be different.

HealthSelect PDP	
EGWP PDP	

- J.9. Describe the process (e.g., regular mail, email, newsletters, etc.) for notifying Participants of:
- Expiration date of their prescription;
 - Their next refill date and the remaining number of refill(s);
 - Prescriptions not on formulary;
 - Generic substitution availability;
 - Drug utilization management requirements;
 - Savings intervention opportunity messages; and
 - COB messages.

- J.10. Can the PBM do prospective modeling for patients and demonstrate their personal savings associated with changing medications from brand to generic or from retail to mail service or EDS with regard to their current prescriptions?

HealthSelect PDP	
EGWP PDP	

- J.10.a. Can this function use existing claim history, ERS-specific plan design and pricing as a starting point?

HealthSelect PDP	
EGWP PDP	

- J.11. What percentage of the PBM's employer-sponsored plan employees register on the PBM's authenticated web site?

HealthSelect PDP	
EGWP PDP	

- J.11.a. What target should ERS set for its population given nearly 50% web access among Participants, and strong promotion?

HealthSelect PDP	
EGWP PDP	

- J.12. Provide information on the PBM's testing and certification of pharmacies that is performed, if any.

HealthSelect PDP	
EGWP PDP	

- J.13. Describe the performance guarantees that the PBM has in place to ensure that Participants receive their benefits seamlessly and any associated reporting that is utilized for verification.

HealthSelect PDP	
EGWP PDP	

- J.14. In the PBM's analysis of ERS' pharmacy claims, what is the comparison of savings if scripts were to be filled as generics vs. brand-name discounts/subsidies through the HealthSelect PDP?

HealthSelect PDP	
EGWP PDP	

- J.15. Describe the PBM's capability to work with the health plan TPA in calculating maximum out-of-pocket ("MOOP") amounts.

HealthSelect PDP	
EGWP PDP	

J.16. The PBM shall confirm that it can handle the integration with the HealthSelect TPA by receipt of daily transmission files.

HealthSelect PDP	<input type="checkbox"/> Confirm <input type="checkbox"/> Unable to Confirm; the PBM shall provide a detailed explanation in Section VII.K.1.
EGWP PDP	<input type="checkbox"/> Confirm <input type="checkbox"/> Unable to Confirm; the PBM shall provide a detailed explanation in Section VII.K.1.

J.17. Provide a description of how retro terms are handled and the impact on claims processing.

HealthSelect PDP	
EGWP PDP	

J.18. Other than processing of claims, describe, in detail, the facilities and procedures that the PBM will utilize in servicing the Contract.

HealthSelect PDP	
EGWP PDP	

J.19. Confirm that PBM will provide actuarial personnel that shall be available to confer with the ERS staff and consulting actuaries concerning rating and other financial issues.

HealthSelect PDP	<input type="checkbox"/> Confirm <input type="checkbox"/> Unable to Confirm; the PBM shall provide a detailed explanation in Section VII.K.1.
EGWP PDP	<input type="checkbox"/> Confirm <input type="checkbox"/> Unable to Confirm; the PBM shall provide a detailed explanation in Section VII.K.1.

Clarification and Site Visit Information

J.20. Provide the name, title, mailing/email address(es), and telephone/facsimile number(s) of the individual responsible for the preparation of the PBM's *Clarifications* during the RFP evaluation period.

	HealthSelect PDP	EGWP PDP
Name:		
Title:		
Mailing address:		
Email address:		
Telephone number:		

J.20.a. In the event that the PBM is selected as a Finalist, ERS may request a site visit to the PBM's Operational (headquarters and call centers) and Information System facilities. To better assist ERS with future travel arrangements, the PBM shall provide the following information for the Operation and Information System facilities:

	HealthSelect PDP	EGWP PDP
Physical address of the Operation headquarters Facility:		
Physical address of the Call Center Facility:		
Physical address of the Information Systems Data Center Facility (the facility were ERS' data will be housed):		

J.20.b. Provide an outline for proposed client-based expansion for the PBM within the next four (4) years to include company name and anticipated enrollment. If expansion is anticipated, what steps will the PBM take to maintain quality service to the ERS account?

HealthSelect PDP	
EGWP PDP	

Organizational Information

J.21. Provide the PBM's full legal name, mailing/email address(es), and telephone number.

	HealthSelect PDP	EGWP PDP
Full legal name:		
Mailing address:		
Email address:		
Telephone number:		

J.21.a. Identify the PBM's type of incorporation (check all that apply):

HealthSelect PDP:

- Publicly owned Privately owned
 For Profit Not-for-Profit / Non-Profit

EGWP PDP:

- Publicly owned Privately owned
 For Profit Not-for-Profit / Non-Profit

J.21.b. What is the PBM's Federal Identification Number?

HealthSelect PDP	
EGWP PDP	

J.21.c. If PBM has a Texas Identification Number, please provide it.

HealthSelect PDP	
EGWP PDP	

J.21.d. PBM shall provide an organizational chart(s) that shows its management and any personnel that may be used to provide Services to ERS.

HealthSelect PDP	
EGWP PDP	

J.22. Describe and confirm the validity of any license(s) that the PBM or its employees, independent contractors or subcontractors are required to maintain.

HealthSelect PDP	
EGWP PDP	

J.23. Provide the date that the PBM products and services were first provided by the PBM.

HealthSelect PDP	
EGWP PDP	

J.24. Provide the PBM's total enrollment as of:

	January 1, 2014	January 1, 2015	January 1, 2016
HealthSelect PDP			
EGWP PDP			

J.24.a. Given the preceding information, are there any limits on the PBM's ability to provide services to the Participants? If so, please describe any such limitations.

HealthSelect PDP	
EGWP PDP	

J.24.b. If the PBM is currently participating in the GBP, indicate the percentage of Enrollment Total for those participating in the GBP.

HealthSelect PDP	
EGWP PDP	

J.24.c. If the PBM is not currently participating in the GBP, indicate the percentage of Enrollment Total that the GBP will represent if PBM is awarded this Contract.

HealthSelect PDP	
EGWP PDP	

J.25. Provide the name(s), title(s), mailing/email address(es), and telephone number for **the individual(s)** responsible for the preparation of all materials contained in the PBM's Proposal (other than the *Price Proposal and Response Format*).

	HealthSelect PDP	EGWP PDP
Name:		
Title:		
Mailing address:		
Email address:		
Telephone number:		

J.26. Provide the name(s), title(s), mailing/email address(es), and telephone number for **the individual(s)** who will be PBM's Business Team Lead.

	HealthSelect PDP	EGWP PDP
Name:		
Title:		
Mailing address:		
Email address:		
Telephone number:		

J.27. Confirm that PBM will provide staff sufficient to provide the Services described in the RFP and Contract for the Contract Term, and that PBM's staff shall include, but not necessarily be limited to, personnel to provide enrollment processing and reporting, benefit processing, program claims processing, communications, Internet/website management, grievance/complaint/appeals processes, transitioning of benefits, payments and reconciliation, and a clinical pharmacist.

HealthSelect PDP	<input type="checkbox"/> Confirm <input type="checkbox"/> Unable to Confirm; the PBM shall provide a detailed explanation in Section VII.K.1.
EGWP PDP	<input type="checkbox"/> Confirm <input type="checkbox"/> Unable to Confirm; the PBM shall provide a detailed explanation in Section VII.K.1.

J.28. How many of your employees are located in Texas? Describe the functions these Texas employees perform.

	HealthSelect PDP	EGWP PDP
Number of the PBM staff in Texas:		
Description of PBM's staff functions:		
If applicable, number of Subcontractor staff in Texas:		
If applicable, description of Subcontractor staff functions:		

Subcontractor

J.29. Does the PBM propose to utilize subcontractors in the performance, delivery and provision of services and products requested hereunder?

HealthSelect PDP	<input type="checkbox"/> Yes	<input type="checkbox"/> No
EGWP PDP	<input type="checkbox"/> Yes	<input type="checkbox"/> No

J.29.a. If applicable, provide the information below for each subcontractor and specify what services may be performed by each subcontractor. List each in the following format:

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

J.30. Confirm that PBM will provide all HUB information required by the State.

HealthSelect PDP	<input type="checkbox"/> Confirm <input type="checkbox"/> Unable to Confirm; the PBM shall provide a detailed explanation in Section VII.K.1.
EGWP PDP	<input type="checkbox"/> Confirm <input type="checkbox"/> Unable to Confirm; the PBM shall provide a detailed explanation in Section VII.K.1.

J.30.a. If applicable, PBM shall provide the HUB information as required in Section VII.D.4. above regarding HUBs.

HealthSelect PDP	
EGWP PDP	

Account Management

J.31. Briefly outline the PBM's account team management philosophy.

HealthSelect PDP	
EGWP PDP	

J.32. Briefly outline the PBM's implementation team philosophy.

HealthSelect PDP	
EGWP PDP	

J.32.a. If bidding on both PDPs, describe how the implementation teams for both PDPs will be coordinated and managed.

HealthSelect PDP	
EGWP PDP	

J.33 Provide the location of the proposed PBM account team's main office.

HealthSelect PDP	
EGWP PDP	

J.34. For purposes of providing the Services that are part of the RFP and Contract, will PBM provide a designated staff or a dedicated staff? Please indicate by title, staff that will be designated and staff that will be dedicated.

HealthSelect PDP	
EGWP PDP	

J.34.a. If providing a designated staff, how many other clients are, and/or will be in the future, assigned to the proposed PBM account team that is assigned to service ERS?

HealthSelect PDP	
EGWP PDP	

J.34.b. If PBM indicated that it will provide a dedicated staff to service ERS, confirm that PBM will provide a dedicated staff arrangement for the entire Contract Term.

HealthSelect PDP	<input type="checkbox"/> Confirm <input type="checkbox"/> Unable to Confirm; the PBM shall provide a detailed explanation in Section VII.K.1.
EGWP PDP	<input type="checkbox"/> Confirm <input type="checkbox"/> Unable to Confirm; the PBM shall provide a detailed explanation in Section VII.K.1.

Operational Services (Administrative, Call Center, Customer Service and Customer Complaint)

J.35. The PBM shall provide a detailed description of the manner in which the PBM proposes to administer the HealthSelect PDP and/or EGWP PDP to the Participants. Include responses to the following:

	HealthSelect PDP	EGWP PDP
Account Manager/Account Representative(s)		
Claims processing		
Customer service		
Website management		
Correspondence unit		
Publications distribution.		

J.36. Are all administrative services performed internally?

HealthSelect PDP	<input type="checkbox"/> Yes	<input type="checkbox"/> No
EGWP PDP	<input type="checkbox"/> Yes	<input type="checkbox"/> No

J.36.a. If not, please identify where any other facilities are located that will be performing administrative duties.

HealthSelect PDP	
EGWP PDP	

J.37. If the PBM contracts with a management company for some or all of its administrative services, please specify:

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

J.38. Where will the account representative be located? Will this individual have responsibility for other clients? If yes, how many?

	HealthSelect PDP	EGWP PDP
Location of account representative		
Responsible for other clients.		

J.39. Describe the PBM's Customer Service Unit by reflecting the following:

	HealthSelect PDP	EGWP PDP
The manner in which the customer service unit is accessed (i.e., web chat, phone, email).		
The Customer Service unit's hours of operation.		
The Customer Service unit's handling of complaints.		
The Customer Service unit's escalation of procedures.		
Describe the related training received by each employee category (i.e., claim processors, customer service representatives, supervisors, and other management staff).		
Identify any dedicated staff units to be assigned to ERS or that you plan to assign to this account.		
Are customer service representatives separated from the claim processing unit, or do claim processors have customer service responsibilities?		
Do customer service representatives have the authority to approve claims?		

J.40. For the period of time listed below, provide the following turnover rate information:

HealthSelect PDP

Employee Title	2014 Calendar Year	2015 Calendar Year
Executive		
Account Manager		
Administrative Staff		
Customer Service Unit		

EGWP PDP

Employee Title	2014 Calendar Year	2015 Calendar Year
Executive		
Account Manager		
Administrative Staff		
Customer Service Unit		

J.41. Describe the types of access the PBM provides to the Participants with information regarding to pharmacy services.

HealthSelect PDP	
EGWP PDP	

J.42. Does the PBM currently maintain an Internet website?

If yes, provide the URL address:

HealthSelect PDP	
EGWP PDP	

J.43. Can the Participants access specific claim information via the PBM website to determine the status of claims and to make inquiries?

HealthSelect PDP	
EGWP PDP	

J.44. Describe the PBM's customer satisfaction survey process and how often they are conducted.

HealthSelect PDP	
EGWP PDP	

J.44.a. The PBM shall provide a copy of the results of the PBM's most recent customer satisfaction survey.

HealthSelect PDP	
EGWP PDP	

J.45. Does the PBM provide any automated customer service support using voice response for routine questions?

HealthSelect PDP	<input type="checkbox"/> Yes	<input type="checkbox"/> No
EGWP PDP	<input type="checkbox"/> Yes	<input type="checkbox"/> No

J.46. Please identify all languages spoken by the PBM's customer service representatives, and describe how the Participant is assisted if they speak languages other than English and Spanish.

HealthSelect PDP	
EGWP PDP	

J.47. Can the PBM provide a separate toll-free telephone number for Participants?

	HealthSelect PDP	EGWP PDP
	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
If no, please explain.		
If yes, explain how the caller is routed to the appropriate customer service representative.		

J.48. Provide a brief description of how after-hours calls are handled.

HealthSelect PDP	
EGWP PDP	

J.49. Does the PBM have the ability to monitor live customer service calls?

HealthSelect PDP	<input type="checkbox"/> Yes	<input type="checkbox"/> No
EGWP PDP	<input type="checkbox"/> Yes	<input type="checkbox"/> No

J.50. How are patterns of customer service inquiries monitored and how is the subsequent data used to improve claims processing activities?

HealthSelect PDP	
EGWP PDP	

J.51. How does the PBM ensure that its customer service representatives are providing timely and accurate information?

HealthSelect PDP	
EGWP PDP	

J.51.a. The PBM shall confirm that it has the ability to provide and send to ERS recorded telephone call records upon request by ERS.

HealthSelect PDP	<input type="checkbox"/> Confirm <input type="checkbox"/> Unable to Confirm; the PBM shall provide a detailed explanation in Section VII.K.1.
EGWP PDP	<input type="checkbox"/> Confirm <input type="checkbox"/> Unable to Confirm; the PBM shall provide a detailed explanation in Section VII.K.1.

J.52. Briefly describe the training that each PBM employee or representative receives to provide the PBM customer services. Include length of time it takes to become a qualified Customer Service Representative.

HealthSelect PDP	
EGWP PDP	

J.53. How does the PBM monitor first call resolution and Participant inquiries that do not get resolved?

HealthSelect PDP	
EGWP PDP	

J.54. Does the PBM record all phone calls and notify all parties that their conversations are being electronically recorded and stored?

HealthSelect PDP	
EGWP PDP	

J.55. Does the PBM'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?

HealthSelect PDP	
EGWP PDP	

J.56. Describe the PBM's call center telecommunications system.

HealthSelect PDP	
EGWP PDP	

J.57. Identify and describe the various reporting capabilities of the call center system.

HealthSelect PDP	
EGWP PDP	

J.58. Describe the PBM's calculation methodology applicable to the proposed call center metrics requirements referenced in Appendix J.

HealthSelect PDP	
EGWP PDP	

J.59. Describe the PBM's procedure for managing written inquiries.

HealthSelect PDP	
EGWP PDP	

J.59.a. What is the PBM's current response time standard with respect to questions requiring written communication?

HealthSelect PDP	
EGWP PDP	

J.60. How does the PBM's customer service system support ERS' Participants with disabilities?

HealthSelect PDP	
EGWP PDP	

J.61. Confirm that the PBM shall provide a dedicated Call Center/Customer Service Unit.

HealthSelect PDP	<input checked="" type="checkbox"/> Confirm <input type="checkbox"/> Unable to Confirm; the PBM shall provide a detailed explanation in Section VII.K.1.
EGWP PDP	<input checked="" type="checkbox"/> Confirm <input type="checkbox"/> Unable to Confirm; the PBM shall provide a detailed explanation in Section VII.K.1.

J.62. Confirm that the PBM's Customer Service unit will be functional prior to SE/FE or at the direction of ERS.

HealthSelect PDP	<input checked="" type="checkbox"/> Confirm <input type="checkbox"/> Unable to Confirm; the PBM shall provide a detailed explanation in Section VII.K.1.
EGWP PDP	<input checked="" type="checkbox"/> Confirm <input type="checkbox"/> Unable to Confirm; the PBM shall provide a detailed explanation in Section VII.K.1.

J.63. How many licensed pharmacists are employed in the PBM's customer service department who will be performing any services in connection with the PDP contracts?

HealthSelect PDP	
EGWP PDP	

J.64. Describe unforeseen implementation issues that the PBM's organization has encountered regarding mandatory generic drug provisions and how the PBM handled these situations.

HealthSelect PDP	
EGWP PDP	

J.64.a. Provide details of disruption analysis, if any, that you perform.

HealthSelect PDP	
EGWP PDP	

J.64.b. Describe the differences, if any, that may be noticeable from a Participant's perspective in regards to how a transaction is performed through the PBM, at the pharmacy or in the transaction documentation (including adjudication) that Participants will receive or experience. Provide examples, as appropriate.

HealthSelect PDP	
EGWP PDP	

- J.65. Does the PBM 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.

HealthSelect PDP	
EGWP PDP	

- J.66. Briefly outline any recent system changes. Describe any planned or scheduled system changes within the next thirty-six (36) months, including projected implementation dates by providing the following:

Program	System Change	Projected Implementation Date
HealthSelect PDP		
EGWP PDP		

- J.67. The PBM shall confirm that they will support and have the ability to answer questions during SE/FE.

HealthSelect PDP	<input type="checkbox"/> Confirm
EGWP PDP	<input type="checkbox"/> Confirm

- J.68. Describe the system the PBM utilizes to assist a Participant in choosing a pharmacy. Such description should include a discussion of the methodology used to coordinate the pharmacy with proximity to the Participant's residence, schedule and language.

HealthSelect PDP	
EGWP PDP	

- J.69. Describe the PBM's procedure for handling customer service complaints and inquiries. This should include, but not necessarily be limited to, (a) a description of PBM's problem resolution policies, and (b) PBM's internal processes to deal with Participant grievances.

HealthSelect PDP	
EGWP PDP	

- J.70. What customer complaint tracking system does the PBM utilize? How long has this system been operational?

HealthSelect PDP	
EGWP PDP	

Claims and Claims Processing

- J.71. Provide a detailed description of the PBM's claims processing procedures.

HealthSelect PDP	
EGWP PDP	

- J.71.a. Are there situations where the PBM would accept a paper claim Universal Claim Form ("UCF") from a pharmacy for processing?

HealthSelect PDP	
EGWP PDP	

- J.71.b. Are all the same online edits and plan design criteria applied to paper claims?

HealthSelect PDP	
EGWP PDP	

- J.71.c. Describe PBM's procedure for processing patient submitted paper claims.

HealthSelect PDP	
EGWP PDP	

J.72. What prescribing physician identifier does the PBM's system require pharmacies to input?

HealthSelect PDP	
EGWP PDP	

J.73. How does the PBM process/pay compound drug claims submitted by network or non-network pharmacies? Describe how the PBM proposes to handle compound medication cost containment, and include an example of this process.

HealthSelect PDP	
EGWP PDP	

J.73.a. What copay does the PBM apply to such claims?

HealthSelect PDP	
EGWP PDP	

J.74. What safeguards exist to prevent one group's claims experience from being charged to another?

HealthSelect PDP	
EGWP PDP	

J.75. Discuss the measures the PBM employs to protect Participant identity information (i.e., social security number, credit card information).

HealthSelect PDP	
EGWP PDP	

J.76. What financial arrangement is the PBM willing to extend to the HealthSelect PDP Participants and/or the EGWP PDP Participants, at no additional cost to the plan or Participants, when the need for multiple or expensive medications may create an economic hardship on the Participants?

HealthSelect PDP	
EGWP PDP	

J.77. Discuss the PBM's collection process, both for Participant and/or pharmacy, as it relates to terminated Participants that utilize pharmacy benefits past their termination date.

HealthSelect PDP	
EGWP PDP	

J.77.a. Will this service be available to the PDPs?

HealthSelect PDP	
EGWP PDP	

J.78. Describe how the Participants will be able to view claims online, in real time.

HealthSelect PDP	
EGWP PDP	

J.79. What is the PBM's average system down time for its online retail pharmacy system?

HealthSelect PDP	
EGWP PDP	

J.80. Describe the PBM's traditional COB process for non-Medicare Part B drugs. Provide details regarding how this would be managed and the member impact.

HealthSelect PDP	
EGWP PDP	

- J.80.a. Describe the PBM's COB process for Medicare Part B drugs. The PBM's description should include:
- COB processes for both retail and mail services and
 - An example demonstrating reimbursement level and savings to plan.

HealthSelect PDP	
EGWP PDP	

- J.80.b. Describe the reporting available to capture COB savings.

HealthSelect PDP	
EGWP PDP	

- J.81. Describe the PBM's retention process of keeping a history of all the Participant's claims submissions.

HealthSelect PDP	
EGWP PDP	

Anti-Fraud and Abuse Processes

- J.82. Explain the procedures and systems the PBM uses to prevent, deter, detect and investigate fraud and related issues, and how such processes shall be utilized in connection with the GBP, the PDPs and HealthSelect.

HealthSelect PDP	
EGWP PDP	

- J.83. Discuss how the PBM would communicate with the Participant, pharmacy, and/or physician(s) once a fraud or abuse problem is suspected or identified. Your response should include, but not necessarily be limited to, how the information will be reported to ERS.

HealthSelect PDP	
EGWP PDP	

- J.84. Discuss what measures the PBM employs to prevent and detect employee fraud (i.e., including background checks, confidentiality agreements, and security monitoring equipment).

HealthSelect PDP	
EGWP PDP	

- J.85. The PBM shall submit its fraud plan with PBM's Proposal.

- J.86. In PBM's experience, what integration is available with the HealthSelect medical TPAs to coordinate fraud, waste and abuse efforts? Provide the frequency, the elements that are required and how compliance is evaluated.

HealthSelect PDP	
EGWP PDP	

Ratings

- J.87. Provide copies of ratings and reports on the PBM issued by independent insurance rating organizations or similar entities (e.g., A.M. Best's, Moody's, NCQA, Standard and Poor's).

HealthSelect PDP	
EGWP PDP	

Data Reporting

- J.88. Provide a listing of all reports currently available within the PBM's Proposal, including claims experience reports.

HealthSelect PDP	
EGWP PDP	

- J.88.a. Describe reports provided on a regular basis at no additional cost to ERS.

HealthSelect PDP	
EGWP PDP	

- J.88.b. Describe how the reports can be utilized to identify problems and monitor performance.

HealthSelect PDP	
EGWP PDP	

- J.88.c. At what frequency are the reports provided by the PBM?

HealthSelect PDP	
EGWP PDP	

- J.88.d. Describe typically requested *ad hoc* reports, including turn-around time.

HealthSelect PDP	
EGWP PDP	

- J.89. Separate from the required claims data file, how will the PBM provide ERS with the capability to conduct online queries, interface with PBM's database in order to generate *ad hoc* reports and extract specific information?

HealthSelect PDP	
EGWP PDP	

- J.90. Describe any unique reporting capabilities that differentiate the PBM from its competitors.

HealthSelect PDP	
EGWP PDP	

- J.91. Does the PBM perform an internal analysis of client-specific data to develop recommendations for program improvement?

HealthSelect PDP	
EGWP PDP	

- J.91.a. Describe the background and training for the personnel involved in this process. Include the experience of the personnel involved in recommending program improvements.

HealthSelect PDP	
EGWP PDP	

- J.92. Confirm that the PBM can provide normative data against which ERS can benchmark its plan.

HealthSelect PDP	<input type="checkbox"/> Confirm <input type="checkbox"/> Unable to Confirm; the PBM shall provide a detailed explanation in Section VII.K.1.
EGWP PDP	<input type="checkbox"/> Confirm <input type="checkbox"/> Unable to Confirm; the PBM shall provide a detailed explanation in Section VII.K.1.

J.92.a. What is the source of the data and what specific benchmark information will the PBM provide?

HealthSelect PDP	
EGWP PDP	

J.93. Provide data and reports that describe the PBM's efficiency, accuracy and audit results in processing rebates, subsidies, reinsurance and discounts for its existing customers.

HealthSelect PDP	
EGWP PDP	

J.94. Describe in detail how the PBM processes data files, the different types of files that the PBM requires, the file layouts, key data fields used for processing and any special nuisances and handling of the data that the PBM utilizes (or that the PBM requires of its clients) in order to successfully exchange and process the information for operational and interface purposes to/from its clients and CMS.

HealthSelect PDP	
EGWP PDP	

J.94.a. What method is the most prevalent method used by the PBM?

HealthSelect PDP	
EGWP PDP	

J.95. Describe the PBM's experience and ability to provide claims-level data to a third-party (i.e., ERS' consulting actuary).

HealthSelect PDP	
EGWP PDP	

EGWP PDP

J.96. Provide the total number of EGWP plans that PBM has implemented into production. Include the largest five (5) implementations and the number of covered lives for each and the number of total lives for all plans currently in operation.

J.97. Is the PBM currently certified by CMS as an EGWP Administrator? Yes No

If so, provide documentation which verifies CMS certification.

J.98. If the EGWP plan is custom-designed and self-insured, describe the potential additional costs and/or insurance risks, if any, that may be incurred.

J.99. Describe the assistance, if any, the PBM can provide in connection with the Part D Income Related Monthly Adjustment Amount ("IRMAA") applicable to High Income EGWP PDP Participants.

J.100. Describe the business, financial and/or administrative processes that would be utilized to collect funding from the following sources for the EGWP PDP, including the timing and frequency with which such funds would be submitted to ERS:

J.100.a. Direct Subsidy;

J.100.b. Coverage Gap Discount Program ("CGDP");

J.100.c. Catastrophic Reinsurance;

J.100.d. Low Income Cost Sharing Subsidies ("LICSS");

J.100.e. Low Income Premium Subsidies ("LIPS"); and

J.100.f. Manufacturer Rebates.

- J.101. Describe how Out Of Pocket ("OOP") and True Out Of Pocket ("TrOOP") expenses are applicable to EGWP PDP Participants for 2016 and the differences, if any, that can be expected in 2017 and beyond.
- J.101.a List the drugs, if any, which will not count toward TrOOP.
- J.102. Provide a detailed description, and/or workflow, of eligibility coordination with CMS.
- J.103. Describe annual changes that you expect, if any, to the EGWP Direct Subsidy, which is based on the national average individual market PDP competitive bids for the year; adjusted for area and risk-profile of employer's population.
- J.104. Describe the changes in the plan design described herein, if any, the PBM recommends to maximize collection of all available subsidies, reinsurance, discounts or rebates.
- J.105. Provide information on the PBM's testing and certification of pharmacies that is performed, if any.
- J.106. Describe how the PBM handles high income and late enrollment penalties.
- J.107. Describe the performance guarantees that the PBM has in place to ensure that Participants receive their benefits seamlessly and any associated reporting that is utilized for verification.
- J.108. If PBM is using a Wrap product, describe the process for COB between the EGWP and the Wrap, including any inconvenience or delay that may be experienced by the Participant.
- J.109. Describe the assistance the PBM can provide in designing and executing processes to obtain Health Insurance Claim Numbers ("HICNs") from current and future EGWP Participants. Discuss steps that can be taken to minimize inconvenience to the Participants.
- J.110. Describe how the PBM proposes to handle "D" drugs that are typically provided under the medical benefit based on their route of administration, such as IV injectable.
- J.111. What is required of the EGWP PDP to verify eligibility? Fully describe the verification process.
- J.112. Provide a description of the PBM's Medication Therapy Management ("MTM") program, including the processes for enrollment, targeting, intervention, and outcomes reporting, including a member opt-out process for MTM, if applicable.
- J.113. Describe how the PBM would support custom changes to the MTM program, if requested.
- J.114. Provide the PBM's book-of-business prescription drug event ("PDE") error rate for 2014.
- J.115. Describe the enrollment/disenrollment process and include detail regarding the timing of when enrollment/disenrollment changes go into effect.
- J.116. Describe the PBM's impact on POS retail transactions.
- J.117. Provide any rule or regulation changes that CMS has implemented, or plans to implement, for Medicare Part D EGWP for 2016 or later.
- J.118. Is there a special unit within the PBM's company responsible for the administration of EGWP? If so, describe.
- J.119. How does the PBM keep its EGWP sponsors current with CMS activities and actions impacting their group?
- J.120. Describe how the PBM would administer CMS Part D Transitional Fill Notifications in connection with the EGWP PDP.
- J.121. Does the PBM utilize a Liton bounce or BSEQ? Which one is the PBM's preferred method?
- J.122. Does the PBM utilize its own precertification process? Yes No
- J.123. In the PBM's experience implementing this program with other self-funded plans, what new processes have the plans needed to implement?

- J.124. Describe any CMS required processes specific to EGWP programs.
- J.125. The PBM shall confirm that it will provide uniform utilization, quality assurance, claims, grievance and other data on a regular basis as required by ERS and/or CMS requirements.
- Confirm
 Unable to Confirm; the PBM shall provide a detailed explanation in Section VII.K.1.
- J.126. Describe the CMS filings that must be filed initially and/or on an ongoing basis for the EGWP.
- J.127. Describe the PBM's processes regarding denials, appeals and/or grievances and confirm that each meets all CMS Medicare Part D requirements. Also discuss changes if any, in the ERS appeals process that would be required in order to comply with CMS requirements.
- J.128. If applicable, confirm that the PBM will provide all CMS required filings related to certification of compliance to all waste, fraud, and abuse requirements.
- Confirm
 Unable to Confirm; the PBM shall provide a detailed explanation in Section VII.K.1.
- J.129. If applicable, is the Fraud, Waste and Abuse program approved by CMS? Yes No
- J.130. Provide sample financial reporting for Rx spending and, if applicable, CMS funding, including monthly payment, pharmacy discounts and reinsurance. Include rebate pass-through to plan Participant reporting.

Optional Services

- J.131. Describe in detail, any products, services, ideas, or facilities which may enhance the PDP's services, but are not essential in providing the required services. The PBM shall provide an accurate and detailed description of any additional enhancements to services offered by the PBM, including the implementation history for each service. As part of the Price Proposal in Section XI, PBM will be asked to provide pricing on a per member basis for HealthSelect PDP and per Participant for EGWP PDP. 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.

HealthSelect PDP				
Services	Date of Implementation	Cost Savings	Other Benefits to System	Additional Monthly Cost (if applicable) Per Member Basis

EGWP PDP				
Services	Date of Implementation	Cost Savings	Other Benefits to System	Additional Monthly Cost (if applicable) Per Participant Basis

Administrative Benefit

J.132. If PBM is submitting Proposals for both the HealthSelect and EGWP PDPs, describe in detail all administrative benefits that the GBP will receive if PBM is awarded both Contracts.

K. Deviations

Review the deviations instructions referenced in Section I.B.2.

K.1. Affirm that the PBM shall comply with all of the **Operational Requirements** described herein **Article VII** of this RFP.

- Affirm Affirm with the proposed Deviations

If applicable, enumerate and provide a detailed description of each of the deviations between the PBM's Response and these requirements.
PBM's Requested Deviations Detail: 

VIII. Project Management Requirements

A. Project Management and Implementation

A.1. ERS' Enterprise Planning Office is responsible for Project Management ("PM") services in order that there are proper planning, procedures and protocols in place to implement the PDPs prior to its January 1, 2017 go-live date.

A.1.a. ERS engages a project manager to manage the implementation activities from ERS' perspective. It is ERS' expectation the assigned project manager will work with the selected PBM's Implementation 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 the PBM's Implementation 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 project sponsor and team members, as needed.

A.1.b The following expectations are in place regarding the PBM and its PM services:

- The PBM will have an Implementation Manager who will be responsible for the oversight and management of implementation activities from the PBM's perspective;
- The Implementation Manager will be ERS' primary point of contact during the implementation;
- There will be one master project schedule from which both the PBM and ERS will work; the schedule must be in a format accessible by ERS, which is currently Microsoft Project or Excel;
- The PBM will be responsible for the management, retention, and transference of all implementation documentation. This includes, but is not limited to: project schedule; meeting minutes, risk and issues log;
- ERS stores all project documentation within SharePoint, which is not accessible by the PBM. However, the PBM is expected to provide all project documentation to the ERS Project Manager, within a timeframe to be determined mutually between the PBM and ERS, for uploading into the SharePoint environment.
- The PBM will ensure all items that are to be operationalized after project go-live have been transferred to the PBM's 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.

A.2. **Project Management Schedule and Documents.** If the PBM is selected as a Finalist for a Face-to-Face interview, the following documents are to be provided upon request by ERS: project implementation schedule (including all project requirements and the proposed tasks, services, and activities necessary to accomplish the project), change management plan (addresses any timing and scheduling impacts as they relate to implementing changes, notification to the ERS PM, additional impacts of the change, and associated risks), and communications plan (how changes and associated impacts will be communication to ERS, a project organization chart, the frequency and type of communication used, and any specialized documents used to communicate).

B. Interrogatories

Review the Interrogatory instructions referenced in Section I.B.3.

Implementation and Project Management

B.1. Describe how the PBM's Implementation Manager proposes to work with ERS' Enterprise Program Management Office ("EPMO") assigned PM and implementation team. How are the project activities communicated? How will the individuals on the team work together? What functional areas will be represented? If the PBM uses a specific approach or methodology, please describe it.

HealthSelect PDP	
EGWP PDP	

- B.1.a. Provide a description of the proposed PBM's implementation project team structure and internal controls to be used during the course of the project, including how subcontractors are managed.

HealthSelect PDP	
EGWP PDP	

- B.1.b. Does the PBM have a Project Management Institute certified Project Manager that will work in conjunction with the ERS EPMO and assigned Project Manager? If not, then what type of resource will PBM assign? Will PBM have a backup to the primary resource and if so, what type of resource is assigned for backup purposes?

HealthSelect PDP	
EGWP PDP	

- B.1.c. Describe how the PBM's Implementation Manager proposes to identify with the ERS Project Manager the activities to be operationalized after project go-live, as well as how these will be coordinated and transferred from the implementation team to the Account Team.

HealthSelect PDP	
EGWP PDP	

Risks and Mitigation

- B.2. Using a risks and issues log, identify potential risks that are considered significant to the success of the project. Include a description of how the PBM's assigned Implementation Manager and/or PM would communicate these risks to the assigned ERS PM. Note: the PBM should include risks encountered in similar projects.

HealthSelect PDP	
EGWP PDP	

- B.2.a. Identify the PBM recommendations to mitigate any risks identified above.

HealthSelect PDP	
EGWP PDP	

- B.2.b. What type of logistical issues or concerns from a project management perspective does the PBM believe this project will face? (i.e., project manager location (offsite/onsite), resource team locations, communications, subcontractors for printing or other outsourced services) Provide an explanation, including how these are mitigated.

HealthSelect PDP	
EGWP PDP	

- B.2.c. How does the PBM propose to coordinate project risk/issues with the assigned ERS PM (i.e., identification, communication, mitigation, tools)?

HealthSelect PDP	
EGWP PDP	

IX. Information Systems Requirements

This Article describes system requirements including information security, data processing interface requirements, enrollment and eligibility, security breach and fraud, and web specifications, as mandated by ERS. The PBM shall administer the PDP in a manner consistent with all applicable laws and regulations, both state and federal, including the Board Rules, and at the direction of the ERS Board, its Executive Director, and ERS staff. The cost of the requirements described herein shall be recovered by the PBM only by making provisions for such expenses in the PBM's *Price Proposal and Response Format* in Article XI.

A. ERS Systems Requirements

A.1. Data Processing Interface

A.1.a **Enrollment/Eligibility.** ERS is responsible for determining the eligibility of its Participants for the HealthSelect PDP and EGWP PDP and for reporting coverage. The PBM receives weekly and monthly enrollment interface files via SFTP and updates its records accordingly. The ERS eligibility file provides the PBM with additions, changes and terminations by absence of Participants. The PBM guarantees that it shall process all processable maintenance eligibility transactions received from ERS via SFTP before 12:00 noon CT within the first twenty-four (24) hours from the availability of each SFTP-delivered file as required in Appendices F-1 and F-2, *Performance Guarantees*.

A.1.b. The PBM shall implement automated enrollment (i.e., via telephone and Internet) and accept enrollment via verbal instruction from an ERS authorized representative. The PBM shall adjust appropriate information in its enrollment system immediately upon receiving updated Participant eligibility information from an ERS representative. The PBM shall accept data updates and adjust appropriate information in its enrollment system weekly and monthly as provided in the eligibility file. Although the PBM is currently required to accept enrollment via 100% Eligibility file, future enhancements are likely to require the PBM to accept enrollment on a daily basis.

A.1.c. ERS reports future effective dates at the end of SE/FE and throughout the year on each eligibility file. ERS will send these reports at least 60 days in advance of the effective date.

A.1.d. PBM shall guarantee that any electronic file transfer or eligibility transaction failure(s) will be resolved as soon as possible, but in no event later than twenty-four (24) hours following the notice to ERS as required in Appendices F-1 and F-2, *Performance Guarantees*.

A.2. **File Layouts.** The file layouts that ERS uses to report eligibility to the PBM and receive claims data from the PBM on a weekly, monthly, and SE/FE basis are included as Appendices I-1 and I-2. The PBM must meet all requests stated in Appendices I-1 and I-2 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.

A.3. **File Interface.** The PBM 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 Appendices I-1 and I-2. Claims files from the PBM to ERS are to be ready for go-live in February 2017 with January 2017 processed claims.

A.4 **Web Access.** In the event ERS provides the PBM with the opportunity to view ERS' enrollment system through web access, the PBM 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, November 1, 2016 and sixty (60) days prior to the go-live date of each Fiscal Year and/or Calendar Year;
- 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.

- A.5. **Identity Theft Enforcement and Protection Act.** Texas Business and Commerce Code 521.001, *et seq.* The PBM shall comply with the Identity Theft Enforcement and Protection Act as required therein.
- A.6. **Data Security Practices.** The PBM 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.
 - A.6.a. Transport Layer Security ("TLS") version 1.0 or better protocols are to be utilized for the exchange of personal identifying information over Hypertext Transport Protocol Secure ("HTTPS"). The PBM shall support SFTP protocol with Secure Shell Handling ("SSH") to encrypt the data exchanged in transit.
 - A.6.b. Requirements include, but are not limited to, the use of SFTP and PGP encryption protocols. The PBM shall be prepared to accept eligibility data and reporting via SFTP forty-five (45) days prior to go-live.
 - A.6.c. Electronic communications including, but not limited to, email and file transfers between the PBM and ERS shall be encrypted to protect Participant's confidential information. The PBM shall establish forced TLS protocols with ERS for email communications.
- A.7. **Secured Internet Access.** To protect the confidentiality of Participant information, the PBM shall provide access to any information reasonably related to the PDPs, the Participants, and the services, coverage, benefits, supplies and products specified hereunder using TLS version 1.0 and higher encryption protocols.
 - A.7.a. 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 the PBM shall perform, deliver or provide in connection with the PDPs, shall be fully accessible and available to ERS using TLS version 1.0 and higher encryption protocols.
 - A.7.b. ERS does not allow VPN split tunneling for client VPN's. PBM shall confirm that PBM will not allow VPN split tunneling on client VPN's, including those possibly used for technical support. PBM shall confirm it will follow highly restricted access policies behind any ERS-related point to point VPN setup in support of this Contract.
- A.8. **Secure Data Backup.** The PBM shall maintain duplicate or back-up computer encrypted data files in a secure, hardened facility that provides environmental and access controls. The PBM shall utilize 256 Bit symmetric key AES encryption standards or better for tapes or equivalent backup medium.
 - A.8.a. All of ERS' data, as maintained by the PBM, 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 the PBM. ERS is entitled to a full data model for such data.
- A.9. **Encrypted Mobile Devices.** 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. The PBM must be capable of remotely deleting all ERS data, if needed.
- A.10. **Security Incident Management.** The PBM shall provide a document describing their Security Incident Management process, for the application as well as internal systems.
- A.11. **Multi-Factor Authentication.** The PBM shall provide non-repudiation services up to and including second factor authentication for the PBM employees, contractors, and service providers capable of accessing ERS data outside the PBM's physical facilities using a VPN or other remote access methods.
- A.12. **Security Breach.** The PBM shall comply with the Data Security and Breach Notification Agreement as attached hereto as Appendix E. In addition, the PBM shall comply with the BAA as attached hereto as Appendix D.

A.13. **Other System Requirements.**

A.13.a **Data Retention.** The PBM shall maintain a complete and accurate reporting system, and provide for the retention, maintenance, and storage of all PBM, other GBP vendors and Participant records for appropriate reporting to ERS on a quarterly basis. The PBM shall securely maintain all such records throughout the Contract Term, and after the Contract terminates plus seven (7) years or as dictated by the Contract, and shall make such records accessible and available to ERS for inspection and audit upon ERS' request.

A.13.b The PBM shall maintain records in accordance with the Contract. In the event the PBM is scheduled to destroy records in advance of the seven (7) year retention period following contract termination, the PBM shall contact ERS for approval prior to the destruction of the records. If ERS approves destruction, verification of the destroyed records shall be required at ERS' direction.

A.13.c At all reasonable times, ERS or its representatives shall have access to the PBM's records. 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 the PBM, the PBM 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.

A.14 **Hardware and Software.** The PBM 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. The PBM is required to notify ERS of all such changes, at least fourteen (14) days in advance of making such changes. All large software or hardware upgrades require a sixty (60) day prior notification to ERS.

A.15 **Internet Availability Specification.** The PBM shall guarantee that the Internet Availability Rate for each Fiscal/Calendar Year shall be 99.5% or greater. "Internet Availability Rate," defined below, means the percentage of available hours that the PBM's GBP-specific Internet site is operational, excluding scheduled and pre-approved maintenance time, measured on a Fiscal Year or Calendar Year basis, as reflected in Appendices F-1 and F-2, *Performance Guarantees*. There should be no outages between the hours of 7:00 a.m. to 7:00 p.m. central time.

A.16 **Testing Prior to Rolling Out Program Changes.** The PBM 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.

A.17 **XML.** The PBM shall be prepared to provide ERS with XML-tagged content for purposes of extracting content on the PBM websites through "feeds."

A.18 **Business Resumption/Disaster Recovery Plan.** The PBM shall maintain contingency plans and procedures, acceptable to ERS, for providing business continuity in the event of a strike, natural disaster, act of God, backlog, or other events that might interrupt, delay or shut-down service that is related to the PBM's administrative, customer service support functions, computer systems and equipment, including that of any subcontractor upon whom the PBM relies in performing or providing services or products to or on behalf of ERS. Article 19 of the Contract has additional requirements in this regard.

A.19 **Information Security Policy.** 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 the PBM relies in performing or providing services or products to or on behalf of ERS. The PBM 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. The PBM's Information Security Policy documentation and independent audits of the PBM's adherence shall be available to ERS upon ERS' request.

B. Interrogatories

Review the Interrogatory instructions referenced in Section I.B.3.

General Information System Inquiries

B.1 Does the PBM have a full time Information Security Officer or Chief Security Officer (“CSO”)? If so, how does this role fit in the PBM’s Organization Chart?

HealthSelect PDP	
EGWP PDP	

B.1.a. What type of background checks are performed on all company hires? Are there special requirements for technical staff having access to confidential data?

HealthSelect PDP	
EGWP PDP	

B.1.b. Please provide an organization chart for the Information Technology (“IT”) department. If the PBM outsources its IT functionality to third-party vendors, please state the name and address of any such vendor and document the exact functions outsourced.

HealthSelect PDP	
EGWP PDP	

Receiving and Transmitting Data

B.2. Confirm the PBM’s ability to transmit and receive confidential and sensitive information via encrypted transmission protocols including site-to-site VPN, SFTP, TLS.

HealthSelect PDP	<input type="checkbox"/> Confirm <input type="checkbox"/> Unable to Confirm; the PBM shall provide a detailed explanation in Section IX.C.1.
EGWP PDP	<input type="checkbox"/> Confirm <input type="checkbox"/> Unable to Confirm; the PBM shall provide a detailed explanation in Section IX.C.1.

B.2.a. Confirm the PBM’s 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.

HealthSelect PDP	<input type="checkbox"/> Confirm <input type="checkbox"/> Unable to Confirm; the PBM shall provide a detailed explanation in Section IX.C.1.
EGWP PDP	<input type="checkbox"/> Confirm <input type="checkbox"/> Unable to Confirm; the PBM shall provide a detailed explanation in Section IX.C.1.

B.2.b. Confirm PBM’s 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.

HealthSelect PDP	<input type="checkbox"/> Confirm <input type="checkbox"/> Unable to Confirm; the PBM shall provide a detailed explanation in Section IX.C.1.
EGWP PDP	<input type="checkbox"/> Confirm <input type="checkbox"/> Unable to Confirm; the PBM shall provide a detailed explanation in Section IX.C.1.

B.2.c. Confirm all files sent and received by the PBM containing confidential and sensitive data will be encrypted using the file level encryption such as Pretty Good Privacy ("PGP"), GNU Privacy Guard ("GPG"), or other industry accepted encryption methodology.

HealthSelect PDP	<input type="checkbox"/> Confirm <input type="checkbox"/> Unable to Confirm; the PBM shall provide a detailed explanation in Section IX.C.1.
EGWP PDP	<input type="checkbox"/> Confirm <input type="checkbox"/> Unable to Confirm; the PBM shall provide a detailed explanation in Section IX.C.1.

B.2.d. PBM shall provide its standard data and claims files for ERS' review. This file should include specifications that are required when ERS transfers Participant information.

HealthSelect PDP	
EGWP PDP	

B.3 Describe how your organization's processes and systems (including test and/or production files) can accommodate the following three scenarios:
 a. Terminations by absence of records in the enrollment file;
 b. Retroactive enrollment dates, (i.e., Participant's start date is Oct. 7th and benefits are active to Oct. 1st); and
 c. Future effective dates on eligibility files (i.e., Participant is going to retire in 30, 60, 90 days).
 Please describe the impact the above has on claims processing.

Onshore Operations

B.4. Confirm the PBM's understanding, acknowledgement and agreement that all operations, staff and facilities being proposed in support of the RFP and Contractual Agreement will be located onshore within the United States.

- Confirm
- Unable to Confirm; the PBM shall provide a detailed explanation in Section IX.C.1. below.

B.4.a. Confirm that 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.

- Confirm
- Unable to Confirm; the PBM shall provide a detailed explanation in Section IX.C.1. below.

B.4.b. Confirm that: (1) data relevant to the administration of the PDP will not be transmitted outside of the United States, (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.

- Confirm
- Unable to Confirm; the PBM shall provide a detailed explanation in the table below.

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.

B.4.c. Confirm that all of the PBM's subcontractors or independent contractors will prevent any person or entity located outside the United States from having access to all ERS, GBP, and the PDPs information, including, but not limited to, confidential or Participant-related information and data.

- Confirm
- Unable to Confirm; the PBM shall provide a detailed explanation in Section IX.C.1. below.

B.4.d. Confirm that all development activities (including production, quality control and testing) are performed solely within the 50 states of the United States and exclusively in PBMs facilities.

- Confirm
- Unable to Confirm; the PBM shall provide a detailed explanation in Section IX.C.1. below.

Statement of Standards for Attestation Engagements

B.5. Provide a copy of the most recent Service Organization Control ("SOC") report and results performed under the Statement of Standards for Attestation Engagements ("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. This should include results of an independent, certified external security audit. The PBM 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.

HealthSelect PDP	
EGWP PDP	

B.5.a. If applicable, provide a copy of the PBM'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. The PBM 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.

HealthSelect PDP	
EGWP PDP	

B.5.b. If the PBM conducts its SSAE 16 control audits with an external firm, please identify the following:

	HealthSelect PDP	EGWP PDP
Name of external firm:		
Address of external firm:		
Dates when firm performed the audits:		

Business Resumption/Disaster Recovery Plans

B.6. The PBM shall confirm that the systems that ERS would use during a disaster undergo annual disaster recovery tests.

HealthSelect PDP	<input type="checkbox"/> Confirm <input type="checkbox"/> Unable to Confirm; the PBM shall provide a detailed explanation in Section IX.C.1.
EGWP PDP	<input type="checkbox"/> Confirm <input type="checkbox"/> Unable to Confirm; the PBM shall provide a detailed explanation in Section IX.C.1.

B.6.a. The PBM shall confirm it has an alternate site to provide services if the assigned primary site is unavailable for a test or disaster declaration.

HealthSelect PDP	<input type="checkbox"/> Confirm <input type="checkbox"/> Unable to Confirm; the PBM shall provide a detailed explanation in Section IX.C.1.
EGWP PDP	<input type="checkbox"/> Confirm <input type="checkbox"/> Unable to Confirm; the PBM shall provide a detailed explanation in Section IX.C.1.

B.6.b. The PBM shall confirm that the primary and alternate sites are both located in the 48 continental United States.

HealthSelect PDP	<input type="checkbox"/> Confirm <input type="checkbox"/> Unable to Confirm; the PBM shall provide a detailed explanation in Section IX.C.1.
EGWP PDP	<input type="checkbox"/> Confirm <input type="checkbox"/> Unable to Confirm; the PBM shall provide a detailed explanation in Section IX.C.1.

B.6.c. Describe the PBM's contingency plans and procedures for providing business continuity in the event of a strike, natural disaster, act of God, backlog, or other events that might interrupt, delay or shut-down service that is related to the PBM's administrative, customer service support functions, computer systems and equipment, including that of any subcontractor upon whom the PBM relies in performing or providing services or products to or on behalf of ERS.

HealthSelect PDP	
EGWP PDP	

Software/Hardware (Systems and Technology)

B.7. Detail all planned upgrades to the PBM's software affecting ERS data and services between now and June 30, 2017.

HealthSelect PDP	
EGWP PDP	

B.7.a. Detail all planned upgrades to the PBM's hardware, infrastructure and data centers that will be hosting ERS data and services being used between now and June 30, 2017.

HealthSelect PDP	
EGWP PDP	

Quality Assurance/Quality Control Measures

B.8. What quality assurance processes are provided in the PBM's system to ensure accurate claims administration?

HealthSelect PDP	
EGWP PDP	

B.8.a. Describe how the PBM evaluates various aspects of a project to ensure that standards of quality are being met.

HealthSelect PDP	
EGWP PDP	

File Transfer Practices

B.9. The PBM shall provide both a full description and documentation regarding business processes that shall include, but not be limited to, the following key elements:

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

B.9.a. If the PBM supplies an interface to ERS, then the PBM 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.

HealthSelect PDP	
EGWP PDP	

Data interfaces

B.10. What is the PBM's standard interface protocol, and what flexibility does the PBM have with its standard approach? Provide a detailed description.

HealthSelect PDP	
EGWP PDP	

B.10.a. What measures does the PBM take to ensure the security of interfaces, which would include, but not be limited to, data files, emails, print screens and email attachments that the PBM is sending/receiving to/from external sources (whether ERS or a third party)?

HealthSelect PDP	
EGWP PDP	

B.10.b. Is the PBM's system capable of supporting an alphanumeric User ID other than Social Security Number ("SSN")?

HealthSelect PDP	<input type="checkbox"/> Yes	<input type="checkbox"/> No
EGWP PDP	<input type="checkbox"/> Yes	<input type="checkbox"/> No

B.10.c. What are PBM's minimum and maximum User ID lengths?

B.10.d. Briefly describe the PBM's back-up procedures for the system(s) to be used in the services proposed to ERS.

HealthSelect PDP	
EGWP PDP	

Data Center Security

B.11. The PBM shall confirm all systems in ERS' environment are physically secured in an access-restricted environment.

HealthSelect PDP	<input type="checkbox"/> Confirm <input type="checkbox"/> Unable to Confirm; the PBM shall provide a detailed explanation in Section IX.C.1.
EGWP PDP	<input type="checkbox"/> Confirm <input type="checkbox"/> Unable to Confirm; the PBM shall provide a detailed explanation in Section IX.C.1.

B.11.a. PBM shall discuss who has access to its data center and how this access is monitored.

HealthSelect PDP	
EGWP PDP	

B.12. PBM shall confirm that its data center is rated as Uptime Tier III or Tier IV.

HealthSelect PDP	<input type="checkbox"/> Confirm <input type="checkbox"/> Unable to Confirm; the PBM shall provide a detailed explanation in Section IX.C.1.
EGWP PDP	<input type="checkbox"/> Confirm <input type="checkbox"/> Unable to Confirm; the PBM shall provide a detailed explanation in Section IX.C.1.

B.12.a. How does PBM confirm that its data center is rated as Uptime Tier III or Tier IV?

HealthSelect PDP	
EGWP PDP	

B.12.b. Provide details regarding the redundant links for internet access that PBM has in place for its data center.

HealthSelect PDP	
EGWP PDP	

B.13. Confirm that PBM acknowledges, accepts and agrees that ERS must be permitted to personally inspect PBM's data center facilities and systems on an annual basis or when ERS deems it necessary.

HealthSelect PDP	<input type="checkbox"/> Confirm <input type="checkbox"/> Unable to Confirm; the PBM shall provide a detailed explanation in Section IX.C.1.
EGWP PDP	<input type="checkbox"/> Confirm <input type="checkbox"/> Unable to Confirm; the PBM shall provide a detailed explanation in Section IX.C.1.

Security Architecture

B.14. Describe the PBM's Security Incident policies and procedures. The PBM shall provide a copy of this documentation.

HealthSelect PDP	
EGWP PDP	

B.14.a. What kind of network security devices are running in the PBM's data center(s) (e.g., Data Loss Prevention tools, Intrusion Detection Systems, Intrusion Prevention Systems)?

HealthSelect PDP	
EGWP PDP	

Portable Devices

B.15. Are the PBM's portable devices encrypted to protect the data in case of theft or loss?

HealthSelect PDP	<input type="checkbox"/> Yes <input type="checkbox"/> No
EGWP PDP	<input type="checkbox"/> Yes <input type="checkbox"/> No

Security Practices

B.16. The PBM shall confirm it will provide ERS a copy of any information security policies, procedures and standards upon request.

HealthSelect PDP	<input type="checkbox"/> Confirm <input type="checkbox"/> Unable to Confirm; the PBM shall provide a detailed explanation in Section IX.C.1.
EGWP PDP	<input type="checkbox"/> Confirm <input type="checkbox"/> Unable to Confirm; the PBM shall provide a detailed explanation in Section IX.C.1.

B.16.a. Does the PBM have dedicated resources for information security efforts?

HealthSelect PDP	<input type="checkbox"/> Yes <input type="checkbox"/> No
EGWP PDP	<input type="checkbox"/> Yes <input type="checkbox"/> No

B.16.b. In detail, describe the PBM's practices and controls utilized to limit access and protect confidential and sensitive data in storage and in transit.

HealthSelect PDP	
EGWP PDP	

B.16.c. Are network firewalls and other security equipment checked by independent third parties for vulnerabilities and possible exploits? If so, how often?

HealthSelect PDP	
EGWP PDP	

B.16.d. In the event of a security breach, describe the process to notify ERS of the breach of ERS data, the PBM facilities or other types of Information Technology infrastructure breaches.

HealthSelect PDP	
EGWP PDP	

B.16.e. The PBM shall confirm that ERS data stored at the PBM's site is encrypted at rest.

HealthSelect PDP	<input type="checkbox"/> Confirm <input type="checkbox"/> Unable to Confirm; the PBM shall provide a detailed explanation in Section IX.C.1.
EGWP PDP	<input type="checkbox"/> Confirm <input type="checkbox"/> Unable to Confirm; the PBM shall provide a detailed explanation in Section IX.C.1.

B.16.f. The PBM shall describe how often its firewall and router configuration standards are reviewed. The PBM shall provide the last date its firewall and router configuration standards were reviewed.

HealthSelect PDP	
EGWP PDP	

- B.16.g. The PBM 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 the PBM data center systems and user workstations were checked?

HealthSelect PDP	
EGWP PDP	

- B.16.h. The PBM shall describe its processes and procedures it has in place for responding to low, medium and high severity information security incidents. What is the PBM's process to rank such incidents? Does the PBM's company have forensic security experts on staff or is a third-party contracted in the case of a breach?

HealthSelect PDP	
EGWP PDP	

- B.16.i. What anti-virus ("AV") protection/programs does the PBM use? Is AV software deployed on all the PBM's and PBM'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?

HealthSelect PDP	
EGWP PDP	

Execution Architecture

- B.17. Who is the PBM's data center provider(s)? What technology in the Data Center is shared with other data center customers?

HealthSelect PDP	
EGWP PDP	

Development Architecture

- B.18. How would the PBM manage legal changes such as Texas legislative changes? How would this be managed to avoid developing "forked" versions of the PBM's solution for ERS?

HealthSelect PDP	
EGWP PDP	

Operations Architecture

- B.19. What are the normal staffing hours (in central time) for the following:
- PBM's technical support team to respond to data and reporting questions; and
 - PBM's data center.

HealthSelect PDP	
EGWP PDP	

- B.19.a Describe the PBM's standardized methodology for resolving issues and implementing measurable action plans to resolve.

HealthSelect PDP	
EGWP PDP	

B.19.b. The PBM shall provide the following:

	HealthSelect PDP	EGWP PDP
a. The historical periodic scheduled maintenance schedule for 2015;		
b. The non-periodic maintenance which happened outside the scheduled period for 2015; and		
c. A detailed report of all unscheduled outages, slowdowns, impairments, and other system perturbances for 2015, exceeding 5 minutes duration.		

Customer Service and Support: Standard Service

B.20. Indicate how the PBM will manage the ongoing account with ERS.

HealthSelect PDP	
EGWP PDP	

C. Deviations

Review the deviations instructions referenced in Section I.B.2.

C.1. Affirm that the PBM shall comply with all of the **Information Systems Requirements** described herein **Article IX** of this RFP.

Affirm Affirm with the proposed Deviations

If applicable, enumerate and provide a detailed description of each of the deviations between the PBM's Response and these requirements.
PBM's Requested Deviations Detail:

X. Financial Requirements and Specifications

This Article presents the requirements and specifications for a PBM to administer the self-funded HealthSelect PDP and/or EGWP PDP under the GBP. The PBM shall provide a level of benefits and services consistent with those currently offered to Participants under the HealthSelect PDP.

The PBM's services shall at minimum include, but not be limited to: administrative services, pharmacy network management and credentialing, establishment and maintenance of the formulary used in connection with the HealthSelect PDP and/or EGWP PDP, rebate administration, drug utilization review, disease management and Medicare Part D Retiree Drug Subsidy administration as described in this RFP, and shall be executed in accordance with the requirements outlined in the Contract. Other financial requirements may be further outlined elsewhere in this RFP.

The PBM understands and accepts that it is bound by various statutory, regulatory and fiduciary duties and responsibilities and, therefore, the PBM expressly agrees that it shall accept and abide by such duties and responsibilities when acting on behalf of ERS pursuant to this engagement. The PBM shall administer the HealthSelect PDP and/or EGWP PDP in a manner consistent with applicable laws and regulations, both state and federal, including the Board Rules, as amended, and at the direction of the ERS Board, its Executive Director, and ERS' staff. The PBM shall recover any costs related to the RFP and Contract requirements only through the PBM's *Price Proposal and Response Format*, Article XI.

A. Reimbursement Methodology

A.1. **Reimbursement of Claims (Option 1).** Under the self-funded arrangement, the PBM shall process and pay all claims submitted under the PDPs as described herein and in the Contract. The claims shall be paid by the PBM through the issuance of drafts or through electronic funds transfer from the PBM's account prior to reimbursement from ERS. On the first business day of each week, the PBM shall present an invoice to ERS for all claim payments actually made and paid during the previous week. ERS will use reasonable efforts to process and submit the payment voucher to the Comptroller of Public Accounts ("CPA") for payment within five (5) business days following receipt of the invoice. It is anticipated that payment authorization from CPA shall be returned to ERS within four (4) business days and, upon receipt by ERS, shall be deposited into the PBM's account at its designated financial institution via wire transfer. Although the PBM shall be responsible for maintaining sufficient funds to provide for the costs incurred under the PDPs, the PBM shall take on no risk for the sufficiency of plan contributions. Due to the timing of the claims reimbursements, the PBM may be required to advance up to two (2) weeks of its own resources for claims payments. Two (2) weeks of claims payments are projected to average around \$30 million for the HealthSelect PDP and \$15 million for the EGWP PDP.

OR

A.1.a. **Payment of Claims at Presentment (Option 2).** ERS would strongly prefer to reimburse pharmacy claims paid by the PBM in accordance with the following:

- The PBM will process and pay all claims submitted under the PDPs as described herein.
- The PBM will open and administer a demand deposit account ("DDA") on ERS' behalf with a Qualified Public Depository.
- The PBM retains ownership and control of the DDA; however, the funds in the DDA will only be used for reimbursement of claims.
- The claims will be paid by the PBM through the issuance of drafts or through Electronic Funds Transfer from the PBM'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.
- The PBM will be responsible for any bank charges and/or overdraft fees.
- Before 8:00 a.m. CT on each business day, the PBM 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 Fed wire to the DDA to settle the claim reimbursement on the same day.
- Although the PBM shall be responsible for maintaining sufficient funds to provide for the cost incurred, the PBM assumes no risk for the sufficiency or collection of plan contributions on self-funded coverages.

- A.1.b In connection with retail pharmacy claims, ERS shall reimburse the PBM on a pass-through arrangement under which the PBM may invoice ERS only for the exact amount paid to the pharmacies and only after the PBM has actual paid said claims to pharmacies. The PBM shall be reimbursed for actual payments made to pharmacies (i.e., it is not acceptable for the PBM to seek reimbursement from ERS in an amount that is different from the amount the PBM paid to the pharmacy). The PBM shall only be reimbursed for paid claims, and shall not be reimbursed for claims that have been processed but not yet paid to pharmacies.
- A.1.c As required in the Performance Guarantees, Appendices F-1 and F-2, the PBM for the HealthSelect PDP or EGWP PDP shall adjudicate 100% of the electronically-submitted retail pharmacy "clean" claims by remitting the total amount of the claim no later than fifteen (15) business days following the date the PBM affirmatively adjudicates the retail pharmacy claim. PBM shall process adjudicated claims with a financial accuracy rate of 99%.
- A.1.d The reimbursement process will reimburse the PBM in arrears. The initial funding of the reimbursement process will be determined and agreed upon by both parties during the implementation process.
- A.1.e ERS shall have the right to audit appropriate PBM records to determine the accuracy of the monthly payments. Further audit requirements are referenced in Article VII., *Operational Specifications*.

Payment Methodology.

- A.2. **Inactive Account Billing.** Standard services provided to all Participants regardless of their account balance status shall be provided by the PBM and may only be recovered through the administrative fees quoted in Article XI.
- A.3. **Administrative Fee.** Each month the total administrative fee will be determined by multiplying the number of Participants enrolled by the administrative fee. ERS will collect the contributions made by the Participant and remit the administrative fee to the PBM within fifteen (15) days of the end of the month for which it is applicable. ERS will pay based on internal enrollment systems and the PBM shall be responsible for reconciling any billing discrepancies of the administrative fee.
 - A.3.a In responding to this RFP, the PBM shall propose an administrative fee(s), which will be guaranteed for the initial term of the Contract.
 - A.3.b The administrative fee proposed by the PBM must cover the cost incurred for the performance of all services and obligations as described in the RFP and Contract prior to and during the entire Contract Term and during any runoff period following termination of the Contract. The PBM shall not be paid any fees or earn any compensation in connection with the Contract except for the administrative fee.
 - A.3.c Section 1551.012 TIC exempts the GBP from any state tax, regulatory fee, or surcharge including premium or maintenance taxes or fees. The administrative fee should not include any provision for such taxes or fees.
 - A.3.d To the extent that the PBM intends to recover start-up costs through the administrative fee, such recovery should be amortized over the Contract Term and specifically described to ERS in Article XI, *Price Proposal and Response Format*.
- A.4. **Runoff.** Following expiration or termination of the Contract for any reason, the PBM shall continue to be responsible for processing and paying the HealthSelect PDP and/or EGWP PDP claims incurred during the term of the Contract. The cost of such runoff administration shall be reflected in Article XI. Administrative fees will not be paid following termination of the Contract.
 - A.4.a There may be other obligations surviving the termination of the Contract.

- A.5. **Annual Experience Accounting.** Within ninety (90) days after the end of each Fiscal Year and/or Calendar Year, the PBM will provide ERS with an accounting of the HealthSelect PDP and/or EGWP PDP financial experience for the Fiscal Year and/or Calendar Year under the Contract. The accounting shall include monthly enrollment, paid claims, rebates or other pharmaceutical manufacturer's revenue returned to ERS, contractual guarantees, federal subsidies, and payments, other revenue and *Performance Guarantees*. In addition, the PBM 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.

B. Interrogatories

Review the Interrogatory instructions referenced in Section I.B.3.

Financial Reporting Requirements

- B.1. Provide an indication of the type of support, if applicable (i.e., guarantees, letters of credit), that PBM will receive from other entities or persons.

HealthSelect PDP	
EGWP PDP	

- B.1.a. Provide the maximum limits of additional financial support from other entities or persons, if applicable.

HealthSelect PDP	
EGWP PDP	

- B.1.b. If the PBM's company is a subsidiary or affiliate of another company, provide a full disclosure of all direct or indirect ownership and include an organizational chart depicting the parent company, other companies owned by the parent company and any subsidiary relationships.

HealthSelect PDP	
EGWP PDP	

- B.2. Does a pharmaceutical manufacturer own the PBM or does the PBM have any legal relationships or financial agreements (other than rebate contracts) with pharmaceutical manufacturers?

	HealthSelect PDP	EGWP PDP
<input type="checkbox"/> Yes <input type="checkbox"/> No		
If yes, please describe.		

- B.2.a. What steps has the PBM taken to ensure that such relationships do not constitute a conflict of interest?

HealthSelect PDP	
EGWP PDP	

- B.2.b. The PBM shall disclose any relationships, contractual, employment or otherwise, with affiliates, manufacturers or any person or entity that could present a conflict of interest or the appearance of a conflict of interest with the PBM's role as administrator for the HealthSelect PDP and/or EGWP PDP.

HealthSelect PDP	
EGWP PDP	

- B.3. Describe all areas of remuneration provided to the PBM from pharmaceutical manufacturers including, but not limited to, rebates, administrative fees, data compilation fees and promotional grants directly related to ERS utilization.

HealthSelect PDP	
EGWP PDP	

B.4. The PBM shall provide a list reflecting all persons or entities that have a 20% or greater ownership interest in the PBM.

HealthSelect PDP	
EGWP PDP	

B.4.a. The PBM shall provide a list reflecting all persons or entities that have a 20% or greater ownership interest in the PBM's sponsoring or parent company, if applicable.

HealthSelect PDP	
EGWP PDP	

B.5. The PBM shall provide a copy of its annual audited financial statements for the two (2) most recent Fiscal Years.

HealthSelect PDP	
EGWP PDP	

B.5.a. If applicable, PBM shall provide its sponsor or parent organizations' audited financial statements for the two (2) most recent Fiscal Years.

HealthSelect PDP	
EGWP PDP	

B.6. Describe in detail the PBM's claims and administrative fee reimbursement methodology.

HealthSelect PDP	
EGWP PDP	

B.7. The PBM shall confirm, that as a reimbursement process, claims will be paid in arrears. The initial funding of the reimbursement process will be determined and agreed upon by both parties during the implementation process.

HealthSelect PDP	<input checked="" type="checkbox"/> Confirm <input type="checkbox"/> Unable to Confirm; the PBM shall provide a detailed explanation in Section X.C.1.
EGWP PDP	<input checked="" type="checkbox"/> Confirm <input type="checkbox"/> Unable to Confirm; the PBM shall provide a detailed explanation in Section X.C.1.

C. Deviations

Review the deviations instructions referenced in Section I.B.2.

C.1. Affirm that the PBM shall comply with all of the **Financial Requirements and Specifications** as described herein **Article X** of this RFP.

Affirm Affirm with the proposed Deviations

If applicable, enumerate and provide a detailed description of each of the deviations between the PBM's Response and these requirements.
 PBM's Requested Deviations Detail:

XI. Price Proposal and Response Format

ERS requires the PBM to submit a pricing proposal as specified below. The PBM shall include provision for ALL services and/or programs referenced in the RFP in the PBM's *Price Proposal and Response Format*.

A. Price Proposal

- A.1. The PBM must structure its pricing proposal using any combination of (a) retail, mail service and specialty pharmacy reimbursement, (b) rebates and other subsidies, and (c) administrative fees, if any, that it deems appropriate, recognizing that it:
 - A.1.a. May not bill ERS for an amount that is different from the amount paid to a retail pharmacy in connection with a prescription drug dispensed through the retail pharmacy;
 - A.1.b. Must pass through to ERS any and all federal funding, pharmaceutical manufacturer rebates and any other type of revenue generated from the prescription drug utilization of the HealthSelect PDP and EGWP PDP Participants, if applicable; and
 - A.1.c. Must base the charges for drugs dispensed through mail service and specialty pharmacy on AWP.
- A.2. The pricing proposal must be guaranteed for the initial term of the contract beginning January 1, 2017.
- A.3. The pricing proposal should be adequate to cover all expenses to be incurred by the PBM for implementation of the Contract and for the performance of all services and other matters described herein and in the Contract prior to and during the initial term of the Contract, and during any runoff period following termination of the Contract.
- A.4. Section 1551.012 of the TIC exempts the GBP from any state tax, regulatory fee, or surcharge, including premium or maintenance taxes or fees. As required by the Contract, the administrative fee, if any, should not include any provision for such taxes or fees.
- A.5. The arrangement must be fully subject to audit by ERS and/or its designated representatives as more fully described in the Contract.
- A.6. All AWP discount guarantees shall be a direct savings off of AWP and are not the result of incremental savings due to repackaging of drugs or blending non-Maximum Allowable Cost generics to achieve a higher brand discount.
- A.7. The PBM shall not include expenses for clinical programs of any kind (i.e., retro/DUR) in any of the quoted discount rates.
- A.8. On a quarterly basis, the PBM will reconcile the actual average ingredient cost discount and the actual average dispensing fee paid to retail pharmacies against the proposed aggregate guarantees for retail drugs.
 - A.8.a. If the actual average ingredient cost discount for brand or generic drugs for the HealthSelect PDP and/or EGWP PDP is less than the corresponding aggregate ingredient cost discount guarantee, or if the actual average dispensing fee for the HealthSelect PDP and/or EGWP PDP is greater than the aggregate dispensing fee guarantee, the PBM will pay the full dollar amount of such shortfall to ERS on a quarterly basis.
 - A.8.b. Each guarantee stands on its own. As an example, the PBM may not offset discount guarantees shortfalls on generic retail prescriptions with overages from generic guarantees at mail order or retail brand guarantees.
 - A.8.c. The reconciliation and payment, if any, along with supporting documentation will be provided to ERS within 90 days of the end of each FY (HealthSelect PDP) and/or CY (EGWP PDP) quarter.

- A.8.d. Claims adjudicated on the basis of U&C pricing will not be considered in determining compliance with the brand and generic guaranteed discount rates. All other transactions are to be included, including specialty drugs.
- A.9. The PBM will conduct a similar reconciliation for drugs dispensed through (a) the mail pharmacy and (b) the specialty pharmacy as described in Sections XI.A.8. – XI.A.8.c. above.
- A.10. Pricing guarantees will be applied separately for each pharmacy category (retail, mail and specialty pharmacy).
- A.11. The pricing reconciliation will be separate and apart from the rebate reconciliation described in Section XI.A.12.b. below.
- A.12. The PBM will provide ERS with the greater of (i) 100% of total rebates received by the PBM based on the dispensing of each manufacturer's formulary drugs under the PDPs and (ii) the proposed guaranteed rebates.
 - A.12.a. Guaranteed rebates will be paid within 30 days of the end of each FY (HealthSelect PDP) and/or CY (EGWP PDP) quarter. The PBM will provide documentation for such payments.
 - A.12.b. Each quarter, the PBM will reconcile and pay the excess, if any, of (a) the actual total rebates received for that FY (HealthSelect PDP) and/or CY (EGWP PDP) over (b) the total guaranteed rebates paid to ERS for that FY (HealthSelect PDP) and/or CY (EGWP PDP). The PBM will provide ERS with full documentation of this reconciliation.
 - A.12.c. Rebates received by the PBM after completion of the reconciliation described in Section XI.A.12.b. above that would have impacted the determination described therein will be refunded to ERS upon receipt.
 - A.12.d. The rebate reconciliation will be separate and apart from the pricing reconciliation as described above.
- A.13. Rebates must not be contingent upon days' supply or acceptance of any programs whatsoever.
- A.14. Any cost of case management for critical disease conditions shall be included in the PBM's Price Proposal and Response Format.
- A.15. The PBM shall coordinate benefits with other prescription drug coverages and include the cost of such service in the PBM Price Proposal and Response Format.
- A.16. The PBM shall use Medi-Span as the basis for determining whether a drug is brand (multisource code field contains an M, N, or O) or generic (multisource code field contains a Y). No other source of brand/generic determination will be acceptable for pricing purposes. This determination shall be applicable for all purposes under the Contract.

B. PBM's Programs and/or Services

- B.1. The PBM shall indicate the RFP programs and/or services it is responding to by making an "X" in the box below:

Programs and/or Services	Offered
HealthSelect PDP	
EGWP PDP	

- B.1.a. From the response(s) provided in the box above, the PBM shall provide the fees associated with the programs and/or services that the PBM will be providing in the Sections below.

C. HealthSelect PDP

C.1. The PBM shall indicate its pricing for the items requested below:

Pricing Element	Current Network	Alternate Retail Network
I. Retail reimbursement		
A. Brand (including specialty drugs dispensed at retail pharmacy)		
1. Ingredient Cost	Complete Appendix L	Complete Appendix M
2. Aggregate Ingredient Cost Guarantee ⁸	AWP ¹ less ___ %	AWP ¹ less ___ %
3. Dispensing Fee	Complete Appendix L	Complete Appendix M
4. Aggregate Dispensing Fee Guarantee ⁹	\$ ___ per script	\$ ___ per script
B. Generic (including specialty drugs)		
1. Ingredient Cost	Lesser of (a) U&C, (b) MAC ⁷ or (c) Appendix L Formula ²	Lesser of (a) U&C, (b) MAC ⁷ or (c) Appendix M Formula ³
2. Aggregate Ingredient Cost Guarantee ⁸	AWP ¹ less ___ %	AWP ¹ less ___ %
3. Dispensing Fee	Complete Appendix L	Complete Appendix M
4. Aggregate Dispensing Fee Guarantee ⁹	\$ ___ per script	\$ ___ per script
II. Mail Service Reimbursement and Extended Days' Supply (EDS) Retail Network		
A. Brand (including specialty drugs)		
1. Ingredient Cost	AWP ¹ less ___ %	
2. Dispensing Fee	\$ ___ per script	
B. Generic (including specialty drugs)		
1. Ingredient Cost	Lesser of MAC ⁷ and AWP ¹	
2. Aggregate Ingredient Cost Guarantee ⁸	AWP ¹ less ___ %	
3. Dispensing Fee	\$ ___ per script	
III. Specialty Pharmacy Reimbursement		
A. Brand		
1. Ingredient Cost	Complete Appendix N	
2. Dispensing Fee	Complete Appendix N	
B. Generic		
1. Ingredient Cost	Lesser of (a) U&C, (b) MAC ⁷ or (c) Appendix N Formula ⁵	
2. Aggregate Ingredient Cost Guarantee ⁸	AWP ¹ less ___ %	
3. Dispensing Fee	\$ ___ per script	
IV. Manufacturer Revenue		
A. ERS Share		
	100%	
B. Guaranteed Rebate		
1. Retail	\$ ___ per paid script	
2. Mail	\$ ___ per paid script	
3. Specialty	\$ ___ per paid script	
V. Administrative Fee		
	\$ ___ PMPM ⁶	

Footnotes:

- ¹AWP = Medi-Span Average Wholesale Price
- ²AWP less the discount for that particular pharmacy shown in Appendix L
- ³AWP less the discount for that particular pharmacy shown in Appendix M
- ⁴WAC = Medi-Span Wholesale Acquisition Cost
- ⁵AWP less the discount for that particular drug shown in Appendix N
- ⁶PMPM denotes per Member (employee or retiree) per month
- ⁷MAC = Maximum Allowable Cost as established by the PBM. The PBM shall use the same MAC pricing in determining retail and mail reimbursement.
- ⁸The average discount for all applicable claims shall be no less than the percentage indicated.
- ⁹The average dispensing fee for all applicable claims shall be no greater than the amount indicated.

- C.2. Is there separate pricing for injectables and biotech products? If yes, please provide a separate fee schedule.
- C.3. The total dollar amount at risk for Performance guarantees shall equal ten percent (10%) of the annualized administrative fee based on initial enrollment and on each subsequent Fiscal Year period.

D. EGWP PDP

- D.1. The PBM shall indicate its pricing for the items requested below:

Pricing Element	Current Network	Alternate Retail Network
I. Retail reimbursement		
A. Brand (including specialty drugs)		
1. Ingredient Cost	Complete Appendix L	Complete Appendix M
2. Aggregate Ingredient Cost Guarantee ⁸	AWP ¹ less ___ %	AWP ¹ less ___ %
3. Dispensing Fee	Complete Appendix L	Complete Appendix M
4. Aggregate Dispensing Fee Guarantee ⁹	\$ ___ per script	\$ ___ per script
B. Generic (including specialty drugs)		
1. Ingredient Cost	Lesser of (a) U&C, (b) MAC ⁷ or (c) Appendix L Formula ²	Lesser of (a) U&C, (b) MAC ⁷ or (c) Appendix M Formula ³
2. Aggregate Ingredient Cost Guarantee ⁸	AWP ¹ less ___ %	AWP ¹ less ___ %
3. Dispensing Fee	Complete Appendix L	Complete Appendix M
4. Aggregate Dispensing Fee Guarantee ⁹	\$ ___ per script	\$ ___ per script
II. Mail Service Reimbursement and Extended Days' Supply (EDS) Retail Network		
A. Brand (including specialty drugs)		
1. Ingredient Cost	AWP ¹ less ___ %	
2. Dispensing Fee	\$ ___ per script	
B. Generic		
1. Ingredient Cost	Lesser of MAC ⁷ and AWP ¹	
2. Aggregate Ingredient Cost Guarantee ⁸	AWP ¹ less ___ %	
3. Dispensing Fee	\$ ___ per script	

III. Specialty Pharmacy Reimbursement		
A. Brand		
1. Ingredient Cost	Complete Appendix N	
2. Dispensing Fee	Complete Appendix N	
B. Generic		
1. Ingredient Cost	Lesser of (a) U&C, (b) MAC ⁷ or (c) Appendix N Formula ⁵	
2. Aggregate Ingredient Cost Guarantee ⁸	AWP ¹ less ___ %	
3. Dispensing Fee	\$ ___ per script	
IV. Manufacturer Revenue		
A. ERS Share	100%	
B. Guaranteed Rebate		
1. Retail	\$ ___ per paid script	
2. Mail	\$ ___ per paid script	
3. Specialty	\$ ___ per paid script	
V. Administrative Fee	\$ ___ PMPM ⁶	

Footnotes:

¹AWP = Medi-Span Average Wholesale Price

²AWP less the discount for that particular pharmacy shown in Appendix L

³AWP less the discount for that particular pharmacy shown in Appendix M

⁴WAC = Medi-Span Wholesale Acquisition Cost

⁵AWP less the discount for that particular drug shown in Appendix N

⁶PMPM denotes per Participant (retiree, spouse or survivor) per month

⁷MAC = Maximum Allowable Cost as established by the PBM. The PBM shall use the same MAC pricing in determining retail and mail reimbursement.

⁸The average discount for all applicable claims shall be no less than the percentage indicated.

⁹The average dispensing fee for all applicable claims shall be no greater than the amount indicated.

D.2. Is there separate pricing for injectables and biotech products? If yes, please provide a separate fee schedule.

D.3. The total dollar amount at risk for Performance guarantees shall equal ten percent (10%) of the annualized administrative fee based on initial enrollment and on each subsequent Calendar Year period.

D.4. Revenue from Other Sources

The EGWP PDP agrees to pay 100% of all revenue obtained from the following sources. In addition, the PBM provides the following minimum guarantees.

Revenue Source	Minimum Guarantee	CY2017	CY2018	CY2019	CY2020	CY2021	CY2022
Federal Direct Subsidy	_____ PPM						
Coverage Gap Discount Program	_____ PPM						

Catastrophic Reinsurance	_____ PPM						
Low Income Cost Sharing Subsidies	_____ PPM						
Low Income Premium Subsidies	_____ PPM						

D.5. Projected Net Plan Cost of Prescription Drug Benefits under the EGWP PDP

Based on the enrollment and claims data provided herein, project the net plan cost of prescription drug benefits under the EGWP PDP for CY2017. The projection should take into consideration all factors impacting the net cost, including offsetting revenue from external sources. Provide the projection in the following format.

Cost Factor	Amount
Gross Cost of Prescription Drugs	419,700,000
Participant Cost Sharing	36,600,000
Plan Payments to Pharmacies	383,100,000
PBM Administrative Fees	5,700,000
Other Costs (describe)	0
Federal Direct Subsidy	23,700,000
Coverage Gap Discount Program	52,000,000
Catastrophic Reinsurance	64,100,000
Low Income Cost Sharing Subsidies	3,600,000
Low Income Premium Subsidies	400,000
Manufacturer Rebates	50,000,000
Other Offsets (describe)	0
Net Plan Cost	195,000,000

E. Optional Services

E.1. If PBM answered Section VII.J.131 with regard to products, services, ideas, or facilities which may further enhance the PDP's services, but are not essential in providing the required services, please list the price associated with each such product, service, idea or facility below. Please provide pricing on a per member basis for HealthSelect PDP and per Participant for EGWP PDP. As noted in Section VII.J.131., 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.

HealthSelect PDP				
Services	Date of Implementation	Cost Savings	Other Benefits to System	Additional Monthly Cost (if applicable) Per Member Basis

EGWP PDP				
Services	Date of Implementation	Cost Savings	Other Benefits to System	Additional Monthly Cost (if applicable) Per Participant Basis

F. Interrogatories

Review the Interrogatory instructions referenced in Section I.B.3.

- F.1. Provide the name, title, mailing/email address(es) and telephone/facsimile number(s) for the individual responsible for preparation of the **PBM's Price Proposal and Response Format Requirements** as submitted in **Article XI**.

	HealthSelect PDP	EGWP PDP
Name:		
Title:		
Mailing address:		
Email address:		
Telephone number:		
Facsimile number:		

- F.2. Provide actuarial assumptions regarding brand, generic and specialty pricing and utilization trends.

HealthSelect PDP	EGWP PDP

- F.3. The PBM shall confirm that it agrees that the total dollar amount at risk for Performance Guarantees shall be ten percent (10%) of the annualized administrative fee based on initial enrollment and on each subsequent Fiscal Year period for the HealthSelect PDP and on each subsequent Calendar Year period for the EGWP PDP.

- Confirm
 Unable to Confirm

G. Deviations

Review the deviations instructions referenced in Section I.B.2.

- G.1. Affirm that the PBM shall comply with all of the **Price Proposal and Response Format Requirements** as described herein **Article XI** and be bound to the fees/rates the PBM provided in response to the Fee/Rate Proposal section of this RFP.

- Affirm Affirm with the proposed Deviations

If applicable, enumerate and provide a detailed description of each of the deviations between the PBM's Response and these requirements.
PBM's Requested Deviations Detail:

**BUSINESS ASSOCIATE AGREEMENT
BETWEEN EMPLOYEES RETIREMENT SYSTEM OF TEXAS
AND UNITED HEALTHCARE SERVICES, INC.**

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

PREAMBLE

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

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

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

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

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

WHEREAS, HIPAA mandates that 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

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, immediately 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

- (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.

- 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:

United Healthcare Services, Inc.,
1250 S. Capitol of Texas Hwy., Suite 360
Austin, Texas 78746
Phone: (512) 252-3846-Office / (512) 745-9361-Mobile
Email: [Kimberly R McLeod@uhc.com](mailto:Kimberly_R_McLeod@uhc.com)
Attn: Kimberly R. McLeod, Account Vice President

THIS SPACE INTENTIONALLY LEFT BLANK.

SIGNATURE PAGE TO FOLLOW.

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

UNITED HEALTHCARE SERVICES, INC.

By: 

Printed Name: John S. Akssis

Title: Sr. Associate General Counsel

Date: May 16, 2016

EMPLOYEES RETIREMENT SYSTEM OF TEXAS

By: 

Printed Name: Porter Wilson

Title: Executive Director

Date: May 17, 2016

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.

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

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

[Form Effective: 07-03-15]

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 United Healthcare Services, Inc. (“*PBM*”).

Article 1. Purpose

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

Article 2. Specific Requirements

- 2.1 PBM, including its affiliates, subsidiaries, representatives, officers, directors, principals, employees, agents, assigns and any subcontractors and independent contractors (“*Agents*”), as a condition of handling Participants’ personally identifying and / or sensitive personal information and, if applicable, protected health information (“*PHI*”) (together, “*Personal Data*”) must annually, or more frequently upon request of ERS, 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. PBM 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, PBM shall comply with all applicable federal and state laws and regulations pertaining to the handling and use of Personal Data. In the event of a conflict between applicable laws, the Contract and this Agreement, the strictest provision or provisions offering protections to ERS and its Participants shall apply.
- 2.3 The amount of Personal Data collected must be adequate, relevant and not excessive in relation to the purposes for which it is collected or for which it is further processed. If applicable, PHI must be collected only for purposes consistent with what is communicated to the Participant and not further processed in a way incompatible with those purposes. All other Personal Data must be collected only for purposes as necessary for PBM to perform and fulfill its obligations under the Contract and not further processed in a way incompatible with those purposes. Further processing of such Personal Data for historical, statistical or other business purposes is not incompatible with the original purpose, provided it is permitted under the Contract and the further processing includes adequate additional controls protecting the rights of the Participant.
- 2.4 If PBM serves as a recordkeeper for ERS or collects data on behalf of ERS, all Personal Data must be accurate and complete, and where necessary, kept up to date. Every reasonable step must be taken to ensure that Personal Data that is inaccurate or incomplete, keeping in mind the purposes for which it was collected or for which it is further processed, is definitively erased or corrected in accordance with applicable law.
- 2.5 If PBM did not execute a Business Associate Agreement (“*BAA*”) in connection with the Contract, but PBM subsequently receives or handles any PHI, PBM agrees to immediately notify ERS. ERS will then determine, in ERS’ sole discretion, whether PBM must execute a BAA to address the privacy, security and breach notification requirements related to PHI. If applicable, PBM agrees to act in good faith and to cooperate in the execution of a BAA.
- 2.6 PBM shall maintain industry-accepted standards, such as those recommended by the National Institute of Standards and Technology (NIST), and shall incorporate other applicable state and federal laws and



PBM



ERS

regulations regarding the confidentiality, integrity, accessibility and availability of Personal Data, including, but not limited to, maintenance of disaster recovery and business continuity plans. PBM agrees to allow ERS to view these standards and plans upon request onsite at ERS' premises.

- 2.7 PBM shall maintain computer files containing Personal Data in a secure, hardened facility which provides environmental and access controls. All computer files containing Personal Data, including, but not limited to, duplicate or backup copies, shall be encrypted at all times, including while in use, 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 PBM), in any fashion, no matter what technology is employed, at any location outside the fifty (50) states of the United States of America. Access to Personal Data for purposes of this requirement occurs whenever it is possible to view Personal Data from outside the United States, whether or not the Personal Data is actually sent out of the United States or is actually viewed by someone outside the United States.
- 3.2 When building, testing, enhancing and maintaining processing systems that contain, or will contain, Personal Data, developers must not use actual Personal Data. Instead, they must use fictional or sanitized data that preserves the essential characteristics of the Personal Data, but that does not relate to identifiable individuals. In emergency situations where processing with actual Personal Data is required, use of such information may be permitted only if security procedures are approved in advance, in writing, by ERS' Executive Director, Deputy Executive Director and General Counsel and Information Security Officer.
- 3.3 All authentication access to processing systems and networks containing Personal Data must be logged so that access attempts to systems and networks containing Personal Data can be traced to a specific user. PBM is responsible for monitoring and following up on potential security-relevant events.
- 3.4 When no longer needed, or as required by applicable state or federal law or the Contract, all copies of Personal Data, including, but not limited to, copies on backup tapes, must be irreversibly destroyed according to standards and procedures as provided in the Contract and applicable law. A document describing the Personal Data destroyed, the reasons for such destruction, date and manner thereof and who performed such destruction must be prepared for each destruction process and promptly submitted to ERS. Permission to destroy Personal Data may be granted only by ERS, and 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 PBM's performance under the Contract or this Agreement, then the Personal Data must be retained during the pendency of such litigation or investigative proceedings.

Article 4. Data Breach Monitoring and Notification

- 4.1 PBM must take proactive steps to monitor for breaches of system security, including, but not limited to, acquisition, access, use or disclosure of Personal Data (each, a "*Notification Event*"). In the event of such a Notification Event, PBM must notify ERS immediately, but in any event within



PBM



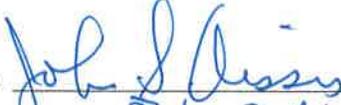
ERS

24 hours 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 Deputy Executive Director and General Counsel and Information Security Officer. At any time upon request of ERS, PBM must notify, at PBM'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 PBM is required to notify at one time more than 10,000 Participants of a Notification Event, pursuant to applicable law, PBM shall also notify, without unreasonable delay, all consumer reporting agencies that maintain files on consumers on a nationwide basis of the timing, distribution, and content of the notices.
- 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, **PBM AGREES TO DEFEND, INDEMNIFY, SAVE AND HOLD HARMLESS, AND TO PROVIDE, AT PBM'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 will designate the vendor that will provide the credit monitoring service.

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

UNITED HEALTHCARE SERVICES, INC.

By: 
Printed Name: John S. Aissis
Title: Sr. Associate General Counsel
Date: May 16, 2016

**EMPLOYEES RETIREMENT SYSTEM
OF TEXAS**

By: 
Printed Name: Porter Wilson
Title: Executive Director
Date: May 17, 2016

[Effective 8-6-2015]