

THE STATE OF TEXAS §
§
COUNTY OF HIDALGO §

SERVICES AGREEMENT
C-20-245-07-21

THIS AGREEMENT is made as of the **21st** day of July, **2020** by and between **COUNTY OF HIDALGO, TEXAS**, a political subdivision of the State of Texas ("County") and **H-E-B RxTRA Advantage** (the "Company").

W I T N E S S E T H:

WHEREAS, County desires to contract for Online Pharmacy Billing Services for qualified clients of the County Indigent Health Care Level 2 Pilot Program of County's Health & Human Services Department (hereinafter "Health Department") that are more specifically set forth hereinafter;

WHEREAS, Company has submitted a proposal to provide services in accordance with the specifications as bid, a copy of Request for Proposals (RFP) Procurement Packet and Proposal being attached hereto as Exhibits "A" and "B" respectively, and incorporated herein for all purposes (the "Specifications") and agreed to provide the services enumerated hereinafter for Health & Human Services Department; and

WHEREAS, in recognition of and in consideration of Company's agreement to perform the Services in accordance with Specifications, the Commissioner's Court of County awarded the proposal to Company.

NOW, THEREFORE, for the mutual consideration expressed hereinafter, County and Company agree as follows:

1. Company agrees to provide to County and its Health & Human Services Department the services required for Online Pharmacy Billing Services for the County's

Health & Human Services Department County Indigent Health Care Level 2 Pilot Program.

These services include, but are not limited to:

- a)** Provide and maintain a system for pharmacies within the network to bill claims online;
- b)** Provide a discount for all prescriptions billed online of at least AWP less 40% of the net cost for generic and 13% brand drug as starting point;
- c)** Provide the ability to limit members to three prescriptions per month;
- d)** Provide the ability to limit members to a certain amount per drug per month;
- e)** Provide real-time online eligibility management;
- f)** Provide ability to maintain and develop a network of pharmacies;
- g)** Provide bi-weekly, monthly and quarterly reports summarizing drug expenditures;
- h)** Provide Customer Service Help Desk to service the County of Hidalgo members and providers;
- i)** Provide ability to load electronic eligibility files within 24 hours of receipt;
- j)** Provide ability to maintain and provide a cost-effective drug formulary;
- k)** Impose a generic only program with an override feature for any name brand drug;
- l)** Provide the same pricing to members who exceed the three prescriptions per month as the County would receive;
- m)** Provide County with all rebates issued by pharmaceutical companies for any medications;
- n)** Provide electronic billing to interface with software provider for County of Hidalgo Health and Human Services;
- o)** Provide ability to run real-time online reports;
- p)** Provide actual numbers of covered lives for any date range requested on reports;
- q)** Provide a yearly summary report reflecting drug utilization and identify potential cost savings to the County.

Company may engage a third party administrator/subcontractor to provide all or part of the service(s) described herein. Company ensures that the third party administrator/subcontractor shall comply with the contract terms.

2. Company represents that it is licensed by the State of Texas and qualified to perform and execute the services provided above. If such license is suspended or revoked, this Contract shall automatically be terminated and Company shall immediately notify the County Judge of Hidalgo.

3. When County determines that it needs a quantity of the products to be delivered, it will, according to its Purchasing Policies, complete and submit to Company a Purchase Order describing the type and quantity of the products required. The products are to be delivered by Company to the location in Hidalgo County specified by County in its Purchase Order.

4. As consideration for rendering the Service provided under this Contract, the County agrees to pay Company for each Purchase Order based on the prices set out in Exhibit "B". Company shall render invoices for each Purchase Order, and the invoices shall be paid by County in accordance with the Texas Prompt Payment Act, Tex. Govt. Code Ch. 2251.

5. Company must comply with all applicable laws and regulations of the State of Texas and County and Health & Human Services Department policies. Notwithstanding the foregoing sentence, Company represents and maintains that Company is an independent Contractor and is not an employee of County, the Health & Human Services Department, or any agency thereof, and represents and warrants that Company does not desire or request any fringe benefits provided to employees of County, Health & Human Services Department and/or any agency of County.

6. This Agreement may be terminated by County without cause upon thirty (30) days written notice.

7. **Insurance:** Company shall provide insurance in force on all its vehicles and all persons connected with providing services under this Contract naming County as an additional insured (with coverage in the amounts described on Exhibit "C" attached hereto and incorporated herein for all purposes), and shall furnish to County certificates of such insurance coverage. Consistent with its status as an independent contractor and at its sole expense, Company agrees that throughout the duration of the work under this contract and any extension hereof, it shall provide and maintain any and all insurances and abide by any requirements which are specified in the Procurement Packet/Specifications and/or which may be necessary in providing Services or are otherwise required by law. Insurance policies shall cover, but are not limited to, Bidder's activities and all persons, vehicles, equipment and property connected with providing Services. The amount of insurance required shall be in accordance with amounts specified by the County or as prescribed by law, but in no event shall any amount be less than the minimum amounts prescribed by law, including, but not limited to the Texas Tort Claims Act. These requirements do not establish limits of Company's liability. Any and all applicable insurance requirements and amounts are incorporated herein by reference for all purposes. Company is responsible for ensuring all required insurance policies are valid for the duration of the contract. All insurance policies are to be issued by an insurance company authorized to do business in the State of Texas and acceptable to County. Company shall cause all subcontractors utilized by Company to also comply with these specifications. Company shall furnish to County certificate(s) of coverage, and all renewals throughout the duration of the Project, issued by the insurer that such insurance is in full force and effect. (See Exhibit "C" attached hereto and incorporated herein for all purposes). For each applicable policy, Company shall name the County as an additional insured. Company shall notify County a minimum of thirty (30) days in advance

of cancellation of all or part of a policy. Company shall make any other insurance documentation available to County upon request.

8. Company may not assign the obligations or rights under this Contract to any person without the prior written consent of County.

9. **Indemnification: Company will indemnify and hold County harmless from any and all claims, actions, liability, and expenses (including costs of judgments, settlements, court costs, and attorneys' fees, regardless of the outcome of such claim or action) caused by, resulting from, or alleging negligent or intentional acts or omissions or any failure to perform any obligation undertaken or any covenant in this Contract, whether such act, omission, or failure was the Company's or that of any person providing services hereunder through or for the Company. Upon written notice from the County, the Company will resist and defend at its own expense, and by counsel reasonably satisfactory to County, any such claim or action. The Company will carry proper insurance with the County as an additional named insured.**

10. This Contract shall be for a period of one (1) year with County's option to renew the contract for two (2) additional one (1) year terms under the same rates, terms and conditions.

11. **Texas Law to Apply.** This Contract shall be construed under and in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Hidalgo County, Texas. The parties hereby consent to personal jurisdiction in Hidalgo County, Texas.

12. **Entire Agreement.** This Agreement contains the entire contract between the parties hereto, and each party acknowledges that neither has made (either directly or

through any agent or representative) any representation or agreement in connection with this Agreement not specifically set forth herein. This Agreement may be modified or amended only by an agreement in writing executed by the parties hereto, and not otherwise.

13. **Immunities.** Nothing in this Agreement is intended to and County does not hereby waive, release or relinquish any right to assert any of the defenses County enjoys by virtue of the state or federal constitution, laws, rules or regulations, and any sovereign, official or qualified immunity available to County as to any claim or action of any person, entity, or individual against County.

14. Except as may be otherwise specifically provided in this Contract, all notices, demands, requests or communications required or permitted hereunder shall be in writing and shall either be (i) personally delivered against a written receipt, or (ii) sent by registered or certified mail, return receipt requested, postage prepaid and addressed to the parties at the addresses set forth below, or at such other addresses as may have been theretofore specified by written notice delivered in accordance herewith:

If to County:	County of Hidalgo, Texas Attention: County Judge 100 East Cano, 2 nd Floor Edinburg, Texas 78539
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If to Company:	H-E-B RXtra Advanantage 646 South Flores San Antonio TX 78204
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Each notice, demand, request or communication which shall be delivered or mailed in the manner described above shall be deemed sufficiently given for all purposes at such time as it is personally delivered to the addressee or, if mailed, at such time as it is deposited in the

United States mail.

15. **Commitment of Current Revenues Only.** In the event that, during any term hereof, the Commissioners Court does not appropriate sufficient funds to meet the obligations of County under this Agreement, County may terminate this Agreement upon ninety (90) days written notice to Company. County agrees, however, to use reasonable efforts to secure funds necessary for the continued performance of this Agreement. The parties intend this provision to be a continuing right to terminate this Agreement at the expiration of each budget period of County. **Agreements for the acquisition, including lease of real or personal property under Tex. Loc. Govt. Code §271.903:** In the event that, during any term hereof, the Commissioner's Court does not appropriate sufficient funds to meet the obligations of County under this Agreement, County may terminate this Agreement upon ninety (90) days written notice to Company, County agrees, however, to use a best efforts attempt to obtain and appropriate funds for payment of the Agreement. The parties intend this provision, if applicable, to be a continuing right to terminate this at the expiration of each budget period of County in accordance with Tex. Loc. Govt. Code §271.903 (Vernon Supp. 1996).

16. **Nondiscrimination:** Company/Contractor/Vendor, including subcontractors, assignees and successors in interest, ensures that no person shall on the grounds of race, religion, color, national origin, sex, age, disability, or any other protected class under law, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination or retaliation in any federally or non-federally funded program or activity when providing any services described herein under this contract/agreement.

17. **Additional Documents.** The parties hereto covenant and agree that they will execute each such other and further instruments and documents as are or may become necessary or convenient to effectuate and carry out the terms of this contract/agreement.

18. Company shall provide a sufficient number of trucks, vehicles, personnel, and equipment available to safely and efficiently provide the Services.

19. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

20. This Agreement shall be binding upon and inure to the benefit of and be enforceable by the parties hereto and their respective heirs, executors, administrators, legal representatives, successors, and assigns where permitted by this Agreement.

21. Appendix II to CFR 200-Contract Provisions: Pursuant to 2 CFR 200.236, a non-Federal entity's contracts must contain the applicable provisions described in Appendix II to 2 CFR 200-Contract Provisions for non-Federal Entity Contracts under Federal Awards. Therefore, if applicable, the provisions of Appendix II to 2 CFR 200 are attached and incorporated by reference into this County contract should it be subject to Federal award.

EXECUTED and effective as of the day and year first written above.

Approved by Commissioners' Court on this the _____ day of _____, 2020.

COUNTY OF HIDALGO, TEXAS

By: _____
Richard F. Cortez, County Judge

Date: _____

ATTEST:

By: _____
Arturo Guajardo, Jr., County Clerk

Date: _____

COMPANY:

By: _____

Printed: _____

Date: _____

Approved as to form:

Office of the District Attorney

By: _____
Josephine Ramirez, Assistant District Attorney

Date: _____

EXHIBIT "A"
REQUEST FOR PROPOSALS PROCUREMENT
PACKET

EXHIBIT "B"

PROPOSAL

EXHIBIT "C"
INSURANCE