



STATE OF TENNESSEE
DEPARTMENT OF FINANCE & ADMINISTRATION, BENEFITS ADMINISTRATION

**REQUEST FOR PROPOSALS #31786-00174
AMENDMENT #ONE
FOR PHARMACY BENEFITS MANAGEMENT**

DATE: November 7, 2023

RFP #31786-0074 IS AMENDED AS FOLLOWS:

1. This RFP Schedule of Events updates and confirms scheduled RFP dates. Any event, time, or date containing revised or new text is highlighted.

EVENT	TIME (central time zone)	DATE
1. RFP Issued		September 28, 2023
2. Disability Accommodation Request Deadline	2:00 p.m.	October 3, 2023
3. Pre-response Conference	1:00 p.m.	October 4, 2023
4. Notice of Intent to Respond Deadline	2:00 p.m.	October 5, 2023
5. Written "Questions & Comments" Round 1 Deadline	2:00 p.m.	October 16, 2023
6. State Response to Written "Questions & Comments" Round 1		November 7, 2023
7. Written "Questions & Comments" Round 2 Deadline	2:00 p.m.	November 14, 2023
8. State Response to Written "Questions & Comments" Round 2 *NOTE: Vendors may submit no more than ten (10) questions to the State in the 2nd round of Written Questions and Comments.		November 30, 2023
9. Response Deadline	2:00 p.m.	December 14, 2023
10. State Opening of Cost Proposals		December 21, 2023
11. Cost Proposal Analysis		December 21, 2023 – February 5, 2024
12. State Completion of Technical Response Evaluations		January 26, 2024
13. State Notice of Intent to Award Released <u>and</u> RFP Files Opened for Public Inspection	1:00 p.m.	February 22, 2024
14. End of Open File Period		February 29, 2024
15. State sends contract to Contractor for signature		March 1, 2024
16. Contractor Signature Deadline	2:00 p.m.	March 8, 2024

2. State responses to questions and comments in the table below amend and clarify this RFP.

Any restatement of RFP text in the Question/Comment column shall NOT be construed as a change in the actual wording of the RFP document.

RFP SECTION		QUESTION / COMMENT	STATE RESPONSE
General	1.	Is the state of Tennessee open to considering alternative submissions for their pharmacy benefit management RFP? Instead of submitting a conventional PBM proposal, we are interested in presenting our clinical management program as an alternative.	No, the State intends to sign the <i>pro forma</i> contract listed in the RFP, and the Contractor is responsible for delivering all services and requirements listed in the <i>pro forma</i> contract.
General	2.	Will there be requested pricing revisions for a best and final?	<p>No. Submit your best cost proposal by the response deadline listed in the RFP Schedule of Events, Section 2.1. The State has removed the language in 5.2.3. See Amendment item #27.</p> <p>Please note that the Cost Proposal has been revised. See Amendment item #26.</p>
General	3.	Will a PBM be disqualified if they do not meet all requirements and criteria listed in the RFP? Or will points be deducted for responses that do not meet all criteria?	Please refer to RFP Section 5.2 Evaluation process.
General	4.	<p>The RFP defines “questions and comments” to include any questions, comments, objections, or any other matter requiring clarification or correction related to the Pro Forma Contract. Is the intent that the bidder provide any objections to the terms and conditions in the Pro Forma contract during the Written “Questions and Comments” rounds to be due and submitted by the Written Questions & Comments Deadlines or should that be part of the bidders final response on the RFP due by the Response Deadline?</p> <p>If the intent is that those objections to the Pro Forma Contract be due by the Written Questions & Comments Deadline, our organization takes exception to that requirement. At this stage, the RFP is still under review and subject to additional information being provided by the State in response to questions submitted by the bidders. The terms</p>	All questions, comments, objections, and redlines should be submitted during Round 1 or 2 of Written Questions and Comments listed on the RFP Schedule of Events, Section 2.1. Please note that in Round 2 of Questions and Comments, Respondents are limited to ten (10) questions and/or comments, which include suggested redlines. There will be no negotiation after the contract award.

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		and conditions contained in the Pro Forma Contract will need to be reviewed in the context of the final response to be submitted and our organization, therefore, reserves the right to submit comments, objections, clarifications, and corrections related to the Pro Forma Contract with the final response on the RFP.	
General	5.	Is it permissible for Vendor to submit redlines to the pro forma contract for the State's consideration?	See the State's response to Question #4
General	6.	Please clarify whether Vendor can mark any proposal sections (technical and cost) proprietary and confidential.	Please refer to RFP Section 4.8. All records including RFP responses are subject to Tennessee law. Tennessee Code Annotated 10-7-504 (n)(1)(A) does afford some protection for certain cost/pricing information marked as confidential and proprietary in response to a state RFP of this type. Please note that not all documents submitted as part of your proposal and which you may mark as "Confidential and proprietary" are covered by this statute. Please review the statute accordingly.
General	7.	Additional contract exhibit required. Delegation agreement addition. Bidder requests that the final contract between the State and the Bidder includes the Bidder's delegation agreement, which is required for NCQA accreditation when the Bidder is delegated for PA and Appeals	The State is willing to review this agreement but cannot make any guarantee of its inclusion in the final contract. Please submit a copy by the Written Questions and Comments Round 2 deadline. NCQA accreditation is not a new requirement for this contract, and this document has never been included in any past contracts.
General	8.	Would you please provide your monthly PA statistics?	Average 6,218/month

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General	9.	Please provide average monthly volume of calls handled by the member call center.	In CY 2022 30,425 calls were answered by the existing PBM's customer service center, for an average of 2,535 per month or 83 per day. From January-September 2023, 31,111 calls have been answered, for an average of 3,457 per month or 114 per day.
General	10.	Would you please provide your monthly call center statistics?	See the State's response to Question #9.
General	11.	Please provide average monthly volume of calls handled by the PA team.	Per our current PBM, this is not available on a client specific basis. They were able to provide this on a book of business basis, but that answer is not client specific.
General	12.	Please provide the average number of clinical prior authorizations per month (or annually).	See the State's response to Question #8.
General	13.	What are the detailed challenges State of TN has faced and is expected to face in the upcoming years?	The State Group Insurance Program's biggest challenges at the present time are the cost and utilization of specialty drugs and the overall trend associated with specialty drugs as more enter the market, as well as how specialty drugs continually receive additional FDA approved indications. This, in turn, allows even more members to potentially receive these costly drugs in the future – thereby increasing plan costs.
General	14.	What is the ERISA status?	The state group insurance program is not subject to ERISA. We are, however, subject to the Public Health Service Act (PHSA).
General	15.	Please provide the average number of DMRs (direct member reimbursement) per month (or annually).	Average 86/month

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General	16.	What is State of TN's current yearly trend over 3 years.	Gross cost trend, all drugs, before rebates-: 2020 7.3% 2021 7.1% 2022 14.2% Gross cost trend, all drugs, after rebates-: 2020 2.4% 2021 -3.1% 2022 10.3%
General	17.	What percentage of your general and specialty claims adjudicate through your hospital pharmacies vs. your PBM network pharmacies?	In 2022 there were 4,485,821 non-specialty prescriptions and 52,739 specialty prescriptions that processed through the PBM benefit, while there were 24,126 specialty claims that processed through the separate medical TPA contacts. The prescriptions that processed through the medical benefit are mostly provider administered medications in an office or other outpatient setting.
General	18.	Are claims through in-house pharmacies included in discount guarantees? Are they included in rebate guarantees?	The state group insurance program does not have any in-house pharmacies in our existing networks. We do not operate any in-house pharmacies, nor do we intend to do so during the term of this contract.
General	19.	Given that Public Chapter 1070 only recently went into effect, and that it therefore may be difficult to accurately forecast the impact of price increases that result from pharmacy appeals pursuant to that legislation, would the State consider including additional contract language closer to the date of contract execution that would allow the parties to more accurately account for impact of such appeals on pricing guarantees?	No, all suggested redlines or suggested additional contract language must be submitted in Round 1 or 2 of Written Questions and Comments listed in the Schedule of Events, RFP Section 2.1. Please note that in Round 2 of Questions and Comments, Respondents are limited to ten (10) questions and/or comments, which includes suggested redlines. There will be no negotiation after the contract award.
General	20.	Public Chapter 1070 requires PBMs to pay professional dispensing fee "not less than the amount paid by the TennCare program to a	The cost proposal already allows for the exclusion of these. Please see footnotes #7 and #8 in the Cost Spreadsheet tab of the cost proposal that say these claims "...shall be excluded from the Guaranteed Minimum

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		<p>pharmacy” whose “annual prescription volume is at a level that, if the pharmacy were a TennCare-participating ambulatory pharmacy, would qualify the pharmacy for the enhanced amount of professional dispensing fee.” The increased dispensing fee required under this provision will, in many cases, result in a significantly higher overall claim cost than if the claim were processed at a pharmacy that did not qualify for the TennCare dispensing fee, and thus may have a distorting effect on pricing and dispensing fee guarantees at retail. In order to allow PBMs to offer their most aggressive financial terms at retail, will the State agree to exclude this class of claims from retail pricing and dispensing fee guarantees?</p>	<p>Average Discounts above...” and “...shall be excluded from the Dispensing Fees above...”</p>
General	21.	<p>What method will your consultant use to evaluate PBMs that do not follow the traditional pricing model? What steps will your consultant take to ensure that transparent PBMs receive comparable evaluation to traditional models knowing that through publicly available data the current PBM is not controlling costs on behalf of the state and its taxpayers??</p>	<p>To ensure all bidders are evaluated on an equal basis, the Mandatory Requirement A.13 references the methodology that will be used: all bidders will be required to reconcile and provide guarantees based on the Medi-Span post-settlement Average Wholesale Price (AWP), regardless of their pricing model used to adjudicate claims.</p>
General	22.	<p>How would the State propose to address low list price covered products, which become preferred as lowest net cost options for the Plan, but which may change the PBM’s ability to meet Rebate guarantees? Often the impact of pricing competition cannot be anticipated until market conditions have played out. Accordingly, would the State be willing to introduce contract language that would account for such unpredictable impacts?</p>	<p>Scenarios as described are covered by language in section A.15.b.5.</p>

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General	23.	<p>Upon review of the TNCloud site for Digital Media submissions, we noticed that there is not a user authentication. With regard to the digital media submissions, please find the following two clarifying questions:</p> <ul style="list-style-type: none"> a. Please confirm that a respondent's proposal will be separated from any other respondent's proposal and whether respondents should identify themselves in the file submission, i.e. "RFP #3186-00174 - [Respondent Name]". b. Additionally, please confirm that separately attached zip files for the Cost and Technical Proposal that are submitted through the TNCloud site meet the requirements for separate submissions. 	<p>Respondents are only able to upload and view their own responses. No other responses will be visible. It is helpful for Respondents to identify themselves in the file submission.</p> <p>A zip file is acceptable. Please ensure that the Technical Response and Cost Proposal are in separate zip files.</p>
General	24.	Are bidders allowed to do any offsetting for rebates? If so, what type of offsetting?	No.
General	25.	Please provide a copy of your current benefit design(s).	This was provided as Appendix 7.1 - Medical Options Comparison. There are two pages for the State/Higher Education employee benefits and two pages for the Local Education and Local Government employee benefits. The pharmacy benefits are found at the bottom of the first and third pages.
General	26.	Due to the complexity of many issues in this RFP and the need to finalize all issues in the Pro Forma	The State has set a new limit of ten (10) questions. Please refer to the RFP Schedule of Events, Section 2.1 and Amendment item #1.

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		Contract, please amend the 5 question limit for round 2 of Questions & Comments and allow more questions. If a limit is necessary, please consider twenty (20) instead of five (5). Thank you.	
General	27.	Is the State's intent to use the Bidder's Open formulary where drug coverage is managed by the bidder and the State will manage benefit design for exclusion for specific categories for example infertility, weight loss, OTC's.	Correct. We will work through those questions with the Contractor during the implementation phase after the contract is signed.
General	28.	Do you currently have drug exclusion outside of the categories in the governing plan document, if so, please provide a full list of the exclusions under the existing formulary.	No. All plan exclusions are listed in the governing plan document. Our current PBM does maintain a list of "Medications Requiring Prior Authorization for Medical Necessity." Those medications are excluded from coverage unless the member's prescriber requests a medically necessary PA that is approved by the PBM. However, we don't consider these as truly "excluded," as there is still a potential pathway to coverage for the member.
General	29.	Please confirm as noted on the Cost Proposal (Cost Spreadsheet Tab) that specialty pricing and specialty rebate guarantee only apply to brand specialty products. Generic specialty products will take the R30 non-specialty guarantee and R30 non-specialty rebate guarantee. For informational purposes, can you please provide context for requesting this approach as it is non-standard?	Confirmed, this is the intended setup, and this is per the State's request.
General	30.	Please confirm if the State is requesting any type of implementation credit, developmental fund, etc. and if yes where should that be populated within the documents and will these be evaluated as part of the technical or cost component?	No, the state is not requesting this.
General	31.	Please confirm the R90 day supply is 31 and	Confirmed.

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		greater.	
General	32.	Please confirm rebate guarantees can be reconciled in the aggregate and are not required to be reconciled on a component basis.	Confirmed, the Manufacturer Payment Guarantees can be reconciled in the aggregate.
General	33.	Please provide an NDC level listing of drugs currently considered specialty.	The state does not determine which drugs are considered specialty; the Contractor will make that determination. The incumbent vendor's specialty drug list can be found at: https://www.caremark.com/portal/asset/tn_specialtydruglist.pdf . Appendix 7.25 has been added to show The State has added a new appendix showing an NDC level listing of the incumbent vendor's specialty drugs. See Amendment item #26 below.
General	34.	[Redacted] does not currently have URAC Accreditation, but we have kicked off the process. Can you please clarify what is necessary to submit to indicate we will have this accreditation by the start date of January 2025, and when we need to submit that documentation.	The Bidder would need to supply documentation with a statement from URAC showing that URAC Pharmacy Benefit Management accreditation will occur on or before the pharmacy contract effective date.
General	35.	Is State of TN currently utilizing a POS rebate arrangement?	No, we currently do not offer point of sale (POS) rebates.
General	36.	If using a POS rebate arrangement, what are the State of TN goals with regard to the POS rebate arrangement?	The state does not currently offer point of sale (POS) rebates. However, per A.16.h of the pro forma contract, if we decide during the term of this contract that we want the Contractor to put POS rebates in place for one or more of our plan types, the Contractor shall do so upon notice by the state. Our goals, if we exercise the right to institute POS rebates, would be to lower the member's cost share at the point of sale to the extent possible particularly for high deductible plan members.
RFP Section B.13	37.	Please clarify if a specific participation percentage is required.	There is no minimum participation requirement. However, Finance & Administration does have goals and results that are reported to the governor and general assembly each year.
RFP Section B.13	38.	With regard to Question B.13 of the RFP on pages 26 & 27, please clarify if bidders who may not directly meet the requirements of being a Diverse	Yes. If using subcontractors or third-party businesses, they must first be certified as a small or diverse business in their home state or with a nationally recognized organization to claim diversity status.

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		Business Enterprise but have substantial engagement with and utilization of Diverse Business Enterprises would have an equal opportunity to earn the maximum points afforded to the question.	
RFP Section C.6.d	39.	Is the State interested in an integrated cash card benefit?	Yes. For more information, please see the State's response to question #40 immediately below.
RFP Section C.6.d	40.	Is the intent to disallow cash card claims to process through the pharmacy benefit?	No. If the bidder has a program in place with one or more of the prescription discount programs that would allow a lower cost for the member at the point of sale, rather than running the prescription through the PBM standard benefit, this is something the state is interested in. The intent would be to allow the member's cost share under such a discount program to seamlessly apply to their deductible (if on a CDHP plan) and/or annual maximum out of pocket amount.
RFP Section C.13.a; C.14.c	41.	It appears, given the information provided in Appendix 7.17, 7.18,7.23 that the State has some utilization management in place today; however, this item indicates that none should be offered. Please provide additional information on how the State is applying formulary management edits and exclusions today and how this information should be applied to the Bidder's response. Further, C.14.c specifically requests clinical management recommendations.	The state requests that you take the plan exclusions into account (see Appendix 7.23) as you develop your response. Aside from that, you should not build into your response any additional required utilization management edits such as prior authorization, quantity limits or step therapy on any medications. If the state is interested in those programs on any drug or drug class, we will work with the Contractor during implementation to put them into place. That said, the state does have UM in place today and expects to adopt similar UM going forward but does not wish to commit to any UM criteria upfront without first understanding its impact.
RFP Section C.13	42.	C.13 states, "The State currently has an open formulary (see Appendix 7.24) with a few exclusions specifically listed in our Plan Document. Regarding the Respondent's Formulary management policies, procedures, and processes describe or provide: (a) A copy of the Formulary and the name of the Formulary you intend the State to use for its current benefit plans if selected as the best evaluated Respondent. This MUST be an open formulary with no exclusions or limitations	Not confirmed. The state requests an open formulary through this RFP. If, after awarding of the contract and during the contract implementation phase the state determines that we wish to allow prior authorization, step therapy, and/or quantity limits on medications or medication classes we will make that determination then and provide such direction.

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		<p>such as Step Therapy, quantity limits and/or PA requirements. If the State is interested in those programs the State will discuss those during contract implementation and during the term of the contract. See RFP Appendices 7.17, 7.18, and 7.23 for a summary of the State's current Formulary management edits and exclusions.</p> <p>Please confirm Vendor may submit a closed formulary quotation as the RFP also states, "The State is open to the acceptance of utilization management edits, but such edits must be prior approved by the State."</p>	
RFP Section C.23.a	43.	Understanding the contractor is responsible for all 3 appeal levels, please provide the average number of appeals, by appeal level, per month (or annually)	Level 1 Appeals: average 247/month Level 2 Appeals: average 19/month External appeals: average 6/month
RFP Reference Questionnaire	44.	The Reference Questionnaire references a "signature across the envelope seal." Can the State please clarify whether references should email or submit the questionnaire through mail?	References should email the questionnaire to the Solicitation Coordinator. The State has removed this language. Please see Amendment item #3 below.
Pro Forma Contract A(2)(a)	45.	Section A(2)(a) of the Pro Forma Contract defines "340B Claim" as "a Claim that receives 340B program pricing and is dispensed from a 340B program covered entity. 340B Claims are identified by the submission of "20" in the 'Submission Clarification Code' field (420-DK) AND includes a covered entity owned pharmacies 340B status coded as "37", "38", or "39" in the NCPDP DataQ database." Type 39 pharmacies serve only covered entity-qualified members and, thus Type 39 pharmacy claims would appear to meet the first sentence of the definition automatically. However, there may be instances where a Type 39 pharmacy processing a claim neglects to submit the claim with a submission code of 20 and in those cases, a PBM would not be able to exclude that claim from Rebate	The definition of 340B Claim has been edited. Please see Amendment item #4 below.

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		<p>guarantees, even though manufacturers generally do not pay a rebate on the claim. As a consequence, the PBM would need to factor the requirement to pay a Rebate guarantee on these claims into our minimum rebate guarantees and to be conservative in doing so since such claims represent 100% downside risk to the PBM. To allow PBMs to offer more aggressive minimum Rebate guarantees, would the State be willing to revise the 340B Claim definition to specify that all Type 39 pharmacy Claims are counted as 340B Claims regardless of whether they meet the additional criterion of being submitted with a submission code of 20?</p>	
Pro Forma Contract A.2.c	46.	<p>Pro Forma Contract A.2.c, definition of Actual Acquisition Cost Price or AACP - Since Off-Invoice Remuneration is not applicable at the claim level, any reporting of AACP cannot reflect any such remuneration. Please remove this as part of the calculation of AACP which is to be provided to the State.</p>	<p>The State has elected to remove the definition of Actual Acquisition Cost Price or AACP, as this is not relevant, as bidders are instructed to provide Pass-Through, transparent pricing. See Amendment item #5 below.</p>
Pro Forma Contract A.2 definitions	47.	<p>Coinsurance - The percentage amount of allowable charges paid by the Program and the Member to a Provider for a product or service provided to the Member.</p> <p>Clarification: Coinsurance is an insured individuals share of the costs of a covered expense, generally expressed as a percentage.</p>	<p>The state has revised this language. Please see Amendment item #6 below.</p>
Pro Forma Contract A.2.nn	48.	<p>Pro Forma Contract A.2.nn, definition of Generic Product Identifier – This definition appears to be for FirstData Bank GCN, not Medispan GPI. GPI at the six digit level would only represent chemical and subclass of chemical. To identify same chemical, strength, form and route, would require the use of</p>	<p>The definition of Generic Product Identifier (“GPI”) has been updated. See Amendment item #7 below.</p>

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		MSP GPI 14. Please clarify which is intended here.	
Pro Forma Contract A(2)(yyy)	49.	Section A(2)(yyy) of the Pro Forma Contract defines “Other Pharmaceutical Manufacturer Revenue” as “any revenue that PBM or PBM Affiliates receive from Pharmaceutical Manufacturers” and specifies that the term includes Invoice Wholesaler Remuneration, Pharmacy Purchase Discounts, Transmission Fees, and Specialty Service Fees, which terms are, respectively, also defined in the Pro Forma Contract. In light of the definition of Pass Through Pricing (which specifies that PBMs who own their own mail and specialty pharmacies may take spread), please confirm that such PBMs are not required to pass through Wholesaler Remuneration, Pharmacy Purchase Discounts, and Specialty Service Fees.	In this RFP with Pass-Through Pricing, PBMs will be allowed to retain the following sources of revenue: “The PBM’s only profits are the Administrative Fee, Other Pharmaceutical Manufacturer Revenue not directly attributable to the State’s Claims and/or utilization , and any clinical program fees.” This has been clarified in a revised definition of Pass-Through Transparent Pricing. Please see Amendment item #8 below.
Pro Forma Contract A.2.cccc	50.	Pro Forma Contract A.2.cccc, definition of Pass-Through Transparent Pricing – states that bidder is allowed to have Spread at Mail and PBM Specialty. Is acquisition cost pricing at Mail and PBM Specialty a requirement? Or is Spread pricing at Mail and PBM Specialty an option?	Acquisition cost pricing at PBM-owned Mail and Specialty is not a requirement. For clarity, please refer to the definition of Pass-Through Transparent Pricing, as it has been updated. Please see Amendment Item #8 below.
Pro Forma Contract A.2 definitions	51.	Group Purchasing Organization or GPO - an entity that aggregates the purchasing power of a group of businesses to obtain Discounts or Rebates from Pharmaceutical Manufacturers. These services may include contracting with manufacturers for Manufacturer Payments or any similar service conducted on behalf of the PBM. Any entity who provides the same or similar services as the PBM on behalf of the PBM under this Agreement shall also be considered a GPO.	The State declines to change this contract language for the definition of GPO. The State is willing to add a phrase to the end of the definition of Manufacturer Administration Fees (MAF) to address your concern. Please see Amendment item #9 below.

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		<p>For purposes of this Agreement, rebate aggregators or any similar/competing entity shall also be a GPO. PBM represents and warrants that PBM's agreements with a Group Purchasing Organization shall contain (and will continue to contain through the term of this Agreement) provisions or obligations that are substantially similar to any provision or obligation contained in this Agreement which directly or indirectly relates to any service under this Agreement that is or may be performed by a GPO as defined herein.</p> <p>The amount Contractor receives for Rebates from rebate aggregators and/or intermediaries may be different from the amount such rebate aggregators and/or intermediaries receive through their own pharmaceutical manufacturer or intermediary agreements, which such difference may be retained by the rebate aggregator and/or intermediary as its compensation, and the term "Rebate" as used in this Agreement does not include this compensation, which belongs exclusively to the rebate aggregator or intermediary.</p> <p>Bidder requests additional sentence be added.</p>	
Pro Forma Contract A.2.hhh	52.	<p>Pro Forma Contract A.2.hhh, definition of Manufacturer Payments – The State's proposed Manufacturer definition is exceedingly broad, is not tied to State utilization, and fails to exclude Other Pharmaceutical Manufacturer Revenue, e.g., bona fide service fees that cannot be passed through to the State pursuant to federal regulations cannot be passed on to payers. Please consider defining Manufacturer Payments as: "Manufacturer Payments" includes Rebates, Manufacturer Administrative Fees, Inflation Protection Payments, but excludes Other Pharmaceutical Manufacturer Revenue.</p>	<p>The definition of Manufacturer Payments has been edited for clarity. Please see Amendment item #10 below.</p>

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A.2 definitions	53.	<p>Material change (5): Client-initiated change to benefit design or formulary (including utilization management) that impacts Rebates negatively by more than one million five hundred thousand (\$51,000,000) dollars per year.</p> <p>Such a change initiated by the State is limited to changes to the Pharmacy benefit program, plan design, or formulary alignment. In the event a modification to financial guarantees is necessary, the parties will mutually agree on an appropriate adjustment which shall be economically neutral to the impact of the change, such agreement not to be unreasonably withheld.</p> <p>Bidder requests a change to rebate impact.</p>	The state accepts this change. Please see Amendment item #11 below.
Pro Forma Contract A.2	54.	Will the State consider removing “service fees” from the first sentence of the definition of “Rebate” and include such phrase as an exception to Rebates in the second sentence of the definition, as fees received for services provided would not constitute rebates.	No, the State does not agree.
Pro Forma Contract A.2 definitions	55.	<p>340B Claim(s) - a Claim that receives 340B program pricing and or is dispensed from a 340B program covered entity. 340B Claims are identified by the submission of “20” in the ‘Submission Clarification Code’ field (420-DK) AND OR includes a covered entity owned</p> <p>pharmacies 340B status coded as “37” “38”, or “39” in the NCPDP DataQ database.</p> <p>Bidder requests the shown changes to more closely define a 340B claim.</p>	The State does not agree.
Pro Forma Contract	56.	Brand Drug – an FDA approved drug, or a drug that is designated by FDA a DESI (Drug Efficacy Study Implementation) drug, or product, which is manufactured and distributed by an	The State does not agree.

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A.2 definitions		<p>innovator drug company, or its licensee, set forth in Medi-Span's National Drug Data File (MS) as a Brand Drug identified by all of the products meeting at least one of the following criteria:</p> <p>(1) Brand Name code of "T" and Multisource Code "M"</p> <p>(2) Brand Name code of "B" or "T" and Multisource Code of "N"</p> <p>(3) Brand Name code of "B" or "T" and Multisource Code "O" and a DAW code of 0, 1, 2, 7, 8, or 9</p> <p>For the avoidance of doubt, Brand Drugs shall also include brand name vaccines, supplies, medical devices, kits, diabetic supplies, OTC products, and test strips.</p> <p>Bidder considers the items removed as devices, not brand drugs.</p>	
Pro Forma Contract A.2 definitions	57.	<p>Business Days - Traditional workdays, including Monday, Tuesday, Wednesday, Thursday, and Friday. State Government and Contractor's Holidays are excluded.</p> <p>Bidder may be closed on some days outside of State government holidays.</p>	The State does not agree. This definition is standard in Benefits Administration contracts.
A.2 definitions	58.	<p>Manufacturer administrative fees: remove in full</p> <p>Bidder requests this be removed</p>	The state does not agree.
A.2 definitions	59.	<p>Provider – An entity or individual that has an agreement with the Contractor to provide covered pharmaceutical, medical, or other health care services to plan Members according to contracted terms and rates.</p> <p>As there is a definition for Pharmacy or Participating Pharmacy having this definition of Provider may cause confusion.</p>	The state does not agree to delete this definition. Because the state would like the ability to engage point solution providers, as described in A.10.f., the definition must remain.

RFP SECTION		QUESTION / COMMENT	STATE RESPONSE
Pro Forma Contract A.2(d)	60.	Section A.2(d) of the Pro Forma Contract specifies that the Administrative Fee billed to the State “is the only compensation due the Contractor under the contract, unless the Contractor also bid a Clinical Fee.” The Tennessee Department of Commerce and Insurance (TDCI) recently enacted rules in connection with the passage of Public Chapter 1070, requiring that “[a]ll costs associated with conducting an appeal under this rule, including the expenses of [TDCI], shall be paid by the applicable PBM” (Rule 0780-01-95-.06(11)), and announced that it has engaged an outside contractor to administer external appeals and will bill the contractor’s fee for each appeal to the PBM. Given that Public Chapter 1070 only recently went into effect, and that it therefore may be difficult to accurately forecast the volume of pharmacy appeals pursuant to that legislation, would the State consider allowing its PBM to pass through TDCI’s contractor’s charge for each appeal to the State, rather than factoring these charges into the administrative fee?	The state does not agree.
Pro Forma Contract A.2.h	61.	Pro Forma Contract A.2.h, definition of Average Speed of Answer – Bidder does not receive data from its provider that says when a call is placed on hold, only the amount of time someone is on hold. We request modifying the language to read: Average Speed of Answer (“ASA”) – The number of seconds between the time a call is queued to an advocate or queued to the IVRU and the time a call is answered, divided by the total calls handled.	The State does not agree. This definition is standard in all Benefits Administration contracts.
Pro Forma Contract A.2.p	62.	Pro Forma Contract A.2.p, definition of Claims Payment Accuracy, Since Bidder audits claims based on the number of adjustments for Bidder-	The State does not agree.

RFP SECTION		QUESTION / COMMENT	STATE RESPONSE
		owned errors, would the State adjust this measurement to accommodate this approach?	
Pro Forma Contract A.2.q	63.	Pro Forma Contract A.2.q, definition of Claims Processing Accuracy, Since Bidder audits claims based on the number of adjustments for Bidder-owned errors, would the State adjust this measurement to accommodate this approach?	The State does not agree.
Pro Forma Contract A.2.bbbb (3)	64.	Should Retail Pharmacy replace Mail Order Pharmacy so (3) reads: Unique handling, distributions and/or administration requirements such that the drug cannot be safely dispensed from a Retail Pharmacy?	The correct reference is A.2.bbbbb(3) The State declines to change this contract language. The intent was accurately represented in the current version of the Pro Forma contract.
Pro Forma Contract A.2(d)	65.	Section A.2(d) of the Pro Forma Contract states that the Administrative Fee defined in that section “is the only compensation due the Contractor under the contract, unless the Contractor also bid a Clinical Fee.” Please confirm that the definition of “Administrative Fee” will not be interpreted to conflict with the ability of PBMs who own their own mail and/or specialty pharmacies to earn margin on claims dispensed through those pharmacies, as appears to be contemplated elsewhere in the Pro Forma Contract (e.g., section A.2 (cccc), which states that PBMs may “retain[] the difference between Mail Order and specialty acquisition costs and the amounts guaranteed to the State”).	Confirmed.
Pro Forma Contract A.2 (o)	66.	Section A.2(o) of the Pro Forma Contract states that the defined term “Claim”, may, “[a]t the State’s request [] include any product or service utilized by a member via a point solution offered by the Contractor for which the state elects to participate.”	Confirmed. If the state were to offer point solutions, those claims – when processed through the PBM benefit – do not need to be included as a Claim for the purposes of calculating Manufacturer Payment Guarantees. Footnote #7 on the Cost Spreadsheet tab in the cost proposal has been edited to clarify this. See Amendment item #26

RFP SECTION		QUESTION / COMMENT	STATE RESPONSE
		<p>The Cost Proposal requests that bidders provide Manufacturer Payment guarantees on a per Paid Claim basis. Please confirm that the delivery of a “point solution” would not be included as a Claim for purposes of calculating Manufacture Payment Guarantees. To the extent such services are to be included in the calculation of per-Claim Manufacturer Payment Guarantees, please provide additional information regarding what type of “point solution” would be considered a Claim for that purpose.</p>	
<p>Pro Forma Contract A(2)(gg)</p>	<p>67.</p>	<p>Section A(2)(gg) of the Pro Forma Contract defines “Dependent” as “[t]he child or spouse of an employee or retiree.” To ensure that the individuals the State designates as being eligible for coverage under the Plan receive such coverage, would the State agree to expand this definition to include other relationships that may qualify an individual as a dependent?</p>	<p>No. This definition suffices for the state’s benefits under this contract. The state will place an eligibility file on our SFTP server daily/nightly, and the Contractor will be responsible for picking it up. The state is responsible for telling the Contractor on the file who the employee (head of contract) is, and who all covered dependents will be. Further, the state group insurance program has a detailed definition of “Dependent” in our governing State Plan Document, Local Education Plan Document, and Local Government Plan Document which defines eligibility and enrollment provisions as well as all covered services and the Contractor must operate under the provisions of these Plan Documents at all times.</p>
<p>Pro Forma Contract A.2.00</p>	<p>68.</p>	<p>Pro Forma Contract A.2.00, definition of Group Purchasing Organization or GPO – Bidder contracts with a Group Purchasing Organization on a book-of-business basis and pursuant to an extant contract. Consequently, Bidder can neither represent nor warrant that the terms of said agreement contain or will contain the State’s proposed obligations or provisions in this Pro Forma contract, or that of any other client contract. Please consider revising this definition to the following: "Group Purchasing Organization" or "GPO" means a third party entity group purchasing organization with which PBM may contract for Rebates and Manufacturer Administrative Fees.</p>	<p>The State declines to change this contract language.</p>

RFP SECTION		QUESTION / COMMENT	STATE RESPONSE
Pro Forma Contract A.2.pp	69.	Pro Forma Contract A.2.pp, definition of Guaranteed Minimum Manufacturer Payment or Rebate Guarantee – Specific to the per Rx portion of this provision, is this for total claims or only Brand claims?	Per the Cost Proposal, "Manufacturer Payments must be guaranteed on an all-claim basis." Per Response Requirements 3.1.2, If a Respondent fails to submit the Cost Proposal exactly as required, the State may deem the response to be non-responsive and reject it.
Pro Forma Contract A.2.ddd	70.	Pro Forma Contract A.2.ddd, definition of Low Volume Pharmacy – What threshold or volume of claims are you referring to with this provision that places a pharmacy into this category?	Please refer to the language in Public Chapter 1070, Section 2 (f) from the 2022 State of Tennessee General Assembly proceedings. That public chapter refers to a professional dispensing fee to be paid to ambulatory pharmacies such that, if they were a TennCare-participating ambulatory pharmacyPI that would qualify them as a low-volume pharmacy. It refers to the Division of TennCare Pharmacy Provider Manual or a successor manual. At the present time, pharmacies that dispense 0-64,999 prescriptions per year are considered low volume.
Pro Forma Contract A.2.fff	71.	Pro Forma Contract A.2.fff, definition of Manufacturer Administrative Fee(s) (MAF) – The State’s proposed Manufacturer Administrative Fee(s) (MAF) definition is broad. Please consider defining Manufacturer Administrative Fee(s) (MAF) as: Manufacturer Administrative Fee(s) (MAF) - fees for services rendered to Pharmaceutical Manufacturers in relation to administrative duties in connection with aggregation, allocating, collecting, and invoicing for Rebates. Manufacturer Administrative Fees are considered inclusive of "rebate administrative fee(s)," "formulary administrative fees," paid to PBM, PBM Affiliates, or a GPO in relation to administrative duties in connection with the collection of Manufacturer Payments.	The State declines to change this contract language.
Pro Forma Contract A(2)(iii)	72.	Section A(2)(iii) of the Pro Forma Contract defines certain events as constituting “Material Changes.” However, we were unable to locate any provision of the Pro Forma contract specifying what is to	Please refer to the current language in A.15.B.5. Also, language has been added to A.15.B.5. Please see Amendment item #15 below.

RFP SECTION		QUESTION / COMMENT	STATE RESPONSE
		<p>happen in the event that a Material Change occurs. Our assumption is that if one of the enumerated Material Changes occurs, the State will work with the chosen PBM to negotiate appropriate changes to financial terms designed to restore the relative economics of the agreement that were in place prior to the occurrence of the event. Please confirm that is consistent with the State's understanding or, if the State has a different expectation of the impact of a Material Event, please provide additional information in that regard.</p>	
Pro Forma Contract A(2)(hhh)	73.	<p>Section A(2)(hhh) of the Pro Forma Contract defines "Manufacturer Payments" to include "any and all compensation, financial benefits and remuneration PBM, PBM Affiliates, or a GPO, receives from a Pharmaceutical Manufacturer, including but not limited to, Discounts; credits; Rebates, regardless of how categorized; market share incentives, chargebacks, commissions, Inflation Protection adjustments or payments, access fees, MAF, and administrative and management fees." In the definition of "Pass-Through Transparent Pricing" at Section A(2)(cccc), the Contract indicates that PBMs who own their own mail and specialty pharmacies may "retain the difference between Mail Order and specialty acquisition costs and the amounts guaranteed to the State." However, that definition also requires the PBM to pass through all "Manufacturer Payments [] in excess of the State's guaranteed Manufacturer Payments." In light of the State's allowance of PBMs to retain spread at mail and specialty pharmacies owned by the PBM, can the State confirm that the definition of Manufacturer</p>	<p>The definition of Manufacturer Payments has been edited for clarity. Please see Amendment item #10 below.</p>

RFP SECTION		QUESTION / COMMENT	STATE RESPONSE
		Payment is not intended to include any Pharmacy Purchase Discounts, Specialty Service Fees, or Wholesaler Remuneration?	
Pro Forma Contract A.2(jjj)	74.	Section A.2(jjj) of the Pro Forma Contract, as written, requires that “[t]he Mail Order Pharmacy and Specialty Pharmacy MAC list price points for individual drugs/generic class numbers shall be equal to or less (i.e., more deeply Discounted) than the Retail Pharmacy MAC price points for the same drugs/generic class numbers.” Absent such a requirement, PBMs on occasion will have a higher MAC price at mail than retail in the case of individual drugs, as doing enhances the PBM’s ability to account for marketplace dynamics and fluctuations in client drug mix while meeting both pharmacy and client commitments. Would the State consider removing this requirement provided that the PBM’s GER guarantee at mail will, in the aggregate, provide lower cost overall compared to retail and represent substantial savings to both the plan and members on generics?	The State declines to change this contract language. The intent of this requirement is not to preclude bidders from providing Generic Effective Rates/Aggregate guarantees for Mail Order, rather the intent is to ensure that members receive the same or better pricing at Mail Order (vs. Retail). Bidders are not allowed to have a higher MAC price (i.e., a lower MAC discount) at Mail than at Retail for the same product, respectively, at any given time.
Pro Forma Contract A.2.yyy	75.	Pro Forma Contract A.2.yyy, definition of Other Pharmaceutical Manufacturer Revenue – Bidder cannot agree to this definition as the first sentence is too broad, and this term should be intended to carve out certain categories of revenues that cannot be passed through to the State as Rebates or otherwise. Please consider defining Other Pharmaceutical Manufacturer Revenue as: Other Pharmaceutical Manufacturer Revenue – means Off- Invoice Wholesaler Remuneration, Pharmacy Purchase Discounts (i.e., Mail Order Volume Discounts), Transmission Fees, and Specialty Service Fees.	The State declines to change this contract language.

RFP SECTION		QUESTION / COMMENT	STATE RESPONSE
Pro Forma Contract A.2.dddd	76.	<p>Pro Forma Contract A.2.dddd, definition of PBM Affiliates – This definition purports to contractually involve entities that are not party to this agreement, do not provide PBM services as requested by this RFP and Pro Forma Contract, including those that may even not be licensed to do so. Bidder may have corporate relationships or utilize subcontractors that provide services to the State under separate contracts, awarded independently of this procurement. Bidder and State cannot change those contractual relationships through this procurement.</p> <p>To the extent this term is used in connection with Manufacturer Payments and related terms, please consider revising the PBM Affiliates definition as: “PBM Affiliates” of a party shall mean a third party Group Purchasing Entity with which PBM contracts for Rebates and Manufacturer Administrative Fees if such entity: (i) is directly or indirectly, through one or more intermediaries, controlling such party; (ii) is under the same direct or indirect ownership or control as such party; or (iii) is directly or indirectly, through one or more intermediaries, owned or controlled by such party. For purposes of this definition and the Agreement, “control” (including the terms controlling, controlled by or under common control with) means (a) the possession, direct or indirect, (b) the power to direct or cause the direction of the management or policies of an entity, or (c) the ability to direct an entity’s affairs or to control the composition of its board of directors or equivalent body, whether through (i) 50% of more of voting securities, (ii) partnership or membership interests, (iii) by contract or (iii) any other means.</p>	The State declines to change this contract language.

RFP SECTION		QUESTION / COMMENT	STATE RESPONSE
Pro Forma Contract A.2.ffff	77.	<p>Pro Forma Contract A.2.ffff, definition of Pharmacy Benefit Manager (PBM) or Contractor – This definition purports to contractually involve entities that are not party to this agreement, do not provide PBM services as requested by this RFP and Pro Forma Contract, including those that may not even be licensed to provide PBM services. In addition, Bidder may have corporate relationships or utilize subcontractors that provide services to the State under separate contracts, awarded independently of this procurement. Bidder and State cannot change those contractual relationships through this procurement.</p> <p>Please consider revising this definition to: Pharmacy Benefit Manager (PBM) or Contractor - the business or other entity that, pursuant to a contract with the State manages the prescription drug benefit provided by the State including, but not limited to, the processing and payment of Claims for prescription drugs, the performance of Drug Utilization Review, the processing of drug Prior Authorization requests, the adjudication of appeals or grievances related to prescription drug coverage, contracting with network pharmacies, and controlling the cost of covered prescription drugs.</p>	The State declines to change this contract language.
Pro Forma Contract A.2(III)	78.	Section A.2(III) defines “Pre-Service Appeals” as “an appeal from a covered plan Member or prescribing clinician before the plan Member initiates actual filling of a prescription.” Section A.2(nnnn), meanwhile defines “Prior Authorization” as “[a] Program requirement where certain therapies must gain approval before payment can be authorized. the Pro Forma.” Does the State consider these terms synonymous? If not, can the State explain what other types of “Pre-Service	Prior Authorizations are separate and distinct from Pre-Service Appeals. Pre-Service Appeals can be leveraged after a denied Prior Authorization, where the appeal occurs before the plan Member initiates the actual filling of a prescription.

RFP SECTION		QUESTION / COMMENT	STATE RESPONSE
		Appeals” (other than a Prior Authorization) would meet the definition of that term?	
Pro Forma Contract A.2.tttt	79.	Pro Forma Contract A.2.tttt, definition of Rebates – The State’s proposed Rebates definition is exceedingly broad and includes undefined terms. Please consider defining Rebates as: Rebates - means amounts paid to the PBM, PBM Affiliates, or a GPO, (i) pursuant to the terms of an agreement with a pharmaceutical manufacturer pursuant to the terms of a rebate contract, negotiated directly with a pharmaceutical company by PBM, PBM Affiliates, or a GPO, (ii) in consideration for the inclusion of such manufacturer’s drug(s) on the Formulary, and (iii) which are directly related and attributable to, and calculated based upon, the specific and identifiable utilization of certain prescriptions by Members. Rebates do not include purchase Discounts (e.g., prompt pay Discounts) from mail and specialty products, the value of drug manufacturer coupons, Other Pharmaceutical Manufacturer Revenue, or the value from any other patient assistance programs.	The State declines to change this contract language.
Pro Forma Contract A.2.ooooo	80.	Pro Forma Contract A.2.ooooo, definition of Transmission Fees – This provision indicates PBM can collect \$0.15/rx for transmission fees, while provision A.6.m states they cannot be collected. Can you please clarify?	The definition of Transmission Fees states that “...These fees shall not constitute Pharmacy Rebates if (a) such fees do not in aggregate exceed \$0.15/Claim.” The definition itself does not give permission to bidders to charge and retain Transmission Fees. This is addressed in A.6.M, and language in this section has been further edited for clarity. Please see Amendment item #13 below.
Pro Forma Contract A.5.i	81.	The Contractor shall train all Contractor staff and subcontractors regarding all applicable aspects of the Plan’s Pharmacy Program. The State shall approve the Contractor’s subcontractors, or its staff, as defined in this Contract Section.	The state does not agree to make this change.

RFP SECTION		QUESTION / COMMENT	STATE RESPONSE
		Bidder endeavors to ensure State has the opportunity to review all staff and applicable subcontractors, but retains final right of approval.	
Pro Forma Contract A.5.k	82.	<p>The Contractor shall notify the State at least fifteen (15) Business Days in advance, or as soon as the information is available, of proposed changes to key personnel commitments (implementation manager, ongoing account manager, strategic account executive, and chief pharmacist) made in the Contractor's proposal. If any key positions become vacant, Contractor shall provide a replacement with commensurate experience and required professional credentials within sixty (60) days of the vacancy unless the State grants an exception to this requirement In Writing. The Contractor shall submit justification (including proposed substitutions) in sufficient detail regarding education and experience equal to previous staff to the State to evaluate the impact of the new key personnel assigned to the State's account. The State reserves the right to require personnel changes. The decision of the State on these matters shall not be subject to appeal.</p> <p>Bidder endeavors to ensure State has the opportunity to review all staff and request changes based on documented performance concerns; however, this should be mutually agreed upon between the State and the Contractor.</p>	The state does not agree to make this change. If we are unhappy with the responsiveness or working relationship with any of the key members of the PBM's account team, we reserve the right to require a change.
Pro Forma Contract A.6.d	83.	<p>Pro Forma Contract A.6.d, request provision be revised to reflect 99.5% of claims on a monthly basis. As outlined below:</p> <ul style="list-style-type: none"> The Contractor shall process one hundred percent (100.0%) <u>ninety nine point five percent (99.50%)</u> of POS Claims on a monthly <u>monthly daily</u> basis within two (2) seconds 	The state does not agree to make this change.

RFP SECTION		QUESTION / COMMENT	STATE RESPONSE
		<p>excluding scheduled maintenance downtime. For this calculation the number of Claims processed within two (2) seconds during each twenty-four (24) hour period <u>month</u> shall be the numerator and the number of Claims processed during each twenty-four (24) hour period <u>month</u> shall be the denominator. To measure compliance with this standard, the Contractor shall measure for each Claim the time from when the Claim is received by the Contractor's processor to the time the results are transmitted from the Contractor's processor. The Contractor's measure shall reflect the time required for all procedures required to complete Claim adjudication.</p>	
Pro Forma Contract A.6(d)	84.	<p>Section A.6(d) of the Pro Forma Contract requires that 100% of POS Claims are to be processed within two seconds, excluding maintenance downtime. The Service Level Agreement scorecard in Attachment D specifies liquidated damages-like amounts that must be paid if certain scores are not achieved. Such performance-related liquidated damages are generally required to approximate damages that would be difficult to measure, but that are reasonable in light of the actual harm caused by a miss, rather than imposing an arbitrary penalty. In this case, even a single claim, out of millions, that does not process within two second would result in the reduction of the PBM's SLA score, without causing any realistic harm to the State. In order to avoid this type of harsh result, which is typically not the goal of performance-based liquidated damages, would the State consider either (a) lowering the threshold in</p>	<p>The State does not agree to make this change. We understand what the Bidder is saying, but we would refer the Bidder to Contract Attachment D. Each quarter, the Contractor will be allowed a window to miss certain KPIs and they will only be required to begin paying any administrative fees at-risk once they fall below a score of 96% out of 100%. Further, the POS Processing Accuracy KPI is but one of 19 quarterly KPIs.</p>

RFP SECTION		QUESTION / COMMENT	STATE RESPONSE
		Section A.6(d) from 100% to 99%, or (b) requiring that 100% of claims process <i>in an average</i> of two seconds.	
Pro Forma Contract A.6.k	85.	Pro Forma Contract A.6.k, Since Bidder does not audit in exactly this same breakdown, will the State accept a calculation based on the number of claims adjudicated, divided by the number of Bidder-owned errors? Also, reducing the threshold to 99.5%?	No. The State does not agree to make this change.
Pro Forma Contract A.6.k	86.	Can bidder audit a subset of claims and extrapolate that result?	The Contractor can audit and extrapolate the results of a statistical random sample, using a 95% confidence level and a 5% margin of error, of the total number of claims in the quarter being measured.
Pro Forma Contract A.6.m	87.	Pro Forma Contract A.6.m, request provision be revised to reflect 99.90% accessibility excluding scheduled downtime. As outlined below: <ul style="list-style-type: none"> • POS system used by contracted pharmacies to process Pharmacy Claims shall be accessible and operational 99.98% 99.90% of the time <u>excluding scheduled maintenance.</u> 	The state agrees. Please see Amendment item #13 below.
Pro Forma Contract A.7.f	88.	Pro Forma Contract A.7.f, Please confirm requests for recovery of Claims would be made directly to the Member.	With requests for recovery of claims due to a retroactive termination wherein the Plan paid and should not have, the state currently pulls this data from our PBM's system and staff in our Program Integrity unit attempt to recover the claims overpayment from the member. Where we need assistance from the Contractor would possibly be in the area of pulling older claims histories or perhaps working directly with a Medicare Secondary Payment recovery contractor (e.g., Rawlings Co.) to supply claims data or other information as it is requested. This happens on average 1-2 times per year.
Pro Forma Contract A.7.g	89.	Please provide details on expected billing frequency for claim payments.	Please refer to Contract Section C.3.e., which states in part: The State will fund the Contractor for the total issue amount of the payments, net of cancellations, voids or other payment credit adjustments, at least weekly

RFP SECTION		QUESTION / COMMENT	STATE RESPONSE
			provided the Contractor's payment process includes timely settlement of ACH transactions.
Pro Forma Contract A.7.g	90.	Does the State currently receive invoices daily, weekly (from incumbent)?	The incumbent ACH debits the designated State bank accounts on a weekly basis.
Pro Forma Contract A.7.g	91.	Please advise what that the State's invoice terms are (how long before bidder would expect payment on the claims invoice)?	Please refer to answers for questions 89 and 90. Once the Contractor initiates the ACH debit, it typically settles the next banking business day if the Contractor's bank indicates that as the effective date on the ACH debit. Also, TCA 12-4-703 Time limit for payment requires payment to be made with forty-five (45) days after receipt of invoice.
Pro Forma Contract A.8. Pharmacy Network - g. Mail order network (10) Page 71	92.	Is the web site allowing a member to access all pharmacy claims and request and pay for a refill for mail order claims only	Per Contract section A.27.n and A.27.o the contractor shall maintain a website that allows all plan members to review their PBM-administered and adjudicated claims history regardless of pharmacy type. Specific to your question about A.8.g.10 which is the in Mail Order Network section, the Contractor shall offer the ability on their website for members who utilize Contractor's Mail Order Pharmacy the ability to log onto a secure site and pay for their Mail Order prescription drug claims.
Pro Forma Contract A.8. H(1)	93.	Is the reference to "certain drugs" in this item referencing the drug list provided in RFP Appendix 7.22?	No. Appendix 7.22 is a list of the incumbent vendor's specialty drugs that must be utilized before other more costly specialty drugs are covered. The "certain drugs" in A.8.h(1) refers to all specialty drugs that you, as a PBM, deem to be a specialty drug.
Pro Forma Contract A.8. H(1)	94.	Is the intent that the specialty network discount must be more favorable than other channel discounts OR is the intent that the network discount for the preferred/certain drugs is to be more favorable?	The intent is that specialty medications will be dispensed only through the specialty pharmacy network and that the discounts for these medications/designated products through this network are more favorable than they would be if filled through the Retail, Mail Order, or Retail-90 networks.
Pro Forma Contract A.8. Pharmacy	95.	What is the expectation of the state for the member assistance requirement when a member is utilizing specialty drugs?	The Contractor's specialty network pharmacies should be able to assist plan members who fill specialty drugs with member questions and concerns about their specialty drugs, as noted in A.8.h.7.(c). More broadly, the Contractor's customer service staff should be able to assist members in locating a specialty pharmacy in the Contractor's Custom Specialty

RFP SECTION		QUESTION / COMMENT	STATE RESPONSE
Network - h. Specialty Network Page 72			Pharmacy Network – either the Contractor’s own specialty pharmacy (if applicable) or another brick-and-mortar specialty pharmacy within Tennessee in keeping with the contract requirements in section A.8.h(4) regarding steerage.
Pro Forma Contract A.8. Pharmacy Network - i Page 73	96.	Will the state be providing when a member should be following Lock-In guidelines for restriction to pharmacy/prescriber?	Yes, member lock-in must be approved by the State but the State will use data and recommendations supplied by the Contractor, per contract section A.8.i., to make these recommendations. Using the data available to them, the Contractor should flag situations when it appears there may be abuse of medications or pharmacy or doctor shopping by a member. Upon review, the State will either advise to disregard or to lock in a member to a certain pharmacy. If being locked in, the state will mail the member a letter announcing this and will share a copy with the Contractor for their CSR’s use. The state will work with the appropriate staff at the Contractor and provide direction on the pharmacy name, address, NABP number, and similar information so that the Contractor can lock the member into a single pharmacy on a set date. Additional information can be found in A.8.j.
Pro Forma Contract A.8. Pharmacy Network - n Page 74	97.	'Who does the state consider the top 5 pharmacies to be?	The top 5 pharmacies would be those most utilized (highest prescription volume) by the state’s plan members. Depending on the contractor, this could be different pharmacies.
Pro Forma Contract A.9.g	98.	Pro Forma Contract A.9.g, You have noted that final decisions for both inclusion and exclusion from the formulary shall be at the sole discretion of the State- Is the state’s intention to utilize the bidder’s open formulary with the state making one-off formulary exclusion changes or does the state plan to offer a custom formulary managed by the state and does the state have their own P&T?	The intention is to use the bidder’s open formulary. We will work with the winning bidder during the implementation phase and advise which drug classes we may or may not want to have PA, ST, or QL on and which drugs should be excluded per our Plan Document. The state does not have our own P&T committee.
Pro Forma Contract Section A.9.i	99.	Please provide details on how the State’s current Contractor works with the State to reduce the use of coupons or drug cards in this manner.	The current process is not relevant to this RFP. The state is requesting that respondents to this RFP work to help reduce the utilization of copay cards and coupons from artificially contributing to a member’s deductible or maximum out of pocket amounts.

RFP SECTION		QUESTION / COMMENT	STATE RESPONSE
Pro Forma Contract Section A.8.o	100.	Please confirm that network changes outside of Bidder's control (e.g., pharmacy closures) are exempt from this contract provision.	Confirmed. A pharmacy closure which is outside of the Contractor's control would be exempt from this provision.
Pro Forma Contract A.9.k	101.	<p>The Contractor does shall not require participation in any Formulary management programs and may or alter pricing and Rebate Guarantees based on the state's decision not to participate in any Formulary management program. The State will make all final determinations regarding participation in Formulary management programs.</p> <p>Bidder's rebate guarantees do require the State to utilize its standard, open (non-exclusionary) formulary and associated utilization management edits, which align with those in place by the State per Appendices 7.17, 7.18, 7.23 provided with the RFP.</p>	The state does not agree to make this change.
Pro Forma Contract A.10	102.	'Would the state be mixing the copay structure within the same network (the same member having fixed and % based on mail order; specialty; retail fill)?	The Contractor should assume any variation of member copay or coinsurance depending on the network used (retail 30, retail 90, mail order, or specialty) or brand/generic. Currently, PPO members have flat dollar copayments for most prescriptions except for specialty drugs where they have tier coinsurance depending on whether the specialty drug is a Tier 1 generic drug or Tier 2/Tier 3 brand specialty drug. All CDHP and Local CDHP members have coinsurance depending on whether their prescription is a 30 day or a 90-day maintenance tier medication (with those, the script bypasses their deductible immediately and lower coinsurance applies). These benefits may continue in the future, or the state may change them depending on direction from the Insurance Committees.
Pro Forma Contract A.10.b	103.	At the State's request, the Contractor shall implement value-based payments on medications where Provider payments are differentiated based on quality, efficacy, and/or patient outcomes (or any combination of these). The Contractor shall not implement such value oriented	The State does not agree to this change.

RFP SECTION		QUESTION / COMMENT	STATE RESPONSE
		<p>payments to pharmacies or manufacturers without prior approval In Writing from the State. Upon implementation of any value-based payments, the Contractor shall report descriptive information and data about its value-oriented payments in sufficient detail to enable the State to adequately monitor the Contractor's payments. The information that may be requested may include the following:</p> <ul style="list-style-type: none"> • The drug name(s), NDC, and full GPI • Drug manufacturer name • The total number of prescriptions filled • The total number of Members filling a prescription for each drug • The projected financial impact and savings to the plan as a result of the Program. <p>Bidder requests 1 change.</p>	
Pro Forma Contract A.11	104.	<p>Section A.11 of the Pro Forma Contract states: "The Contractor shall ensure that the Plan benefits are delivered in compliance with all state and federal rules and regulations." The State of Florida recently passed a law imposing requirements on PBMs that will apply to Plan members who reside in Florida, and requiring that PBM contracts taking effect after the law's passage "must include, in substantial form, terms that ensure compliance with all of the [] requirements [of the law] and that, except to the extent not allowed by law, shall supersede any contractual terms to the contrary." See Florida Statutes §626.8825. In light of this requirement, will the State allow the PBM awarded the contract to provide contract language capturing the requirement of this Florida statute (as well as any State laws with similar applicability and contractual inclusion requirements) for the State's</p>	<p>The state does not negotiate or alter contract language after contract award. Therefore, we request that you please supply the suggested contract revision language as one of your possible ten (10) questions that are allowed during Round 2 of the Written Questions and Comments in the RFP Schedule of Events, Section 2.1. Clearly describe where you believe said language should reside in the contract. The state will review and respond.</p>

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		consideration to be included in the final executed contract?	
Pro Forma Contract A.11.f	105.	'Does the state have any specific design specifications that can be provided for the comparative analysis for non-quantitative treatment limitations?	The State will work with the winning vendor during implementation to provide the information necessary to comply with this contract requirement. If the vendor feels this information is necessary to respond to this RFP, please indicate that in Round 2 of the Written Questions and Comments in the RFP Schedule of Events, Section 2.1. and specify exactly what information is being requested from the state.
Pro Forma Contract A.11.m	106.	Is the program proposed in this section being requested at this time?	There is not a section A.11.m in the pro forma contract, and we assume this refers to section A.12.m which is a program for poly-chronic patients. This program is not being requested at this time, but the Contractor shall implement said program if the state requests it during the term of this contract.
Pro Forma A.12.b	107.	Pro Forma Contract A.12.b, Please provide details around the existing clinical solution currently offered for members by the State. Please provide the most recent 3 or 6 months' member claims utilization file at an NDC level including member identifiers in excel format. This will enable non-incumbent bidder to review the latest utilization and offer valuable insights to the state regarding potential member impact and formulary analysis.	For information around the kinds of existing clinical solutions and programs currently utilized by the state with the incumbent vendor, please see our response to question #108 below. The state will not provide additional claims information for review, as we provided a full 12 months (July 2022-June 2023) of claims data in Appendices 7.13-7.16. Appendices 7.13-7.16 have detailed claims data at an NDC level along with dummy member identifiers. This data will allow all non-incumbent bidders the ability to review the data themselves and make their own inferences and conclusions from it.
Pro Forma A.12.b.6	108.	Pro Forma Contract A.12.b.6, Please provide more details around the type of clinical custom program and examples the State is currently offering here that indicates custom program.	Current programs include Generics First; Targeted Generic Step Therapy; Hyperinflation Management Program; Compound Drugs and Misc. Formulations; Enhanced Specialty Guideline Management; Lidocaine Strategy; Medical Devices Strategy; Naive User-Days' Supply Limit - 7 days (3 for adolescents); POS Safety Messaging, POS Utilization Management – QLs, ST, and Dose Optimization; Prior Authorization and Appeals; Retro Safety Review; Safety & Monitoring; DAW-2 penalty. This is not an all-inclusive list and there are many other clinical programs that we have with our incumbent PBM. What is shown here are merely examples of what we might expect and to give potential bidders an idea of what's being requested.

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Pro Forma Contract A.12.e	109.	Pro Forma Contract A.12.e, You have requested us to maintain GDR of 85%, Vaccines are not generic. Please clarify why you note vaccines here and if you include Vaccines as generic?	While not all vaccines are generic claims, for transparency, the State requests all vaccine claims are included in the calculation of and reporting of GDR. The language in A.12.E has been edited for clarity. Please see Amendment item #14 below.
Pro Forma Contract A.12.f	110.	Pro Forma Contract A.12.f, Bidder's clinical solutions that drives members to alternatives that will save the State and members money. Are communications permissible in instances where we may communicate with members when there are therapeutic alternatives that are on the same tier for members where we can drive members to a clinically alternative therapy that saves the plan money but may keep the members cost the same.	This is acceptable, but during the implementation phase (if awarded the contract), we would ask for you to share copies of such letters that you would mail to members so that we may approve them or request edits.
Pro Forma Contract A.12.h.1	111.	Pro Forma Contract A.12.h.1, Please modify provision to remove "decision trees" as those are considered proprietary and the Bidder's clinical policies contain all approved indications.	The State does not agree to this change as we have received this information in the past and want to have an accurate picture of the policies and provisions used to determine whether members would or would not be approved a PA for certain drug classes – if the State were to request those PA policies.
Pro Forma Contract A.12.k	112.	Pro Forma Contract A.12.k, Please provide more details around your existing Opioid Solutions.	You may find this information on pages 14-19 of the state's current UM list located at https://www.caremark.com/portal/asset/STNRX_UM_drug_list.pdf . Additionally, opioid-naïve members are restricted to a seven-day or less supply of short-acting opioids (3 days or less for members ages 19 and younger).
Pro Forma Contract A.15 b) 3)	113.	Is the state going to be providing which pharmacies qualify as low volume pharmacies? If so, how will this information be passed to the Contractor?	No, the State is unable to provide this information to the Contractor; The State does not have this information. The Contractor is expected to work with pharmacies to determine if they are a low volume pharmacy. Presumably, a PBM should be able to survey all pharmacies and ask them to attest to whether they are a low volume pharmacy. If the pharmacy attests to this, the PBM should take the necessary next steps as outlined in the Contract for correct claims reimbursement methodology and appropriate dispensing fee to the low volume pharmacy. Pharmacies that do not attest to the Contractor's survey that they are, indeed, a low volume

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			pharmacy, should be considered a high-volume pharmacy and reimbursed as such.
Pro Forma Contract A.15.b.4	114.	Pro Forma Contract A.15.b.4, Does your NADAC requirement follow the TennCare Pharmacy Provider Manual requirement; i.e. dispense fee and pricing methodology? Please clarify the intent.	TennCare's Pharmacy Provider Manual is only to be referenced to determine the dispensing fee for low-volume pharmacies. It is silent regarding NADAC. Benefits Administration included the language in A.15.b.3 and A.15.b.4 to clearly delineate our expectations around the pricing methodology to be used depending on which PBM is selected as the winning bidder. If your PBM supports an AWP minus based strategy, then please utilize that for high volume pharmacies, and then use NADAC for the low volume pharmacies. If you do not support AWP minus methodology, then utilize NADAC for all claims.
Pro Forma Contract A.15.b.5	115.	In regard to marketplace event cost neutrality: What is the remedy should, in the unlikely event, the change in marketplace results in such a large deficit that Contractor is not able to make cost neutral or cost saving adjustments? How are both parties protected in this instance. This applies to both discount and dispensing fee guarantees and rebate guarantees.	The Contractor and the State will discuss adjustments and the State must approve via a contract Amendment any adjustments prior to their effective date.
Pro Forma Contract A.15.b.5	116.	Pro Forma Contract A.15.b.5, Would the state agree to the following in order to add the mail channel? "A change in insulin strategy will not result in an adjustment to Rebate Guarantees in any other distribution channels besides Retail-30, Retail-90, and Mail."	The State agrees to update the language as requested. See Amendment item #15 below.
Pro Forma Contract A.15.b.6	117.	Pro Forma Contract A.15.b.6, Does the 95% refer to a generic discount guarantee; or that 95% of generic drugs will hit the PBM's MAC; or that 95% of all generic drugs will have to hit whatever guarantee is offered; or that 95% of the generic drugs will be eligible for MAC pricing? Please clarify.	The language in question contained within A.15.B.6 has been adjusted. See Amendment item #16 below.

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Pro Forma Contract A.15.e	118.	<p>Specialty rebate guarantees are based on standard Specialty Drugs as identified on Contractor's Specialty Drug List All brand specialty Claims, regardless of where filled, shall be included in the same specialty Manufacturer Payment Guarantees and specialty network discount guarantees listed in Contract Section C.3.b.</p>	The state does not agree to this change.
Pro Forma Contract A.16.e	119.	<p>Rebates and Manufacturer Payments shall be based on 30 day supply adjusted Claim count.. Manufacturer Payment guarantees shall take into consideration anticipated movement of Brand Drugs to Generic Drugs throughout the term of the Contract.</p> <p>Rebate guarantees are paid based on the days supply for the channel dispensed from and the applicable days supply per channel (e.g., retail 30 (1-83 days supply; retail 90/mail 84+ days supply)</p>	The language referenced here is in contract section A.16.g. The state does not agree to this change.
Pro Forma Contract A.16.g	120.	Pro Forma Contract A.16.g, Does this provision apply to both specialty and non-specialty?	A.16.g has been edited for clarity. Please also note language in A.8.h.4. Please see Amendment item #17 below.
Pro forma A.16.g	121.	f. Contractor shall only exclude the following Claims from the calculation of Manufacturer Payment Guarantee; however, if Contractor does in fact receive Manufacturer Payments on any of these products or Claims, they will be passed back to Participating Groups in their entirety: Subrogation Claims; COVID Vaccine and Vaccine Administration Fee Claims, authorized and approved COVID treatment Claims and other COVID testing-related Claims; 340B Claims; COB Claims; Vaccine Claims; Paper Claims; and Compounds, and Non-Drug claims (except diabetic test strips).	The State declines to change this contract language.

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		Bidder requests the addition of non-drug claims as many nondrug items are not rebated by manufacturers and including these in the rebate guarantee will dilute the guarantee value. Diabetic test strips will be included in the rebate guarantee.	
Pro Forma Contract A.16g	122.	<p>Please confirm that the intent of this section is for bidders to provide a per claim guarantee for 30 day supply only and that subsequent retail 90 and mail order claims would be paid out at 3x the 30-day per claim guarantee.</p> <p>If that is not the intent, please provide further clarification.</p>	<p>Not confirmed. Each channel should have specific guarantees as specified and requested in the Cost Proposal.</p> <p>Please note, the language for A.16.g has been updated for clarification. See Amendment item #17 below.</p> <p>Also note language in A.8.h.4.</p> <p>Per Response Requirements 3.1.2, If a Respondent fails to submit the Cost Proposal exactly as required, the State may deem the response to be non-responsive and reject it.</p>
Pro Forma Contract A.17.a	123.	Will the State consider separating the first two sentences of A.17.a into a separate MFN provision?	The state does not agree to this change.
Pro Forma Contract A.17.a	124.	<p>Will the State consider restating the first sentence of A.17.a as follows:</p> <p>The Contractor shall provide most favored nation ("MFN") terms wherein it shall not provide any substantially similar account more favorable pricing terms in the aggregate than that provided to the State.</p>	The state does not agree to this change.
Pro Forma Contract A.19.e	125.	Bidder's standard process is to require any third parties to sign an NDA with Bidder prior to the third party receiving any claims data. Please confirm that the State agrees with this process.	The State will not sign an NDA. All Contractors are required to sign a HIPAA Business Associate Agreement to ensure that business associates will appropriately safeguard protected health information. The State does not require an NDA to be signed between a Contractor and third party,

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			however, if the two parties agree to an NDA between themselves, that is acceptable to the State.
Pro Forma Contract A.22.c	126.	Pro Forma Contract A.22.c, Are agents required to be within the state of TN or just within the United States? Are agents required to be located in a brick-and-mortar physical location or are agents to work virtually?	Agents are not required to be located in Tennessee but must be located within the contiguous United States as noted in A.22.c. Agents are not required to be located in a brick-and-mortar physical location and may work from home, as long as all other contract requirements, including member privacy and all HIPAA rules are followed and enforced by the Contractor.
Pro Forma Contract A.22.g	127.	Pro Forma Contract A.22.g, Our designated bi-lingual Spanish team is available M-F from 8a-9p EST. Are we able to leverage interpreter services for outside of those hours?	This is acceptable. In your technical response, please ensure that you list your subcontractors as requested in RFP Attachment 6.2, Section B.12.
Pro Forma Contract A.22.i	128.	Pro Forma Contract A.22.i, request provision to reflect language outlined below: <ul style="list-style-type: none"> The Contractor shall resolve at least ninety-five percent (95%) of issues at the first point of contact. <u>The majority of the remaining calls for which the member calls back within five days are resolved during the second contact with Contractor. If a member has a complex issue that takes additional time to research, Contractor's patient care advocates maintain regular contact with the member until the issue is resolved.</u> 	The State does not agree to this change.
Pro Forma Contract A.22.w	129.	Please provide call volume, annual average by hour, that required consultation with a licensed pharmacist from 7a-7p CT and, on average, how many after-hours call backs by a licensed pharmacist are required per day.	This information is not available.
Pro Forma Contract A.24 (1)	130.	Please confirm that Provider directories are equivalent to pharmacy directories.	Confirmed. Provider directories as used here are the equivalent of pharmacy directories. The directories need not be printed; rather, they should be regularly updated and available on the Contractor's splash page as noted in A.24.i and A.27.f.(4), A.27.f(5), A.27.f(6), and A.27.f(7) and

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		Please advise if these directories are to be printed or electronically available through the member website.	easily sortable by state, city, zip, and/or pharmacy name /NABP/NCPDP ID.
Pro Forma Contract A.24.c	131.	Please confirm ParTNers for Health branding will be used for communications for State Plans (2), Local Education Plans (126) and Local Government Plans (392).	Yes. ParTNers For Health branding is used for communications about the State Plan, Local Education Plan, and Local Government Plan.
Pro Forma Contract A.25 (1)h	132.	Please advise if the certification of reading level is expected to be completed by a third party or if Bidder can provide an attestation that this requirement is met.	Certification of reading level is not expected to be completed by a third party. The Contractor can evaluate materials using the Flesch-Kincaid Index, or a comparable product.
Pro Forma Contract A.26f	133.	Please confirm this applies to Rx ID cards only (not combined medical/Rx cards that the PBM would produce).	Confirmed. The contractor is not responsible for the printing or distribution of any medical ID cards. The State has separate pharmacy ID cards and medical ID cards and plan to continue this set up.
Pro Forma Contract A.28.b	134.	Please confirm that it is acceptable to have individual system SMEs perform training for the State understanding that different individuals within the Bidder's organization are specifically trained in each applicable application.	This is acceptable to the State as long as the SME is qualified to teach the materials associated with the program(s) being discussed. The trainings will likely consist of a broad spectrum of Benefits Administration employees ranging from customer service center staff and analysts, individuals on the billing and program integrity team, to the Pharmacy Director and Assistant Director.
Pro Forma Contract A.31	135.	For section A.31 in light of subsection (a), will the State confirm that subsection (b) means that standard rebate audit protocols will apply?	During Round 2 of Written Questions and Comments, please explain in more detail what exactly you mean by "standard rebate audit protocols." As described in A.31.c, the State's outside auditing entity is required to sign a reasonable confidentiality agreement with the Contractor for any audit, not just "rebate audits." However, if you wish to reference a standard rebate audit protocol, please provide this for review as we must know exactly what you are referencing as a potential "standard" protocol.
Pro Forma Contract A.31.a	136.	Pro Forma Contract A.31.a, please revise provision to remove subcontracts as we do not allow clients to review our subcontractors as the contractual relationship is between Bidder and the Supplier.	The State does not agree to this change.
Pro Forma Contract A,31.a	137.	Upon thirty (30) calendar days' notice In Writing and the establishment of applicable third party confidentiality agreement(s), if any, reasonably required by the Contractor, the State and/or its	The State does not agree to this change.

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		<p>representative shall have the right to examine and audit the Contractor services and pricing to ensure compliance with all applicable requirements. For the purpose of this requirement, the term, "Contractor," shall include its parent organization, PBM Affiliates, subsidiaries, and subcontractors.</p> <p>Bidder does not consider its parent company, affiliates, subsidiaries, or subcontractors auditable under the agreement.</p>	
Pro Forma Contract A.31.d	138.	Pro Forma Contract A.31.d, Bidder requests the first sentence be removed as auditors must be mutually agreed upon. Will the State please remove the requirement to re-audit the same claims?	The State does not agree to this change.
Pro Forma Contract A.31.d	139.	<p>In no instance shall the Contractor advise the State that one set of auditors is appropriate while another set is not. In addition, the State may audit or re-audit any the most recent 12-month time period in order to comply with the timeframe for audits listed in Contract Section D.11. Previous audits of a set of Claims, Providers, time periods, or any other sort of audit does not negate the State's right to re-audit the same information again later. There shall be no audit blackout periods at any point during a year nor any charges or fees in any form for any audits that the State chooses to exercise.</p> <p>Bidder restricts audits to the most recent 12 months and disallows auditing of the same claim more than one time.</p>	The State does not agree to this change. State audit has the right and may, at any time, choose to audit the benefits under this contract – even if our own consultants have already conducted a rebate audit, financial/claims audit or the like.
A.31.e	140.	Pro Forma Contract A.31.e, Please modify provision to reflect 12 months post termination audit rights.	The State does not agree to this change considering the requirement to conduct audits each year for the PBM Audit & Monitoring Report required by TCA 4-3-1021 and due to the historical lag time involved in the annual audits. It is likely that the audits of portions of claims from plan years 2026 and 2027 would occur in 2028 and 2029 - far longer than 12 months post contract termination.

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A.31.e	141.	<p>The Contractor shall provide access within thirty (30) days' notice from the State, at any time during the term of this Contract and for five-two (25) years after final contract payment (longer if required by law), to the State and/or its representative to examine and audit Contractor services, payments, and pricing pursuant to this Contract. The State reserves the right to request that documentation be provided for review virtually, at the representative's location, the State's location, or at the Contractor's corporate site.</p> <p>Bidder limits audits post termination to 2 years.</p>	The State does not agree. Please see the response to question 140.
Pro Forma Contract A.31.f	142.	Pro Forma Contract A.31.f, Please modify provision to remove "access to systems" as we do not provide direct access to systems during the course of an audit.	<p>The State agrees to remove the language "access to systems" in this contract clause. The rest of the clause shall remain intact. It should be noted that the state agrees that auditors do not need log on access to the Contractor's system(s), however the state expects that our contracted auditors will be given access to a Contractor's representative to view the system or provided screenshots or similar when requested by auditors.</p> <p>See Amendment item #18 below</p>
Pro Forma Contract A.32.b	143.	Please confirm that the State is amendable to claim reversals that occur as part of a pharmacy audit being refunded as a credit to the claim invoice.	Not confirmed. When the contractor recovers funds from pharmacies as a result of an audit, those funds should be returned to the state as described thoroughly in section A.32.b along with supporting documentation that attributes each portion of said check to one of our six distinct funds: Fund 55000 (State Actives), Fund 56000 (Local Education Actives), Fund 58000 (Local Government Actives), Fund 51010 (State Retirees), Fund 52000 (Local Education Retirees), or Fund 53000 (Local Government Retirees).
Pro Forma Contract A.34	144.	<p>Warranty. Contractor represents and warrants that the term of the warranty ("Warranty Period") shall be the greater of the Term of this Contract or any other warranty generally offered by Contractor, its suppliers, or Manufacturers to customers of its goods or services. The goods or services provided under this Contract shall conform to the terms and conditions of this Contract throughout the Warranty Period. Any nonconformance of the goods or</p>	The State requests that Vendor agree to revert back to the State's original Contract term A.34 as written. This is a competitive bid and this would be a material change. It should be noted that this term was written to consider both goods and services.

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		<p>services to the terms and conditions of this Contract shall constitute a "Defect" and shall be considered "Defective." If Contractor receives notice of a Defect during the Warranty Period, then Contractor shall correct the Defect, at no additional charge.</p> <p>Contractor represents and warrants that the State is authorized to possess and use all equipment, materials, software, and deliverables provided under this Contract.</p> <p>Contractor represents and warrants that all goods or services provided under this Contract shall be provided in a timely and professional manner, by qualified and skilled individuals, and in conformity with standards generally accepted in Contractor's industry.</p> <p>If Contractor fails to provide the goods or services as warranted, then Contractor will re-provide the goods or services at no additional charge. If Contractor is unable or unwilling to re-provide the goods or services as warranted, then the State shall be entitled to recover the fees paid to Contractor for the Defective goods or services. Any exercise of the State's rights under this Section shall not prejudice the State's rights to seek any other remedies available under this Contract or applicable law.</p> <p>Bidder requests this adjustment as PBM services are not considered "goods"</p>	
Pro Forma Contract C.1	145.	Please confirm that the maximum liability is the board approved/appropriated total.	<p>The maximum liability is an estimate of the total value of the contract based on the best evaluated cost proposal.</p> <p>Benefits Administration will present the apparent best-evaluated Response recommendation before the State, Local Education, and Local Government</p>

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			<p>Insurance Committees, as applicable, for approval to enter into a contract with the best-evaluated Respondent.</p> <p>There is no guarantee that the State will pay the total maximum liability amount to the Contractor and no amounts above the maximum liability will be paid to the Contractor without an additional contract amendment.</p>
Pro Forma Contract C3d	146.	<p>The State authorizes the Contractor to retain monies received through subrogation, on a per patient basis, of no more than five percent (5%) of the gross recoveries received. The Contractor may retain an additional twenty percent (20%) of the gross recoveries, when such recoveries are made by subrogation subcontractor(s). The Contractor's subrogation processes shall include the recovery of Claims paid as a result of work-related illnesses or injuries relative to worker's compensation Claims.</p> <p>Bidder does not utilize subrogation subcontractors.</p>	The state does not agree to the contract language change. If the Bidder does not use a subcontractor, then this clause would not apply.
Pro Forma Contract C.3.e	147.	Pro Forma Contract C.3.e, What is the typical turnaround time for the settlements?	Once the Contractor initiates the ACH debit, it typically settles the next banking business day if the Contractor's bank indicates that as the effective date on the ACH debit.
Pro Forma Contract Section C.3(f)	148.	Section C.3(f) of the Pro Forma Contract provides: "The State will fund the Contractor monthly for the poly-chronic Member management fee based on the roster of engaged members supplied by the Contractor." If a PBM offers a program that otherwise met the State's criteria, would the State accept a program fee on a per member per month basis-(as opposed to a per-engaged member basis)?	No, the state does not agree to that arrangement. As A.12.m indicates, this polychronic program is only to be implemented "at the state's request" and we will only pay for engaged members. For additional information on how the State will fund the program, see pro forma contract section C.3.f.

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Pro Forma Contract C.3.m	149.	Pro Forma Contract C.3.m, Could a material change in membership, e.g. greater than 20% be considered for this requirement?	No. For context, the State's membership tends to remain relatively constant over time.
Pro Forma Contract C.3.p	150.	Pro Forma Contract C.3.p, Would you accept an aggregate Mail Brand/Generic specialty guarantee or a Mail Brand Specialty and a Mail Generic Specialty guarantee?	No.
Pro Forma Contract C.3.t	151.	Pro Forma Contract C.3.t, Will the State please remove the interest accrual?	No, the state does not agree to this change.
Pro Forma Contract C3u	152.	u. The Contractor shall measure the guaranteed minimum Manufacturer Payments each quarter, with an annual true-up. The Contractor shall pay the State no less than the guaranteed minimum Manufacturer Payments plus any additional Rebate and Manufacturer Payment yield, above the guarantee, thereby resulting in 100% of Manufacturer Payments being passed to the State. Payment shall occur via check sixty-one hundred and twenty (1260) calendar days after the end of each calendar quarter. True-up to one hundred percent (100%) will occur one hundred fifty (150) calendar days after the end of each calendar year. Specialty reconciliation will be on Brand Drugs only. All Brand drugs that are on the Contractor's specialty drug list will be included in the Specialty Guaranteed Minimum Manufacturer Payment Per Paid Claim. Brand drugs not on the Contractor's specialty drug list will be included in the non-specialty Guaranteed Minimum Manufacturer Payment Per Paid Claim, and the channel of distribution dictates the Guaranteed Minimum Manufacturer Payment Per Paid Claim for any Brand drug not included on the Contractor's	The state does not agree to the contract language change.

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		<p>specialty drug list. Generic specialty will be calculated as Retail-30 Generic.</p> <p>Bidder is requesting an adjustment to the number of days to pay minimum rebate guarantees after the end of the quarter to allow receipt of rebate dollars from Bidder's rebate services vendor.</p>	
Pro Forma Contract C.3.u	153.	Please confirm that the minimum rebate guarantees are to be paid 60 days post quarter and that annual true up is to be 150 days after the calendar year.	Confirmed.
Pro Forma Contract C.3.v	154.	<p>The Contractor shall pay out to the State all Manufacturer Payments earned by the State regardless of termination of this contract with final payment 265 days post termination.</p> <p>Bidder requests a definitive final reconciliation and record closeout date.</p>	<p>The final reconciliation and payment shall be made 180 calendar days post termination.</p> <p>Please see Amendment item #20 below.</p>
Pro Forma Contract C.3.f	155.	Please provide additional detail on what is to be included in reference to the stated "poly-chronic Member management fee" as this is not outlined elsewhere in the RFP. Is this in place today? If so, please provide additional details on the program and how many members qualify	Please refer to the language in contract section A.12.m. This is not in place today, nor will it be at the time of go-live. This is something that the state may implement in the future if we request it. As noted in the Cost Proposal instructions on tab 5-Cost Spreadsheet, footnote 1 "Clinical fee must cover all clinical programs, including poly-chronic member management, and appeals required in the pro-forma contract."
Pro Forma Contract C.10	156.	Pro Forma Contract C.10, Please provide an example of the type of payment reconciliation this would refer to.	Please refer to Pro Forma Contract C.3.f., which states in part: The State will fund the Contractor monthly for the Administrative Fee and Clinical Fee based on the State's record of enrolled Members as of the first day of the month. This would be an example of a payment that the Contractor may include in its reconciliation process. Pro Forma Contract C.10. does not require communication with the State unless the Contractor identifies a discrepancy through its reconciliation process.
Pro Forma Contract C.11	157.	C.11. Payment Reductions. The Contractor's payment shall be subject to reduction for amounts included in any invoice, purchase order, or payment that is determined by the State, on the basis of audits conducted in accordance with the terms of	This is standard state contract template language and cannot be changed.

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		<p>this Contract, to not constitute proper compensation for goods delivered or services provided. Payment reductions will occur upon conclusion of the audit.</p> <p>Proper notice of should be provided upon conclusion of the audit.</p>	
Pro Forma Contract C.14	158.	<p>Pro Forma Contract C.14, Bidder is concerned that this requirement potentially violates the rights and obligations of its board of directors and numerous laws, including those applicable to publically traded companies and corporations organized under Delaware law. Would the State consider removing or modifying?</p> <p>Bidder discloses its principal sources of revenue derived from pharmaceutical manufacturers, wholesale distributors, and network pharmacies to our clients. Bidder provides its Financial Disclosure to its clients, and further details are available through its parent company's Securities and Exchange Commission (SEC) filings.</p>	The State does not agree. Section C.14 is consistent with the requirements of the federal Consolidated Appropriation Act (CAA).
Pro Forma Contract D.4	159.	Please confirm that this is related only to work performed after the notice was provided to Contractor. If Contractor continued to work prior to receiving the notice, Contractor should be compensated for it.	<p>Please see D.4. Subject to Funds Availability.</p> <p>Please note the pertinent part: Upon receipt of the written notice, the Contractor shall cease all work associated with the Contract. If the State terminates this Contract due to lack of funds availability, the Contractor shall be entitled to compensation for all conforming goods requested and accepted by the State and for all satisfactory and authorized services completed as of the termination date.</p>
Pro Forma Contract D.6	160.	<u>Termination for Cause:</u> If the Contractor fails to properly perform its obligations under this Contract in a timely or proper manner, or if the Contractor materially violates any terms of this Contract ("Breach Condition"), the State shall have the right to immediately terminate the Contract and withhold payments in excess of compensation for completed	The State will not agree to the proposed language.

RFP SECTION	QUESTION / COMMENT	STATE RESPONSE
	<p>services or provided goods. Notwithstanding the above, the Contractor shall not be relieved of liability to the State for damages sustained by virtue of any Breach Condition and the State may seek other remedies allowed at law or in equity for breach of this Contract.</p> <p><u>Failure of The State to Pay Timely.</u> In the event The State fails to pay any amount due under this Agreement as set forth herein, in addition to all other rights and remedies under this Agreement and at law and in equity, Contractor shall have the following rights and remedies:</p> <p><u>Interest and Other Charges.</u> Should The State fail to pay any amount due under this Agreement within the time frame set forth herein, The State shall be subject to interest charged on all amounts due at an amount equal to one and one-half percent (1.5%) per month, to accrue on a daily basis on any unpaid balances In addition, The State shall be responsible for all costs of collection and agrees to reimburse Contractor for such costs and expenses, including reasonable attorneys' fees.</p> <p><u>Suspension of Services.</u> If forty-eight (48) hours have elapsed from the time any amount due under this Agreement was due Contractor, and payment in full (including any accrued interest) has not been received at the Contractor designated bank account, then Contractor may suspend its services and system operations for The State upon written notice to The State provided all past due amounts (including interest) have not been cured in full within forty-eight (48) hours after receiving such a notice.</p> <p><u>Termination Due to Non-Payment.</u> Notwithstanding any other provision in this Agreement, in the event The State fails to timely pay Contractor the full amount due for each Statement (and any interest accrued thereon) as set forth in this Agreement,</p>	

RFP SECTION		QUESTION / COMMENT	STATE RESPONSE
		<p>Contractor may terminate this Agreement on any date thereafter, effective on the date specified in such notice of termination.</p> <p><u>Offsets.</u> In the event of any uncured payment default, The State authorizes Contractor to offset the amount of such payment defaults, interest, and collection costs against any The State related amounts otherwise payable to Client (including, without limitation, any Rebate amounts or Client's deposit, if any).</p> <p>Bidder requests the additional language presented in this section for the following reasons</p> <p>In the event the State does not pay timely, Bidder must have remedies under the contract & Interest should be paid for past due amounts in accordance with what is allowed by state law for the State.</p> <p>If the State has an uncured payment default, Bidder needs to be able to terminate the contract. If there are unpaid claims amounts owed by the state, rebate funds need to be used to pay those amounts owed to pharmacies, members, or Bidder as applicable.</p>	
Pro Forma Contract D.7	161.	Please confirm that as it relates to the State's prior written approval of subcontractors that this can be satisfied by Bidder providing a list of subcontractors relevant to services provided under the contract and unless the State objects within 15 business days, such subcontractors are deemed approved by the State.	There is no set timeframe in which the State has to approve subcontractors.
Pro Forma Contract D.7	162.	Regarding the State's request to impose additional terms and conditions to Bidder's subcontractors: Please provide additional context on what this may entail for Bidder's utilizing subcontracted vendors to	The State expects that any subcontractor will comply with all terms and conditions of this Contract. And as stated in the term, the Contractor shall be the prime contractor and responsible for compliance with all terms and conditions of this Contract.

RFP SECTION		QUESTION / COMMENT	STATE RESPONSE
		support non-core PBM services (e.g. assistance in administering a specific clinical program) understanding such vendors may be supporting additional Bidder clients.	
Pro Forma Contract D.7	163.	Pro Forma Contract D.7, Section D.7 Assignment and Subcontracting states that the Contractor shall not enter into a subcontract for any of the goods or services without prior written approval of the State. Please confirm this term does not apply to subcontractors the Contractor utilizes for all clients across their book of business pursuant to pre-existing subcontractor and vendor agreements.	This term applies to subcontractors that are used in fulfilling the Contractor's obligations under this Contract.
Pro Forma Contract D.10b	164.	Please confirm that a general attestation statement by any applicable subcontractor in agreement with the requirement is acceptable. If this is not acceptable, please provide an example of the attestation that would be required.	The Attestation that is to be used is found at Pro Forma Attachment A.
Pro Forma Contract D.17	165.	Bidder requests an exception for acts by the State that constitute gross negligence, intentional torts, non-compliance with applicable law or regulation, breach of payment contract terms, and for situations where Contractor in good faith relied on the State's directions.	The State will not accept this request. The Vendor's request would be a material change in the terms. This is a competitive bid and this would be a material change.
Pro Forma Contract D.18	166.	Related to (ii) – can the State explain the intent of this item?	Section D.18(ii) pertains to any claims covered by liquidated damages contained in the contract. This provision states that a LOL in a contract with the State will not apply to liquidated damages. See Tenn. Code Ann. Sec. 12-3-710.
Pro Forma Contract D.19	167.	<u>Hold Harmless</u> . The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all Claims, liabilities, losses, and causes of action which may arise, accrue, or result to any person, firm, corporation, or other entity which may be injured or damaged as a result of	The State will not accept this request. The Vendor's request would be a material change in the terms. This is a competitive bid and this would be a material change.

RFP SECTION		QUESTION / COMMENT	STATE RESPONSE
		<p>acts, omissions, intentional misconduct or gross negligence on the part of the Contractor, its employees, or any person acting for or on its or their behalf relating to this Contract. The Contractor further agrees it shall be liable for the reasonable cost of attorneys' fees, court costs, expert witness fees, and other litigation expenses for the State to enforce the terms of this Contract.</p>	
<p>Pro Forma Contract D.19</p>	<p>168.</p>	<p>Pro Forma Contract D.19, Section D.19 of the Pro Forma Contract requires that Contractor indemnify and hold harmless the State for "any and all claims" which "arise, accrue, or result to any person, firm, corporation, or other entity which may be injured or damaged as a result of acts, omissions, or negligence on the part of the Contractor." As a PBM, the Bidder must contractually abide by and follow the State's plan design and coverage directions, and consequently Bidder will be required to deny some drug benefit claims or make other State-directed decisions, which are simply "acts" that may result in claims litigation. Please confirm that Bidder would only be expected to defend a lawsuit if the Bidder improperly denies a claim or otherwise fails to perform the services in accordance with the contract and the State's plan design direction (i.e., the Bidder performs the services negligently or in breach of the contract). Would the State consider revising Section D.19 to the following:</p> <p>Hold Harmless. The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all Claims, liabilities, losses, and causes of action which may arise, accrue, or result to any person, firm, corporation, or other entity which may be injured or damaged as a result of omissions or negligence on the part of the</p>	<p>The State will not accept this request for revising its Hold Harmless provision. This is a competitive bid and this would be a material change.</p>

RFP SECTION		QUESTION / COMMENT	STATE RESPONSE
		Contractor, its employees, or any person acting for or on its or their behalf relating to this Contract. The Contractor further agrees it shall be liable for the reasonable cost of attorneys' fees, court costs, expert witness fees, and other litigation expenses for the State to enforce the terms of this Contract.	
Pro Forma Contract D.20d & g	169.	Please confirm that these provisions are subject to the limitation of Bidders insurance.	No, the State will not confirm this. Contractor's compliance is required in accordance with HIPAA and HITECH rules, as well as any other relevant laws and regulations pertain to privacy laws and rules.
Pro Forma Contract D.24	170.	<p><u>Force Majeure</u>. "Force Majeure Event" means fire, flood, earthquake, elements of nature or acts of God, wars, riots, civil disorders, rebellions or revolutions, acts of terrorism or any other similar cause beyond the reasonable control of the Party except to the extent that the non-performing Party is at fault in failing to prevent or causing the default or delay, and provided that the default or delay cannot reasonably be circumvented by the non-performing Party through the use of alternate sources, workaround plans or other means. A strike, lockout or labor dispute shall not excuse either Party from its obligations under this Contract. Except as set forth in this Section, any failure or delay by a Party in the performance of its obligations under this Contract arising from a Force Majeure Event is not a default under this Contract or grounds for termination. Except for payment of invoices, the non-performing Party will be excused from performing those obligations directly affected by the Force Majeure Event, and only for as long as the Force Majeure Event continues, provided that the Party continues to use diligent, good faith efforts to resume performance without delay. The occurrence of a Force Majeure Event affecting Contractor's representatives, suppliers, subcontractors, customers or business apart from this Contract is not a Force Majeure Event under</p>	The State will not accept this request for revising its Force Majeure clause. This is a competitive bid and this would be a material change.

RFP SECTION		QUESTION / COMMENT	STATE RESPONSE
		<p>this Contract. Contractor will promptly notify the State of any delay caused by a Force Majeure Event (to be confirmed in a written notice to the State within one (1) day of the inception of the delay) that a Force Majeure Event has occurred and will describe in reasonable detail the nature of the Force Majeure Event. If any Force Majeure Event results in a delay in Contractor's performance longer than forty-eight (48) hours, the State may, upon notice to Contractor: (a) cease payment of the fees for the affected obligations until Contractor resumes performance of the affected obligations; or (b) immediately terminate this Contract or any purchase order, in whole or in part, without further payment except for fees then due and payable. Contractor will not increase its charges under this Contract or charge the State any fees other than those provided for in this Contract as the result of a Force Majeure Event.</p> <p>Payment for drug spend cannot be delayed even in a force majeure event or Bidder would need to suspend services.</p>	
Pro Forma Contract D.32	171.	<p>Pro Forma Contract D.32, we request the following revisions as outlined and reasoned below.</p> <ul style="list-style-type: none"> • <u>Insurance</u>. Contractor shall maintain insurance coverage as specified in this Section. With agreement of Contractor, the State reserves the right to amend or require additional insurance coverage, coverage amounts, and endorsements required under this Contract. Contractor's failure to maintain or submit evidence of insurance coverage, as required, is a material breach of this Contract. If Contractor loses insurance coverage, fails to renew coverage, or for any reason becomes uninsured during the Term, Contractor 	<p>The State will not accept this request. This is a competitive bid and this would be a material change.</p> <p>The State will not accept this request. This is a competitive bid and this would be a material change.</p>

RFP SECTION		QUESTION / COMMENT	STATE RESPONSE
		<p>shall immediately notify the State. All insurance companies providing coverage must be: (a) acceptable to the State; (b) authorized by the Tennessee Department of Commerce and Insurance ("TDCI"); and (c) rated A- / VII or better by A.M. Best <u>at the inception of each policy.</u> All coverage must be on a primary basis and noncontributory with any other insurance or self-insurance carried by the State. Contractor agrees to name the State as an additional insured on any insurance policy with the exception of workers' compensation (employer liability) and professional liability (errors and omissions) insurance. All policies must contain an endorsement for a waiver of subrogation in favor of the State. Any deductible or self-insured retention ("SIR") over fifty thousand dollars (\$50,000) must be approved by the State. The deductible or SIR and any premiums are the Contractor's sole responsibility. The Contractor agrees that the insurance requirements specified in this Section do not reduce any liability the Contractor has assumed under this Contract including any indemnification or hold harmless requirements.</p> <p>Revision 1 Rationale: We are unable to leave requirements open-ended. This allows us to be engaged in the discussion so we can mutually assess the recommendation, review current policies and insurance marketplace availability.</p> <p>Revision 2 Rationale: We ask for this deletion as Bidder is a very large organization with complex</p>	<p>The State will not accept this request. This is a competitive bid and this would be a material change.</p> <p>Proposed revisions 1 through 4 are rejected. Vendor's requested revisions would constitute material changes in the terms. This is a competitive bid and this would be a material change.</p>

RFP SECTION	QUESTION / COMMENT	STATE RESPONSE
	<p>risk management programs that includes procurement of over 100 insurance policies providing coverage in over 30 countries with thousands of contacts that contain contractual insurance obligations so we're unable to seek approval from 3rd parties, clients, etc. on a contract by contract basis on the selection of insurance carriers we might utilize to insure our risk obligations.</p> <p>Revision 3 Rationale: Bidder asks for this addition as insurance carrier ratings are evaluated periodically and are always subject to change, and of which insureds have no control. Given this, Bidder cannot guarantee that for the entire term of the policy period any carrier will maintain the referenced rating, however, we can control that at each policy inception annually, we will initiate coverage with carriers that maintain at least this rating.</p> <p>As noted above, due to our complex programs, we cannot guarantee that, should an insurer's rating fall beneath the threshold mid-policy term, we would be able to replace said policy based on insurance markets conditions, availability and/or implication replacing said policy might have on other insurance programs. However, Bidder can agree that at each annual policy inception, our policies will be placed with insurers that have at least this rating.</p> <p>Revision 4 Rationale: Bidder asks for this language deletion. As noted, Bidder is a very large organization (with in excess of \$185B in annual revenue) so we have the financial wherewithal to assume risk and must maintain the ability to assume said risk as is necessary in our view. Also, as referenced above, we have thousands of contracts that contain contractual insurance obligations so we're unable to seek approval from 3rd parties, clients, etc. on a contract by contract</p>	

RFP SECTION	QUESTION / COMMENT	STATE RESPONSE
	<p>basis to seek approval on the SIR's/deductibles that we might maintain. Also, note, SIR's/deductible are at times driven by what is available within the insurance marketplace and, at times, is out of the insured's control to an extent.</p> <ul style="list-style-type: none"> Contractor shall provide the State a certificate of insurance ("COI") evidencing the coverages and amounts specified in this Section. The COI must be on a form approved by the TDCI (standard ACORD form preferred). The COI must list each insurer's National Association of Insurance Commissioners (NAIC) number and be signed by an authorized representative of the insurer. The COI must list the State of Tennessee – CPO Risk Manager, 312 Rosa L. Parks Ave., 3rd floor Central Procurement Office, Nashville, TN 37243 as the certificate holder. Contractor shall provide the COI ten (10) Business Days prior to the Effective Date <u>of this Agreement</u> and again thirty (30) calendar days before <u>prior to any</u> renewal or replacement of coverage. Contractor shall <u>ensure provide the State evidence that</u> all subcontractors maintain <u>adequate insurance as applicable for the services being performed by said subcontractor. the required insurance or that subcontractors are included under the Contractor's policy. At any time, the State may require Contractor to provide a valid COI.</u>The Parties agree that failure to provide evidence of insurance coverage as required is a material breach of this 	<p>The State will not accept this request. This is a competitive bid and this would be a material change.</p> <p>The State will not accept this request. This is a competitive bid and this would be a material change.</p>

RFP SECTION		QUESTION / COMMENT	STATE RESPONSE
		<p>Contract. If Contractor self-insures, then a COI will not be required to prove coverage. Instead, Contractor shall provide a certificate of self-insurance or a letter, on Contractor's letterhead, detailing its coverage, policy amounts, and proof of funds to reasonably cover such expenses. The State reserves the right to require complete copies of all required insurance policies, including endorsements required by these specifications, at any time.</p> <p>Revision 1 Rationale: At times, renewal terms are negotiated right up until the renewal date so Bidder cannot guarantee that we will have COI's available 30 days prior as COI's cannot be issued until the new policy is bound. With this said, we can confirm that we will provide renewal COI's prior to the current policies expiration, renewal, etc.</p> <p>Bidder does not provide insurance documentation for our subcontracted vendors. As a standard insurance industry practice, we require our subcontractors to maintain reasonable and customary types and limits of insurance based on the specific services that they're providing. Subcontractor insurance requirements vary based upon factors such as contract value, coverages applicable to the scope of services being performed, and financial exposure to us so we are unable to agree to specific insurance requirements for our subcontractors. Please note that in most cases, the indemnification obligations in the final executed copy of the underlying agreement requires us to indemnify the counterparty for our negligence in retaining subcontractors or damages arising out of our subcontractors' negligence.</p>	

RFP SECTION		QUESTION / COMMENT	STATE RESPONSE
		<p>Revision 2 Rationale: Due to the non-standardized nature (i.e. manuscripted or tailor-made) of Bidder's insurance programs, almost all of Bidders' insurers require us to execute a confidentiality and non-disclosure statement as a precondition to obtaining preferential insurance coverage terms. Moreover, as a publicly-traded organization, disclosure of copies of insurance policies may be construed as a disclosure of material non-public information. As a result, we are unable to disclose copies of insurance policies to a non-PBM entity or a non-regulatory body. We can gladly evidence insurance coverage via the industry-standard ACORD® Certificate of Insurance form.</p> <ul style="list-style-type: none"> • The insurance obligations under this Contract shall be: (1)—all the insurance coverage and policy limits carried by the Contractor; or (2)—the minimum insurance coverage requirements and policy limits shown in this Contract; whichever is greater. Any insurance proceeds in excess of or broader than the minimum required coverage and minimum required policy limits, which are applicable to a given loss, shall be available to the State for policies of which the State is noted/listed as an additional insured. No representation is made that the minimum insurance requirements of the Contract are sufficient to cover the obligations of the Contractor arising under this Contract. The 	

RFP SECTION		QUESTION / COMMENT	STATE RESPONSE
		Contractor shall obtain and maintain, at a minimum, the following insurance coverages and policy limits.	
Pro Forma Contract D.32	172.	Section D.32 requires: "Contractor shall provide the COI ten (10) Business Days prior to the Effective Date and again thirty (30) calendar days before renewal or replacement of coverage." This timing is not feasible under our policies; would the State instead accept COIs within 10 days of renewal?	The State will not accept the proposed change in contract language. The State, through its insurance broker, has determined that the time periods for providing COIs represents best business practices.
Pro Forma Contract D.32	173.	Section D.32 requires the State's approval of any "deductible or self-insured retention ("SIR") over fifty thousand dollars (\$50,000)." As a large health care company, all of our deductibles or self-insured retentions exceed \$50,000, and we are unable to make adjustments to the retention levels we maintain to meet client specific requirements. Would the State thus consider removing this requirement?	The State will not accept this request. This is a competitive bid and this would be a material change.
Pro Forma Contract D.32	174.	In Section D.32 of the Pro Forma Contract, would the State consider making an exception to the Waiver of Subrogation requirement for the Professional Liability, Cyber, and Crime policies?	The State will not accept this request. This is a competitive bid and this would be a material change.
Pro Forma Contract D.32	175.	Section D.32 of the Pro Forma Contract requires the PBM to "name the State as an additional insured on any insurance policy with the exception of workers' compensation (employer liability) and professional liability (errors and omissions) insurance." In lieu of naming the State as an additional insured, would the State be willing to a requirement that the State be included as an additional insured?	The State will not accept this request. This is a competitive bid and this would be a material change.

RFP SECTION		QUESTION / COMMENT	STATE RESPONSE
Pro Forma Contract D.32	176.	<p><u>Insurance.</u> Contractor shall maintain insurance coverage as specified in this Section. The State reserves the right to amend or require additional insurance coverage, coverage amounts, and endorsements required under this Contract. Contractor's failure to maintain or submit evidence of insurance coverage, as required, is a material breach of this Contract. If Contractor loses insurance coverage, fails to renew coverage, or for any reason becomes uninsured during the Term, Contractor shall immediately notify the State. All insurance companies providing coverage must be: (a) acceptable to the State; (b) authorized by the Tennessee Department of Commerce and Insurance ("TDCI"); and (c) rated A- / VII or better by A.M. Best. All coverage must be on a primary basis and noncontributory with any other insurance or self-insurance carried by the State. Contractor agrees to name the State as an additional insured on any insurance policy with the exception of workers' compensation (employer liability) and professional liability (errors and omissions) insurance. All policies must contain an endorsement for a waiver of subrogation in favor of the State. Any deductible or self-insured retention ("SIR") over fifty thousand dollars (\$50,000) must be approved by the State. The deductible or SIR and any premiums are the Contractor's sole responsibility. The Contractor agrees that the insurance requirements specified in this Section do not reduce any liability the Contractor has assumed under this Contract including any indemnification or hold harmless requirements.</p> <p>Bidder does not allow its clients to approve amounts.</p>	The State will not accept this request. This is a competitive bid and this would be a material change.

RFP SECTION		QUESTION / COMMENT	STATE RESPONSE
Pro Forma Contract D.32.e.1	177.	Pro Forma Contract D.32.e.1, We request that “all” be struck from the provision as insurance policies do not cover “all” they provide coverage based on the terms and conditions of said policy.	The State will not accept this request. This is a competitive bid and this would be a material change.
Pro Forma Contract D.32.f.1	178.	<p>Pro Forma Contract D.32.f.1, We request provision be modified to read as outlined below.</p> <p>The Contractor shall maintain crime insurance, which shall be written on a “loss sustained form” or “loss discovered form” providing coverage for losses sustained by the State due to: (1) a dishonest act by Contractor’s Personnel (whether acting alone or in collusion with others), including theft, forgery, alteration, or transfer of funds (electronically or otherwise) involving property, money or securities of the State of which Contractor holds third-party fidelity, including cyber theft and extortion. Contractor shall continue to purchase a like The policy to must allow for reporting of circumstances or incidents that may give rise to future Claims or purchase, include an extended reporting period of no less than two (2) years with respect to events which occurred but were not reported during the term of the policy, and not contain a condition requiring an arrest or conviction.</p>	<p>The State will not accept this request. This is a competitive bid and this would be a material change.</p> <p>The State will not accept this request. This is a competitive bid and this would be a material change.</p> <p>The State will not accept this request. This is a competitive bid and this would be a material change.</p>

RFP SECTION		QUESTION / COMMENT	STATE RESPONSE
		<p>Any crime insurance policy shall have a limit not less than one million dollars (\$1,000,000) per Claim and one million dollars (\$1,000,000) in the aggregate. Any crime insurance policy shall contain a Social Engineering Fraud Endorsement with a limit of not less than two hundred and fifty thousand dollars (\$250,000). This insurance may be written on a Claims-made basis, but in the event that coverage is cancelled or non-renewed, the Contractor shall continue to purchase like coverage or purchase an extended reporting or “tail coverage” of at least two (2) years after the Term.</p>	
Pro Forma Contract D.32.f	179.	<p>Crime Insurance 1) The Contractor shall maintain crime insurance, which shall be written on a “loss sustained form” or “loss discovered form” providing coverage for third party fidelity, including cyber theft and extortion. The policy must allow for reporting of circumstances or incidents that may give rise to future Claims, include an extended reporting period of no less than two (2) years with respect to events which occurred but were not reported during the term of the policy; and not contain a condition requiring an arrest or conviction. Any crime insurance policy shall have a limit not less than one million dollars (\$1,000,000) per Claim and one million dollars (\$1,000,000) in the</p>	<p>The State will not accept this request. This is a competitive bid and this would be a material change.</p>

RFP SECTION		QUESTION / COMMENT	STATE RESPONSE
		<p>aggregate. Any crime insurance policy shall contain a Social Engineering Fraud Endorsement with a limit of not less than two hundred and fifty thousand dollars (\$250,000). This insurance may be written on a Claims-made basis, but in the event that coverage is cancelled or non-renewed, the Contractor shall purchase</p> <p>an extended reporting or “tail coverage” of at least two (2) years after the Term.</p> <p>Bidders policy does not cover these items.</p>	<p>The State will not accept this request. This is a competitive bid and this would be a material change.</p>
Pro Forma Contract E.3	180.	<p>What recourse occurs in the unlikely event Bidder is unable to support a new line, item, or option requested by the State?</p>	<p>This term E.3. just provides the State the right to request that the Contractor add items that are within the Scope, however, if during conversations it is determined that the Contractor cannot provide the requested line, item or option, the Contractor is not obligated to provide the items.</p>
Pro Forma Contract E.5	181.	<p>Please confirm that this applies only to Contract Attachment B.</p> <p>If this provision is broader than Contract Attachment B, does this also apply to non-material non-performance?</p>	<p>The Liquidated Damages provision in E.5 does reference Attachment B. Attachment B contains the amounts that the Contractor may expect to pay in the event of a Liquidated Damages Event.</p>
Pro Forma Contract E.6 (B)	182.	<p>protect against any threats or hazards to the security or integrity of PII; and (C) prevent unauthorized access to or use of PII. Contractor shall immediately-notify State within 5 Business Days:</p> <p>This aligns with what the State is asking for in the BAA.</p>	<p>The State will not accept this proposed revision, as it expects immediate notification by the Contractor.</p>
Pro Forma Contract E.7.a.3	183.	<p>The Contractor must annually perform Penetration Tests and Vulnerability Assessments against its Processing Environment. “Processing Environment” shall mean the combination of software and hardware on which the Application runs.</p> <p>“Application” shall mean the computer code that</p>	<p>The State agrees and has also added additional language. Please see Amendment item #21 below.</p>

RFP SECTION		QUESTION / COMMENT	STATE RESPONSE
		<p>supports and accomplishes the State's requirements as set forth in this Contract. "Penetration Tests" shall be in the form of attacks on the Contractor's computer system, with the purpose of discovering security weaknesses which have the potential to gain access to the Processing Environment's features and data. The "Vulnerability Assessment" shall be designed and executed to define, identify, and classify the security holes (vulnerabilities) in the Processing Environment. The Contractor shall allow the State, at its option, to perform Penetration Tests and Vulnerability Assessments on the Processing Environment.</p> <p>Bidder does not allow its client to perform this work as it could bring the systems down or allow access to other client data and should not be permitted for any reason.</p>	
Pro Forma Contract E7.a.5	184.	<p><u>Except to the extent that data is required to meet data record retention laws and requirements,</u> Upon termination of this Contract and in consultation with the State, the Contractor shall destroy all Confidential State Data it holds (including any copies such as backups) in accordance with the current version of National Institute of Standards and Technology ("NIST") Special Publication 800-88. The Contractor shall provide a written confirmation of destruction to the State within ten (10) Business Days after destruction.</p> <p>Bidder would not destroy or send back data at the end of the contract. We have a regulatory obligation to hold on to PHI in accordance with our data retention schedule.</p>	NIST 800-88 is an industry standard and covers data retention laws and requirements. The change to the language is not necessary. The language should remain as is and unchanged.

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Pro Forma Contract E.7.c	185.	Pro Forma Contract E.7.c, Bidder does not allow clients to review our subcontractors as the contractual relationship is between Bidder and the Supplier. Would the state accept our HITRUST Certification which provides assurance that we assess appropriately, and continuously monitor our Supply network?	Per RFP Section 5.3.6, the State may, at its sole discretion, entertain limited terms and conditions or pricing negotiations prior to Contract signing that are found to be in the States best interest with no material changes to the contract. There is no guarantee this will occur. The State may, at its sole discretion, entertain limited negotiations with the best-evaluated respondent. See RFP Attachment 6.1 STATEMENT OF CERTIFICATIONS AND ASSURANCES.
Pro Forma Contract Attachment C	186.	Is the State amendable to monthly and quarterly reports being provided 30 days following the end of the measurement period?	The State does not agree. The monthly, quarterly, and annual report deadlines in Pro Forma Contract Attachment C are consistent across all Benefits Administration contracts with all vendors. Standardization of reporting deadlines across all contracts is our preference and helps to ensure proper compliance and tracking.
Pro Forma Contract Attachment D	187.	Pro Forma Contract Attachment D, Table A, KPI #1, Request language to be updated to align with our requested change to A.6.m. – POS system, used by contracted pharmacies to process Pharmacy Claims, as required in Contract Section A.6.m shall be accessible and operational ninety-nine point nine eight (99.98%) ninety nine point nine zero (99.90%) of the time excluding scheduled maintenance.	The state agrees. Please see Amendment items #22 and #13.
Pro Forma Contract Attachment D, Table A, KPI #2	188.	Pro Forma Contract Attachment D, Table A, KPI #2, Request language to be updated to align with our requested change to A.6.d. – As required in Contract Section A.6.d, the Contractor shall process one hundred percent (100%) ninety nine point five zero (99.50%) of POS Claims on a daily monthly basis within two (2) seconds.	The state agrees to change from 100% to 99.5% on a daily basis within five (5) seconds. Please see Amendment items #23 and #12.
Pro Forma Contract Attachment D	189.	Pro Forma Contract Attachment D, Table A, KPI #3, Request language to be revised to reflect 99.5% accuracy.	The State does not agree.

RFP SECTION		QUESTION / COMMENT	STATE RESPONSE
Pro Forma Contract Attachment D	190.	Pro Forma Contract Attachment D, Table A, KPI #4, Request language to be revised to reflect 99.5% accuracy.	No, the State does not agree.
Pro Forma Contract Attachment D	191.	Pro Forma Contract Attachment D, Table A, KPI #7, Please clarify if the doctor notification must occur within the same 24 hour period as the evaluation.	Confirmed.
Pro Forma Contract Attachment D	192.	Pro Form Contract Attachment D, Table A, KPI #15, Request language to be updated to align with our requested change to A.27.n. – Maintain a Contractor website that is available twenty-four (24) hours a day, three hundred sixty-five (365) days a year <u>99.50%</u> except for maintenance windows as required in Contract Section A.27.n.	The State does not agree.
Pro Forma Contract Attachment D	193.	Pro Forma Contract Attachment D, Table A, KPI #11, Request language to be revised to reflect 99% availability.	The State does not agree.
Contract Attachment E – HIPAA BAA 2.6	194.	Business Associate shall require its employees, agents, and subcontractors to promptly (up to five days) report, to Business Associate, immediately upon becoming aware of any use or disclosure of PHI in violation of this Agreement. Business Associate shall report to Covered Entity any use or disclosure of the PHI not provided for by this Agreement. Business Associate will also provide additional information reasonably requested by the Covered Entity related to the breach. Bidder will report any successful incident “promptly” “up to five days to report” language. Deleted “immediately” as that is not the same as “promptly”	The State does not agree.

RFP SECTION		QUESTION / COMMENT	STATE RESPONSE
		or “up to five days” and does not make sense as written in the State’s contract.	
Contract Attachment E – HIPAA BAA 2.7.1	195.	<p>Business Associate shall provide to Covered Entity notice of an Potential Actual Breach of Unsecured PHI immediately promptly upon becoming aware of the Breach.</p> <p>Bidder only reports Actual Breaches (not potential breaches). The law requires “Prompt” reporting.</p>	The State partially agrees. Please see Amendment item #25 below.
Contract Attachment E – HIPAA BAA 2.12	196.	<p>Business Associate shall provide Covered Entity of an Individual, in time and manner designated by Covered Entity, information collected in accordance with this Agreement, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR §164.528, provided that Business Associate shall have at least thirty (30) Business Days from Covered Entity notice to provide access to, or deliver such information which shall include, at minimum, (a) date of the disclosure; (b) name of the third party to whom the PHI was disclosed and, if known, the address of the third party; (c) brief description of the disclosed information; and (d) brief explanation of the purpose and</p> <p>basis for such disclosure. Business Associate shall provide an accounting of disclosures directly to an individual when required by section 13405(c) of Public Law 111-5 [designated as 42 U.S.C. 17935(c)].</p> <p>Bidder always refers Individuals (members) to the Covered Entity for any HIPAA related data requests. The Covered Entity is the entity responsible for these requests under HIPAA. Bidder does not provide any information directly to</p>	The State does not agree to this change. HIPAA does not specify that a covered entity is solely responsible for disclosures.

RFP SECTION		QUESTION / COMMENT	STATE RESPONSE
Contract Attachment E – HIPAA BAA 2.15	197.	<p>members, we always work through the Covered Entity.</p> <p>If Business Associate receives a request from an Individual for a copy of the individual's PHI, and the PHI is in the sole possession of the Business Associate, Business Associate will provide the requested copies to refer the individual and notify to the Covered Entity of such action. If Business Associate receives a request for PHI in the possession of the Covered Entity, or receives a request to exercise other individual rights as set forth in the Privacy Rule, Business Associate shall notify Covered Entity of such request and forward the request refer the individual to Covered Entity. Business Associate shall then assist Covered Entity in responding to the request</p> <p>Bidder always refers Individuals (members) to the Covered Entity for any HIPAA related data requests. The Covered Entity is the entity responsible for these requests under HIPAA. Bidder does not provide any information directly to members, we always work through the Covered Entity.</p>	The State does not agree to these changes.
Contract Attachment E – HIPAA BAA 3.4	198.	<p>Business Associate shall require its employees, agents, and subcontractors to report to Business Associate within five (5) Business Days, any successful Security Incident (as that term is defined in 45 CFR § 164.304) of which it becomes aware. 45 CFR 164.314(a)(2)(C) requires that business associate shall report to the covered entity any successful security incident of which is becomes aware, including breaches of unsecured protected health information as required by 164.410. Business Associate shall promptly (up to 48 hours five (5) Business Days) report any successful Security Incident of which it becomes aware to</p>	The State does not agree to these changes.

RFP SECTION		QUESTION / COMMENT	STATE RESPONSE
		<p>Covered Entity. Provided however, that such reports are not required for attempted, unsuccessful Security Incidents, including trivial and routine incidents such as port scans, attempts to log-in with an invalid password or username, denial of service attacks that do not result in a server being taken off-line, malware, and pings or other similar types of events.</p> <p>Bidder only reports "successful" Security incidents</p>	
<p>Contract Attachment E – HIPAA BAA: 8.11 URAC required language</p>	<p>199.</p>	<p>8.11.1. As applicable, Business Associate shall transfer and/or disclose PHI to Covered Entity via multiple media (e.g., electronically, telephonically, mail/courier) in compliance with the HIPAA Regulations and consistent with the Service Agreement to Covered Entity's main office location as identified in the introductory paragraph to this Agreement or as otherwise mutually agreed upon by the Parties</p> <p>8.11.2. As applicable, Covered Entity shall transfer and/or disclose PHI to Business Associate via multiple media (e.g., electronically, telephonically, mail/courier) in compliance with the HIPAA Regulations and consistent with the Service Agreement to Business Associate's main office location as identified in the introductory paragraph to this Agreement or as otherwise mutually agreed upon by the Parties.</p> <p>8.11.3. Not use or disclose PHI other than as permitted or required by the Service Agreement, this Agreement, or as Required by Law. Business Associate shall secure all PHI in compliance with HIPAA and the HIPAA Regulations and consistent with the Service Agreement.</p> <p>8.11.4. Business Associate shall provide, and shall ensure that its applicable staff participate in, appropriate HIPAA training.</p>	<p>The State does not agree. Information is included in the service agreement. If vendor can provide documentation of URAC requirement, state will consider additions.</p> <p>This is covered in Section 2.2,2.3,2.4,and 2.10 in BAA.</p>

RFP SECTION		QUESTION / COMMENT	STATE RESPONSE
		Additional language required to have in Bidder's BAAs to maintain its URAC Accreditation.	
Cost Proposal	200.	Is the State open to receiving rebate guarantees on a per brand claim basis [rather than all claim basis] considering the proforma contract also requests per brand claim.	<p>No. Per the Cost Proposal, "Manufacturer Payments must be guaranteed on an all-claim basis."</p> <p>Per Response Requirements 3.1.2, If a Respondent fails to submit the Cost Proposal exactly as required, the State may deem the response to be non-responsive and reject it.</p>
Cost Proposal	201.	<p>The cost proposal notes: "Clinical fee must cover all clinical programs, including poly- chronic member management, and appeals required in the pro-forma contract". The Pharmacy Contract provided notes: "Clinical PMPM should include PA, appeals, dose optimization, Step Therapy, quantity limits (specialty and non-specialty), closing gaps in case, retrospective safety, medication therapy management, safety and monitoring programs)including identifying members with suspected abuse and locking them into a single pharmacy with approval from the State) and all Specialty Drug management programs (Step Therapy, recalls, member adherence education, Pa, and first fill counseling)."</p> <p>Are there any anticipated additional clinical programs that should be accounted for aside from the potential request to implement an Opioid management program at the State's request.</p> <p>If additional clinical programs are requested at a later date will the clinical administrative fee be adjusted accordingly?</p>	<p>No, there are not any additional clinical programs anticipated that should not be included at this time other than those listed and the potential for an opioid management program. If the state requested additional programs later that resulted in additional costs, the contract would need to be amended through the state's formal contract amendment process.</p>

RFP SECTION		QUESTION / COMMENT	STATE RESPONSE
Cost Proposal	202.	Please confirm that within the “Cost Proposal” document, tab titled “5. Cost Spreadsheet” that the pricing included on this tab should reflect the AWP based pricing for the high volume pharmacies only and no NADAC pricing should be reflected on this tab.	Confirmed. No NADAC pricing should be included.
General	203.	<p>Bidder requests the following language be incorporated into the State’s pro forma contract:</p> <p>See below:</p> <p><u>Provision of Required Information.</u> Throughout the term of this Agreement, the State shall provide to Contractor information in a format and at a frequency required by Contractor for Contractor to perform the services, including but not limited to, regular and timely Eligible Member Lists and Benefit Plan Information. The State shall be solely responsible for ensuring the accuracy and completeness of its Eligible Members List and Benefit Plan Information provided to Contractor and shall be obligated to pay for Claims accepted by Contractor based on that information. Retroactive modification of the Eligible Members List and/or Benefit Plan Information will not relieve the State of liability for those Claims processed prior to such modifications being implemented in Contractor systems.</p> <p>Rationale: There needs to be an obligation on the State to provide the necessary information for Bidder to perform the PBM services under</p>	The State does not agree to add this language to the contract.

RFP SECTION	QUESTION / COMMENT	STATE RESPONSE
	<p>the agreement. Additionally, this language addresses Claims for retroactively terminated members.</p> <p><u>Reliance on the State's Information.</u> The State acknowledges and agrees that Contractor shall have the right to rely on the information and instructions provided by the State in connection with this Agreement and the Services provided hereunder. Failure of the State to timely provide the required information related to Eligible Member Lists and Benefit Plan Information in a format acceptable to Contractor may result in postponement of the scheduled Implementation Date (or change date for updated information). The State acknowledges and agrees that Contractor may provide Participating Pharmacies and/or subcontractors with access to Eligible Member List information, Benefit Plan Information, and Claims data, and that Contractor and the Participating Pharmacies and/or subcontractors are entitled to rely on the accuracy and completeness of the information provided by the State, whether provided electronically, manually, or otherwise. Further, Contractor shall have the right to rely on instructions from the State in connection with the provision of Services hereunder. This does not give the State the right to impose requirements on Contractor beyond those specified in this Agreement.</p>	

RFP SECTION		QUESTION / COMMENT	STATE RESPONSE
		<p>Bidder must be able to rely on the information provided by The State and must also be able to share the minimum necessary information with contracted pharmacies dispensing covered benefits to members and any subcontractors that might be performing services connected to this agreement (such as ID cards, etc.).</p> <p><u>Review of Reports, Statements, and Invoices.</u> Upon receipt from Contractor of reports, statements, and invoices by The State or its designee(s), The State shall be responsible for promptly reviewing and confirming that the reports, statements, and invoices are accurate and complete and for promptly notifying Contractor in writing of any errors or objections to such reports, statements, and/or invoices. Specifically, this includes but is not limited to all service requests, benefit change requests, pharmacy operations change requests, acceptance tests, quarterly and annual performance guarantee reports, statements of work, etc. Unless The State notifies Contractor in writing of any errors or objections within thirty (30) days from receipt of such report, statement, and/or invoice, all the information contained therein will be deemed accurate, complete and acceptable to The State, and thereafter Contractor shall have the right to rely on all such information and shall have no liability related thereto. If The State provides timely notification within the thirty (30) day period, Contractor's liability shall be limited to The</p>	

RFP SECTION	QUESTION / COMMENT	STATE RESPONSE
	<p>State's actual out-of-pocket losses, if any, capped to that which accrued during the initial thirty (30) day period.</p> <p>Prompt review of any invoices, reports, etc. is needed so that if the State identifies any discrepancies, these may be dealt with quickly.</p> <p><u>Contractor Status.</u> The parties acknowledge that Contractor is a service provider of The State and is acting in a ministerial capacity in the performance of its obligations under this Agreement. Nothing in this Agreement shall be construed or deemed to confer upon Contractor any responsibility for or control over the terms or validity of any Benefit Plan, and Contractor shall have no discretionary authority over or responsibility for any Benefit Plan, but rather Contractor provides administrative services for The State. The State of Tennessee acknowledges and agrees that neither it nor any Benefit Plan intends Contractor to be a fiduciary (as defined under state or federal Law, including ERISA), and neither will name Contractor or any of Contractor's affiliates as a plan fiduciary. Contractor is not an insurer, plan sponsor, provider of health services, or a fiduciary, and Contractor shall have no responsibility for: (i) any funding of The State benefits; (ii) any insurance coverage relating to The State, any Benefit Plan, or Eligible Members; (iii) the nature or quality of professional health services rendered to Eligible Members; or (iv) management or disposition of assets of the</p>	

RFP SECTION	QUESTION / COMMENT	STATE RESPONSE
	<p>Benefit Plan, if any exist. Upon reasonable notice, Contractor will have the right to terminate Services with respect to any Benefit Plan (or, if applicable, Eligible Members) located in a state requiring a pharmacy benefit manager to be a fiduciary to The State, a Benefit Plan, or an Eligible Member, in any capacity.</p> <p>This is an important disclosure that Bidder needs to make clear in providing services to all of its clients.</p> <p><u>Third Party Data Access.</u> The State acknowledges and agrees that Contractor may provide The State's third party vendors with access to The State Claims and other information upon The State's request or direction (e.g., via access to MedAccess® or secure email file submissions). Contractor may require such third party vendors of The State to execute a non-disclosure/confidentiality and/or license agreement prior to providing such data access. The State represents and warrants that it shall have and maintain a business associate agreement and confidentiality agreement in connection herewith with such third party vendors.</p> <p>This allows Bidder to share data with the State's designated third party vendors upon written direction from the State and discloses that Bidder requires an NDA be in place with any third parties who might have access to</p>	

RFP SECTION	QUESTION / COMMENT	STATE RESPONSE
	<p>Bidder proprietary information via the data that is being sent.</p> <p><u>Open Records Requests.</u> The State agrees to give Contractor/Contractor notice and the minimum statutory or regulatory period of time to oppose or request redactions or limitations on any disclosures under a third party freedom of information or open records request pertaining to this Agreement and/or any proposals related hereto.</p> <p>Bidder requests this be added so that this is reciprocal.</p> <p><u>Database Limitation.</u> Contractor relies on Medi-Span, First Databank, and/or other industry comparable databases in providing The State with claims adjudication, drug utilization review, and other Services under this Agreement. The data available from Contractor through such databases and the Services provided hereunder are limited by the amount, type, and accuracy of information made available to Contractor by the databases, The State, Participating Pharmacies, Eligible Members, and prescribers. Contractor has no obligation to acquire information about an Eligible Member beyond that provided as part of the Eligible Members List and Claims information submitted by Participating Pharmacies. Contractor does not warrant the accuracy of reports, alerts, codes, prices, or other data contained in such databases. The clinical</p>	

RFP SECTION	QUESTION / COMMENT	STATE RESPONSE
	<p>information contained in these databases and the Formulary is intended as a supplement to, and not a substitute for, the knowledge, expertise, skill, and judgment of physicians, pharmacists, and/or other healthcare professionals involved in Eligible Members' care. The absence of a warning for a given drug or drug combination shall not be construed to indicate that the drug or drug combination is safe, appropriate, or effective for any Eligible Member. EXCEPT AS EXPRESSLY WARRANTED IN THIS AGREEMENT, CONTRACTOR DISCLAIMS ALL EXPRESS AND IMPLIED WARRANTIES OF ANY KIND, INCLUDING THE SUITABILITY FOR ANY PARTICULAR PURPOSE OF THE DATA GENERATED THROUGH THE CONTRACTOR SOFTWARE SYSTEM.</p> <p>This is a disclosure regarding Bidder's use of databases and possible limitations.</p> <p><u>Confidential Information.</u> The term "Confidential Information" (whether oral or written), means information of a confidential or proprietary nature relating to the subject matter described in this Agreement which is taken from or disclosed by one party (the "Disclosing Party") by or to the other (the "Receiving Party"), whether prepared by a party, its advisors, or otherwise, and whether furnished prior to or after the Effective Date. Without limiting the generality of the foregoing, for avoidance of doubt, Contractor's Confidential Information</p>	

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	<p>includes this Agreement, Contractor’s reporting and other web-based and computer applications and systems (including but not limited to MedAccess®), adjudication systems, system formats, and databanks; Contractor’s Formulary, along with clinical and formulary management operations and programs; policies and procedures, information and contracts relating to Rebates and other manufacturer revenue; pricing information, including MAC Lists and pricing schedules, and Contractor’s contracts with Participating Pharmacies. Confidential Information shall not include information which, as evidenced in writing: (a) is or becomes publicly available or otherwise in the public domain through no breach of this Agreement; or (b) is learned by the Receiving Party from a third-party expressly entitled to disclose it.</p> <p><u>Treatment of Confidential Information.</u> The Receiving Party agrees to hold the Disclosing Party’s Confidential Information in strict confidence and to take reasonable precautions to protect such Confidential Information (including, without limitation, marking such information as confidential and proprietary and using all precautions Receiving Party employs with respect to its own Confidential Information). The Receiving Party shall only permit access and use of any Confidential Information to its employees and other individuals within the Receiving Party’s organization, including its advisors,</p>	

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	<p>consultants, and subcontractors who need to use the information to perform such Receiving Party's obligations under this Agreement, who have been informed of the confidential and proprietary nature of the Confidential Information, and have been directed to treat the Confidential Information in accordance with the terms of this Agreement. The Receiving Party further agrees not to disclose any Confidential Information to any third party, not to use, analyze, transcribe, transmit, decompile, disassemble, or reverse engineer any Confidential Information unless required in the performance of the Receiving Party's duties under this Agreement, not to use any Confidential Information for its own or any third party's benefit unless authorized by this Agreement or by the Disclosing Party in writing, and not to alter or remove any legend, marking, or notice provided by the Disclosing Party on its Confidential Information regarding the confidential and proprietary nature of such information. Notwithstanding the foregoing, The State shall require its advisors, consultants, and subcontractors to enter into a Contractor standard non-disclosure agreement with Contractor prior to The State's disclosure of Confidential Information to such advisors, consultants, and subcontractors. Without limiting the generality of the foregoing, The State will not, and will not permit any advisors, consultants, or subcontractors to, attempt to access Contractor's systems or networks connected to Contractor's systems by circumventing Contractor's system access</p>	

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	<p>control measures (e.g., <i>hacking, password mining, etc.</i>) or breach the security or authentication measures of Contractor's systems and networks. The Receiving Party shall be responsible for any failure of its employees and other individuals within such Receiving Party's organization, and its advisors, consultants, and subcontractors, to comply with the terms of this Agreement. Receiving Party may make disclosures required by Law or court order provided Receiving Party has given the Disclosing Party immediate written notice of the request so that the Disclosing Party can object or otherwise intervene and provided that the Receiving Party uses diligent, reasonable efforts to limit disclosure and to obtain confidential treatment or a protective order. Notwithstanding the foregoing, any disclosure of Rebate contract terms and data permitted hereunder must be subject to a protective order.</p> <p><u>No Transfer of Right or Title.</u> Receiving Party acknowledges that it shall not acquire any rights or title to any Confidential Information merely by virtue of its use or access to such Confidential Information hereunder. Neither the execution of this Agreement nor the furnishing of any Confidential Information hereunder shall be construed as granting the Receiving Party, either expressly, by implication, or otherwise, any license under any invention or patent now or hereafter owned by or controlled by the Disclosing Party. None of the information that may be submitted or exchanged by the parties</p>	

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	<p>shall constitute any representation, warranty, assurance, guarantee, or inducement by a party to the other with respect to the infringement of patents, copyrights, trademarks, trade secrets, or any other rights of third persons.</p> <p><u>Remedies.</u> Each party agrees that any disclosure or use of Confidential Information in violation of this <u>Article X</u> would cause immediate and irreparable injury or loss that may not be adequately compensated by monetary damages. Therefore in the event of any breach or threatened breach of this <u>Article X</u>, each party shall be entitled to injunctive relief and specific performance, enjoining or restraining such breach or threatened breach, in addition to all other remedies available at Law or in equity.</p> <p>Confidential information language should protect both parties. The language in the State's standard contract terms only provides protection to the state. Bidder requests that it be mutual and has added it's standard language here. This could also be added to D.34</p> <p><u>Relationship to Participating Pharmacies.</u> Participating Pharmacies are independent contractors and not subcontractors or agents of Contractor, and Contractor does not exercise any control over the professional judgment of any pharmacist dispensing prescriptions or otherwise providing pharmaceutical related services at a Participating Pharmacy. As a result, Contractor shall have no liability to The State or any Eligible Member for a claim resulting from any act or omission of any</p>	

RFP SECTION	QUESTION / COMMENT	STATE RESPONSE
	<p>Participating Pharmacy or its agents or employees.</p> <p>This is a disclosure that Participating Pharmacies are independent contractors.</p> <p><u>Contractor Proprietary Software and Information.</u> The State acknowledges that Contractor owns, licenses, or otherwise holds the rights to the entire proprietary software system used by Contractor in processing Claims and preparing reports, including, without limitation, computer programs, system and program documentation, and other documentation relating thereto (collectively "Contractor Software System"), and the Contractor Software System is the exclusive and sole property of Contractor. The State further acknowledges that Contractor owns, licenses, or otherwise holds all rights to its programs, reports, MAC Lists, pricing schedules, Formularies, and other services provided to The State under this Agreement (collectively "Contractor Business Information"), and the Contractor Business Information is the exclusive and sole property of Contractor. The State disclaims any rights to the Contractor Software System (including access to any applicable source codes), the Contractor Business Information, and any resultant reports, procedures, or forms developed by Contractor, any development or modification of the Contractor Software System and/or Contractor Business Information as a result of any customization performed by any party, as well</p>	

RFP SECTION	QUESTION / COMMENT	STATE RESPONSE
	<p>as any program, report, Contractor Formulary, or service provided hereunder, all of which shall be the property of Contractor and are protected by copyright which shall be owned by Contractor. In addition, The State acknowledges and agrees that use of the Contractor Software System, including but not limited to the enterprise formulary system ("EFS") and member website, are subject to the respective terms of use, disclaimer, and privacy policy and The State hereby agrees with those terms and conditions prior to using the Contractor Software System. Contractor may provide hyperlinks to other websites for the convenience of The State. The State understands and agrees that by clicking on the links they will be taken to websites that may not be owned or operated by Contractor and are subject to the terms of use of those respective sites. When using the Contractor Software System, these hyperlinks and related sites are for informational purposes only and should not be solely relied on when using the Contractor Software System. If a conflict exists between terms and conditions of this Agreement and terms and conditions of another agreement between The State and Contractor specific to a particular software within the Contractor Software System, the specific term or condition in the other agreement that is in conflict with this Agreement shall supersede and control as it relates to the particular software.</p> <p>Contractor may, in its sole discretion, make changes to the Contractor Software System including adding or removing software</p>	

RFP SECTION		QUESTION / COMMENT	STATE RESPONSE
		<p>applications or reports provided through the Contractor Software System. The State acknowledges and agrees that Contractor may, in its sole discretion, eliminate or remove certain reports, software application, or Contractor Software System components. In the event Contractor removes, eliminates, or discontinues a report, software application, or component from the Contractor Software System, Contractor will provide The State ninety (90) days prior written notice of such change. Contractor will provide The State information about Contractor alternatives to replace the removed report, software application, or component, if available.</p> <p>The parties acknowledge that in the event of any breach or threatened breach of this <u>Section x</u>, any remedy at law is inadequate and Contractor will suffer irreparable injury if such conduct is not prohibited, and therefore Contractor is entitled, among other rights and remedies, to injunctive relief, enjoining or restraining such breach or threatened breach. The parties further agree that the existence of this remedy will not preclude Contractor from seeking or receiving other relief. In no event will The State have the right to access the Contractor Software System and/or Contractor Business Information after termination of this Agreement.</p>	

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	<p>This explains Bidder's proprietary software and information and is essentially our licensing agreement which allows the State to utilize Bidder's software.</p> <p><u>Escheatment/Unclaimed Property.</u> The State, as the "holder" (as defined under unclaimed property Laws) of uncashed checks made out to Eligible Members for DMR Claims, shall be responsible for any required due diligence activities and escheating such amounts to the applicable states. As such, Contractor will provide The State with reports, in Contractor's standard format, containing sufficient information to allow The State to perform the escheatment activities as required under each state's respective unclaimed property Laws related to these uncashed DMR checks. Such reports will be provided to The State twice a year on or about January 31st and July 31st for such DMR checks that have remained uncashed for at least six (6) months post issuance. In addition, Contractor will remit a check to The State in an amount equal to the aggregate amount as reflected in each such report and Contractor shall have no further obligations related to any due diligence or escheatment requirements for such DMR Claim payments.</p> <p>This is needed for any DMR checks that are sent on the State's behalf that might not be <u>Use of Name</u>. Neither party shall use the name, trade names, trademarks, service marks, or logos of the other party or any affiliated company of the other party in any materials, presently existing or hereafter established, except in the manner and to the</p>	

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		<p>extent permitted by prior written consent of the other party.</p> <p>cached by a member.</p> <p>Request this language so that both parties may be certain that their name, logos and any address/phone numbers are portrayed accurately and appropriately.</p>	

3. Delete RFP Reference Questionnaire in its entirety and insert the following in its place (any sentence or paragraph containing revised or new text is highlighted):

RFP # 31786-00174 REFERENCE QUESTIONNAIRE

REFERENCE SUBJECT: RESPONDENT NAME (completed by Respondent before reference is requested)

The "reference subject" specified above, intends to submit a response to the State of Tennessee in response to the Request for Proposals (RFP) indicated. As a part of such response, the reference subject must include a number of completed reference questionnaires (using this form).

Each individual responding to this reference questionnaire is asked to follow these instructions:

- complete this questionnaire (either using the form provided or an exact duplicate of this document);
- sign and date the completed questionnaire and follow the process outlined below;

E-Mail:

- e-mail the completed questionnaire to: Heather Pease, heather.pease@tn.gov
-

- a. **What is the name of the individual, company, organization, or entity responding to this reference questionnaire?**
- b. **Please provide the following information about the individual completing this reference questionnaire on behalf of the above-named individual, company, organization, or entity.**

NAME:	
TITLE:	
TELEPHONE #	
E-MAIL ADDRESS:	

- c. **What goods or services does/did the reference subject provide to your company or organization?**

- d. **If the goods or services that the reference subject provided to your company or organization are completed, were the goods or services provided in compliance with the terms of the contract, on time, and within budget? If not, please explain.**

- e. If the reference subject is still providing goods or services to your company or organization, are these goods or services being provided in compliance with the terms of the contract, on time, and within budget? If not, please explain.

- f. How satisfied are you with the reference subject’s ability to perform based on your expectations and according to the contractual arrangements?

REFERENCE SIGNATURE:

(by the individual completing this request for reference information)

DATE:

- 4. Delete *Pro Forma* Contract Sections A.2.a in its entirety and insert the following in its place (any sentence or paragraph containing revised or new text is highlighted). Renumber any subsequent sections as necessary.
 - a. **340B Claim(s)** - a Claim that receives 340B program pricing and is dispensed from a 340B program covered entity. 340B Claims are identified by (i) the submission of “20” in the ‘Submission Clarification Code’ field (420-DK) AND includes a covered entity owned pharmacies 340B status coded as “37” or “38” in the NCPDP DataQ database and (ii) Claims that include a covered entity owned pharmacies 340B status coded as “39” in the NCPDP DataQ database.

- 5. Delete *Pro Forma* Contract section A.2.c in its entirety and renumber any subsequent sections as necessary.

- 6. Delete *Pro Forma* Contract Sections A.2.s in its entirety and insert the following in its place (any sentence or paragraph containing revised or new text is highlighted). Renumber any subsequent sections as necessary.
 - s. **Coinsurance** - The percentage amount of allowable charges paid by the Member to a Provider for a product or service provided to the Member.

- 7. Delete *Pro Forma* Contract Sections A.2.nn in its entirety and insert the following in its place (any sentence or paragraph containing revised or new text is highlighted). Renumber any subsequent sections as necessary.
 - nn. **Generic Product Identifier (“GPI”)** – A fourteen (14)-digit code, as defined by Medi-Span, which includes all drugs sharing the same chemical composition, in the same strength, in the same form and that are administered via the same route.

8. Delete *Pro Forma Contract Sections A.2.cccc* in its entirety and insert the following in its place (any sentence or paragraph containing revised or new text is highlighted). Renumber any subsequent sections as necessary.

cccc. Pass-Through Transparent Pricing – a pricing structure comprised of fixed guaranteed Discounts at PBM's Mail Order Pharmacy and Specialty Pharmacy and a full pass through (100%) of PBM's contracted rates with Participating Pharmacies and Pharmaceutical Manufacturers. In this arrangement, PBM retains the difference between Mail Order and specialty acquisition costs and the amounts guaranteed to the State. PBM passes through (1) its contracted rates with Participating Pharmacies and (2) all Manufacturer Payments it receives from Pharmaceutical Manufacturers in excess of the State's guaranteed Manufacturer Payments. The amount billed to the State at Retail Pharmacies will be equal to the amount paid by PBM to the Retail Pharmacies. The PBM's only profits are the Administrative Fee, Other Pharmaceutical Manufacturer Revenue not directly attributable to the State's Claims and/or utilization, and any clinical program fees. All financial negotiated Retail Pharmacy contracts and Rebate contracts are fully disclosed to and auditable by the State or its authorized agent. The State is protected in this model by requiring guaranteed Discounts, fees, and Manufacturer Payments from the PBM and any PBM Affiliates. Discounts and Manufacturer Payments achieved on the State's behalf that exceed the financial guarantees are payable to the State. Dispensing Fees that are paid lower than the guaranteed are also passed through to the State. Hence, the financial guarantees are the minimum Discounts and Manufacturer Payments the State will achieve and the maximum Dispensing Fees and Administrative Fees the State will pay.

9. Delete *Pro Forma Contract Sections A.2.fff* in its entirety and insert the following in its place (any sentence or paragraph containing revised or new text is highlighted). Renumber any subsequent sections as necessary.

fff. Manufacturer Administrative Fee(s) (MAF)- fees for services rendered to Pharmaceutical Manufacturers in relation to administrative duties in connection with aggregation, allocating, collecting, and invoicing for Rebates. Manufacturer Administrative Fees are considered inclusive of "rebate Administrative Fee(s)," "formulary administrative fees," "GPO fees" or any other fee paid to Contractor or a GPO in relation to administrative duties in connection with the collection of Manufacturer Payments, excluding fees retained by the GPO for Contractor's participation in the GPO.

10. Delete *Pro Forma Contract Sections A.2.hhh* in its entirety and insert the following in its place (any sentence or paragraph containing revised or new text is highlighted). Renumber any subsequent sections as necessary.

hhh. Manufacturer Payments - any and all compensation, financial benefits and remuneration PBM, PBM Affiliates, or a GPO, receives from a Pharmaceutical Manufacturer, that is in any way attributable to the State's Claims and/or utilization, including but not limited to, Discounts; credits; Rebates, regardless of how categorized; market share incentives, chargebacks, commissions, Inflation Protection adjustments or payments, access fees, MAF, and administrative and management fees. Manufacturer Payments also include any fees received for sales of utilization data to a Pharmaceutical Manufacturer. For avoidance of doubt, Manufacturer Payments excludes Other Pharmaceutical Manufacturer Revenue that is not in any way attributable to the State's Claims and/or utilization.

11. Delete *Pro Forma Contract section A.2.iii(5)* in its entirety and insert the following in its place (any sentence or paragraph containing revised or new text is highlighted):

(5) Client-initiated change to benefit design or formulary (including utilization management) that impacts Rebates negatively by more than five hundred thousand dollars (\$500,000) per year. Such a change initiated by the State is limited to changes to the Pharmacy benefit program, plan design, or formulary alignment. In the event a modification to financial

guarantees is necessary, the parties will mutually agree on an appropriate adjustment which shall be economically neutral to the impact of the change, such agreement not to be unreasonably withheld.

12. Delete *Pro Forma Contract* section A.6.d in its entirety and insert the following in its place (any sentence or paragraph containing revised or new text is highlighted):

- d. The Contractor shall process **ninety-nine point five percent (99.5%)** of POS Claims on a daily basis within **five (5)** seconds excluding scheduled maintenance downtime. For this calculation the number of Claims processed within **five (5)** seconds during each twenty-four (24) hour period shall be the numerator and the number of Claims processed during each twenty-four (24) hour period shall be the denominator. To measure compliance with this standard, the Contractor shall measure for each Claim the time from when the Claim is received by the Contractor's processor to the time the results are transmitted from the Contractor's processor. The Contractor's measure shall reflect the time required for all procedures required to complete Claim adjudication.

13. Delete *Pro Forma Contract* section A.6.m in its entirety and insert the following in its place (any sentence or paragraph containing revised or new text is highlighted):

- e. The POS system shall generate a Claim pay status of pay or deny. The system shall allow a Pharmacy to initiate a reversal (void) of a submitted Claim. The telecommunications system supporting the POS function shall be available for Claims submissions by pharmacies twenty-four (24) hours-a-day, seven (7) days-a-week (except for regularly scheduled and separately approved downtimes). The Contractor shall not charge participating Pharmacy Providers any POS fees for services, **including but not limited to Transmission Fees**, rendered under this contract. Network Pharmacy Providers are responsible for purchasing POS hardware, software and all telecommunications linkages. The Contractor shall require all participating network Pharmacy Providers to have the POS function. POS system used by contracted pharmacies to process Pharmacy Claims shall be accessible and operational 99.90% of the time **excluding scheduled maintenance**.

14. Delete *Pro Forma Contract* section A.12.e in its entirety and insert the following in its place (any sentence or paragraph containing revised or new text is highlighted)

- e. The Contractor shall maintain a Generic Drug dispensing rate ("GDR") of 85.0% or higher, including **all** vaccines.

15. Delete *Pro Forma Contract* section A.15.b(5) in its entirety and insert the following in its place (any sentence or paragraph containing revised or new text is highlighted)

The Contractor shall guarantee that in the event there are changes in the marketplace to the baseline measure used for the Ingredient Costs of drugs (i.e., post-settlement AWP, NADAC, WAC, or other) the Contractor shall adjust accordingly to provide an equivalent price. The Contractor shall provide notice to the State and the conversion shall be agreed upon In Writing before any changes are made.

In the event of substantial changes in the marketplace that are outside of the Contractor's control which impact the pricing components of this agreement, the Contractor may request approval from the State to make adjustments to their pricing and guarantees. Such adjustments must be prior approved In Writing by the State and must

result in cost neutrality or cost savings to the State, as compared to the terms that were in place prior to the adjustments going into effect. The Contractor must provide the State and/or its consulting actuary NDC-11 level information to analyze the request and its impact prior to its implementation and to ensure that the result is cost neutral or provides cost savings to the State. The State may deny any such requests and all decisions of the State are final.

For avoidance of doubt, known launches of biosimilars and Authorized Generics for brand-name reference products that occur before and throughout the term of the Contract (and beyond), known market events in the respiratory category, and insulin price reductions and related insulin market changes are expected to occur before or during the term of the Contract, including but not limited to price reductions and maximum price caps (AMP cap). The Contractor agrees these known market events will not constitute "Unexpected industry changes, limited to: Unexpected Generic Drug introductions, unexpected OTC introductions, unexpected FDA recalls or market withdrawals or unexpected launches of Biosimilars," i.e., will not constitute a Material Change. If the State either directs or approves a change in Biosimilar strategy, respiratory strategy, or insulin strategy during the Contract term, the Contractor agrees that any adjustments made to Rebate Guarantees shall be either economically neutral or favorable to the State. A change in Biosimilar strategy will not result in adjustment to Rebate Guarantees in any other distribution channel besides Specialty. A change in insulin strategy will not result in an adjustment to Rebate Guarantees in any other distribution channels besides Retail-30 and Retail-90, and Mail. Furthermore, the Contractor shall provide the State with NDC-11 level information to ensure economically neutral or favorable adjustments are made to the Rebate Guarantee.

Except as explicitly set forth in the definition of Material Change, pricing and financial guarantees will only change with the explicit written approval of the State. Should there be an event of Material Change, the Contractor shall provide the request to the State along with the reason for the change, a State-specific analysis of the financial impact and any Member impact. The State will have forty-five (45) calendar days to review and determine if the change is reasonably acceptable. If the State, in good faith, determines that the change is not reasonably acceptable, except as required by law, it will not occur during the term of the Agreement. For the avoidance of doubt, changes in AWP inflation rates, differences between underwriting projections and actual performance (other than covered in above items), drug mix shifts due to any dynamics other than those listed above, and pharmaceutical manufacturer merger and acquisition activity shall not constitute a Material Change.

16. Delete *Pro Forma Contract* section A.15.b(6) in its entirety and insert the following in its place (any sentence or paragraph containing revised or new text is highlighted):

- (6) The Contractor shall apply a MAC List at Mail Order pharmacies and at Retail-90 network pharmacies for Generic Drug medications. The list will have prices equivalent to or lower than the MAC List prices applied to retail Claims and effective MAC Discounts are required to be more aggressive than effective non-MAC AWP Discounts. The Contractor shall use the same MAC List for network Pharmacies (Retail-30, Retail-90, Specialty and Mail Order) and shall, upon the State's request, provide the most current MAC List to the State on a quarterly basis and as requested by the State in a spreadsheet format. The Contractor will employ your most aggressive (i.e., highest discount) MAC list prices which must include a minimum of 95% of all Generic Drugs. In addition, the MAC List pricing schedule at Mail Order and Retail-90 (including Specialty Drugs) will include the same or more favorable pricing (lower per unit prices) than at Retail-30 for every MAC drug. The Contractor's MAC pricing schedule at Mail Order and Retail-90 will include a comparable list of low-cost Generic Drugs included in retail

Generic Drug fixed price programs at competitive pricing. In all cases when a Member moves from the retail channel to the mail channel, the Member will NOT be charged more unless there has been a manufacturer price increase or the Retail Pharmacy's Usual & Customary charge was the Member's previous charge. Products will be added to the MAC list no later than twenty-one (21) days after the products become available.

17. Delete *Pro Forma Contract* section A.16.g. in its entirety and insert the following in its place (any sentence or paragraph containing revised or new text is highlighted):

- g. **For Specialty Drugs**, Rebates and Manufacturer Payments shall be based on 30 day supply adjusted Claim count. Manufacturer Payment guarantees shall take into consideration anticipated movement of Brand Drugs to Generic Drugs throughout the term of the Contract.

18. Delete *Pro Forma Contract* section A.31.f. in its entirety and insert the following in its place (any sentence or paragraph containing revised or new text is highlighted):

- f. The Contractor shall, at its own cost, provide the State and/or its representative with prompt and complete access to any data, data extracts, documents, **a Contractor's representative to view the system or system screenshots as requested**, and other information necessary to ensure Contractor compliance with all requirements of this Contract.

19. Delete *Pro Forma Contract* section C.3.y. in its entirety and insert the following in its place (any sentence or paragraph containing revised or new text is highlighted):

- y. The Contractor understands and agrees that this contract is deemed a '100% fully pass-through, transparent contract' and agrees that the same costs charged to the Plan and Members, combined, are the same costs paid to network pharmacies.

20. Delete *Pro Forma Contract* section C.3.v. in its entirety and insert the following in its place (any sentence or paragraph containing revised or new text is highlighted):

- v. The Contractor shall pay out to the State all Manufacturer Payments earned by the State regardless of termination of this contract **with final reconciliation and payment made to the State 180 calendar days post termination.**

21. Delete *Pro Forma Contract* section E.7.a(3) in its entirety and insert the following in its place (any sentence or paragraph containing revised or new text is highlighted):

- 3. The Contractor must annually perform Penetration Tests and Vulnerability Assessments against its Processing Environment. "Processing Environment" shall mean the combination of software and hardware on which the Application runs. "Application" shall mean the computer code that supports and accomplishes the State's requirements as set forth in this Contract. "Penetration Tests" shall be in the form of attacks on the Contractor's computer system, with the purpose of discovering security weaknesses which have the potential to gain access to the Processing Environment's features and data. The "Vulnerability Assessment" shall be designed and executed to define, identify, and classify the security holes (vulnerabilities) in the Processing Environment. **Contractor shall allow a mutually agreed upon third party to perform the penetration testing and vulnerability assessments in accordance with NIST 800-115.**

22. Delete *Pro Forma Contract Attachment D KPI #1* in its entirety and insert the following in its place (any sentence or paragraph containing revised or new text is highlighted):

1.	POS System Availability	POS system, used by contracted pharmacies to process Pharmacy Claims, as required in Contract Section A.6.m shall be accessible and operational ninety-nine point nine percent (99.90%) of the time.	99.90%	99.90% or greater	9	
				97.98-99.89%	6	
				97.0-97.97%	3	
				Less than 97%	0	

23. Delete *Pro Forma Contract Attachment D KPI #2* in its entirety and insert the following in its place (any sentence or paragraph containing revised or new text is highlighted):

2.	POS System Processing	As required in Contract Section A.6.d, the Contractor shall process ninety-nine point five percent (99.5%) of POS Claims on a daily basis within five (5) seconds.	99.5%	99.5% or greater	5	
				98.0-99.4%	3	
				97.0-97.9%	1	
				Less than 97%	0	

24. Delete *Pro Forma Contract Attachment D, At Risk Payment % for Tables A and B*, in its entirety and insert the following in its place (any sentence or paragraph containing revised or new text is highlighted):

Score	At Risk Performance Payment % for Tables A and B
>=96	0% of previous quarter Administrative Fees
91 – 95.9	.25% of previous quarter Administrative Fees
86 – 90.9	.50% of previous quarter Administrative Fees
81 – 85.9	.75% of previous quarter Administrative Fees
76 – 80.9	1% of previous quarter Administrative Fees
71 – 75.9	1.5% of previous quarter Administrative Fees
66 – 70.9	2% of previous quarter Administrative Fees
61 – 65.9	3% of previous quarter Administrative Fees
<61	4% of previous quarter Administrative Fees

25. Delete *Pro Forma Contract Attachment E Section 2.7.1* in its entirety and insert the following in its place (any sentence or paragraph containing revised or new text is highlighted):

2.7.1 Business Associate shall provide to Covered Entity notice of an Actual Breach of Unsecured PHI immediately upon becoming aware of the Breach.

26. Add the following as RFP Attachments and Appendices and renumber any subsequent sections as necessary:

RFP 31786-00174 Attachment 6.3 Cost Proposal **REVISED**

Appendix 7.25 State of TN NDC level Specialty drug list as of 10/31/23

27. Delete RFP section 5.2.3 in its entirety and renumber any subsequent sections as necessary.

28. Delete RFP section C.19.d in its entirety and renumber any subsequent sections as necessary.

29. Delete RFP #31786-00174 in its entirety, and replace with RFP #31786-00174, Release #2. Revisions of the original RFP document are emphasized within the new release. **Any sentence or paragraph containing revised or new text is highlighted.**

30. RFP Amendment Effective Date. The revisions set forth herein shall be effective upon release. All other terms and conditions of this RFP not expressly amended herein shall remain in full force and effect.