STATE OF TENNESSEE
FINANCE AND ADMINISTRATION, DIVISION OF BENEFITS ADMINISTRATION

REQUEST FOR PROPOSALS # 31786-00121
AMENDMENT # 3
FOR PHARMACY BENEFITS MANAGER

DATE: May 7, 2014

RFP # 31786-00121 IS AMENDED AS FOLLOWS:

1. This RFP Schedule of Events updates and confirms scheduled RFP dates.

	EVENT	TIME	DATE	UPDATED / CONFIRMED
1	State Issues RFP		March 31, 2014	Confirmed
2	Disability Accommodation Request Deadline	2:00 p.m.	April 3, 2014	Confirmed
3	Pre-proposal Conference	1:30 p.m.	April 4, 2014	Confirmed
4	Notice of Intent to Propose Deadline	2:00 p.m.	April 7, 2014	Confirmed
5	Written Comments Deadline	2:00 p.m.	April 11, 2014	Confirmed
6	State Responds to Written Comments		May 7, 2104	Confirmed
7	Proposal Deadline	2:00 p.m.	May 23, 2014	Confirmed
8	State Completes Technical Proposal Evaluations		June 13, 2014	Confirmed
9	State Opens Cost Proposals & Calculates Scores	9:00 a.m.	June 16, 2014	Confirmed
10	State Issues Evaluation Notice & Opens RFP Files for Public Inspection	9:00 a.m.	June 23, 2014	Confirmed
11	Contract Signing		June 27, 2014	Confirmed
12	Contract Signature Deadline		June 30, 2014	Confirmed
13	Contract Start Date		July 1, 2014	Updated

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.

	QUESTION / COMMENT	STATE RESPONSE
1	Contract – A.5.1 Section A.5.l of the Contract requires the POS system to generate "a claim pay status of pay, suspend, or deny." Section A.6.b also refers to claims that cannot be "denied or allowed." Our understanding is that NCPDP claims transaction standards do not permit a submitted claim to be "suspended." Please confirm the POS system is not required to "suspend" a claim.	**Confirmed, the POS system is not required to "suspend" a claim. The claim pay status will be allowed or denied. Please see the amended Pro Forma Contract language in Amendment Sections 10 and 11.**
2	Contract – C.5.d Section C.5.d. Please clarify/confirm the number of days in which the State proposes to pay each invoice after receipt.	**By state law, the State has 45 days from date of receipt to pay an invoice. However, we make every effort to pay quicker.**
3	Contract - Section A.7.g (4)/A.7.h (6). In the event the Contract proposed an offer that includes NDC-11 at retail but NDC for package sizes of 100 for pills, capsules, and tablets (and 16 oz for liquids) for mail service, will the State consider such a proposal in the event the Contractor submits an economically equivalent offer based on the State's utilization.	**No. The RFP requires the PBM to use the actual package size for AWP at mail order, and this requirement will continue.**
4	Contract - Section A.14.b(4) This section states that the MAC list at mail and for 90-day at retail "will have prices equivalent to or lower than the MAC-list applied to retail claims." Please confirm that this provision does not require that the former MAC list provide a lower price than retail on every drug and all the time, without exception.	**The RFP requires the MAC list to be the SAME or lower at mail for every drug and all the time. The point is to use the same MAC at retail and mail (or a lower priced MAC at mail), not a MAC that gives the mail pharmacy an advantage.**
5	Contract - Section A.15b This section states that negatively affect Contractor's "guaranteed rebate amounts" may result in a contract amendment. It is unclear whether this places any obligation on the State. Please confirm that if the state takes action that negatively impacts the rebates that Contractor is able to obtain, the State will agree to make a corresponding adjustment to the rebate guarantees provided that Contractor provides reasonable substantiation for the request.	**This paragraph allows the PBM to adjust rebates if the State were to make changes in their benefit. It is specifically worded to allow modifications. The wording of the section will not change.**
6	Contract – Section C.3.k Similarly, the Contractor bases its offer on the	**The State does not intend to make any benefit changes during the term of the contract that will materially**

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	State's current benefit design. Although Contractor does not require the State to adopt a benefit design (C.3.k), please confirm that if the State made benefit design changes during the term of the Contract that had a material effect on the Contractor's ability to maintain its pricing, the State will agree to make a corresponding adjustment to the pricing terms provided that Contractor provides reasonable substantiation for the request.	**impact the Contractor's ability to maintain its pricing without an amendment signed by all necessary parties.**
7	Contract – Section 1.16.a This section requires MFN pricing for similar accounts. Please confirm that similar accounts means any account administered by Contractor for a state or other instrumentality of government, with the same or fewer members, the same or lower gross drug spend, lower mail penetration, lower generic dispensing rate, and comparable retail network.	**Similar accounts means accounts of similar size (i.e. less than 120% of the membership of the state), OR similar gross spend (i.e. less than 120% of the total gross spend). In addition, the comparators will have similar mail penetration (i.e. Mail Rx% will be 1.2 times the state's mail Rx%), the same or lower generic dispensing rate, and a comparable retail network (e.g. broadest network). These accounts should not be limited to only states or other instrumentalities of government.**
8	Contract – Section 1.16.a The market check refers to comparable arrangements. In light of the provision permitting the State to terminate for convenience on 30 days notice, please confirm that comparable arrangements will be limited to agreements with comparable termination provisions (i.e., 90 days or fewer) notice without cause or contracts with a term of no greater than one year.	**No. Termination arrangements do not have to be similar for comparable agreements.**
9	Contract – Section A.32.c Multisource brand drugs are products of the innovator. However, they are not distributed under patent. Please confirm that Brand Drug includes multisource brand drugs.	**Confirmed. Brand Drug will include multi-source brand drugs.**
10	Contract - Section A.32.v.1 In the definition of Ingredient Cost for retail, please confirm that "adheres to the guaranteed AWP discount percentage set forth in the	**Confirmed. The guarantees apply to all applicable claims, not on a claim by claim basis.**

	QUESTION / COMMENT	STATE RESPONSE
	contractor's pricing" refers to the average minimum discounts, and does not apply on a claim by claim basis. (Claims will adjudicate at different rates under lower of logic and will be passed through to the State at those rates. Some will be lower and some will be higher than the guaranteed average discount. Contractor will achieve the guaranteed rate in aggregate.)	
11	Contract - Section C.5.c(3) This section prohibits sales tax from appearing on invoices. Some jurisdictions in which participant claims may be processed require the assessment of sales tax on prescription drugs. Please confirm sales tax may be included when it is properly assessed.	**Sales tax may be included for jurisdictions that require the assessment of sales tax on prescription drugs.**
12	Contract - Section E.6 The Contract does not appear to provide protection for Contractor's confidential information. Please confirm the State will treat such confidential and proprietary information, and the financial terms of the Contract, confidential to the extent allowed by law.	**The State can agree to protect the Contractor's material to the fullest extent permitted by Tennessee law, including the Public Records Act. Please see the additional language the State has added to the Pro Forma Contract in Amendment Section 34.**
13	Contract - A.2.d This Section requires that the Contractor have and maintain URAC PBM accreditation. Our contracting entity is *[Name Redacted]*. Our PBM accreditation with URAC is actually held through our affiliate, *[Name Redacted]*, which will provide services under the Contract. Does the State require that the URAC-accredited entity be a party to the contract or otherwise be listed in the contract?	**URAC PBM accreditation is required for the entity that will deliver the following services under this contract: processing and paying prescription drug claims, developing and maintaining the formulary, contracting with pharmacies, negotiating discounts and rebates with drug manufacturers, providing drug utilization management, managing patient safety and quality programs, delivering customer service, and reporting PBM outcomes measurement.**
14	B.17 Can vendors submit the reference envelope with only the signature of the reference across the back? The outer envelope that would include the postage, return and mailing address would be discarded. Please confirm if this is acceptable.	**This is acceptable; the envelope that contains the actual reference document should have the signature across the back seal, the mailing envelope can be discarded.**
15	A.8	**A proposer will not be deemed non-**

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	Would the State consider a vendor responsive if they provided Medicaid and FFS reference forms?	**responsive for not submitting appropriate reference forms, however if the reference forms do not follow State RFP protocol they may not be scored during the evaluation process.**
16	Please outline the number of PA, 1st, 2nd and IRO level appeals annually for the State.	- **(13,344) PA requests in 2013** - **(387) first level appeal requests in 2013** - **(28) second level appeal requests in 2013** - **(19) IRO level appeal requests in 2013**
17	Please confirm whether the State wants a dedicated or designated account team for the State of TN.	**Designated**
18	Section C— Technical Qualifications, Experience & Approach Items C. 21 Appeals What is the average number of appeals performed per month (or annually)?	**Please refer to the response to question #16**
19	Contract A.7 Pharmacy Network How many prior authorizations are performed monthly (or annually) on average?	**Please refer to the response to question #16**
20	What is the average number of grievances processed per month (or annually)?	**Please refer to the response to question #16**
21	What is the number of onsite and desktop audits conducted for the most recent 12 months?	**181 Field Audits and 999 Daily Review Audits were conducted during January, 2013 through March, 2014**
22	What is the average number of DMRs processed per month (or annually)?	**18,981 paper claims were processed in 2013, the average paper claims per month was 1,582**
23	Are DMRs for international claims covered?	**Direct Member Reimbursement (DMRs) for international claims are covered with the State's permission (there have been none in the past 5 years).**
24	A.11 What clinical programs do you have in place	**Adherence Program, Gaps in Therapy program, Retrospective**

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	today that are administered by the PBM?	**Safety Review, Safety and Monitoring, Dose Optimization, Prior Authorization, Quantity Limits, Step Therapy**
25	Contract Attachment B – Liquidated Damages Can a bidder provide a counter response?	**No, these requirements are final, any counters should have been provided for State consideration during this question and answer process.**
26	Section A-A.10: Please provide clarification and confirmation regarding the formulary that will be implemented on the effective date of the contract. A.10. requires confirmation of a custom formulary. Section C.12 requests a copy of the formulary the Proposer intends the state to use if awarded the business. Is the expectation that the current formulary will be in force? Or, will the PBMs recommended formulary be implemented?	**The State requests each proposer's intended/proposed formulary. However, the state reserves the right to modify the proposed formulary as a custom formulary is required to be implemented on 1/1/2016. There is no expectation that the current formulary be in force beginning 1/1/2016.**
27	RFP Section C: C.21.(b). Please confirm that the Proposers are to Include fees for Appeals in their base fee and may not charge them separately.	**Confirmed. That is correct. Please see the State's response to question #28.**
28	Are PA fees to be considered as Clinical Program Fees OR should they be included in the Admin Fee?	**PA fees should be included in your proposed administrative fee.**
29	Pro Forma Contract Sections A.4.h and i. Sections A.4.h and i discuss certain requirements and restrictions on Contractor staff and Subcontractors. The bidder engages a number of vendors that support its provision of certain ancillary services that are not part of the core PBM services. Can the State clarify that this section refers to Subcontractors that directly provide core PBM services, such as member customer service, mail and specialty pharmacy services, claims processing, appeals processing and similar functions that directly touch and impact plan members and the State, by adding the following sentence to the end of section A.4.h: **"These requirements shall be applied to Contractor staff and subcontracted staff**	**Yes, the State can confirm regarding question #29 that this section relates to the core services provided by the PBM under the contract and would defined as being those that touch or affect the member, specifically member customer services, mail and specialty pharmacy services (if used by the member), claims processing and adjudication, appeals processing at all levels. Also included are such services that affect the plan administrator such as the contractor's account team that interacts with the state on a daily basis through telephone calls, emails, and face to face meetings, clinical advisors or pharmacists on**

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	directly providing core PBM services that touch or affect the member, benefit or process such as Member customer service, mail service or specialty pharmacy services, claims processing or appeals processing, and does not apply to staff providing non-core services." And revise section A.4.i as follows: **"The State may direct the Contractor to replace staff members or subcontractors providing core PBM services, as it deems necessary and appropriate. The decision of the State on these matters shall not be subject to appeal"**	**the account team, and the contractor's P&T (pharmacy & therapeutics) committee which develops the contractor's standard national drug formulary. Please see the revised language for Pro Forma Contract section A.4.h in Amendment Section 6.** **The State will agree to revise Pro Forma Contract section A.4.i, please see Amendment Section 7.**
30	Pro Forma Contract Section A.4.k refers to a "dedicated" account staff. Should this refer to "designated" staff to be consistent with the requirements of Sections A.4.a, c and d?	**A designated team will suffice, as long as they are able to provide the State with the services being sought via this RFP in a timely, responsive manner. As noted in the RFP and pro forma contract, the State retains the right to request replacements on the account team at any time.** **Please see the revision to Pro Forma Contract section A.4.k in Amendment Section 8.**
31	Pro Form Contract Section A.4.l requires a response to urgent matters within four hours. While bidder provides member services 24 hours per day, 365 days per year, and we will make reasonable efforts for your account team to be accessible during non-business hours, it would be very challenging to ensure a four hour response time in the middle of the night or on weekends or holidays when the State's offices are scheduled to be closed. Will the State agree to modify this provision to require a response within four business hours?	**The State chooses to retain the original language.**
32	Pro Forma Contract Section A.5.h requires a point-of-sale explanation of benefits for members. While the bidder can provide this for mail service pharmacy and specialty pharmacy claims, we have no capability to provide such an EOB at	**That was the state's intention here – that the "contractor's systems" (i.e. mail service and specialty claims filled directly by the PBM itself) be able to provide these notices. The state recognizes that the PBM cannot provide such an EOB at the**

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	the point of sale through the tens of thousands of chain and independent pharmacies that participate in our retail pharmacy network. Will the State agree to modify this provision as follows: **"The Contractor's systems must provide members a point-of-sale explanation of pharmacy benefits for Claims processed through its mail service and Specialty pharmacies, and concurrently provide online Claims records for prescriptions dispensed through all channels, which lists the individual member's pharmaceutical out-of-pocket expenses, the plan sponsor's costs, and any cost savings opportunities for the member, as well as providing members, on at least an annual basis, with a summary of their benefit cost savings opportunities from the prior year."**	**point of sale through other contracted network retail pharmacies. The state agrees to revise and use the suggested language provided here, please refer to Amendment Section 9.**
33	Pro Forma Contract Section A.5.l states that the Contractor shall not charge participating pharmacies any POS fees for services provided under the contract. Bidder does not charge fees specific to any contract or the services provided thereunder. Bidder does collect a small charge for each claim processed (a "click fee") to support the costs of operating the claims submission network. These fees are collected uniformly with respect to claims for any vendor and cannot be suppressed for any specific client. Please confirm the State is not requiring the Contractor to not collect such "click fees". If it is the State's intent to prevent such click fees, please advise and confirm that it is acceptable to refund these fees with the claim reimbursements due to the pharmacies, in which case the bidder will factor the cost of such refunds into its underwriting of all costs to provide services.	**Refunding the fees to the pharmacies for the State's utilization is an acceptable solution.**
34	Pro Form Contract Section A.6.g refers to the reimbursement of "claims paid by the Contractor." Bidder will, pursuant to Pro Form Contract Section A.6.h, pay all claims to retail pharmacies in accordance with applicable prompt payment law (or the sooner of 30 days	**This is not consistent with State expectations.** **The State does understand that the Contractor will need to be reimbursed as quickly as possible**

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	or the contracted payment timing if no applicable prompt payment law). Because bidder will invoice the State four times per month for Claims adjudicated within a few days after the completion of the relevant billing period, Claims will typically be invoiced to the State before having been paid to the retail pharmacies (but bidder is contractually obligated to the pharmacies and, through this contract, to pay the pharmacies promptly). Please confirm this is consistent with the expectations in Section A.6.g.	**and does have the capability to reimburse the Contractor daily for claims paid. Please refer to Amendment Section 12 for revised Pro Forma Section A.6.g.**
35	Pro Forma Contract Section A.7.a specifies that the Contractor shall maintain the broadest available national pharmacy provider network. While bidder will provide its broadest national network of over 64,000 pharmacies, only one bidder can maintain the broadest available network. Will the State consider revising this Section to refer to the Contractor's broadest pharmacy network, as suggested below, or insert an objective measure? **The Contractor shall establish and maintain its broadest available national pharmacy provider network and a statewide Any Willing pharmacy provider network of retail, 90-day-at-retail, mail order, and specialty pharmacies.**	**Since the suggested language provided only requires the State to change the word "the" to "its" the State agrees and will make the revision, please see Amendment Section 13.**
36	Pro Forma Contract Section A.7.c requests that the member facing website retail pharmacy locator include the pharmacy NCPDP number and NPI number, in addition to other identifying data. It is not typically to provide an NCPDP number and NPI number on this tool, as most members are not familiar with these numbers. Although bidder could post and update quarterly a link on the website to a PDF document with these numbers, the real-time locator will not include the data and we do not believe members are likely to ever use such a link. Therefore, will the State agree to strike NCPDP number and NPI number from the list of data to be posted to the website in Section A.7.c?	**On the co-branded website that the contractor will operate, the NCPDP and NPI numbers do not have to be available via the online pharmacy locator/search tool that members will utilize; however, they should be included on any pharmacy listing (e.g. a pdf document) that may be posted to said website, as State uses this information as well for internal purposes in Benefits Administration.**
37	Pro Form Contract Sections A.7.g (5) and A.8.f. As drug substitutions may be required for safety issues, will the State agree to revise Sections	**The State agrees to revise the sections referenced here please refer to Amendment Sections 14 and**

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	A.7.g(5) and A.8.f to permit substitution, with prescriber approval, when the original prescribed drug presents a drug interaction or other member safety issue, as follows: **A.7.g(5): "The PBM mail order service shall inform the member, the prescriber, and the State if it substitutes products that will result in a member co-pay or plan cost that is greater than the co-pay or plan cost that would have been incurred had the prescription been dispensed as written. The Contractor shall only engage in such substitutions when there are widespread marketplace drug availability issues with the more cost effective product, if there is a member safety issue or if there is a drug interaction or efficacy issue."** **A.8.f: "The Contractor shall not implement or administer any program that results in the therapeutic switching of members from lower net cost products to higher net cost products. The only exceptions are for member safety or efficacy issues or, upon notification to the State, in response to widespread marketplace drug availability issues with the more cost effective product."**	**16.**
38	Pro Forma Contract Section A.7.4 requires active solicitation of participation in the specialty network by the Contractor. Due to the wide variety of capabilities, specialties and patient need in the State's population (and the marketplace generally), the bidder is not able to solicit participation in the specialty network in any logical manner and doing so may result in an imbalanced network that does not provide the services in the most effective and efficient manner. Therefore, will the State agree to modify this Section to read: **"Unless otherwise directed by the State, the Contractor shall limit specialty drugs to no more than a thirty (30) day supply, which it shall provide exclusively via specialty network pharmacies. In accordance with the any willing provider law codified at TCA § 56-7-2359, as applicable, contractor shall allow pharmacies inside the state of Tennessee who agree to the same terms and conditions**	**The State assumes the question is related to Pro Forma Contract Section A.7.h.4. The State retains the original language, but will limit the recruiting the contractor is responsible for to the specialty pharmacies that are in the current PBM's specialty network as of the date of go-live.**

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	as are offered to other providers in the specialty network even if the contractor operates its own specialty pharmacy. Further, contractor understands and warrants that neither the Contractor nor the Contractor's staff will attempt to steer plan members to utilize any particular pharmacy within the Specialty Pharmacy Network, so long as plan members do utilize a pharmacy in said network for their specialty medications."	
39	Pro Forma Contract Sections A.8.a, c and g indicate the Contractor will manage the Plan formulary in compliance with the coverage defined in the Plan Documents and the State's direction. As bidder will be basing its proposal rebate guarantees on alignment with its formulary, will the State confirm that if the State determines to exclude a drug or drug class from coverage and the exclusion of that drug or class impacts the Contractor's ability to achieve the rebates guaranteed, the State will work with the Contractor to equitably adjust the minimum rebate guarantees?	**Agreed. However, your offer should factor in the programs currently in place for the State. See section A.15.b of the contract as well as the response to question #5.**
40	Pro Forma Contract Section A.8.e requires implementation of certain changes in the formulary, Step Therapy, PA and other edits within 15 business days of request, but goes on to require member notification of the changes thirty days prior to the implementation. If the Contractor must implement the changes in 15 business days from a request, it will not be possible to notify member 30 days before making the change, as that would be approximately 5-7 business days prior to Contractor's receipt of the request to make the change. Can the State please clarify and/or adjust the draft contract language to provide for Contractor to implement the specified changes within thirty (30) days of the State's approval or request and an obligation for the Contractor to notify the impacted members at least fifteen (15) days before the change is implemented?	**The State would work with the contractor well in advance of any changes in the formulary with regards to ST, PA, or other similar edits and merely requests that the contractor be able to implement the changes as soon as possible.** **Nevertheless, the state recognizes the inconsistency of the language and will agree to change it to state "…within 30 business days of request" and members to be notified within 30 days. This will approximate a 2 month lead time from the time the state may potentially ask the contractor to initiate such changes before it becomes effective to members. Please see the language revision in Amendment Section 15 below.**
41	Pro Forma Contract Section A.8.i requires certain minimum generic dispensing through	**No. The State is looking for a PBM that is an expert in the marketplace**

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	retail and mail service. Certain industry occurrences outside of bidder's control can materially impact the achievement of the required levels. Therefore, will the State agree to add the following provision to the end of Section A.8.i: **"If there is widespread shortage of some generics, the corresponding brands can be counted as single source brands for purposes of this calculation. The exact drugs identified, as well as the time period for which this shortage existed, and the documentation to support the shortage should be provided to the State to allow exclusion of these drugs."**	**and can work around these situations without impacting the State.**
42	Pro Forma Contract Section A.8.i.1 stipulates that the Contractor's P&T Committee shall design the State Plan's formulary in a certain manner. Bidder's P&T Committee approves the inclusion and exclusion of drugs from the bidder's formulary, but the actual design of the formulary is done by the bidder within the approvals/limitations provided by its P&T Committee. Will the State agree to modify this Section to reflect that the Contractor will design the formulary based on the recommendations and approvals of its P&T Committee, as follows: **"Based on recommendations by the Contractor's Pharmacy and Therapeutics (P&T) Committee, the Contractor shall design the Public Sector Plan formulary to…"** In addition, bidder does sometimes place certain drugs in a preferred tier that may have a higher cost than other clinically equivalent drugs because the preferred drug drives greater rebate performance, which is paid through to the State and therefore results in the lower net cost option. Accordingly, will the State agree to further modify this first sentence of Section A.8.i.1, as follows: **"… (i) maximize the prescribing and dispensing of safe and clinically effective drugs within each therapeutic class that are the most clinically effective as well as the most cost-effective (ii) ensure that the more costly drugs (net of Rebates), which do not**	**State agrees to the revised language in the first suggestion, please see Amendment Section 17 below.** **Regarding the second language suggestion, the state declines and retains the original language. To clarify, the "cost" is the final cost, net of rebates.**

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	have any significant clinical or therapeutic advantage over others in their class…."	
43	Pro Forma Contract Section A.10 requires that the Contractor ensure the State's benefits comply with the federal ACA. Section A.9.b requires that the Contractor advise the State of requirements of the federal ACA, including costs. Can the State confirm that these should be read together to mean that the Contractor shall advise the State of requirements of the ACA and, upon approval and direction of the State, including any applicable cost increases approved by the State, implement the required changes? If so, can Section A.10 be conformed to read in a complimentary fashion, as follows: "The Contractor will be responsible for ensuring that all pharmaceutical benefits and programs offered by the State and administered by the Contractor meet all current and future requirements of the federal Affordable Care Act, including benefit design, formulary design and management, copay and/or coinsurance structure, appeals of all levels and any and all associated costs. This shall include invoicing the State for any costs of compliance communicated to the State pursuant to Section A.9.b and accepted by the State." Alternatively, would the State consider deleting Pro Forma Contract Section A.10 in favor of the very similar Section A.23.g?	**The State chooses to delete Section A.9.b of the Pro Forma contract, see Amendment Section 18 below.** **Section A.10 will remain as-is, and the contractor will be required to ensure state compliance with all pertinent pharmacy related benefits of the federal ACA and should include the expected costs of doing so in their proposed administrative fee. The State is willing to consider, on a case-by-case basis, any fees imposed on the Contractor due to compliance with Federal Law, and will make any necessary cost adjustments by way of contract amendment if deemed necessary.** **For clarification, though, the State understands and recognizes that claims cost increases due to things such as waived member cost sharing will be absorbed by the state plans, not by the PBM contractor.**
44	Pro Form Contract Section A.15.d requires that the Contractor pass all rebates and other remuneration to the State's Plan. Because the definition of Rebates in Section A.15.a includes the concept of Total Manufacturer Value and is very comprehensive, will the State agree, for greater clarity, to amend the first sentence of Section A.15.d to refer to "Rebates" (the capitalized, defined term), instead of "rebates and other remuneration" (which is not defined and less clear)?	**Agreed, please reference Amendment Section 20 below.**
45	Pro Forma Contract Section A.16.a. So that there is better clarity around identifying which of the Contractor's other clients are similar to the State for purposes of the Market Check/Most Favored Nation provision, will the State agree to insert the following new sentence after the first	**No, the State will not make this change and chooses to retain the original language.** **Similar accounts means accounts of similar size (i.e. less than 120% of**

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	sentence in Section A.16.a of the Pro Forma Contract: **"The aggregate pricing terms will not be more favorable than the terms offered to similar clients of similar size (or smaller), inclusive of rebates and program savings, provided they have a similar formulary, similar plan design, similar member population demographics and similar mail/retail and brand/generic utilization."**	**the membership of the state), OR similar gross spend (i.e. less than 120% of the total gross spend). In addition, the comparators will have similar mail penetration (i.e. Mail Rx% will be 1.2 times the state's mail Rx%), the same or lower generic dispensing rate, and a comparable retail network (e.g. broadest network).**
46	Pro Forma Contract Section A.17.a refers to a federal standard requiring encryption of all electronic PHI at rest. We comply with all current applicable U.S. privacy and security regulations and NIST standards, and will comply with all future applicable regulations and NIST standards. Encryption of data at rest is not required by law. We are considering whether to implement this additional process but cannot commit to doing so at this time. Would the State consider removing this sentence form Section A.17.a: "Additionally, federal standards require encryption of all electronic protected health data at rest as well as during transmission."?	**NIST is a federal requirement, but the state has adopted many of its standards related to PHI. Guidance issued by HHS encourages the use of NIST SP 800-111 standard for data at rest.** **See:** http://www.hhs.gov/ocr/privacy/hipaa/administrative/breachnotificationrule/brguidance.html
47	Pro Forma Contract Section A.18.a(1) includes a requirement for the Contractor to make manual adjustments to the eligibility file provided by the State. Bidder is not able to make manual adjustments to client eligibility files. Due to the high importance of loading accurate eligibility data, if a file will not load (which could be caused by data corruption or other significant problems), we are not able to manually manipulate it. However, if a file will load, but errors are detected, they will be reported on an error report to the State. Furthermore, we offer an online tool for clients to directly make manual eligibility updates. Accordingly, we request to replace the last two sentences of Section A.18.a(1) with the following: "Contractor understands and agrees that daily eligibility files will be provided to the Contractor by the State and that Contractor must provide a means for the State to make manual eligibility updates outside of the daily eligibility file process."	**The State chooses to retain the original language.**
48	Pro Forma Contract Section A.18.d refers to a monthly invoice. Bidder invoices claims four	**Pro Forma Contract Section A.18.d refers to the Contractor reconciling**

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	times monthly. Please confirm that the monthly reference in Section A.18.d refers to the monthly administrative fee payment.	**payment information provided by the State within ten (10) working days. This contract requirement is for all payments, regardless of the payment mechanism. An example provided in the contract is the monthly invoice for the administrative fee payment. However, the expectation is that the Contractor will reconcile all payments, including claims payments, within ten (10) working days.** *****NOTE: Section A.18.d has been moved to Section C of the Pro Forma Contract; please see Amendment Sections 21 and 32.**
49	Pro Forma Contract Section A.21.b requires the Contractor to apply the requirements of HIPAA to "information about members." As HIPAA applies only to PHI, and not all information about a member is PHI, will the State agree to revise the first three sentences of Section A.21.b to read: **"The Contractor shall develop, adopt, and implement standards, which are, at a minimum, compliant with the HIPAA statute and the HIPAA privacy and security rules in 45 Code of Federal Regulations Part 164, to safeguard the privacy and confidentiality of all Protected Health Information (PHI) about members. For example, the Contractor shall ensure that it does not have completed documents or other types of forms containing PHI sitting in public view, left in unsecure boxes or files, or left unattended in any off-site location (e.g., in an automobile, etc.). The Contractor's procedures shall include but not be limited to safeguarding the identity of members as plan members and preventing the unauthorized disclosure of PHI."**	**The State does not agree to change this language. Any information that a PBM has on State plan members will be related to their pharmacy benefits, thus considered PHI.**
50	Pro Forma Contract Section A.21.j. Credit monitoring should only be a concern if PHI or other PII details are subject to a Breach. Therefore, will the State consider revising Section A.21.j to read:	**The State agrees to this revision, please see Amendment Section 22 below.**

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	"At the request of the State, the Contractor shall offer credit protection for those times in which a member's PHI, PII or Payment Card Information (PCI) is disclosed or thought to have been disclosed in a Breach, consistent with the definition set forth in 45 CFR 164.402, caused or permitted by Contractor's acts or omissions."?	
51	Pro Forma Contract Section A.23.g contains a very broad requirement for the Contractor to ensure PPACA compliance at no additional cost to the State. While bidder has procedures and processes in place to provide services in a manner complaint with all final regulations issued under PPACA, some aspects of the law are still awaiting final regulations and some aspects are currently being or may be litigated. Will the State agree to revise Section A.23.g to read: **"The Contractor shall ensure that the State-sponsored pharmacy benefit program is fully compliant with all final regulations issued under PPACA at the time of proposal submission. The administrative fees bid by the Contractor are to include all possible work to ensure that the State and its PBM contractor are compliant with such final regulations issued under PPACA at the date of proposal submission. Contractor shall reasonably coordinate with the State and throughout the term of this contract, as additional regulations are implemented."**	**The State has removed Section A.23.g., please see Amendment Section 23 below. Also, refer to question #43 above.**
52	Pro Forma Contract Section A.24.q specifies that the Contractor's IVR system shall not have more than one level of menu choices unless approved by the State. Bidder wishes to clarify that the authentication of the caller within the IVR is an initial activity and not part of the menu itself. Please confirm this is consistent with the State's expectations.	**Confirmed.**
53	Pro Forma Contract Section A.24.q specifies that the Contractor's customer service phone lines offer a callback option and a voicemail option. Bidder does not have the capability to offer these features at this time and requests the exclusion of those requirements from this section.	**The State declines and retains the original language in the RFP.**

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54	Pro Forma Contract Section A.29.a. Certain of bidder's contractual agreements with third parties that would be auditable under the Pro Forma Contract are highly sensitive and bidder would suffer a material impairment in the marketplace if competitors or the consulting community were to have access to these agreements. Specifically, pharmaceutical manufacturer rebate contracts and retail pharmacy reimbursement contracts. Bidder in unable to allow consultants to review these agreements unless they maintain an independent auditing function that is separated form the consulting function through reasonable "firewalls" to prevent this highly sensitive information form being used against bidder by such consultants in the performance of their services. Accordingly, would the State agree to revise Section A.29.a as follows: **"With provision by the State of thirty (30) days notice, and with the execution of any applicable third party confidentiality agreements, the State or its qualified authorized independent auditor (experienced in conducting pharmacy audits) has the right to examine and audit the services, pricing (including rebates), and any provision of this contract to ensure compliance with all program requirements and contractual obligations. For the purpose of audit requirements, Contractor shall include its parents, affiliates, subsidiaries and subcontractors. All eligibility and claims data belong to the State. The State has sole authority to determine who to choose for any kind of audit: financial, pharmacy rebates, or other, provided, however, that any non-State entity shall execute a Non-Disclosure Agreement with Contractor, which Agreement shall ensure the auditor is independent, has no conflict of interest with Contractor and has acceptable procedures in place to ensure that no information derived from the audit of Rebate or network pharmacy contracts is used in or accessible to any consulting function the auditor may provide. If requested by the State for inclusion in any procurement of an auditor,**	**The State will agree to revise Section A.29.a of the Pro Forma Contract, please see Amendment Section 24 below.**

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	the Contractor shall promptly provide this Non-Disclosure Agreement to the State. This includes state employees, state staff from the Comptroller's audit staff, and consulting staff under contract with the Division of Benefits Administration. This audit right extends to any subcontractors of the PBM (e.g. rebate processor). "	
55	Pro Forma Contract Section A.29.f specifies that the State will have access to audit wholesaler agreements. As this procurement is not requiring bidders that own their mail service and specialty pharmacies to pass through their wholesale acquisition cost, and bidder does not intend to offer this pricing format, access to the very sensitive wholesaler agreements would not seem to be necessary to verify compliance with the contract terms. Will the State agree to strike "wholesaler agreements" from Section A.29f?	**The State agrees, please see Amendment Section 25 below.**
56	Pro Forma Contract Section A.29.g refers to auditing 100% of drugs dispensed under the contract, including generics, as part of a Rebate audit. Bidder does not receive rebates on generic products, so there would be nothing related to generic drugs to audit. Is it the State's intent to merely verify that the Contractor did not receive any Rebates for such drugs? Bidder is not clear on what would be produced for such an audit, as there are no rebate contracts in place for these drugs. Can the State clarify?	**The State is attempting to be clear here in that 100% of all drugs dispensed under the contract are to be available for a rebate audit and none will be excluded. As generics have no rebates, they would not apply but all other drugs will. If during the rebate process, you are able to verify that rebates do not apply to generics, then the focus will shift to brands. There are to be no exclusions whatsoever regarding rebate audits when our consultants commence a rebate audit on the State's behalf.**
57	Pro Forma Contract Section A.29.j It is not unusual for an auditor to make assumptions or interpretations that are not consistent with a contract and protracted disputes can often be avoided if a PBM can review and provide comments on the preliminary report of an auditor. Therefore, would the State agree to include the following at the end of Section A.29.l: **"Once an audit report is issued the Contractor shall have an opportunity to comment on any findings in the report. If the Contractor disagrees with a finding resulting**	**The State is revising Pro Forma Section A.29.l., please see Amendment Section 26 below.**

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	in a payment to the State, the State will review the Contractor's comments, but if the State retains the original audit findings the Contractor will be responsible for any payment to the State."	
58	Pro Forma Contract Section A.32.a imposes limitations on the compensation that the Contractor may receive under the contract. Because a bidder that owns its own mail service and specialty pharmacies may generate margin between the amount it pays for drugs dispensed and the amount paid to such bidder by the State (as permitted by Section A.32.ii of the draft contract), for the avoidance of doubt, will the State agree to add the following to the end of the definition of "Administrative Fee": **"The State also recognizes that the Contractor may make a margin on mail and specialty drugs that it dispenses out of its own pharmacies."**	**The State agrees to the revised definition suggested here; please see Amendment Section 27 below.**
59	Pro Forma Contract Section A.32.c. Brand Drugs (i.e. innovator drugs) continue to be Brand Drugs even after a generic equivalent is released on the marketplace. These drugs are not included in the generic discount guarantees of the contract simply as a consequence of a generic equivalent being introduced. Accordingly, will the State agreed to modify the definition of a Brand Drug in Section A.32.c to add the following to the end: **"or, after the patent protection has ended, represents the original innovator drug before patent protection ended."**	**The State agrees to revise the definition, please see Amendment Section 28 below.**
60	Pro Forma Contract Section A.32.s provides a definition of Generic Drug, which describes an OTC drug as a therapeutic equivalent to a brand drug. Since an OTC drug is not necessarily an equivalent of a brand drug, will the State consider revising this definition? In addition, a small number of drugs approved under an ANDA receive a Medi-Span Multi-source indicator code indicating brand drug classification. Will the state agree to this revision of the definition: **"A prescription drug that is therapeutically equivalent and interchangeable with drugs**	**We agree that many OTC drugs are not equivalent to brand drugs, but some are. The statement will stand. If a drug is approved by an ANDA, it will be considered to be a generic.**

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	having an identical amount of the same active ingredient(s) and approved by the FDA or a drug that is lawfully marketed as a DESI drug. Generic drugs shall also include OTCs where covered by the Plan, generally all drugs with an approved Abbreviated New Drug Application ANDA, and single-source generics drugs, multi-source generic drugs, products involved in patent litigation, house generic drugs and generic drugs that may only be available in limited supply."	
61	Pro Forma Contract Section A.32.bb provides a definition of MAC List. If requested by the successful bidder, would the State agree to add a clarification that the MAC List used in this contract is not the same MAC list published by CMS, as follows: **"The State recognizes that the MAC list is different from the MAC list published by the Centers of Medicare and Medicaid Services (also known as the HCFA MAC). A copy of such MAC drug list shall be provided to the State prior to execution of this Agreement and on a periodic basis or when requested by the State."**	**No, the State will not agree to this change. The definition says that the list is created by the contractor, and does not reference CMS.**
62	Pro Forma Contract Section A.32.ss. The definition of "Rebates" in Section A.32.ss differs slightly form the definition provided in Section A.15.a. The definition in Section A.15.a excludes "service fees" which are fees bidder receives related to its specialty pharmacies from manufacturers for the high level of patient care and supplies required for some specialty drugs to defray the cost of providing these services and supplies. These payments are not allocated on a per clam basis and are factored into the pricing of specialty drugs through these pharmacies and are therefore excluded from the calculation of Rebates. Will the State please confirm that the definition in Section A.15.a is the definition that should be applied to the proposal? Furthermore, mail and specialty pharmacies receive product discounts from manufacturers and wholesalers based on total volume related	**The State agrees to the definition for rebates in A.15.a. Service fees for mail and specialty claims will be excluded from rebate guarantees as the State's intent is to receive the full value of the discounts and the drug manufacturers' revenue that you are able to obtain. Rebates will also exclude purchase discounts (e.g. prompt pay discounts) for mail and specialty products. Please see the revised language in Amendment Sections 19 and 29 below.**

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	to purchase of prescription drugs for their inventories. These payments are factored into the cost of goods sold and, in turn, the pricing of mail service and specialty drugs through these pharmacies and are therefore excluded from the calculation of Rebates. Accordingly, will the State agree to include the following at the end of the definition of Rebates: **"Rebates do not include product purchase discounts related to the Contractor's mail or specialty dispensing pharmacies; or payments received for patient care and supplies required for some drugs."**	
63	Pro Forma Contract Section A.32.fff. The definition of Usual and Customary in Section A.32.fff appears to relate to medical claims pricing. This does not seem to correlate well to the term in a pharmacy context. Would the State consider revising this definition to the following: **"Retail price charged by a participating pharmacy for the particular drug in a cash transaction on the date the drug is dispensed, as reported by the retail pharmacy."**	**The State agrees to this revision, please see Amendment Section 30 below.**
64	Pro Form Contract Section B requires the Contractor to continue to process and pay paper claims run-out for six months. Because the Contractor will not be receiving fees during the run-out period and because the volume of claims processed during a run-out period generally declines rapidly to the point when any outliers can cause a material variance in performance, bidder is not able to continue to offer performance guarantees during the claims run-out period. Accordingly, will the State agree to modify the final sentence of Section B to read as follows: **"Conversely, for a period of six (6) months after the contract terminates, the Contractor shall continue to process and pay any claims that may arrive in any form as long as said claims are for a date of service within the term of this contract, and with the understanding that the Liquidated Damages stated in Attachment B shall not apply during this six (6) month period."**	**The State agrees to this revision, please see Amendment Section 31 below.**
65	Pro Forma Contract Section E.7. In the bidder's experience, minor instances of unauthorized use	**No, the vendor will be reporting violation to Benefits Administration,**

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	or disclosure of PHI, such as sending requests for Prior Authorization information to the wrong prescriber, happen from time to time and clients generally are not interested in individual notifications if the occurrence is not a Breach under HIPAA or cause for particular concern. Clients generally prefer to receive notifications regarding such minor matters in batches periodically or upon request when undertaking a general review. This reduces the administrative burden on both the client and the bidder. Accordingly, will the State agree to revise pro forma contract section E.7.a(2) to read: **"Timely Reporting upon a mutually agreed upon schedule and/or upon request of Violations in Use and Disclosure of PHI; and"**	**not the individual member. This is standard language and does not include incidental disclosures that may occur during normal business operations.** **HIPAA states: *A covered entity is not in compliance ….. if the covered entity knew of a pattern of activity or practice of the business associate that constituted a material breach or violation of the business associate's obligation under the contract or other arrangement, unless the covered entity took reasonable steps to cure the breach or end the violation, as applicable, and, if such steps were unsuccessful, terminated the contract or arrangement, if feasible.*** ***See 45 CFR 164.504***
66	Pro Forma Contract Section E.15.a. In the event of a partial default by Contractor under the contract or another situation that requires remedying but may not warrant termination of the contract, will the State agree to provide the Contractor written notice and a reasonable cure period prior to terminating the contract? If so, will the State agree to insert into Sections E.15.a(3) and (4) the following provision: **"The Notice of Partial Default/Default and termination of services associated with the breach shall advise the Contractor whether the State will provide a reasonable opportunity to cure and the length of such cure period."** **AND:** **"The Termination Notice will (1) specify in reasonable detail the nature of the breach; (2) provide Contractor with an opportunity to cure, which shall be no less than 30 days from the date of the Termination Notice; (3) shall specify the effective date of termination in the event Contractor fails to correct the breach. Contractor must present the State with a written request detailing the efforts it will take to resolve the problem. This**	**The State will revise the language in Pro Forma Contract section E.15, please see Amendment Section 33 below.**

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	opportunity to "cure" shall not apply to circumstances in which the Contractor intentionally withholds its services or otherwise refuses to perform."	
67	Pro Forma Contract generally. In order to add clarification and to enable the Contractor reasonable protections of its legitimate interests, will the State consider including the following terms in Section E of the final contract:	**Please see below:**
	Limitation of Liability. (a) Contractor does not manufacture the drugs dispensed hereunder or make prescribing decisions. Therefore, Contractor makes no warranties of merchantability or fitness for a particular purpose; and (b) the State acknowledges that Contractor does not establish AWP or other available industry pricing benchmark methodologies (e.g., "Wholesale Acquisition Costs" or "WAC"), and Contractor shall have no liability to the State arising from the use of Medi-Span or any other nationally available reporting service.	**The State will add this language, please see Amendment Section 35 below.**
	Third Party Beneficiary. This Contract has been entered into solely for the benefit of State and Contractor and is not intended to create any legal, equitable, or beneficial interest in any third party or to vest in any third party any interest as to enforcement or performance.	**The State declines to add this language.**
	Confidential and Proprietary Information. The State agrees to protect, to the fullest extent permitted by state law, the confidentiality of information expressly identified by the Contractor as confidential and proprietary, including information that would allow a person to obtain unauthorized access to confidential information or to electronic information processing systems owned by or licensed to the State.	**The State will add this language, please see Amendment Section 34 below.**
68	Pro Forma Contract generally. Will the State will permit bidders to propose specific liquidated damages/performance guarantee levels in any cases where a bidder believes it is unable to meet the specified guarantee. If the State is not willing to do so, the bidder can still agree to the standard, but there may be a significant likelihood the guarantee will be missed and a	**No, any proposed liquidated damages or performance guarantees should have been submitted for the State's consideration during this question and answer period. No other changes will be entertained.**

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	payment will be made to the State in lieu of the performance level specified.	
69	The RFP refers to Appendices 7.1 – 7.8 on page 2; however, the link provided to access the current solicitation document only includes Appendix 7.4. Can the State provide and/or direct vendor to the additional appendices?	**All other appendices were provided in .pdf format and are attached to the RFP document, available at the link provided.**
70	With regard to Appendix 7.4 - Formulary Disruption Template, does the listing of drugs encompass the State's entire formulary? If not, can the State provide a copy of the complete formulary currently in place?	**Please review the detailed claims file sent upon request of the State's RFP coordinator (on CD) to which shows the formulary status by drug at a claim level.**
71	A.7.e (1) *[Name Redacted]* will provide confirmation of this section once geo access analysis is performed on the State's census.	**The State retains the requirement in this provision.**
72	A.7.g (1) Based on the current mail volume for the Public Sector Plan, *[Name Redacted]* would like the State to consider measuring the accuracy measurement across *[Name Redacted]* book of business.	**The State declines and chooses to retain the original language**
73	A.10 *[Name Redacted]* cannot control future requirements set for the by the Patient Protection & Affordable Care Act and as such, should not be held accountable for future costs.	**Please refer to the State response for Question #43.**
74	A.24. g. *[Name Redacted]* would propose language such that 95% of issues are resolved in less than one day.	**The State declines and retains the original language in A.24.g and the corresponding liquidated damage #34 associated with First Call Resolution.**
75	A.24. j. *[Name Redacted]* would propose language such that the 3% measurement excludes call that disconnect within the first 30 seconds.	**The State declines and retains the original language in A.24.j.**
76	A.24.m. *[Name Redacted]* agrees with prohibiting advertisements promoting the *[Name Redacted]* or any other brand. However, we plan to provide informational messages in conjunction with hold music alerting members to the features available on web and mobile. These messages are more informational and educational to the members.	**The State recognizes and will allow this.**
77	A.24.q. Our state of the art IVR call tree is no more than three levels prior to identification or authentication questions	**The State retains the original language.**

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78	A.29.l. *[Name Redacted]* policy is to not pay interest on these amounts.	**The State retains the original language.**
79	E.9 Special Terms and Conditions: *[Name Redacted]* views provision is really not applicable to our services. *[Name Redacted]* will at all times retain all rights to its Proprietary Information and Trade Secrets.	**The State retains the original language, as this is standard state contract language.**
80	We appreciate the data that has been sent to proposers this week. Is it possible to get a more detailed claim file that includes the following additional data elements: • Fill dates/dates of service • Days of therapy per claim/Day Supply • Pharmacy name and identifier for each filled script • Retail pharmacy summary – The number of claims filled by each chain and independent pharmacy.	**Please review the detailed claims file sent upon request of the State's RFP coordinator (on CD) to which shows the formulary status by drug at a claim level.**
81	A8 Provide the name of 1 client with 100,000 or more lives currently receiving PBM services from the Proposer, as well as 2 clients with at least 75,000 lives each. The requirement is that the PBM is servicing a client that has 100,000+ lives, correct? And two additional clients with 75,000+ members each, correct?	**Confirmed.**
82	We have very robust utilization management programs but understand the state may want to review/approve and/or offer suggestions specific to the state. Please provide any specific UM program requirements vendors would have to meet.	**Please see the response to question #98. In addition, the state currently has in place (and would like to continue) quantity limits for the following classes: anticoagulants, antiemetics, antimigraines, erectile dysfuncation agents, influenza, pain/narcotics, sedative/hypnotics (both benzodiazepines and non-benzodiazepines), tobacco cessation products (bupropion, Chantix, and OTC nicotine replacement gum, patches, and lozenges are provided at zero copay with a prescription. 2, 12-week**

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		courses of treatment for a 168 day supply each year)
83	We have very robust clinical programs including those listed but understand the state may want to review/approve and/or offer suggestions specific to the state. Please provide any specific clinical programs and requirements vendors would have to meet.	**Please see response to question #82.**
84	ATTACHMENT B – Liquidated Damages Have there been any Liquidated Damages assessed over the current contract period with the current PBM? Please advise what specific guarantees have been missed and levels of liquidated damages assessed for both performance guarantees and contracted pricing requirements.	**To date, the current contractor has paid the state $1,140,000 in Liquidated Damages for missing various performance guarantees over the course of the contract such as:** • **Mail Order Turnaround $100,000** • **Prior Authorization (PA) Evaluation $90,000** • **Eligibility Posting $25,000** • **Maximum Speed of Answer $700,000** • **Abandoned Call Rate $100,000** • **Member Communications $25,000** • **Distribution of Ongoing Member ID Card/Welcome Packet $100,000**
85	Formulary – Drug List In the pre-bid conference the State mentioned that "the current formulary is the CVS Caremark national formulary with a few minor changes". Can the State please provide both the CVS Caremark national formulary document and list of the "minor changes" from that document? Will the winning PBM be required to completely	**The current formulary can be found at http://info.caremark.com/stateoftn** **The state is using CVS Caremark's national formulary with minor revisions such as excluding coverage for fertility medications and antihistamines, for instance. The plan also does not cover Proton Pump Inhibitors (PPIs) without a step therapy process. The State**

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	match the current formulary? If a vendor bids with it's standard formulary verses an exact match of the existing State specific CVS Caremark formulary BUT agrees to make edits as required in the contract and as requested by the state will that vendor be awarded less points than vendors who propose an exact match?	**requests that each proposer submit their own standard formulary/preferred drug list with the understanding that the state will customize the formulary during implementation, and possibly in the future to match our plan rules. Proposers do not have to match the current formulary. The State recognizes that some members may be either positively or negatively impacted due to differences in the tier structure of the new formulary. The disruption analysis will show the number of affected plan members – both positively impacted and adversely impacted and evaluators will use this information in scoring the proposals.**
86	A.18 Data and Information Technology (3) Contractor will provide the data files at no charge to the State or the State's DSS vendor. How frequently will the data files need to be provided? Daily? Weekly? Monthly? Quarterly? As needed? and in what format ? (4) If Contractor's contract with the State is terminated, Contractor will continue to provide run- out pharmacy claims data to the State's DSS vendor until the end of the agreed-upon run-out period. How frequently will the claims data reports need to be required?	**Full claims data will need to be provided to the state's current decision support (DSS) vendor, Truven Health Analytics, on a monthly basis in the format provided in Contract Attachment D. This will continue as long as the contract is in place and until all claims have been processed at contract termination.**
87	h. The Contractor shall provide transmittal of pharmacy data via secure medium to any additional third parties including the State's Third Party Administrator(s) (TPAs), Health Management contractor(s), Mental Health/Substance Abuse contractor(s) or any other vendor or state fiduciary as identified by the State. Unless otherwise directed by the State, the Contractor shall provide, at no additional charge, daily data feeds of pharmacy claims to the third parties during the term of the contract and following the term of this contract until all claims incurred during the term of this	**The State requires a claims file to various third parties with whom the State contracts (Wellness vendor, TPAs, BHO, etc.). The frequency of the files varies. Daily files are required for the TPAs and BHO. Weekly files are required for the wellness vendor. The Contractor must have the capability to send daily files to any future vendors, if needed and requested by the State.**

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	contract have been paid. This data shall be provided in the format specified by the State. If so directed by the State, the Contractor will be required to pass a regular file to the State's TPAs showing an accumulator file of prescription drug payments by individual. Conversely, the Contractor will be required to receive similar files from the State's TPAs for the same reason: to allow the state-sponsored plans to remain compliant with the Affordable Care Act which limits the total medical and pharmaceutical out-of-pocket amounts that an individual can be subjected to each calendar year. Contractor will be expected to receive and send data and work with the State and its other Contractors on a regular basis to this end. Can you confirm approximately how many claim files will need to be provided to the various vendors and the frequency for each of the files? Is daily the frequency for the claim files to be provided to the identified vendors?	
88	A.4.l For matters designated as urgent by the State, the Contractor shall provide a response to the State within four (4) hours. Staff members, from the respective business unit, with final decision making authority shall provide responses. Please provide clarification and/or examples concerning the State's definition of "urgent". Based on past practice how often per month would the state typically need an "urgent" response?	**Typically, urgent requests from the State occur during the Legislative Session – usually from January-April of each year. However, urgent requests can and do occur at any time. For estimates, plan on approximately 1-2 urgent requests throughout the year; more during the Legislative session.**
89	A.5.b The Contractor's POS system shall allow it to interface with the existing pharmacy "switch" networks that connect pharmacy providers with the Contractor's system. Please provide clarification and details regarding the definition of the existing pharmacy "switch" networks	**In Pharmacy, there is a general group of aggregators that help connect pharmacies with PBMs. The accepted term for these in the marketplace is switches.**
90	A.32. Definitions a. Administrative Fee – The fee for pharmacy benefit management services paid by	It is misworded and should read **"The contractor's monthly compensation is a function of the contractor's administrative fee multiplied by the number of participating members**

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	the State to the Contractor. The administrative fee is the only compensation due the Contractor under the contract if a transparent pass-through pricing model is selected by the State. **The contractor's monthly compensation is a function of the contractor's administrative fee multiplied by either the number of participating members per month (PMPM).** The State recognizes that clinical program fees are not included in the administrative fee. The bolded sentence above appears to be incomplete. Is there another method other than PMPM as how fees can be billed, for example, on a per script basis?	**per month (PMPM).**" **The word "either" will be removed from the definition. In addition, please see the state's response to revise the definition further in question #58.**
91	C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed WRITTEN DOLLAR AMOUNT ($NUMBER). The payment rates in Section C.3 shall constitute the entire compensation due the Contractor for the Service and all of the Contractor's obligations hereunder regardless of the difficulty, materials or equipment required. The payment rates include, but are not limited to, all applicable taxes, fees, overheads, and all other direct and indirect costs incurred or to be incurred by the Contractor. The Contractor is not entitled to be paid the maximum liability for any period under the Contract or any extensions of the Contract for work not requested by the State. The maximum liability represents available funds for payment to the Contractor and does not guarantee payment of any such funds to the Contractor under this Contract unless the State requests work and the Contractor performs said work. In which case, the Contractor shall be paid in accordance with the payment rates detailed in Section C.3. The State is under no obligation to request work from the Contractor in any specific dollar amounts or to request any work at all from the Contractor during any period of this Contract. How/why is a Maximum Liability determined on	**All State contracts require a maximum liability be included in the contract. The maximum liability is calculated by multiplying the prevailing bid rates times the projected number of members per month by the number of months of the contract. If maximum liability needs to be increased, the State will amend the contract to include additional funding.**

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	an Administrative Services Only arrangement? What is the methodology used to determine the Maximum Liability? The two items below reference this as well. C.2. Compensation Firm. The payment rates and the maximum liability of the State under this Contract are firm for the duration of the Contract and are not subject to escalation for any reason unless amended. C.3. Payment Methodology. The Contractor shall be compensated, beginning no earlier than January 1, 2015, based on the payment rates herein for units of service authorized by the State in a total amount not to exceed the Contract Maximum Liability established in Section C.1. a. The Contractor's compensation shall be contingent upon the satisfactory completion of units, milestones, or increments of service defined in Section A. j. The Contractor shall guarantee that all discounts and services and administrative fees are guaranteed for the life of this contract, including any optional contract extensions executed by the State.	
92	1A.16. Market Check Provision a. The Contractor shall provide "Most Favored Nation" (MFN) terms wherein it shall not provide any similar account more favorable pricing terms than that provided to the State of Tennessee during the contract. During the resulting contract term, if there are changes to any of the MFN measurement components or methodology and those changes are reasonably designed to achieve greater comparability under this provision, then the parties will negotiate in good faith to seek an appropriate solution. Further,	**The pricing terms will be the components – discounts, dispensing fees, guaranteed rebates, and administration fees.** **The State will use their consultant for the measurement.** **Similar accounts means accounts of similar size (i.e. less than 120% of the membership of the state), OR similar gross spend (i.e. less than 120% of the total gross spend). In**

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	the Contractor must agree to a "market check" provision to compare the economics of the resultant contract. The Contractor shall provide one (1) financial terms market check during the five (5) year contract term. The market check will be performed at month twenty-five (25) to comparable arrangements in the marketplace for the purpose of recommending adjustments necessary to restore and maintain competitive advantage. If financial benchmark pricing indicates that the State's financial terms are no longer competitive, the Contractor shall offer improved pricing. What are the MFN measurement components or methodologies? Please provide complete detail. Who is to measure the MFN measurement components or methodologies? Given that different clients have different utilization patterns, different benefits, different clinical programs, different administrative requirements, etc. how are any two clients contracted terms to be assessed appropriately for MFN measurement? Is the measurement to be the aggregate value of the contract or each specific cost? Does the state currently have a MFN provision in its existing PBM contract? If so, please provide the specific language from the current contract. If no bidders are able to meet a MFN requirement will the state remove the requirement from the bid specifications and contract? Will the State be open for alternative wording in the above provision? The suggested change reads: **The successful bidder will agree to a five year financial arrangement with an annual market check, with a 1% threshold for each year of the contract term.**	**addition, the comparators will have similar mail penetration (i.e. Mail Rx% will be 1.2 times the state's mail Rx%), the same or lower generic dispensing rate, and a comparable retail network (e.g. broadest network).** **Measurement will be the aggregate value to the plan.** **The State does have an MFN provision in the existing contract, but that is not relevant to this RFP.** **The State has defined their market check methodology, and will expect the PBM to make adjustments even if the value is less than 1%. The State will retain the original language.**
93	C.9.g (g) Your ability to offer a restricted network at a more aggressively contracted rate should the State choose to implement such a	**The State requests that proposers respond with the network they have that will allow them to meet the**

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	network. If a bidder proposes a restricted network and the state accepts a restricted network will the state adjust the geographic access standards accordingly?	**access standards shown in the RFP and pro forma contract.** **The State is not currently seeking a restricted network but is seeking information that could possibly be used in the future. Should the State consider a more restrictive network in the future the access standards would be discussed and decided at that time.**
94	Can you highlight what changes have occurred in the Document titled as 31786-00121 which is the Request for Proposals for Pharmacy Benefits Manager RFP? The original released document contained 142 pages but in review of the newest version on the website, it contains 179 pages. Is the only change the addition of pages 143+ or were there also edits in the first 142 pages?	**There have been no edits to the RFP document shown on the website, the difference in page numbers is probably related to the attached appendices on the version posted on the website.**
95	Performance Guarantees section Questions 1,2,3,4,5,6,39 and 41 specifically reference “go-live”. Please confirm that these PGs only apply to the initial “go-live” year beginning 1-1-15 and are not included in years 2+ of the contract.	**Correct**
96	Performance Guarantee #5. Eligibility Set-Up – Guarantee As required in Contract Section A.17.c, eligibility information will be loaded, tested, verified and available online for use no later than thirty (30) days prior to the go-live date specified in Contract Section A.30. Assessment Ten thousand dollars ($10,000) for each day beyond the date specified in Contract Section A.31. $100,000 maximum. Measurement Measured, reported, and reconciled no later than three (3) months after go-live date. Recommended change: **As required in Contract Section A.17.c, eligibility**	**The State chooses to retain the original language.**

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	information will be loaded, tested, verified and available online for use no later than thirty (30) days prior to the go-live date specified in Contract Section A.30 and assuming receipt of clean file to load from the State in timeframe to meet this requirement. PBM will load a fully tested and clean file within 48 hours of receipt.	
97	Performance Guarantee #39. Initial Member ID Card/Welcome Packet Distribution – Guarantee Ninety-five percent (95%) of welcome packets containing I.D. cards will be produced and mailed no later than twenty-one (21) days prior to go-live date, as required in Contract Section A.23.n.4.Assessment Twenty-five thousand dollars ($25,000) if the standard is not met. Measurement Measured, reported, and reconciled no later than three (3) months after go-live date. Recommended change: **Ninety-five percent (95%) of welcome packets containing I.D. cards will be produced and mailed no later than twenty-one (21) days prior to go-live date, assuming receipt of clean file to load from the State in timeframe to meet this requirement. PBM will load a fully test and clean file within 48 hours of receipt.**	**The State declines and retains the original language.**
98	Please provide a complete list of step therapy programs and prior authorization programs currently in place.	**Step Therapy:** **Atopic Dermatitis, Ulcers/Proton Pump Inhibitors, Autoimmune, Growth Hormones, Multiple Sclerosis** **Prior Authorization:** **Specialty medications, Topical acne, Anabolic Steroids, Antifungals, GI Motility, Narcolepsy, Oral fentanyl products, Nutritional Supplements (inborn errors of metabolism products), Testosterone, any**

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		compound claim with an ingredient cost exceeding $300.00. **<u>Quantity Limits</u>:** **Anti-coagulants, Anti-emetics, Anti-Migraine, Erectile Dysfunction, Influenza, Oxycontin, Butorphanol products, Ketoralac, Sedatives, Tobacco Cessation products**
99	Is the State looking for a dedicated (exclusive to the State with no other client responsibilities) account team (account manager, account executive, clinical account executive) or is a team of full time employees designated to the Plan acceptable?	**A designated team will suffice, as long as they are able to provide the State with the services being sought via this RFP in a timely, responsive manner. As noted in the RFP and pro forma contract, the State retains the right to request replacements on the account team at any time.**
100	Does the State currently have any members covered under a Medicare Part D plan related to this RFP and, if so, how many?	**No. The state's Medicare Supplement plan does not provide any pharmacy benefits and Medicare Part D services are not being sought under this RFP. For more information, please see the State's response to question #143.**
101	Is the State interested in receiving an EGWP offer for their retirees?	**No. Please see the State's response to question #143.**
102	Pro Forma Contract, A.8.c. "The Contractor shall allow formulary customizations at the State's request at no additional cost to the State…" Please confirm that this does not limit Section A.15.b "Any actions, approved by and implemented at the request of the State, which negatively affect the Contractor's guaranteed rebate amounts, may result in a contract amendment to the Contractor's guaranteed rebate amount." Please confirm that Section A.8.c is applicable only to fees and not to rebates.	**Confirmed. The formulary customization will not result in a change in discounts, dispensing fees, or admin fees. Rebates may be impacted.**
103	Pro Forma Contract, A.25.e. Please explain the Contractor's role regarding Member Handbooks. Will the Contractor be responsible for writing and printing a Handbook specific to pharmacy benefits?	**Yes, writing and printing a handbook specific to the pharmacy benefit will be the responsibility of the Contractor, but it must be reviewed and approved by the State.**

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104	Pro Forma Contract, A.25.e. Would the "Exemption of incidental pieces" also include routine Book of Business pieces, e.g. drug recalls, mail package inserts, etc?	**Yes, but only with the knowledge and permission of the State.**
105	Pro Forma Contract, A.29.a. "The State has sole authority to determine who to choose for any kind of audit." Please indicate what firms the State has engaged for pharmacy benefit audits, including rebate audits, within the past five years.	**The State has utilized the services of our actuaries/benefits consultants under contract with the Insurance Committees over the past five years – Aon Hewitt and their subcontractor, Caribou Systems. Financial audits, rebate audits, and pricing comparison reports are the types of work that they have provided to our office.**
106	Section C.3.b. Specialty Network Discounts (Guaranteed Minimum Average). In addition to the Guaranteed Minimum Average, will the Contractor submit a list of specialty drugs with applicable discounts per drug?	**Yes**
107	Attachment B, Liquidated Damages, 9. POS System Availability. Does the 99.5% availability exclude scheduled downtime?	**No. The system must be available 99.5% of the time – all the time.**
108	Attachment B, Liquidated Damages, 16. Network Access Guarantee. Does the measurement apply just to members who have a pharmacy (not just a network pharmacy) within those mileage limits? In other words, if there is no pharmacy within 10 miles of a rural member, does this count against the measurement?	**If there is no network pharmacy within the specified number of miles from a member, that does count against the measurement.**
109	Attachment B, Liquidated Damages, 19. Generic Utilization Guarantee. Does the term "separately for mail and retail" mean that the mail and retail generic utilization must EACH meet the 80% standard independently?	**The generic utilization guarantee will apply to the combined mail and retail utilization.**
110	Please provide census information in Excel format (requested separately as well).	**Appendix 7.3 (zip code counts) will be posted online as an Excel document.**
111	Please provide RFP Attachments 6.2, 6.3, and 6.4 in Microsoft Word format (requested separately as well).	**A word version of the RFP document will be posted with this Amendment.**
112	Will the State consider accepting rebate payment at the point of sale?	**No, as that does not provide for useful tracking and makes auditing more difficult.**
113	Will the State consider a multi-tiered generic	**No. The state determines**

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	formulary?	**copayments and any benefits for our plan members via the Insurance Committees. The state merely requests that proposers provide a formulary consisting of generics, preferred brands, and non-preferred brands.**
114	Confirm that proposed financial guarantees apply to pharmacies in the proposer's pharmacy network and that claims processed by pharmacies included as part of the State's any willing network provision are excluded from guarantees.	**Not confirmed. All pharmacies under contract with the successful proposer (including those that are included as part of the State's any willing provider provision) must have their claims included in the financial guarantees.**
115	Confirm that a conflict of interest statement will be included in the confidentiality agreement signed by the State's auditor(s).	**Confirmed, please refer to the response to Question #54 above.**
116	Confirm that the State understands that due to non-disclosure agreements in place with the proposer's contracts with pharmaceutical manufacturers and pharmacies, audits must be conducted on-site at the proposer's offices.	**The State's past rebate audits of the current PBM were conducted on-site at the current PBM's offices and the State recognizes the need for this in the future with regard to any rebate audit.**
117	Please provide the number of administrative and clinical prior authorizations completed in 2013.	**13,344 prior authorization requests**
118	Please provide the number of redeterminations completed in 2013.	**The State assumes that "redeterminations" refers to appeals. Please refer the State's response to question #16.**
119	Please provide the number of external appeals completed in 2013.	**The State assumes that "external appeals" refers to IRO level appeals. Please refer the State's response to question #16.**
120	Please provide the number of replacement ID cards provided in 2013.	**5,088 replacement ID cards were produced in 2013.**
121	Does the State currently provide an adherence program to members?	**Yes**
122	Does the State currently provide a drug therapy	**Yes, a gaps in care program is**

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	management and/or therapy care gap program to members?	**provided.**
123	If a Proposer subcontracts any aspect of formulary administration/management (e.g., rebate contracting, rebate reporting) to another Proposer, will RFP Requirement 3.3.7 result in the disqualification for both Proposers? Does the requirement also apply to a Proposer that subcontracts pharmacy network administration/management and/or clinical program development/management to another Proposer?	**This will not result in disqualification for both Proposers, however the State does reserve the right to reject proposals where all core or the majority of administration, management, and pharmacy networks are sub-contracted and not provided by the Prime proposer.**
124	Please confirm that proposers are able to mark specific items within the RFP response as confidential and proprietary without penalty or risk of being non-responsive with the submission guidelines.	**Proposers will not be penalized for marking items confidential and proprietary; however the State can only honor these claims to the extent they are permitted by Tennessee law.**
125	Please confirm that sealed customer references will be included in the original Technical Proposal only.	**Confirmed**
126	Please confirm that requested sample documents can be referenced as “Exhibits” and placed at the back of the RFP response document.	**Confirmed**
127	RFP Attachment 6.2, Section A and B: Confirm that responses items to mandatory requirements that are represented as attachments (i.e., proposal statement of certification and assurances, etc.) can be referenced under “Proposal Page #” as “A.1. Proposal Statement of Certifications and Assurances” rather than a page number.	**This is not confirmed, A.1 is the mandatory requirement number, a page number is needed to help evaluators locate documents within the proposal.**
128	RFP Attachment 6.2, Mandatory Requirement A.5: What documentation does the State wish for a privately-held proposer to provide if the requested documents are not available?	**The Tennessee Central Procurement Office has stated that a Proposer may provide a letter from its bank on Bank letterhead indicating that the Vendor is in good standing with the bank, and has maintained this standing for the past 24 months consecutively. The documentation will be reviewed by both the Central Procurement Office and our Office of Business Finance for approval,**

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		please see Amendment Section 3 below. Please note, the State has added an additional mandatory requirement with this amendment; please refer to Amendment Section 4 below.
129	RFP Attachment 6.2, Section C, C.4.: Please confirm that this question applies to State contracts only.	**Not confirmed, this question applies to all the Proposer's contracts.**
130	RFP Attachment 6.2, Section C, C.7.e: This statement appears to end prematurely, please indicate what is meant by "include how it would work from the member's".	**This should include the word "perspective", please see the revision in Amendment Section 5 below.**
131	RFP Attachment 6.2, Section C, C.12.l: Please clarify what is meant by the question "What specific steps can your firm help us take to increase that percentage?" What percentage is being referenced, the GDR?	**The State has revised the language in RFP Attachment 6.2, Section C.12.l to read "What specific steps can your firm take to help us increase our GDR percentage which is currently at 79%-80%?"**
132	RFP Attachment 6.2, Section C, C.12.l: With reference to the question related to GDR, Please confirm that the State intends for proposers to respond to this related to how we intend to maintain the GDR listed in contract provision A.11.e.	**Please see the State's response to question #131.**
133	RFP Attachment 6.2, Section C, C.14.f: Please confirm that the State intends proposers to provide examples of member approval and/or denial letters related to prior authorization determinations.	**Confirmed.**
134	RFP Attachment 6.2, Section C, C17.d and .e: Item d asks for a dispensing fee annual reconciliation report and item e asks for a guaranteed minimum discount and dispensing fee measurement report, please confirm that the requested dispensing fee reports being requested are the same.	**The State is requesting a report or reports showing the contractor's reconciliation and ability to have met their guaranteed discounts and dispensing fees for the previous calendar year. Such report(s) should show the contractor's guaranteed/promised discounts for each of the categories for the previous year, along with the actual percentages or amounts met, along with the corresponding amounts due to the State, if applicable. These may be included on the same report if that is your business practice.**

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135	RFP Attachment 6.2, Section C, C.19" Please explain what is meant by "Please answer each subsection separately and label the responses as such" How does the State intend for the responses to C.19.a-i to be presented in our response other than as a response immediately following the question?	**A response immediately following the question is acceptable. To answer each subsection separately and label as such would be to list the question for subsection (a) then reply to only subsection (a) before listing the question for subsection (b). The labels for questions and responses to correspond to what was provided in the RFP document.**
136	RFP Attachment 6.2, Section C, C.22.i. Please confirm that the State is looking for an explanation of how consumer satisfaction is recorded and not 2013 results.	**The State is asking for both – how you measure customer/plan member satisfaction (e.g. types of survey questions or a copy of your customer survey instrument), as well as examples of recent customer satisfaction metrics of some of your key clients of similar size. Note, client name does not have to be provided; rather, proposer may indicate size of the organization (number of covered lives), type of organization (government, manufacturing, etc.), and the outcome of 2013 customer satisfaction surveys or metrics.**
137	RFP Attachment 6.2, Section C, C.23.a: The question requests the sample copies to be labeled in a specific manner, however such nomenclature is not included for any other sample request. Please confirm that the naming of the file is specific only to this item and does not need to be followed for all other sample documents requested.	**Confirmed.**
138	In regard to Section A- Mandatory Requirement Item A.6 on page 24: We are in the process of URAC PBM accreditation. As you know, it is a very lengthy process. Our projected completion date is January, 2016. Will this disqualify us from consideration or is this a component of the requirements that can be revised?	**The State requires URAC accreditation/certification of the PBM as of the benefits go-live date (1/1/2015).**

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139	Regarding the claims data you sent, our analyst noticed that the data provided simply summarizes the rx, ds, qty and costs by NDC. Any chance of getting a more detailed file with NCPDP? Maybe that will be in the file you mentioned we'll need to complete the formulary disruption? Ideally, to build a strong pricing proposal, we would like the following fields in the claims data: **Field** — **Description** National Drug Code (NDC) — Eleven digit NDC number as assigned by the FDA Pharmacy ID — Unique number identifying the pharmacy. National Association of Board Pharmacists (NABP) number Date of Service — Date the prescription was dispensed Metric Quantity — Number of units, pills, ml, IU, etc. that were dispensed Required format: nnnnnn.n (minimum 1 decimal unit) AWP Unit Price — Average Wholesale Price of the NDC at the time of dispensing. Required format: $nnnn.nnnnn (minimum 4 decimal units) Discounted Ingredient Cost — Discounted (or adjusted) amount based on the type of adjustment applied Dispensing Fee — Contracted amount paid to the pharmacy for the dispensing of the product Deductible — Deductible amount to be paid by cardholder based on the benefit plan (if any) Copay/Co-insurance — Amount the patient/member paid for the drug (if any) Paid Amount — Total amount paid by Plan (if any) Drug Type Indicator — Indicator that identifies the product dispensed as Single Source Brand, Multi-Source brand, or	**Please review the detailed claims file sent upon request of the State's RFP coordinator (on CD).**

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	Generic Line of Business — Indicator that identifies claim as commercial, Medicare,etc. Delivery Method — Method of dispensing – through a **mail or retail** pharmacy. Compound Indicator — Indicator that identifies the product as a compounded medication Formulary Indicator — Indicator that identifies the product as preferred, non-preferred U&C — Usual & Customary price Days Supply — Number of days dispensed for this therapy. Patient ID — Encrypted unique identifier of serviced patient (employer or dependent).	
140	I was looking over the RFP for the State of TN and wanted to confirm something related to the pharmacy benefit management. Will the worker compensation aspect of this program be separate from group health related needs? OR does the state want one provider to be responsible for both work comp AND group health-non work comp pharmacy benefits?	**Worker compensation claims are not being provided for or sought under this RFP or contract. The State has a separate PBM that administers worker comp through the Treasury department.**
141	Also, how about work comp ancillary services such as durable medical equipment, home health, transportation/translation services, etc. Is that another RFP or is that included with this current one?	**Workers compensation ancillary services are not being sought as a part of this RFP. Some of the services noted here are available under the medical plans currently administered by BCBS-TN and Cigna and are not pertinent to this PBM RFP.**
142	Can you confirm that there is no PHI included in this claims file?	**Yes**
143	Can you tell me what your strategy is regarding the State retirees? Do you plan to/currently administer either an RDS or EGWP plan?	**The State currently allows pre-65 retirees to remain on our plans until age 65 – at which time they must leave our plan and enroll in Medicare. Pre 65 retirees currently receive the same prescription drug**

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		benefits as active employees. The State Medicare Supplement Plan is not a part of this RFP or contract, so an RDS or EGWP is not pertinent.
144	If one of the mandatory requirements are not met, does that automatically eliminate our proposal?	**Please refer to RFP Section 5.2.1.2.; if a mandatory requirement is not met, the State's evaluation team can either - request clarifications or corrections; or determine the proposal non-responsive to the RFP and reject it.**
145	What is the total employee plus dependents, spouse count or total lives for the RFP?	**As of April 2014 there were 137,897 heads of contract, 136,712 dependents (children, spouses, etc.) for a grand total enrollment of 274,609.**
146	Does the State of TN benefits program have any language related to affirmative action? Are there any requirements of vendors participating in the plan ;i.e., providing services to adhere to any affirmative action policy implemented by the state in relation to the prescription benefits program for it employees?	**No, the State of Tennessee's Diversity Program does not pertain to Affirmative Action policies. Affirmative Action Plans and/or data are not a proper response to the Section B Diversity Language.**
147	Can you please clarify whether all documents for RFP #31786-00121 accessible via the link below? http://tn.gov/generalserv/cpo/sourcing_sub/rfp.shtml We have been able to access the RFP itself via the hyperlink provided (document ID 31786-00121), but have not been able to open Appendix 7.4 or the Cost Proposal via the hyperlinks.	**All documents for RFP #31786-00121 are accessible at the link referenced. If you are experiencing difficulty opening any documents you may request them separately via email.**

3. Add the following as RFP section 6.2, Section A, A.11 and renumber any subsequent sections as necessary:

A.5.	Provide **EITHER**: (a) an official document or letter from an accredited credit bureau, verified and dated within the last three (3) months and indicating a positive credit rating for the Proposer (NOTE: A credit bureau report number without the full report is insufficient and will not be considered responsive.); **OR** (b) a Dun & Bradstreet short-form report, verified and dated within the last three (3) months and indicating a positive credit rating for the Proposer; **OR** (c) In the event the Proposer is a privately held company that does not report to a credit bureau and is unable to pull a Dun & Bradstreet short-form report, the Proposer may submit a letter from its bank on the bank's letterhead indicating that the Proposer is in good standing with the bank and has been

	for the past twenty-four (24) months consecutively.

4. Add the following as RFP section 6.2, Section A, A.11 and renumber any subsequent sections as necessary:

A.11	Provide the Respondent's most recent independent audited financial statements. Said independent audited financial statements must: (1) reflect an audit period for the most recent available fiscal year; (2) be prepared with all monetary amounts detailed in United States currency; (3) be prepared under United States Generally Accepted Accounting Principles (US GAAP); (4) include the auditor's opinion letter; financial statements; and the notes to the financial statements; and (5) be deemed, in the sole discretion of a C.P.A. employed by the State and charged with the financial document review of the Respondent, to reflect sufficient financial stability to undertake the subject contract with the State if awarded pursuant to this RFP. NOTES: ▪ Reviewed or Compiled Financial Statements will not be deemed responsive to this requirement and will not be accepted. ▪ All persons, agencies, firms, or other entities that provide opinions regarding the Respondent's financial status must be properly licensed to render such opinions. The State may require the Respondent to submit proof that the person or entity who renders an opinion regarding the Respondent's financial status is licensed, including the license number and state in which the person or entity is licensed.

5. Delete RFP section 6.2, Section C, C.7.e in its entirety and insert the following in its place (any sentence or paragraph comprised by revised or new text is highlighted in yellow)**:**

(e) Your ability to implement a Coordination of Benefits model, including possible reimbursement, for members who have other prescription drug coverage; include how it would work from the member's perspective.

6. Delete RFP section 6.6, Pro Forma Contract A.4.h in its entirety and insert the following in its place (any sentence or paragraph comprised by revised or new text is highlighted in yellow)**:**

h. The Contractor shall train all Contractor staff and sub-contracted staff regarding all applicable aspects of the Public Sector Plan Pharmacy Program. The State may approve or disapprove the Contractor's Subcontractors or its staff providing core services assigned to this Contract prior to the proposed staff assignment. All new Subcontractors, who will be providing core services not already identified in the Contractor's RFP response, must be approved by the State in writing prior to the performance of any work required under this contract. For the purpose of this Contract, core services are defined as those that touch or affect the member, specifically member customer services, member call center, mail and specialty pharmacy services (if used by the member), claims processing and adjudication, appeals processing at all levels. Also included are such services that affect the plan administrator such as the contractor's account team that interacts with the state on a daily basis through telephone calls, emails, and face to face meetings, clinical advisors or pharmacists on the account team, and the contractor's P&T (pharmacy & therapeutics) committee which develops the contractor's standard national drug formulary.

7. Delete RFP section 6.6, Pro Forma Contract A.4.i in its entirety and insert the following in its place (any sentence or paragraph comprised by revised or new text is highlighted in yellow)**:**

i. The State may direct the Contractor to replace staff members or subcontractors providing core services, as it deems necessary and appropriate. The decision of the State on these matters shall not be subject to appeal.

8. **Delete RFP section 6.6, Pro Forma Contract A.4.k in its entirety and insert the following in its place** (any sentence or paragraph comprised by revised or new text is highlighted in yellow)**:**

k. If any key positions (e.g. the State's designated account Strategic Account Executive, Account Manager, Clinical Pharmacist) become vacant, then the 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.

9. **Delete RFP section 6.6, Pro Forma Contract A.5.h in its entirety and insert the following in its place** (any sentence or paragraph comprised by revised or new text is highlighted in yellow)**:**

h. The contractor's system's must provide members a point-of-sale explanation of pharmacy benefits for Claims processed through its mail service and Specialty pharmacies, and concurrently provide online Claims records for prescriptions dispensed through all channels, which lists the individual member's pharmaceutical out-of-pocket expenses, the plan sponsor's costs, and any cost savings opportunities for the member, as well as providing members, on at least an annual basis, with a summary of their benefit cost savings opportunities from the prior year.

10. **Delete RFP section 6.6, Pro Forma Contract A.5.l in its entirety and insert the following in its place** (any sentence or paragraph comprised by revised or new text is highlighted in yellow)**:**

l. 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) and shall be accessible and operational no less than ninety-seven percent (97%) of this time. The Contractor shall not charge participating pharmacy providers any POS fees for services 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.

11. **Delete RFP section 6.6, Pro Forma Contract A.6.b in its entirety and insert the following in its place** (any sentence or paragraph comprised by revised or new text is highlighted in yellow)**:**

b. The Contractor shall pay the claim or advise the provider that a submitted claim is: (1) a "denied claim" (specifying all reasons for denial); or, (2) remains as a transaction that cannot be denied or allowed due to insufficient information and/or documentation (specifying all information and/or documentation that is needed from the provider in order to allow or deny the claim). An incomplete transaction may be resubmitted with the information necessary to complete the claim.

12. **Delete RFP section 6.6, Pro Forma Contract A.6.g in its entirety and insert the following in its place** (any sentence or paragraph comprised by revised or new text is highlighted in yellow)**:**

g. The Contractor shall reimburse pharmacies for claims from their own funds and accounts. For the payment of all claims under this contract, the Contractor shall issue payments in the form of checks and/or Automated Clearing House (ACH) electronic funds transfer against the Contractor's own bank account. The Contractor shall maintain security and quality controls over the design, printing, and mailing of checks, as well as any fraud prevention

features of checks. Additional requirements related to payments are listed in Section C.3 of the Contract. These claims paid by the Contractor will be reimbursed by the State's Office of Business and Finance (OBF) upon receiving sufficient documentation and reports from the Contractor to validate/justify the accuracy of the requested reimbursement for paid claims. The State will only reimburse the Contractor for paid claims. Claims that have been processed and adjudicated but not yet paid by the Contractor to pharmacies will not be reimbursed by the State.

13. **Delete RFP section 6.6, Pro Forma Contract A.7.a. in its entirety and insert the following in its place** (any sentence or paragraph comprised by revised or new text is highlighted in yellow)**:**

    a. The Contractor shall establish and maintain its broadest available national pharmacy provider network and a statewide Any Willing pharmacy provider network of retail, 90-day-at-retail, mail order, and specialty pharmacies. The network shall be adequate to provide covered pharmacy services and pharmacy location sites available and accessible in accordance with the Terms and Conditions as set forth by the State and in compliance with Tennessee Code Annotated Section 56-7-2359. The Contractor shall provide this said network through the entire term of the contract, including term extensions.

14. **Delete RFP section 6.6, Pro Forma Contract A.7.g.(5) in its entirety and insert the following in its place** (any sentence or paragraph comprised by revised or new text is highlighted in yellow)**:**

    (5) The PBM mail order service shall inform the member, the prescriber, and the State if it substitutes products that will result in a member co-pay or plan cost that is greater than the co-pay or plan cost that would have been incurred had the prescription been dispensed as written. The Contractor shall only engage in such substitutions when there are widespread marketplace drug availability issues with the more cost effective product, if there is a member safety issue or if there is a drug interaction or efficacy issue – and only with prescriber approval.

15. **Delete RFP section 6.6, Pro Forma Contract A.8.e. in its entirety and insert the following in its place** (any sentence or paragraph comprised by revised or new text is highlighted in yellow)**:**

    e. The Contractor shall implement changes to the formulary, Step Therapy, PA and other clinical edit requirements within thirty (30) business days of the State's approval or request. Additional time, beyond thirty (30) business days, may be granted with the state's prior written approval. Changes shall include modifications to the POS system and all supporting systems and documents. The Contractor shall notify pharmacy providers and affected plan members in writing at least thirty (30) days prior to the implementation, unless the Contractor and State mutually agree to a shorter notification time. The State must provide prior written approval for all pharmacy provider and member notifications.

16. **Delete RFP section 6.6, Pro Forma Contract A.8.f. in its entirety and insert the following in its place** (any sentence or paragraph comprised by revised or new text is highlighted in yellow)**:**

    f. The Contractor shall not implement or administer any program that results in the therapeutic switching of members from lower net cost products to higher net cost products. The only exceptions are for member safety or efficacy issues or, upon notification to the State and with prescriber approval, in response to widespread marketplace drug availability issues with the more cost effective product.

17. **Delete RFP section 6.6, Pro Forma Contract A.8.i.(1) in its entirety and insert the following in its place** (any sentence or paragraph comprised by revised or new text is highlighted in yellow)**:**

i. Formulary Design and Development:

(1) Based on the recommendations by the Contractor's Pharmacy and Therapeutics (P&T) Committee, the Contractor shall design the Public Sector Plan formulary to (i) maximize the prescribing and dispensing of safe and clinically effective drugs within each therapeutic class that are the most clinically effective as well as the most cost-effective (ii) ensure that the more costly drugs, which do not have any significant clinical or therapeutic advantage over others in their class, are used only when medically necessary; have a higher formulary tier; and have a higher member cost share (in certain instances, these drugs may be excluded from the formulary) and (iii) ensure that ninety-five percent (95%) or more of mail order prescriptions and ninety percent (90%) or more of retail prescriptions for multi-source drugs will be dispensed with a generic product.

18. **Delete RFP section 6.6, Pro Forma Contract A.9.b. in its entirety and insert the following in its place** (any sentence or paragraph comprised by revised or new text is highlighted in yellow)**:**

b. TEXT DELETED

19. **Delete RFP section 6.6, Pro Forma Contract A.15.a. in its entirety and insert the following in its place** (any sentence or paragraph comprised by revised or new text is highlighted in yellow)**:**

a. "Rebates" include all revenue received by the Contractor from outside sources related to the Public Sector Plan's utilization or enrollment in programs (collectively the "Total Manufacturer Value"). These would include but are not limited to access fees, market share fees, rebates, formulary access fees, data fees, administrative fees and marketing grants from pharmaceutical manufacturers, wholesalers and data warehouse vendors. Rebates will also exclude purchase discounts (e.g. prompt pay discounts) from mail and specialty products.

20. **Delete RFP section 6.6, Pro Forma Contract A.15.d. in its entirety and insert the following in its place** (any sentence or paragraph comprised by revised or new text is highlighted in yellow)**:**

b. The State will audit the rebates that are accrued and paid to the state. Contractor shall pass all Rebates through to the plan. Rebates shall be 100% auditable to the NDC level. The Contractor shall provide, with each pharmacy rebate check presented to the State, a report showing the amount of the check broken down by the groups that comprise the total check amount(e.g. currently funder accounts 55000 State Actives, 56000 Local Education Actives, 58000 Local Government Actives, 51000 State Retirees, 52000 Local Education Retirees, and fund 53000 Local Government Retirees), as well as the calendar quarter that the various rebate amounts are attributable to.

21. **Delete RFP section 6.6, Pro Forma Contract A.18.d. in its entirety and insert the following in its place** (any sentence or paragraph comprised by revised or new text is highlighted in yellow)**:**

d. TEXT DELETED

22. **Delete RFP section 6.6, Pro Forma Contract A.21.j. in its entirety and insert the following in its place** (any sentence or paragraph comprised by revised or new text is highlighted in yellow)**:**

j. At the request of the State, the Contractor shall offer credit protection for those times in which a member's PHI, PII or Payment Card Information (PCI) is disclosed or thought to have been disclosed in a Breach, consistent with the definition set forth in 45 CFR 164.402, caused or permitted by Contractor's acts or omissions.

23. **Delete RFP section 6.6, Pro Forma Contract A.23.g. in its entirety and insert the following in its place** (any sentence or paragraph comprised by revised or new text is highlighted in yellow)**:**

    e. TEXT DELETED

24. **Delete RFP section 6.6, Pro Forma Contract A.29.a. in its entirety and insert the following in its place** (any sentence or paragraph comprised by revised or new text is highlighted in yellow)**:**

    a. With provision by the State of thirty (30) days notice, and with the execution of any applicable third party confidentiality agreements, the State or its qualified authorized auditor (experienced in conducting pharmacy audits) has the right to examine and audit the services, pricing (including rebates), and any provision of this contract to ensure compliance with all program requirements and contractual obligations. For the purpose of audit requirements, Contractor shall include its parents, affiliates, subsidiaries and subcontractors. All eligibility and claims data belong to the State. The State has sole authority to determine who to choose for any kind of audit: financial, pharmacy rebates, or other. This includes state employees, state staff from the Comptroller's audit staff, and consulting staff under contract with the Division of Benefits Administration. This audit right extends to any subcontractors of the PBM (e.g. rebate processor). If the State contracts with a private entity to conduct an audit of Contractor, the State will require the auditing entity to negotiate a reasonable non-disclosure agreement with the Contractor that will ensure that the auditor is independent, has no conflict of interest with Contractor and has acceptable procedures in place to ensure that no information derived from the audit of Rebate or network pharmacy contracts is used in or accessible to any consulting function the auditor may provide.

25. **Delete RFP section 6.6, Pro Forma Contract A.29.f. in its entirety and insert the following in its place** (any sentence or paragraph comprised by revised or new text is highlighted in yellow)**:**

    f. The State will have access to any data necessary to ensure the Contractor is complying with all contract terms, which includes but is not limited to, one hundred percent (100%) of claims data, which includes at least all NCPDP fields from the most current version and release; retail pharmacy contracts; pharmaceutical manufacturer; mail and specialty pharmacy contracts to the extent they exist with other vendor(s); utilization management reviews; clinical program outcomes; appeals; information related to the reporting and measurement of Liquidated Damages; etc.

26. **Delete RFP section 6.6, Pro Forma Contract A.29.l. in its entirety and insert the following in its place** (any sentence or paragraph comprised by revised or new text is highlighted in yellow)**:**

    l. If the outcome of the audit results in an amount due to the State, one hundred percent (100%) of the payment of such settlement will be made by the Contractor within thirty (30) days of the Contractor's receipt of the final audit report. The Contractor shall also pay the State interest on the overcharge by multiplying the amount of the overcharge by the Tennessee State Pooled Investment Fund's Gross Total Portfolio Average Earnings Rate for the month(s) in the overcharge period, times the number of days in the overcharge period(s), divided by 365 days/year. Any amount due the State which is not paid by the Contractor within (30) days of the Contractor's receipt of the final audit report shall be subject to a compounding interest penalty of one percent (1%) per month. The Contractor may submit written comments on the audit report including explanations of or objections to the findings of the audit report. The State, in its sole discretion, may amend the audit findings or adhere to the original findings. The thirty (30) day payment period would be suspended and would not run between the time the State receives Contractor's comments and the time the State responds.

27. **Delete RFP section 6.6, Pro Forma Contract A.32.a. in its entirety and insert the following in its place** (any sentence or paragraph comprised by revised or new text is highlighted in yellow)**:**

a. **Administrative Fee –** The fee for pharmacy benefit management services paid by the State to the Contractor. The administrative fee is the only compensation due the Contractor under the contract if a transparent pass-through pricing model is selected by the State. The contractor's monthly compensation is a function of the contractor's administrative fee multiplied by the number of participating members per month (PMPM). The State recognizes that clinical program fees are not included in the administrative fee. The State also recognizes that the Contractor may make a margin on mail and specialty drugs that it dispenses out of its own pharmacies.

28. **Delete RFP section 6.6, Pro Forma Contract A.32.c. in its entirety and insert the following in its place** (any sentence or paragraph comprised by revised or new text is highlighted in yellow)**:**

c. **Brand Drug –** The innovator drug product submitted to the FDA for approval. A brand drug is a drug produced and distributed with patent protection or after the patent protection has ended, represents the original innovator drug before patent protection ended.

29. **Delete RFP section 6.6, Pro Forma Contract A.32.ss. in its entirety and insert the following in its place** (any sentence or paragraph comprised by revised or new text is highlighted in yellow)**:**

ss. **Rebates -** All revenue received by the Contractor from outside sources related to the Plan's utilization or enrollment in programs (collectively the "Total Manufacturer Value"). Also, the amounts paid to the contractor (i) pursuant to the terms of an agreement with a pharmaceutical manufacturer, (ii) in consideration for the inclusion of such manufacturer's drug(s) on the contractor's formulary, and (iii) which are directly related and attributable to, and calculated based upon, the specific and identifiable utilization of certain prescription drugs by members. These would include but are not limited to access fees, market share fees, rebates, formulary access fees, administrative fees and marketing grants from pharmaceutical manufacturers, wholesalers and data warehouse vendors. Rebates will also exclude purchase discounts (e.g. prompt pay discounts) from mail and specialty products.

30. **Delete RFP section 6.6, Pro Forma Contract A.32.fff. in its entirety and insert the following in its place** (any sentence or paragraph comprised by revised or new text is highlighted in yellow)**:**

fff. **Usual and Customary (U&C) –** Retail price charged by a participating pharmacy for the particular drug in a cash transaction on the date the drug is dispensed, as reported by the retail pharmacy.

31. **Delete RFP section 6.6, Pro Forma Contract B in its entirety and insert the following in its place** (any sentence or paragraph comprised by revised or new text is highlighted in yellow)**:**

B. CONTRACT TERM:

This Contract shall be effective for the period commencing on July 1, 2014 and ending on June 30, 2020. The State shall have no obligation for services rendered by the Contractor which are not performed within the specified period. The Contractor understands that they shall provide staff for an implementation period to last from the time of contract award until benefits go-live on January 1, 2015, and that the Contractor shall not collect any form of payment or administrative fees during this time. Conversely, for a period of six (6) months after the contract terminates, the Contractor shall continue to process and pay any claims that may arrive in any form as long as said claims are for a date of service within the term of this contract, and with the understanding

that the Liquidated Damages stated in Attachment B shall not apply during this six (6) month period.

32. Add the following as RFP section 6.6, Pro Forma Contract C.3.h and renumber any subsequent sections as necessary:

h. The Contractor shall reconcile, within ten (10) working days of receipt, payment information provided by the State (e.g. upon providing the State with a monthly invoice and the Contractor receives payment for this invoice, if the Contractor has questions or concerns about payment, Contractor must do so within 10 days). Upon identification of any discrepancies, the Contractor shall immediately advise the State.

33. Delete RFP section 6.6, Pro Forma Contract E.15. in its entirety and insert the following in its place (any sentence or paragraph comprised by revised or new text is highlighted in yellow)**:**

E.15. Breach. A party shall be deemed to have breached the Contract if any of the following occurs:

— failure to perform in accordance with any term or provision of the Contract;
— partial performance of any term or provision of the Contract;
— any act prohibited or restricted by the Contract, or
— violation of any warranty.

For purposes of this Contract, these items shall hereinafter be referred to as a "Breach."

a. Contractor Breach— The State shall notify Contractor in writing of a Breach.

(1) In event of a Breach by Contractor, the State shall have available the remedy of Actual Damages and any other remedy available at law or equity.

(2) Liquidated Damages— In the event of a Breach, the State may assess Liquidated Damages as outlined in Contract Attachment B. The State shall notify the Contractor of amounts to be assessed as Liquidated Damages. The parties agree that due to the complicated nature of the Contractor's obligations under this Contract it would be difficult to specifically designate a monetary amount for a Breach by Contractor as said amounts are likely to be uncertain and not easily proven. Contractor hereby represents and covenants it has carefully reviewed the Liquidated Damages contained in above referenced, Attachment B and agree that said amounts represent a reasonable relationship between the amount and what might reasonably be expected in the event of Breach, and are a reasonable estimate of the damages that would occur from a Breach. It is hereby agreed between the parties that the Liquidated Damages represent solely the damages and injuries sustained by the State in losing the benefit of the bargain with Contractor and do not include any injury or damage sustained by a third party. The Contractor agrees that the liquidated damage amount is in addition to any amounts Contractor may owe the State pursuant to the indemnity provision or other section of this Contract.

The State may continue to withhold the Liquidated Damages or a portion thereof until the Contractor cures the Breach, the State exercises its option to declare a Partial Default, or the State terminates the Contract. The State is not obligated to assess Liquidated Damages before availing itself of any other remedy. The State may choose to discontinue Liquidated Damages and avail itself of any other remedy available under this Contract or at law or equity; provided, however, Contractor shall receive a credit for said Liquidated Damages previously withheld except in the event of a Partial Default.

The State may conduct “secret shopper” and other monitoring activities during the operation of this Contract. The State may also assess liquidated damages for breaches of contract that it discovers during these and other activities as outlined in Contract Attachment B.

(3) Partial Default— In the event of a Breach, the State may declare a Partial Default. In which case, the State shall provide the Contractor written notice of: (1) the date which Contractor shall terminate providing the service associated with the Breach; and (2) the date the State will begin to provide the service associated with the Breach. Notwithstanding the foregoing, the State may revise the time periods contained in the notice written to the Contractor.

In the event the State declares a Partial Default, the State may withhold, together with any other damages associated with the Breach, from the amounts due the Contractor the greater of: (1) amounts which would be paid the Contractor to provide the defaulted service; or (2) the cost to the State of providing the defaulted service, whether said service is provided by the State or a third party. To determine the amount the Contractor is being paid for any particular service, the Department shall be entitled to receive within five (5) days any requested material from Contractor. The State shall make the final and binding determination of said amount.

The State may assess Liquidated Damages against the Contractor for any failure to perform which ultimately results in a Partial Default with said Liquidated Damages to cease when said Partial Default is effective. Upon Partial Default, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount. Contractor agrees to cooperate fully with the State in the event a Partial Default is taken.

(4) Contract Termination— In the event of a Breach, the State may terminate the Contract immediately or in stages. The Contractor shall be notified of the termination in writing by the State. Said notice shall hereinafter be referred to as Termination Notice. The Termination Notice may specify either that the termination is to be effective immediately, on a date certain in the future, or that the Contractor shall cease operations under this Contract in stages. In the event of a termination, the State may withhold any amounts which may be due Contractor without waiver of any other remedy or damages available to the State at law or at equity. The Contractor shall be liable to the State for any and all damages incurred by the State and any and all expenses incurred by the State which exceed the amount the State would have paid Contractor under this Contract. Contractor agrees to cooperate with the State in the event of a Contract Termination or Partial Takeover.

(5) Opportunity to Cure – In the event of Contractor Breach as referenced above in Sections (3) and (4) the State may provide the Contractor the opportunity to cure as referenced in Contract Section D.4. The Contractor must present the State with a written request detailing the efforts it will take to resolve the problem and the time period for such resolution. This opportunity to "cure" shall not apply to circumstances in which the Contractor intentionally withholds its services or otherwise refuses to perform. The State will not consider a request to cure contract performance where there have been repeated problems with respect to identical or similar issues, or if a cure period would cause a delay that would impair the effectiveness of State operations. In circumstances where an opportunity to cure is not available, termination will be effective immediately.

b. State Breach— In the event of a Breach of Contract by the State, the Contractor shall notify the State in writing within 30 days of any Breach of Contract by the State. Said notice shall contain a description of the Breach. Failure by the Contractor to provide said written notice shall operate as an absolute waiver by the Contractor of the State's Breach. In no event shall any Breach on the part of the State excuse the Contractor from full performance under this Contract. In the event of Breach by the State, the Contractor may avail itself of any remedy at law in the forum with appropriate jurisdiction; provided, however, failure by the Contractor to give the State written notice and opportunity to cure as described herein operates as a waiver of the State's Breach. Failure by the Contractor to file a claim before the appropriate forum in Tennessee with jurisdiction to hear such claim within one (1) year of the written notice of Breach shall operate as a waiver of said claim in its entirety. It is agreed by the parties this provision establishes a contractual period of limitations for any claim brought by the Contractor.

34. Add the following as RFP section 6.6, Pro Forma Contract E.18 and renumber any subsequent sections as necessary:

E.18. Confidential and Proprietary Information. The State agrees to protect, to the fullest extent permitted by state law, the confidentiality of information expressly identified by the Contractor as confidential and proprietary, including information that would allow a person to obtain unauthorized access to confidential information or to electronic information processing systems owned by or licensed to the State to the extent permitted by the Tennessee Public Records Act.

35. Add the following as RFP section 6.6, Pro Forma Contract E.19 and renumber any subsequent sections as necessary:

E.19. Limitation of Liability. The parties agree that the Contractor's liability under this Contract shall be limited to an amount equal to two (2) times the Maximum Liability amount detailed in section C.1. and as may be amended, PROVIDED THAT in no event shall this section limit the liability of the Contractor for intentional torts, criminal acts, or fraudulent conduct.

a. The State acknowledges the Contractor does not manufacture the drugs dispensed hereunder or make prescribing decisions. Therefore, Contractor makes no warranties of merchantability or fitness for a particular purpose; and

b. The State acknowledges that Contractor does not establish AWP or other available industry pricing benchmark methodologies (e.g., "Wholesale Acquisition Costs" or "WAC"), and Contractor shall have no liability to the State arising from the use of Medi-Span or any other nationally available reporting service.