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DEPARTMENT OF BUDGET AND MANAGEMENT

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QUESTIONS AND ANSWERS
PHARMACY BENEFITS MANAGEMENT SERVICES AND PURCHASING POOL MANAGEMENT

SOLICITATION NUMBER – BPM039929

1. Section "4.17 Acceptance of Terms and Conditions: By submitting a Bid in response to this MS-IFB, the Bidder, if selected for award, shall be deemed to have accepted the terms and conditions of this MS-IFB and the Contract, attached hereto as Attachment M. Any exceptions to this MS-IFB or the Contract must be raised prior to Bid submission. Changes to the solicitation, including the Bid Form or Contract, made by the Bidder may result in Bid rejection."
Could you clarify in what method and the timeframe we should be raising any possible exceptions to Attachment M – Contract and/or any terms and conditions of MS-IFB?

Response: Please refer to Question and Answers Document #1. The due date was updated to 2/16/2024 for all questions and possible exception requests.

2. Regarding the Specialty Drug Management Program, will all specialty drugs fall under this program and have Utilization Management programs vs. the categories outlined in Attachment S – Plan Design and Clinical Programs for UM programs?

Response: Not all specialty medications will have utilization management. The intent is to ensure the appropriate use of specialty medications through clinical utilization management programs such as prior authorizations and quantity limits.

3. Is the Core Medication Management - Core Gaps in Care program in place for Medicare only or commercial lives as well?

Response: Per Attachment S, Core Medication Management – Core Gaps in Care is a Commercial program. The Medicare program is also listed in Attachment S; Pharmacy Advisor Support: Closing Gaps in Medication Therapy.

4. In the Formulary Management: Hyperinflation Plan Design, are these drugs excluded from coverage, and evaluated quarterly for new additions and then added to exclusion list on an annual basis?

Response: Yes, please refer to Attachment S.

5. How do you define Hyperinflation?

Response: Drugs subject to significant or egregious price increases

6. Please share your Hyperinflation list.

Response: Please refer to Attachment S

7. For Prime's looking to achieve the 1% VSBE participation goal, must VSBEs be located in the State of Maryland in order to be counted for purposes of achieving the VSBE participation goal?

Response: A certified Veteran-Owned Small Business Enterprises (VSBE) must be verified by the State Department of Veterans Affairs or US Department of Veteran's Affairs Vets First Verification Program (VetBiz) and registered as a VSBE on the State's eProcurement platform, eMaryland Marketplace Advantage (eMMA).

8. Could you please share the State of Maryland's current MBE and VSBE suppliers and the services they provide?

Response: The listing of MBEs and VSBEs is available through the "Vendor Search" on eMMA.

9. Section 2.3.11 Data and Reporting, item B. Please clarify if this timeframe of seventy-five (75) calendar days following the end of the preceding quarter for the Report Card is what the State is looking for in terms of timing of this report, or if it should be the same timeframe as requested in Attachment T – PBA, Section 4.7 Performance Guarantees, PG-4?

Response: The timeframe will be adjusted to 60 days to reflect the requested time frame in Attachment T - PBA, Section 4.7 Performance Guarantees, PG-4.

10. Attachment T – PBA, Section 4.6, Question 34. Are we able to add any additional exclusions to the list of exclusions provided?

Response: No, the exclusions listed in Attachment T – PBA, Section 4.6, Question 34 are the only exclusions permitted. Any requested additional exclusions were to be submitted to the State by the February 16th deadline to be considered. Please reference the Question and Answer Document #1.

11. Is the intent for the guarantees to be reconciled in aggregate for all Purchasing Pool member entities given that the size/utilization of each entity could vary greatly?

Response: Yes, guarantees should be reconciled in aggregate.

12. When evaluating pricing offers, will just the base period (3 years) be considered or will the pricing submitted for option period 1 and option period 2 (years 4-7) also be considered.

Response: All pricing submitted will be considered as the Total Projected Cost. The Total Projected Cost is the sum of the final Reverse Auction round bids of Functional Area 1 and Functional Area 2.

13. Please clarify, in detail, how bids will be determined to have satisfied the technical requirements in the PBA?

Response: The PBA is expected to be accepted in its entirety (all terms agreed to). For questions that require documentation, the State will review the submitted documentation for completeness and reasonability.

14. Will any deviations be acceptable? Or will a single deviation disqualify bidders from advancing to the reverse auction round?

Response: No, all bidders seeking clarification to any question must have addressed that with the State by the question submission deadline. Please refer to the Questions and Answers Document #1.

15. Will there be the ability for bidders to provide context or clarification when responding to PBA requirements or will bidders only have the ability to agree/disagree without explanation?

Response: Bidders will only be able to agree or disagree without explanation.

16. Please describe the states expectations as it relates to the contractor marketing the Maryland Rx Purchasing Pool program to potential Purchasing Pool participants.

Response: Our expectations include:

- Contractor will develop an annual marketing strategy each January
- Create a targeted letter campaign for municipalities throughout the State
- Attend various conferences including Maryland Municipal League and Maryland Association of Counties (summer and winter)
- Meet with interested groups and provide quotes as requested

17. When responding to the requirements in Attachment P and T in RFP360 respectively, will there be an opportunity to elaborate on how we can provide the services (i.e. via dropdown, check box, and or text box). Further, will bidders have the opportunity to begin responding to these items prior to the respective Phase I or Phase II start dates?

Response: Please refer to question 15. Bidders will not have the opportunity to respond prior to Phase I or II but can prepare to respond by referring to Attachment T and Attachment B which will align with RFP360.

18. Please clarify which attachment is applicable to Requirement 4.2.2.2. The Attachment Q–100 Character File Layout appears to refer to a summary reporting format; however, the requirement appears to be requesting something more detailed. Is the intent to refer to Attachment R or possibly a different attachment?

Reference: 4.2.2.2 Contractor shall provide, on a monthly basis, a full file of all claim activity to the State's data warehouse vendor. This file will include member Social Security numbers and will be in the format specified in Attachment Q–100 Character File Layout.

Response: Please see the Amendment to Attachment T.

19. When will the State provide claims data?

Response: Claims data will be provided to qualified bidders in Phase II: Participant Bidding Agreement.

20. Please provide a census file.

Response: Please see the attached census file for reference.

21. Please provide monthly volume of calls handled by the call center.

Response: Commercial: Average monthly call volume over the last 3 calendar years ranges from 2,600 to 2,800. The average volume of calls routed to a customer service representative ranges from 2,000 to 2,300 per month.

EGWP: Average monthly call volume over the last 3 calendar years ranges from 1,100 to 1,300. The average volume of calls routed to a customer service representative range is nearly unchanged.

22. Please provide the average number of prior authorizations, appeals, and grievances per month (or annually).

Response: Prior Authorization (all) in 2023: 22,000
Appeals (all) in 2023: 1,300

23. What is the client's ERISA status?

Response: The State's plan is not subject to ERISA.

24. Please provide the average number of DMRs (direct member reimbursement) per month (or annually).

Response: Average per year = 7,500

25. As a privately held company, that only releases its audited financial statements to a potential client's direct financial contact. Please provide the name and contact method for a financial contact for bidders to submit the requested documents.

Response: All bid documents must be submitted, as required in Section 4 Procurement Instructions. Bids are required to be submitted through the Milliman RFP360 Platform in order to be received by the Procurement Officer. As instructed in Section 4.8 Confidentiality of Bids/Public Information Act Notice, Bidders should clearly identify those portions of its Bid that it considers confidential and/or proprietary commercial information. For privately held companies, audited financial statements would be treated
as confidential, if marked accordingly.

26. Are there any in-house pharmacies? If so, please provide the NPI.

Response: No. The State does not manage any in-house pharmacies

27. Can the State confirm if the PBM's contract may be used?

Response: No, it may not.

28. Under 2.3.1.1 (General Requirements) on Page 6 and recognizing that the State of Maryland is requesting annual SOC2 Type 2 reports (3.9, SOC 2 Type 2 Audit Report, Page 40), does the State of Maryland plan on implementing other privacy frameworks (e.g., Privacy by Design) proactively to

ensure privacy across the domains listed (e.g., Implementation, Testing, Deployment, Training, Reporting, and Administrative Tasks)?

Response: The State of Maryland may implement privacy frameworks (e.g., Privacy by Design) that State agencies and vendors that store, process, or transmit State data would be required to comply with. Per Section 3.7.4 (Information Technology, "Contractors shall comply with and adhere to the State IT Security Policy and Standards. These policies may be revised from time to time and the Contractor shall comply with all such revisions."

29. Under section 2.3.11 (Data and Reporting) on Page 17, there are various reports noted. Several privacy regulations, such as HIPAA, grants patients (i.e., data subjects) the right to make requests to review or manage the personal data that businesses have collected on them. These subject rights requests are also referred to as data subject requests (DSRs), data subject access requests (DSARs), or consumer rights requests. Will the State of Maryland be requesting DSRs and/or DSARs reports to ensure that the data subjects are receiving timely responses?

Response: While Section 2.3.11 (Data and Reporting) does not specifically state a requirement to provide DSRs and/or DSARs reports, such documents supporting the request and timely response should be maintained in accordance with Section 24 (Retention of Records) of the Contract (Attachment M) and should be made available for inspection and audit as requested, in accordance with both Section 24 and Section 25 (Right to Audit) of the Contract (Attachment M).

30. Under MBE Research by NAICS Code on Page 104, was NAICS code 541611 used?

Response: The MBE Research on page 104 states that it was found by "Keywords" that are listed. NAICS codes used were 541611, 561410, 529290 and 519290.

31. Confirm that claims covered by the EGWP Wrap do not appear twice in the data. And please confirm how they will be identified.

Response: Confirmed that EGWP Wrap claims do not appear twice in the dataset. In the FA2 claim detail there is a Group column. This column will have a wrap flag included.

32. Are there any limitations regarding rebate offsetting?

Response: Please the Amendment to Attachment T. The intent is that Rebates cannot offset any other pricing categories (i.e., discount guarantees, dispensing fee minimums, etc.). The intent of minimum rebate guarantees is for those claims to be calculated per component (i.e., retail 30 cannot offset retail 90).

100% of Rebates and Manufacturer Payments collected, may be reconciled in aggregate; they may not, however, offset any pricing category outside of Rebates (i.e., network guarantee performance, etc.).

Reconciliation Example: The reconciliation for the first half of 2025 (2025 H1), shall occur around October 1, 2025. Minimum calculations (Minimum Value) shall include all rebatable claims adjudicated during January 1 – June 30, 2025. The total of the 100% of rebates (100% Value) shall include all

rebates collected during January 1 – June 30, 2025, including claims adjudicated at any time in history up to the date of reconciliation. The 2025 H1 reconciliation will compare the Minimum Value to the 100% Value. Should the aggregate 100% Value exceed the total of each individual minimum rebate, the PBM shall pay the difference between the 100% Value and the Minimum Value.

100% Value Example: A claim for a rebatable Brand drug (Claim A) adjudicates and has a date filled of 12/31/2025. Claim A is paid by the manufacturer on June 1, 2025. The reconciliation for the second half of 2025 (2025 H2) occurs around April 1, 2026 and final reconciliation of 2026 H1 occurs around October 1, 2026. Claim A shall be included in the minimum guarantees around April 1, 2026 (2025 H2); Claim A shall be included in the 100% collected/received rebates guarantee around October 1, 2026 (2026 H1).

33. Barring any court ordered requirements, is the intent of the State to move all EGWP participants off of the state sponsored benefits given the result of Fitch vs. State of Maryland? If so, when does the state expect this to happen?

Response: The State declines to answer at this time.

34. Would the State define the terms Subcontractor and Vendor? In the alternate, does the State agree that the term subcontractor only applies to subcontracts created specifically for this contract, does not apply to subcontracts for the performance of multiple contracts, and does not apply to vendors?

Response: A subcontractor is a person or entity that has been awarded by the general contractor or vendor, the performance of part of the work or services of an existing contract entered between the general contractor and the (original) contracting party. A contractor or vendor is a business or entity that agrees to perform work under terms of a contract.

35. Do you currently offer integrated solutions across your health benefits and provide details around your solution.

Response: No.

36. What is the States expectation of volume and cost of non-standard communications of which the contractor will need to cover the cost. What, historically, has the volume and cost been for the current PBM? Will the State accept a limit to the expenses covered by the contractor for custom communications?

Response: The volume and cost of non-standard communications will be determined by business need. Further, the State does not maintain historical data as the responsibility is with the current PBM. However, we would encourage all bidders to consider MBE/VSBE vendors for these purposes to assure compliance with the stated goals. The stated goals are a minimum and are not subject to a maximum.

37. MS-IFB, Section 2.3.11 Data and Reporting, Letter F. states, “Contractor shall support the State’s compliance with the No Surprises Act (NSA) and Transparency Regulations’ requirements by (1) providing Advanced Explanations of Benefits for scheduled services; (2) providing price comparison tools under the NSA; (3) providing the plan with machine-readable files (updated monthly) with in-network negotiated rates and historical out-of-network allowed amounts; (4) for prescription drug coverage, providing machine-readable files with negotiated rates and prices for covered prescription drugs; and (5) reporting on pharmacy and drug costs as required under the Consolidated Appropriations

Act of 2021. Contractor shall provide, on a monthly basis, a full file of all claim activity to the State's data warehouse vendor. This file shall include Social Security Numbers and be transmitted electronically to a designated VPN connection. This process shall be established through the State of Maryland's consultant."

Please confirm that Item F1 and F3 are not applicable to PBM services.

Response: Please see Amendment #3 to the MS-IFB.

38. MS-IFB, Section 3.3 Invoicing, #3.3.3.1.4 – "Submit to the State for each claim invoiced, a 100-character record with claims detail (Attachment Q – 100 Character File Layout). The file containing these records must equal the amount invoiced and be submitted within 48 hours of invoice submission."

Please share a copy of the 100 character file for review.

Response: A sample version of Attachment Q has been shared VIA email and eMMA.

39. Attachment T – Participant Bidding Agreement, Section 4.2.1 Administrative Requirements, #4 "Contractor shall not allow administrative functions required under this contract to be performed offshore."

Can the state please clarify what services specifically they would not allow to be performed offshore?

Response: Any and all administrative functions required under this contract to be performed.

40. Attachment T – Participant Bidding Agreement, Section 4.2.1 Administrative Requirements, #14 – "Contractor shall assume a share of the cost of an annual State-conducted Participant satisfaction survey on its health plan."

Could you share what the cost has been for the PBM so we have a clear estimate?

Response: Currently this is being conducted in house and has no related cost. However, the State reserves the right to outsource this survey, which would result in a shared annual cost.

41. Attachment T – Participant Bidding Agreement, Section 4.8 Required Documents – Please share Attachment T-1_Sample Required Document Formats for review.

Response: T-1 will be uploaded alongside this document.

42. Attachment T – Participant Bidding Agreement, Section 4.3 Ongoing Claims Review. Could you please clarify specifically what will be required of the PBM and or account team to support the ongoing claims review?

Response: Requirements for Ongoing Claims Review are outlined in both the MS-IFB and Attachment T, section 4.3. Please refer to the definitions in Attachment T for clarification on the data to be provided. Ongoing Claims Review is referenced in State Personnel and Pensions Article, Section 2-502.2.

43. MS-IFB, Section 3.3.2 Self-Administered Billing Remittance Schedule – Would the State consider our standard admin invoicing, which also uses eligibility counts vs the self-bill arrangement?

<u>Response:</u> No.

44. MS-IFB, Section 3.3 Invoicing, #3.3.3.2.3 – "For any recoveries as a result of fraud or an audit, the Contractor shall pay the State any portion due to the State via a separate check payment and provide substantiation on a monthly basis. The Contractor shall report on any aggregate activity twice a year, at six-month intervals, on August 15 and February 15."

Our process is to pay these recoveries through invoice credits. We are requesting confirmation that our current established process will satisfy this requirement.

<u>Response:</u> The State requires a separate check be sent. The process via invoice credits will not be accepted.

45. MS-IFB, Section 3.3 Invoicing, #3.3.3.3.3 - Invoices will be sent to the State by 10:00 a.m. Local Time each Monday (or next State business day if Monday is a holiday) for claims processed the prior week. Invoices received after 10:00 a.m. will be processed for payment as per Section 4 (Consideration and Payment) of the Contract.

We cannot guarantee this requested timeframe. We are requesting that the State accommodates by or before 11:00 a.m. CST/12:00 p.m. EST.

<u>Response:</u> The State will keep the requirement. Any invoices received after 10 AM Local Time will be processed the next business day.

46. MS-IFB, Section 3.6 Insurance Requirements, 3.6.1.C, we request to strike the language below from this requirement.

"C. Crime Insurance/Employee Theft Insurance - to cover employee theft with a minimum single loss limit of $1,000,000 per loss. ~~and a minimum single loss retention not to exceed $10,000.~~ The State of Maryland and the Department should be added as a "loss payee."

Reasoning: As a large corporation with significant assets and financial strength, we may maintain deductibles and self-insured retentions when financially prudent to do to and as such, we are unable to contractually agree to restrictions regarding notification, limitations or requirements to seek approval on our ability to assume risk as we deem necessary.

<u>Response:</u> The State does not accept this language.

47. MS-IFB, Section 3.6 Insurance Requirements, 3.6.1.C, we request to strike the language below from this requirement.

"C. Crime Insurance/Employee Theft Insurance - to cover employee theft with a minimum single loss limit of $1,000,000 per loss., and a minimum single loss retention not to exceed $10,000~~. The State of Maryland and the Department should be added as a "loss payee."~~

Reasoning: Crime Is likely not relevant to our services as we rarely hold clients funds/securities. That said, Contractor does maintain a Crime/Fidelity policy designed to provide Contractor protection against its employees' dishonesty or fraudulent acts where such acts are committed with intent to cause loss to Contractor. This insurance applies on a first-party basis, meaning Contractors insurers will reimburse Contractor (only) when a claim is paid so Contractor is unable to name a third party as a "loss payee". Alternatively, Contractors Managed Care Errors and Omissions insurance program is designed to

respond to any third-party liability arising out of Contractors performance of managed care professional services, thus negating the need for loss payee status (or third-party coverage) under Contractors Fidelity/Crime/Employee Dishonesty insurance program.

<u>Response:</u> The State does not accept this language.

48. MS-IFB, Section 3.6 Insurance Requirements, 3.6.2 states "The State shall be listed as an additional insured on the faces of the certificates associated with the coverages listed above, including umbrella policies, excluding Workers' Compensation Insurance and professional liability."

Please confirm the State will accept this modification as underlined below: *The State shall be listed as an additional insured on the faces of the certificates associated with the coverages listed above, including umbrella policies, excluding Workers' Compensation Insurance, <u>Crime</u>, and professional liability*.

<u>Response:</u> The State does not accept this language.

49. MS-IFB, Section 3.6 Insurance Requirements, 3.6.3, we request to add the underlined language, and strike the language below from this requirement.

<u>Contractor will gladly agree to provide the Procurement Officer by certified or electronic mail a 30-day notice of cancellation of any of the required insurance programs if any insurance policy(ies) is(are) cancelled or non-renewed and not immediately replaced by a substantially similar insurance program without a disruption in coverage while continuing to meet the requirements herein</u>. ~~All insurance policies shall be endorsed to include a clause requiring the insurance carrier to provide the Procurement Officer, by certified or electronic mail, not less than 30 calendar days' advance notice of any non-renewal, cancellation, or expiration. The Contractor shall notify the Procurement Officer in writing, if policies are cancelled or not renewed within five (5) calendar days of learning of such cancellation or nonrenewal.~~ The Contractor shall provide evidence of replacement insurance coverage to the Procurement Officer ~~at least fifteen (15) calendar~~ days prior to the expiration of the insurance policy then in effect.

Reasoning: Our company and its subsidiaries engage in numerous contractual relations with varying contractual requirements. Consequently, neither the Contractor or its insurers/brokers are able to unilaterally administer the 30-day (or 10-day/15-day/60-day) notice of cancellation requirement on a blanket basis. More importantly, our insurance premiums on all insurance programs are paid in full at each policy inception thereby eliminating any chance of policy cancellation due to non-payment of premiums. With this said, we are able to agree to the suggested language which we feel will provide notice when really needed (if the policy is not immediately replaced causing a lapse in coverage).

<u>Response:</u> The State does not accept this language.

50. MS-IFB, Section 3.6 Insurance Requirements, 3.6.6, we request to adjust the language below from this requirement.

Reasoning: Our corporation does not provide insurance documentation for our subcontracted vendors. As a standard insurance industry practice, the Contractor requires our subcontractors to maintain reasonable and customary types and limits of insurance based on the specific services that they're providing. Subcontractor insurance requirements vary based upon factors such as contract value, coverages applicable to the scope of services being performed, and financial exposure to us so we are unable to agree to specific insurance requirements for our subcontractors. Please note that in most cases,

the indemnification obligations in the final executed copy of the underlying agreement requires the Contractor to indemnify the counterparty for our negligence in retaining subcontractors or damages arising out of our subcontractors' negligence.

With the above said, we would be willing to agree to add language similar to what we've added here.

Subcontractor Insurance. The Contractor shall require any subcontractors to obtain and maintain appropriate levels of insurance based on the specific services said subcontractor(s) is/are performing. ~~comparable levels of coverage and shall provide the Contract Manager with the same documentation as is required of the Contractor.~~

Response: The State does not accept this language. The Subcontractor is required to maintain appropriate levels of insurance and is required to provide the documentation to the Contract Manager.

51. MS-IFB, Section 3.7.9 Security Incident Response – "1) notify the Department within one (1) Business Day of the discovery of a Security Incident by providing notice via written or electronic correspondence to the Contract Manager, Department chief information officer and Department chief information security officer;"

Our established process is to report an Incident within 72 hours. We are requesting confirmation that our current established process will satisfy this requirement.

Response: No, the State does not accept this process.

52. MS-IFB, Section 3.9 SOC 2 Type 2 Audit Report, 3.9.2.G – "G. If the Contractor currently has an annual, independent information security assessment performed that includes the operations, systems, and repositories of the Information Functions and Processes being provided to the Department under the Contract, and if that assessment generally conforms to the content and objective of the Guidance, the Department will determine in consultation with appropriate State government technology and audit authorities whether the Contractor's current information security assessments are acceptable in lieu of the SOC 2 Report(s)."

We currently have a SOC 2 Type 2 performed against the Security Principle. Would that and a HITRUST Certification be acceptable to the State in lieu of a SOC 2 Type 2 with the additional Principles?

Response: HITRUST Certification, along with a SOC 2 Type 2 audit that only includes the Security principle, is not acceptable to the State in lieu of the SOC 2 Type 2 requiring all five Trust Services Criteria (TSC), as required Section 3.9 SOC 2 Type 2 Audit Report of the IFB. The State requires an annual, independent information security assessment that covers the contract term (i.e., a period of 12 months). The HITRUST Certification generally lasts two years with only limited testing done annually. Additionally, while HITRUST Common Security Framework includes a majority of the controls related to the five TSC, it does not include all controls related to the TSC Processing Integrity.

53. MS-IFB, Section 4.28 Living Wage Requirements —Our organization has established a minimum wage across its U.S. employee base and substantially exceeds the national minimum wage in the U.S.

We are requesting confirmation that our current established standards will satisfy this requirement.

Response: Section 4.28 will need to be followed as is.

54. Attachment T – Participating Bidding Agreement, Section 4.2.1 Administrative Requirements, #17.c states: "c. The ability to assist participants who contact member services with only their name and/or Social Security number."

In order to locate an account and fully assist a member including discussing PHI with them, we need to verify their name and two other pieces of PII from our approved list which includes: full address, DOB, phone number, member ID number, home delivery prescription number, or zip code only if full address wasn't used as an authenticator. Our systems are not setup to be able to locate a member's account by their social security number, unless the client has assigned the social security number as their member ID number. If we did a search by just name, the system would yield too many results as well as still be required to collect two other pieces of information to verify HIPAA.

Is our standard process as described acceptable to the State?

Response: Yes. Please see the Amendment for Attachment T.

55. Attachment T – Participant Bidding Agreement, Section 4.4 Quality Assurance and Audits, Item 2.f "The Contractor shall pay to the State 100% of any overpayment(s) made, along with any liquidated damages assessed, as determined from an audit no later than thirty (30) calendar days after the Contractor has been made aware of the overpayment."

Proposed language: The Contractor shall pay to the State 100% of recovered ~~any~~ overpayment(s) made, along with any liquidated damages assessed, as determined from an audit ~~no later than~~ thirty (30) calendar days from recovery ~~after the Contractor has been made aware of the overpayment.~~"

Response: The State does not accept this language.

56. Attachment T – Participate Bidding Agreement, Section 4.6.1, #34 – Bidder shall agree that only the following shall be excluded in their Bid and Reverse Auction for network guarantees: COB, Compounds, Vaccines, Direct Member Reimbursement Claims ('DMRs'), 340B Claim, subrogation claims, claims through on-site, in-house, or State-owned pharmacies.

We propose the alternative language for this section: Bidder shall agree that only the following shall be excluded in their Bid and Reverse Auction for network guarantees: COB, Compounds, Vaccines, Direct Member Reimbursement Claims ('DMRs'), 340B Claim, subrogation claims, claims through on-site, in-house, or State-owned pharmacies, out of network, paper submitted claims, OTC, LTC, HI and ITU claims.

Response: 'Paper submitted claims' is intended to be captured in the reference to Direct Member Reimbursement Claims (DMR). The State maintains the listing of exclusions in Attachment T - Participant Bidding Agreement, Section 4.6.1, #34. Please note that OTC, LTC, HI, and ITU claims have their own pricing channels in Attachment B - Reverse Auction Instructions & Sample Export.

57. Attachment T – Participant Bidding Agreement, Section 4.7 Performance Guarantees – We propose that Guarantees will be measured and reported 60 days after the end of the quarter, aside from those that are being requested to be measured and reported annually. Our failure to meet any performance standard(s) shall be calculated and paid to the State within thirty (30) days following the State's receipt of the reconciliation report.

Response: Please see response to question 9.

58. Attachment T – Participant Bidding Agreement, Section 4.7 Performance Guarantees – Will Bidders have the ability during Phase 2 to propose modified thresholds for certain performance guarantees? For example, if the requirement is 99.9% and we can offer support at 99.7% would that be acceptable to the State?

Response: No. Section 4.7 Performance Guarantees will include a dropdown to select Agree or Disagree for each performance guarantee. Any requested modifications were to be submitted to the State by the February 16th deadline to be considered. Please reference the Question and Answer Document #1.

59. Attachment T – Participant Bidding Agreement, Section 4.7 Performance Guarantees – Will Bidders be allowed to propose a maximum aggregate dollar amount of liquidated damages related to performance guarantees each year?

Response: No, there is no maximum aggregate dollar amount of liquidated damages.

60. Attachment M –Contract, Section 10.1 This section requires that Contractor indemnify and hold harmless the State "against any and all claims" which "arise out of or relate to the Contractor's, or any of its subcontractors', performance of this Contract...." As a PBM, the Bidder must contractually abide by and follow the State's plan design and coverage directions, and consequently Bidder will be required to deny some drug benefit claims or make other State-directed decisions, which are simply "acts" that may result in claims litigation. Please confirm that Bidder would only be expected to defend a lawsuit if the Bidder improperly denies a claim or otherwise fails to perform the services in accordance with the contract and the State's plan design direction (i.e., the Bidder performs the services negligently or in breach of the contract).

Would the State consider revising [Section] to the following?

"arise out of or relate to the Contractor's, or any of its subcontractors', negligent act or omission or willful misconduct of the Contractor or its agents, employees, or subcontractors in the performance of this Contract...."

Response: The State does not accept the proposed language change.

61. Please confirm, are all of the 5 Commercial (non EGWP) populations to be reconciled individually under separate contracts? If yes, please confirm that the expectation is that the non EGWP populations have the same pricing and rebate guarantees with customized admin fees for each population?

Response: No, there would be one overall contract and reconciliation for the Commercial population.

62. Please confirm if the EGWP population is required to have the same pricing and rebate guarantees as the non-EGWP (Commercial) populations? If yes, is the expectation that the admin fee will be the differentiator?

Response: No, the EGWP population can have different pricing.

63. Are GLP1's covered for weight loss? How does the State plan to manage GLP1/weight loss utilization? What is the State's outlook for preferring GLP1/weight loss products? Will there be more or less restriction than what is reflected in the formulary and UM documentation?

Response: Weight loss drugs are not covered under the State's formulary. Bidders should assume a continuation of what is reflected in the formulary and UM documentation. Standard utilization management criteria for diabetes GLP-1s went into effect on 1.1.2024.

64. RFP within Attachment T notes the below; however, please confirm whether Commercial should assume Open or Exclusive Specialty? If Exclusive Specialty is being requested, are there 0 grace fills? EGWP would be Open Specialty.

32. Bidder shall agree that their Functional Area 1 - Commercial Bid and Reverse Auction will be for a Broad Retail 30 network, Broad Retail 90 network, PBM Exclusive Mail network (with 90 day allowed at Broad 90 network), and an Open Specialty Network.

33. Bidder shall agree that their Functional Area 2 - EGWP Bid and Reverse Auction will be for a Broad Retail 30 network, Broad Retail 90 network, Open Mail network (with 90 day allowed at Broad 90 network), and an Open Specialty Network.

Response: Functional Area 1 (Commercial) should be based on an open specialty network as indicated in Attachment T 4.6.1.32**.**

65. What are the objectively measured criteria used to determine a bidder to move to Phase 2 and Phase 3? Will the State disclose all formulas and criteria used in the reverse auction process, so that bidders can clearly understand the "objective measurable criteria" [Section 3.4.2 of the Maryland Procurement Manual] and to "define the mathematical formula to be used" [Section 6.4.3.3 of the Maryland Procurement Manual]?

Response: The determination is pass/fail. Phase III is based on total projected cost with updates provided each round.

66. Is there any weight being given to Phase 1 and 2 that impact Phase 3 outside of pass/fail?

Response: No, there will be no weight given to Phase 1 and 2 that impacts Phase 3.

67. Regarding Phase 2, please explain the intent of Section 2 and Section 3 of the document titled "PBM_MS-IFB_2024" and if we are to "respond" to these sections in addition to Attachment T – PBA that is part of the RFP360 tool.

Response: All sections of the MS-IFB are assumed to be accepted by participating in this process. Bidders will only respond via the RFP360 tool for all phases of the MS-IFB.

68. Please provide NDC level formularies.

- For formularies provided, what date does this formulary represent?

Response: Bidders may review the current formulary posted on the State's website noted in Attachment S. Additionally, qualified bidders will receive a formulary disruption file with NDC and current tier

information as of 06/30/2023 to align with the ending of the claims utilization provided.

69. Will the formulary provided include tier definitions that indicate formulary preference?

Response: Please refer to Attachment S for more information on the State's current formulary. The formulary disruption file provided in Phase II will include tier information.

70. Please provide detailed UM documentation on key classes.

Response: Please refer to Attachment S.

71. What is the State's strategy for Immuno biosimilar products? Is the objective to follow lowest net cost strategy (covering only low WAC products), rebate maximizing strategy (covering only high WAC products), or something in between?

Response: The State seeks the lowest net cost for covered prescription drugs, verifiable by the State, while also seeking to minimize member disruption. As noted in the definition under Standard Broad Formulary, Bidder's formulary should focus on promoting the placement of low WAC products within therapeutic categories (i.e., Biosimilars, Insulins).

72. If a product is not listed on the formulary, should it be considered as "excluded"?

Response: Bidders may review the current formulary posted on the State's website noted in Attachment S.

73. If there is any misalignment between the formulary and UM documents, which document should we consider as the source of truth?

Response: Please refer to Attachment S for all pertinent information for formulary and UM information.

74. Is this an MAPD plan? If yes, what are the preferred products for Diabetic Test Strips, Supplies, and Devices?

Response: No, this is not an MAPD plan. Functional Area 2 is a Part D Employer Group Waiver Plan (EGWP).

75. Please confirm, are the performance guarantees listed in Attachment T – Section 4.7, expected to be measured in aggregate across all lines of business (Commercial and EGWP combined)?

Response: The performance guarantees are expected to be measured separately for Functional Area 1 (Commercial) and Functional Area 2 (EGWP).

76. Please provide a census file with member zip codes in order to determine if retail network access complies with performance guarantee #PG-29.

Response: This is an ongoing guarantee during the contract. Please see the census file provided.

77. What assumptions are included in the bid 360 tool for utilization changes and inflation?

Response: There will not be trending assumptions applied to the Reverse Auction financial analysis. All bids will be evaluated based on submitted pricing against the untrended claims experience provided.

78. For PG-9 (Participating Employees Satisfaction), would the State agree to utilize vendor's post-call member satisfaction survey instead of the State conducted survey? If not, would the vendor be required to assume the cost of the State's survey?

Response: No, the State does not agree to utilize a vendor's post-call member satisfaction survey in lieu of the State's conducted survey. Yes, the vendor would be required to participate in cost-sharing if there was a transition from a State conducted survey to a separate contractor for said services.

79. Q&A #2 states in response to item 4 that claims history files will be provided during Phase 2 of the RFP process. According to the most recent timeline, Phase 2 will begin on 3/21/2024 and close on 3/28/2024. Will the State consider extending the Phase 2 closing period if the claims data will not be accessible to Vendors until 3/21?

Response: The claims history files are being provided in Phase 2 so that vendors have time to analyze them prior to participating in the reverse auction phase if qualified.

80. Will the State consider adding an additional open Q&A period for Vendors who advance to Phase 2 to ask questions concerning additional release of data files or other deliverables?

Response: Please see Amendment #3 to the MS-IFB.

81. Please provide an RFP360 export of Attachment T and Attachment B that includes response options through the online portal. (i.e., selections limited to "Agree/Disagree", open form text, attachment requirements, etc.)

Response: Response options for Attachment T (Phase II) are Agree/Disagree dropdowns for sections 4.1 – 4.6.3. Section 4.6.4 is a text input for a requested fee. 4.7 continues with Agree/Disagree dropdowns for each Performance Guarantee. Section 4.8 Required Documentation contains all file uploads. The format of the question and instructions at the top of each section clearly indicates the response format required. The only open text section for Attachment T is specific to Section 4.6.4.

82. Please confirm if the State will accept the following alternative definition of 340B Claims:

> *"340B Claims" means Claims submitted by 340B pharmacies that are (i) submitted with a Submission Clarification Code of "20", or such comparable codes as may be adopted for such Network Pharmacies under the NCPDP Telecommunication Standard version (or any successor version) , or (ii) includes a covered entity owned pharmacies 340B status coded as "39" in the NCPDP DataQ database, or (iii) claims reasonably determined to have been purchased at or subject to a 340B discount through claim level identification or pharmacy 340B purchasing levels.*

Response: The State does not accept this language.

83. Attachment T, Section 4.7 Performance Guarantees: Are the liquidated damages for failure of performance guarantees expected to be paid annually?

Response: The measurement and payment period will vary by guarantee. Liquidated damages will be measured as indicated in the "reporting measurement" column. As noted in Section 4.7, performance results will also be audited annually by the State's contract auditor.

84. Attachment T, Section 4.7 Performance Guarantees: Please specify the annual maximum liquidated damages amount that may be assessed to a vendor. (ie. Liquidated damages will not exceed X% of the monthly fees due per contract).

Response: Please see response to question 59.

85. Attachment T, Section 4.7 Performance Guarantees: For PG-26 (Member Communication Approval), please confirm the following documents are excluded from the measurement: drug recall notifications, urgent patient safety communications, formulary changes, prior authorization expiration notifications, prior authorizations, coverage determinations, appeals, grievance letters, and information specific to a member regarding any change in status to their medication.

Response: The State reviews all notice templates for approval prior to use with the understanding that some (i.e. recalls or urgent patient safety) cannot be modified. Edits must be reviewed and approved by the State.

86. Attachment T, Section 4.7 Performance Guarantees: For PG-27 (Member Communication Accuracy), the accuracy of member communication is dependent on client-provided data. The PBM is unable to validate and confirm accuracy of such data. Please confirm this performance guarantee is not applicable.

Response: Please see the Amendment to Attachment T.

87. Attachment T, Section 4.7 Performance Guarantees: For PG-32 (Benefit Change Requests), please confirm this guarantee should be measured based on data elements (not number of benefit plan builds) and with a reduced target. Benefit change accuracy guarantees are measured on data elements rather than number of plan builds; therefore a target of 100% would be unattainable. The industry standard is 98% accuracy based on data elements.

Response: This guarantee refers to the accurate set up of requested plan changes (e.g. change in member copayments, prior authorization rules, etc.). The State requires that implementation of plan design changes will be 100% accurate.

88. Attachment T, Section 4.7 Performance Guarantees: For PG-5 (Claims Standards Financial Accuracy) and PG-6 (Claims Standards Payment Accuracy), please indicate how many claims will be audited (ie. is it based on a statistically significant random sample of claims?). What portion of the claim will be audited? (ie. ingredient cost, member copayment, member eligibility, prior authorization, quantity limits or deductible errors).

Response: 100% of claims are audited for member eligibility, benefit design, clinical edits, coverage, payment accuracy and accumulator maintenance. A targeted sample is provided to substantiate the validity of the claims for all parameters listed above.

89. Attachment T, Section 4.7 Performance Guarantees: For PG-7, please confirm the guarantee applies to electronic (point-of-service) claims adjudication.

Response: Confirmed.

90. Does the State agree to the edits below to clarify that the PBM is not required to pass through or disclose details of revenue related to amounts received as compensation for products or services not directly related to utilization of Participants in the State Plan? –

2.3.2.1 The Contract shall be a transparent arrangement. The Contractor shall provide the State with reports and audit access to: (1) any and all data related to the State Plan and (2) data related to the Contractor's receipt of revenue, including any Manufacturer Payments and/or other revenue streams received by the Contractor that are directly or indirectly related to the State's Plan, with the exception of the traditional pricing allowed below and excluding amounts received as compensation for products or services not directly related to utilization of Participants in the State Plan.

2.3.2.2. Transparency and Pass-Through:

A. For the retail, mail, and specialty components, the Contractor shall disclose any and all of the following when such items are directly or indirectly attributable to the State's Plan or the provision of Pharmacy Benefits Management (PBM) Services to the State:

1. *Manufacturer Payments; and*

2. *Other sources of revenue, payments, compensation, or remuneration from any source other than the administrative fee paid to it by the State (except as specified above, to accommodate a traditional mail order pricing model if the Contractor owns its own mail order and specialty pharmacies).*

B. When such revenue, payments, compensation, or remuneration are directly or indirectly attributable to the State Plan or any PBM services provided to the State, the Contractor shall pass through the funds, revenue, remuneration, payment, compensation, or Manufacturer Payments to the State and must provide reporting that discloses the value of this revenue from each source and also demonstrates where and how the revenue is passed to the State; such pass through does not apply to traditional pricing allowed or to amounts received as compensation for products or services not directly related to utilization of Participants in the State Plan .

Response: The State does not accept this language.

91. Attachment M, Contract, Does the State agree to the following edits to clarify that indemnification obligations relate to third party claims and are proportionate to responsibility?
–

10. Indemnification and Notification of Legal Requests

10.1 At its sole cost and expense, Contractor shall (i) indemnify and hold the State, its employees and agents harmless from and against any and all third party claims, demands, actions, suits, damages, liabilities, losses, settlements, judgments, costs and expenses (including but not limited to attorneys'

fees and costs), ~~whether or not involving~~ ~~a third party claim, which~~ to the extent such claims arise out of or relate to the

Contractor's, or any of its subcontractors', performance of this Contract and (ii) cooperate, assist, and consult with the State in the defense or investigation of any such claim, demand, action or suit. Contractor shall not enter into any settlement involving third party claims that contains any admission of or stipulation to any guilt, fault, liability or wrongdoing by the State or that adversely affects the State's rights or interests, without the State's prior written consent.

Response: The State does not accept this language.

92. Attachment M, Contract, Does the State agree to the following edits to clarify that Contractor shall have the right to cure a breach before termination may occur?

17. Termination for Default

If the Contractor fails to fulfill its obligations under this Contract properly and on time, fails to provide any required annual and renewable bond 30 days prior to expiration of the current bond then in effect, or otherwise violates any provision of the Contract, the State may terminate the Contract by written notice to the Contractor if such matter remains uncured for a period of 30 days following notice from the State. The notice shall specify the acts or omissions relied upon as cause for termination. All finished or unfinished work provided by the Contractor shall, at the State's option, become the State's property. The State shall pay the Contractor fair and equitable compensation for

satisfactory performance prior to receipt of notice of termination, less the amount of damages caused by the Contractor's breach. If the damages are more than the compensation payable to the Contractor, the Contractor will remain liable after termination and the State can affirmatively collect damages. Termination hereunder, including the termination of the rights and obligations of the parties, shall be governed by the provisions of COMAR 21.07.01.11B.

Response: The State does not accept this language.

93. Contractor Requirements, Section 3.9 regarding SOC 2 Type 2 Audit Report: Will the State accept HITRUST certification as an alternative to SOC 2 Type 2 Audit?

HITRUST is a comprehensive framework that integrates various security and privacy standards, based largely on NIST SP 800-53, plus a broad array of regulatory requirements directly related to healthcare. HITRUST is specifically designed for the healthcare sector, so unlike a general-purpose framework, it addresses the unique challenges and risks associated with handling sensitive healthcare information.

Maintaining a HITRUST certification involves demonstrating continuous monitoring, assessment and improvement which broadens the reach of a point in time assessment. HITRUST is also considered a peer framework to SSAE* SOC, with the AICPA and HITRUST issuing formal mappings of the Trust Principles to the HITRUST Common Security Framework (CSF).

Response: The State does not accept this language.

94. Attachment T, Section 4.1 general definitions 30-32 regarding Coverage Gap: As part of the 2025 Medicare redesign are these definitions applicable? Can Vendors generally state agreement to standard CMS Medicare Part D definitions as defined by CMS regulations, given the pending adjustments to the Coverage Gap definitions?

Response: Please see the Amendment to Attachment T.

95. Question 2 in Attachment T 4.5.2 Specialty, LDD, New-to-Market states "Contractor agrees that Non-Specialty Drugs filled through a Specialty Pharmacy will be adjudicated and billed at Mail Order rates, and further, included with the Mail Order Network Discount guarantees and the Mail Order Rebate guarantees." Can the State agree to change to the following "Contractor agrees that Non-Specialty Drugs filled through a Specialty Pharmacy will be adjudicated and billed at Retail rates, and further, included with the Retail Network Discount guarantees and the Retail Rebate guarantees."

Response: Please see the Amendment to Attachment T.

96. Can we attach additional documents with our submission or is there a way to include any additional language that should be needed?

Response: No. Only requested attachments may be submitted where indicated.

97. Can the State agree to annual reconciliations for discount, dispensing fee, and rebate guarantees? - 4.1 General Definitions 111. Pricing Guarantee Period - Means each six

(6) month period (i.e., bi-annual) for Discounts, Dispensing Fees, and Rebates, commencing with the Go-Live Date of the Agreement.

Response: The State maintains the original definition. Please refer to the response to Question 32.

98. Please confirm if the State will accept the following alternative definition of Biosimilar or Biosimilar Product:

"Biosimilar Drug" or "Biosimilar Product" means a biological product that is highly similar to a US-licensed reference biological product notwithstanding minor differences in clinically inactive components, and for which there are no clinically meaningful differences between the biological product and the reference product in terms of safety,

purity, and potency of the product as defined in the Biologics Price Competition and Innovation Act of 2009 at. 42 U.S.C 262(i)(2) and/or approved under Section 351(k) of the Public Health Services Act and as identified in the Purple Book.

Response: The State does not accept this language.

99. Please confirm if the State will accept the following alternative definition of Coordination of

Benefit Claim (COB Claim):

> *"COB (Secondary Payor) Claim" shall mean a claim which processed with an Other Coverage Code of anything but a 0 or a 1 indicating that the customer is the secondary payer.*

Response: The State does not accept this language.

100. Please confirm if the State will accept the following alternative definition of Mail Order Pharmacy:

> *A pharmacy where prescriptions are filled and delivered to Members by ~~regular~~ mail or delivery service.*

Response: The State does not accept this language.

101. Please confirm if the State will accept the following alternative definition of Retail Pharmacy:

> *"Retail Pharmacy" or "Retail" means any type of Pharmacy other than a Mail Order Pharmacy or Specialty Pharmacy, and includes any independent pharmacies, supermarket pharmacies, chain pharmacies or mass merchandiser pharmacies having a state license to dispense medications to the general public.*

Response: The State does not accept this language.

102. Please confirm if the State will accept the following alternative definition of Rejected Claim:

> *"Rejected Claim" means a Claim that has not been paid.*

Response: The State does not accept this language.

103. Please confirm if the State will accept the following alternative definition of Reversed Claim:

> *"Reversed Claim" means a Claim that initially is Paid, but for which a subsequent Claim with the same participating pharmacy, mail service pharmacy, and/or specialty pharmacy, covered individual, prescription number, and NDC was submitted for reversal of payment.*

Response: The State does not accept this language.

104. Please confirm if the State will accept the following alternative definition of Specialty Drug:

"Specialty Drug" shall mean a Covered Product that: (a) is injected, infused, orally or topically administered, or inhaled for the ongoing treatment of complex, chronic conditions; (b) requires extensive patient education, risk assessment, mitigation strategies, and/or clinical monitoring; (c) may require temperature-controlled shipping or other special handling and careful adherence to treatment; and (d) meets CMS Requirements for placement on the specialty tier of a Medicare Formulary, if applicable. When a drug is identified as Specialty Drug, it shall be considered a Specialty Drug for all purposes, including Eligible Member Cost Share, therapeutic classification, pricing

and all related guarantees.

Response: The State does not accept this language.

105. Please confirm if the State will accept the following alternative definition of Standard Broad Formulary:

The Bidder's standard list of Covered Products with minimal exclusions. Covered Products may be subject to different copay amounts based on their Formulary placement and State's benefit design. Bidder's ***commercial*** *formulary should focus on promoting the placement of low WAC products within therapeutic categories (i.e., Biosimilars, Insulins).*

Response: The State does not accept this language.

106. For PG-30 (Retail Network Turnover), would the State consider modifying the standard as follows? –

PBM shall guarantee an annual turnover rate of ***5%*** *or less of retail Network Pharmacies utilized by Customer's Members within the last 6 months. Excluded from this guarantee are Network Pharmacies that are terminated for cause or failure to properly meet network requirements, are no longer in business, are acquired by an organization that was not in the existing national pharmacy network, and/or are removed at Customer's request.*

Response: The State does not accept this language.

4.1 General Definitions

107. Attachment T, Section 4.1 (General Definitions), item 21, states Bidder shall agree that EGWP wrap and supplemental coverage claims shall be included in the Commercial Minimum Rebate guarantees. Given the wrap is contingent on continuation on EGWP, would it be reasonable to offer Wrap, included in the EGWP rebate guarantees?

Response: The State does not accept this recommended change.

108. Attachment T, Section 4.1 (General Definitions), For the following 30-32 as defined below, please confirm the State's intent is to define these terms as the Manufacturer Discount Program (MDP), which replaces the Coverage Gap Discount Program in 2024. Further, please confirm that the State's requirements of this RFP restrict any bidder from including such MDP value in its proposed rebate guarantee offering for the State and that any requirements regarding payment of MDP amounts will be aligned with CMS final guidance.

30. Coverage Gap - The stage of the benefit between the initial coverage limit and the catastrophic coverage threshold, as described in the Medicare Part D prescription drugs program administered by the United States federal government.

31. Coverage Gap Discount - The manufacturer discounts available to eligible Medicare beneficiaries receiving applicable, covered Medicare Part D drugs while in the Coverage Gap.

32. Coverage Gap Discount Program - The Medicare program that makes manufacturer discounts available to eligible Medicare beneficiaries receiving applicable, covered Medicare Part D drugs while in the Coverage Gap.

Response: Please see the Amendment to Attachment T.

109. Attachment T, Section 4.1 (General Definitions), item 43 defines Dispensing Fee(s) as *The pharmacy professional fee incurred at the point of sale to pay for costs in excess of the Ingredient Cost for the filling of a single Covered Product for a Member.* Please confirm the State is agreeable to this definition: Dispensing fee shall mean the fee that a pharmacy may be reimbursed to cover the costs that such pharmacy incurs in filling a prescription (e.g., the cost of overhead, supplies, and labor).

Response: The State does not accept this language.

110. Attachment T, Section 4.1 (General Definitions), item 60 defines Generic Code Number (GCN) as *A standard number assigned by a drug pricing service called First DataBank. The GCN identifies each strength, formulation, and route of administration of a drug entity. Each drug has its own unique GCN.* Please confirm the State is agreeable to remove the definition of GCN or provide additional details on the intent for the State's use of such definition in relation to this agreement. Upon our review, we did not identify how GCN is otherwise used in the RFP. Further, Contractor does not currently possess license rights to share proprietary First DataBank (FDB) data elements with any third parties, including clients. As such, we would not be able to utilize GCN information in any reporting or other deliverables with the State.

Response: Please see the Amendment to Attachment T.

111. Attachment T, Section 4.1 (General Definitions), item 81 defines Market Check as a technology-driven evaluation of prescription drug pricing based on benchmarks derived from pharmacy benefits manager's reverse auction processes conducted in the United States over the

immediately preceding 12 months (State Personnel and Pensions Article, Section 2-502.2). In the event market data for reverse auction processes conducted in the United States over the immediately preceding 12 months is not available or complete, benchmarking will be based on existing market pharmacy benefits manager agreements from comparable plans.

Please confirm if the intent of the Market Check is to limit comparisons solely to those with a reverse auction process and if not, provide additional details so that bidder can evaluate its ability to comply with such requirement.

Response: The State believes that the description in Attachment T, Section 4.1 is clear on the intent of this requirement.

112. Attachment T Section 4.1 (General Definitions), item 88, defines "Member" as an employee, former employee, or retiree (including Satellite and Direct Pay) who is eligible to participate in the Program pursuant to COMAR 17.04.13.03A, as amended from time to time, inclusive of that individual's Dependents. One "Member" includes the eligible employee, former employee, or retiree and that eligible individual's Dependents.

For purposes of a bidder's proposal for the State, please confirm that a bidder must structure its offer in alignment with this definition of Member and as PMPM, as opposed to Participant as defined in item 98. "Participant - Each individual covered by the family unit of a Member enrolled in a plan (Members and Dependents)."

Response: The bidders must follow both definitions.

113. Attachment T Section 4.1 (General Definitions), item 100, defines "Participating Pharmacy" as "[a]n in-network Retail Pharmacy, Mail Order Pharmacy, Specialty Pharmacy, or other pharmacy type that has entered into a pricing agreement with Bidder to dispense Covered Products to members." The definition of "Pass-Through" at Section 4.1, item 103, meanwhile, requires (among other things) that the PBM will "invoice the State the same amounts reimbursed by Bidder to retail *Participating Pharmacies* for any Covered Product dispensed from such retail Participating Pharmacy [and] will bill the State the exact Ingredient Cost, Dispensing Fee and taxes paid less member copay and potential POS Rebates to the Participating Pharmacy." For a PBM that has affiliated mail and specialty pharmacies, these affiliated pharmacies (like any retail pharmacy in a PBM's retail network) will sell drugs for more than they paid for them. Please confirm that the "Pass Through" definition is not intended to require affiliated mail and specialty pharmacies to pass through their acquisition costs to the State.

Response: Confirmed.

114. Attachment T, Section 4.1 (General Definitions), item 103, defines "Pass-Through as meaning that "Bidder shall invoice the State the same amounts reimbursed by Bidder to retail Participating Pharmacies for any Covered Product dispensed from such retail Participating

Pharmacy. This pricing model will bill the State the exact Ingredient Cost, Dispensing Fee and taxes paid less member copay and potential POS Rebates to the Participating Pharmacy" and that "Bidder receives no other revenue and derives no other value from any Paid Claim adjudicated at the Participating Pharmacy, either directly or indirectly, in the aggregate or otherwise, except for the fee(s) charged by Bidder to a Participating Pharmacy for administrative services related to dispensing Covered Products to Members." Like many PBMs, our contracts with pharmacies utilize MAC pricing as a mechanism to manage drug costs. MAC prices are set at the GPI level, and thus may not match the overall effective rates negotiated with the pharmacy. However, on all MAC claims (and all retail claims) we pass through to the client the amount paid to the pharmacy, and do not keep any differential. Please confirm that the arrangement for MAC claims described above would comply with the "Pass-Through" requirement defined in Attachment T.

Response: Confirmed.

115. Attachment T, Section 4.1 (General Definitions), item 111 defines the Pricing Guarantee Period to mean each six (6) month period (i.e., bi-annual) for Discounts, Dispensing Fees, and Rebates, commencing with the Go-Live Date of the Agreement. Please advise if the State would consider a proposal in which the Pricing Guarantee Period would mean each twelve (12) month period (i.e. annual) for Discounts, Dispensing Fees, and Rebates, commencing with the Go-Live Date of the Agreement. Structuring the guarantees as annual would be in line with common PBM practice and allow a bidder's offer to be less impacted, i.e. less-conservative, based upon factors such as, but not limited to, the seasonality of claim utilization. By allowing bidders to propose its offer with annual guarantee reconciliation, a bidder may be able to provide a more aggressive financial offer to the State.

Response: Please see the response to question 97.

116. Attachment T, Section 4.1 (General Definitions), item 129 defines Specialty Pharmacy as a pharmacy that focuses on dispensing Specialty Drugs to Members. Please confirm that a bidder can propose its Specialty pricing such that separate pricing is provided and applicable for non-Specialty medications dispensed at a Specialty Pharmacy and separate pricing applicable to Specialty medications dispensed at a Retail Pharmacy.

Response: Please refer to Attachment B - Reverse Auction Instructions & Sample Export for the pricing tables that will be requested. Attachment T - Section 4.5.2, question 2, requires that Non-Specialty drugs filled through a Specialty Pharmacy be adjudicated and billed at Mail Order rates and included in the Mail Order Network Discount and Mail Order Rebate Guarantees.

4.2 General Requirements

117. Attachment T, Section 4.2 (General Requirements), item 2, states: "Bidder must certify that if qualified for the Reverse Auction phase, the pricing submitted in Section 11.1 and 11.2 applies to the duration of the Agreement and that any proposed changes to pricing will only be warranted for an Unforeseen Market Event as defined in Section 4 and be mutually agreed upon between the State (or designated representative) and Contractor." "Unforeseen Market Event" is defined in Attachment T as "[a]n unanticipated change which occurs after the time of Agreement execution which may materially alter the ability of the PBM to meet its financial obligations *with regard to Rebates*." Recently, several states have enacted laws requiring that PBMs reimburse retail pharmacies according to a mandatory pricing methodology (e.g., reimbursing certain pharmacies using the NADAC index, rather than with regard to the MediSpan-published Average Wholesale Price, and such requirements may result in dramatically different pricing at retail from what the Contract provides for how drugs are priced. In light of these changes, would the State consider expanding the definition of "Unforeseen Market Event" as follows:

Unforeseen Market Event - An unanticipated change which occurs after the time of Agreement execution which may materially alter the ability of the PBM to meet its financial obligations with regard to Rebates**, or, to the extent resulting from state or federal regulation, other financial components of the Contract (e.g., pricing or dispensing fee guarantees)**. An Unforeseen Market Event may include: pharmaceutical manufacturer significantly dropping list price of a medication, a product with material utilization being removed from the market by the Food and Drug Administration (FDA) due to safety concerns, or changes to any law or regulation which would materially alter the intent or financial arrangement of this agreement. An Unforeseen Market Event is not: a Brand Drug medication becoming available generically, a Biosimilar product being launched or approved by the FDA, a Brand Drug losing rebates when a brand over generic strategy (DAW9) is used by the PBM, or a new to market product being approved by the FDA.

Response: The State does not accept this recommended change.

118. Attachment T, Section 4.2 (General Requirements), item 2, states: "Bidder must certify that if qualified for the Reverse Auction phase, the pricing submitted in Section 11.1 and 11.2 applies to the duration of the Agreement and that any proposed changes to pricing will only be warranted for an Unforeseen Market Event as defined in Section 4 and be mutually agreed upon between the State (or designated representative) and Contractor." "Unforeseen Market Event" is defined in Attachment T as "[a]n unanticipated change which occurs *after the time of Agreement execution* which may materially alter the ability of the PBM to meet its financial obligations *with regard to Rebates*." Given that unforeseen events otherwise meeting the definition above may occur after Reverse Auction has been completed, but prior to execution of the Agreement, would the State consider expanding the definition of "Unforeseen Market Event" as follows:

Unforeseen Market Event - An unanticipated change which occurs after the time of Agreement execution **(or between completion of the Reverse Auction phase through the date the Agreement is executed)** which may materially alter the ability of the PBM to meet its financial

obligations with regard to Rebates. An Unforeseen Market Event may include: pharmaceutical manufacturer significantly dropping list price of a medication, a product with material utilization being removed from the market by the Food and Drug Administration (FDA) due to safety concerns, or changes to any law or regulation which would materially alter the intent or financial arrangement of this agreement. An Unforeseen Market Event is not: a Brand Drug medication becoming available generically, a Biosimilar product being launched or approved by the FDA, a Brand Drug losing rebates when a brand over generic strategy (DAW9) is used by the PBM, or a new to market product being approved by the FDA.

Response: The State does not accept this language.

119. The State's definition of "Unforeseen Market Event" specifies that such events do not include "a Biosimilar product being launched or approved by the FDA." The future introduction of biosimilars into the market is likely to have a material impact on PBMs' ability to obtain rebates on currently rebatable products, and while a PBM may know when a Biosimilar may launch, the net cost impact and resulting formulary positioning of the launch ordinarily cannot be determined until the event has already occurred and the impact on the particular plan can be assessed. To account for these unforeseen impacts, would the State consider including in the contract a provision allowing the PBM to include "Rebate Credit" to account for the impact of such unforeseen biosimilar changes. Under such a Rebate Credit arrangement, the PBM would be permitted to add value to total Rebates remitted to the State to account for utilization shifts to Low WAC biosimilars that the parties could not have anticipated at the time of contracting. In the alternative, would the State allow the PBM to make adjustments to rebate guarantees based on Contractor's formulary changes that prefers Biosimilar products with lower WAC prices to achieve overall lower net cost?

Response: Please see the response to question 71.

120. Attachment T, Section 4.2 (General Requirements), item 9, asks that bidders confirm that they "shall pass 100% of all associated EGWP and CMS subsidies (e.g. low-income subsidies, direct subsidies, federal reinsurance and coverage gap discounts) to State within ten (10) Business Days of receipt." Notwithstanding that all such revenues must be passed to the State within ten (10) Business Days, please confirm that the selected PBM will not be permitted identify these subsidy revenues as Rebates or Manufacturer Payments for purposes of the Contract, and that these subsidy revenues are independent of Rebates.

Response: Confirmed.

121. Attachment T, Section 4.2 (General Requirements), item 11 states: "Bidder agrees the State shall own their Claims detail (State Prescription Drug Data)", and 4.2.9 (Special Provisions), item 4 states: "All claim records and eligibility data used by the Contractor shall remain the property of the State as plan sponsor and plan administrator." Bidder considers certain Claim-level information contained in Claims data to be confidential, proprietary, and trade secret information that is exempt from disclosure under the Maryland Public Information Act (PIA). As such, would the State

confirm that while it owns all Claims data, it will notify its PBM in the event any of the pricing elements of Claims data were subject to a PIA request, or otherwise subject to potential disclosure, so that the PBM could assert appropriate public information act exemptions, and/or take any other necessary steps to prevent disclosure of the information?

Response: Confirmed, the State normally advises the contractors for information being released for PIA requests.

122. Attachment T, Section 4.2 (General Requirements), item 21 states: “Bidder must demonstrate financial stability by submitting: a) Vendor’s most recent financial report; b) the most recent independent auditor’s report; and c) SSAE 16, SAS-70, or equivalent external audit of Vendor’s operations. Please attach proof of financial stability meeting this requirement.” Please confirm if a bidder is able to satisfy the requirement through a recent financial report, i.e. 10-K report OR independent auditor’s report, OR SSAE-16, SAS-70.

Response: Bidder must demonstrate financial stability by submitting: a) Vendor’s most recent financial report; b) the most recent independent auditor’s report; and c) SSAE 16, SAS-70, or equivalent external audit of Vendor’s operations.

4.2.1 Administrative Requirements

123. Attachment T, Section 4.2.1 (Administrative Requirements, item 1, states: ”the State reserves the right to change any aspect of the plan design including, drugs to which Drug Utilization Review (DUR) is applied, the list of specialty medications in the Specialty Drug Management Program, changes to member cost share structure, list of drugs eligible for the zero copay generics and prior authorization requirements, without a contract modification.” The rebate guarantees bidder is providing with its offer are based on the plan design that the State has advised will be in place in this procurement. Therefore, the guarantees are predicated upon maintaining those plan design structures. Please confirm to the extent the State made plan design changes that impacted its PBM’s ability to receive Rebates, the Contract would be modified in a manner tailored to account for the impact of the change?

Response: To the extent PBM demonstrates and documents a material impact to rebates, a contract modification will be considered by the State.

4.2.6 Electronic Health Records

124. Attachment T, Section 4.2.6, item 11 states “Contractor shall accept electronic transfer of

eligibility data in a format indicated by the State or Participating Pool Participant including cloud-based transfers." Please confirm that "cloud-based transfers" should be understood to be secure, i.e. SFTP, exchanges of data.

Response: Confirmed.

125. Attachment T, Section 4.2.6, item 16 states "For Purchasing Pool Participants, Contractor shall maintain flexibility to deal with Pool Participant-specific eligibility data requirements and variations such as: member ID numbers varying in length; alpha-numeric ID numbers; incorporating client-specific departments, classes, or product coding." Please confirm that any such coding for a Pool Participant will be at Contractor's stated custom IT programming rates.

Response: The expectation is that Purchasing Pool Participants will receive all services at the same cost provided to the State.

4.2.7 Claims Processing

126. Attachment T, Section 4.2.7 (Claims Processing), item 3, states "Contractor shall assume claim fiduciary responsibilities, including appeals, for claim adjudication *and defense of any drug utilization review (DUR) program decisions*." Does the State intend the italicized portion of this provision to require the PBM to indemnify the State for the costs of any defense of denials of claims (even those where the PBM has properly denied the claim in accordance with all Plan requirements)? If so, please advise how many member suits have been filed over the last three years challenging such denials so we can understand the potential costs we will need to underwrite.

Response: The contract which the vendor signs will include indemnification provisions, such as the language discussed in related Question No. 26. The specific quoted and italicized language in the question above requires an upfront defense.

4.2.9 Special Provisions

127. Attachment T, Section 4.2.9 (Special Provisions), item 5, states: "Contractor agrees to prepare and file all legal documents necessary to implement and maintain the plan, including policies, amendments, contracts, required state filings, and development of booklet/certificate formats." PBMs typically are not legally obligated to file legal documents to maintain plans with state government entities, other than their own licensure requirements in the states where they operate. Other than filing such licensure paperwork, are there other legal documents that the State believes would be required to be filed in compliance with this provision and if so what other requirements would be in scope?
Response: The State is aware of the currently limited requirements. Should changes occur, the State reserves the right to require the PBM to file all legal documents per Section 4.2.9, #5.

4.3 Ongoing Claims Review

128. Can the State provide additional details with regard to its Ongoing Claims Review process described. With specifics, please detail how this process is not an audit based upon the requirements, specifically requirements 6 and 7. Further, can the State share information on the vendor it intends to contract with to provide such services.

Response: Ongoing Claims Review is defined in Attachment T as " An automated process to receive and review claims files underlying each PBM invoice" and is pursuant to State Personnel and Pensions Article, Section 2-502.2. The requirements in questions 6 and 7 within Section 4.3 in Attachment T are intended to be addressed by the Contractor's Account Team and does not call for involvement from the PBM's Audit department. The State's contractor for Ongoing Claims Review is Milliman, Inc.

4.4 Quality Assurance and Audits

129. 4.4.1. Please confirm the State would be agreeable to the following edit for 4.4.1. This edit would be consistent and in line with market for PBM claims and rebate audits.

Contractor shall allow the State or its designee the right to audit, same data and time period may only be audited once, with an auditor of the State's choice, with full cooperation of the selected PBM, on an annual basis, the services and pricing (including Rebates) provided in order to verify compliance with all program requirements and contractual guarantees. The State's right to audit shall survive the termination of the agreement between the parties for a period of five (5) years.

Response: The State does not accept this language.

130. 4.4.7. Please confirm the State is agreeable to the following clarification regarding "prescription records" as it relates to this requirement: Prescription records are defined as claims data in a Contractor's system that are tied to invoices, not actual copies of handwritten prescriptions by a doctor.

Contractor shall agree that as part of any claims audit, State or its auditor shall have access to the prescription records associated with the claims being audited.

Response: The State does not accept this language.

131. 4.4.10. Please confirm the State is agreeable to the following requested changes to 4.4.10. The changes requested are in line with general PBM practices:

Contractor shall agree to payback ~~all~~ a calculated portion of spend associated with Claims resulting from an inappropriate prior authorization (PA) setup, processing or a discrepancy. When appropriate, we would reimburse based on how often PAs are not obtained/not approved rather than always reimbursing 100%.

Response: The State does not accept this language.

132. 4.4.12. Please confirm the State is agreeable that rebate audits can be limited to a mutually agreeable designated third party. If the State must have such ability to perform its own rebate audits, please confirm that such audit right would be limited to no more than three (3) employees of the State and that such employees must agree to the terms of an Non-Disclosure Agreement (NDA). Any rebate audit performed by State employees would be performed onsite at Contractor's location via electronic review of information only.

The State (or its designated third party) will be allowed to audit one hundred percent (100.00%) of Claims and one hundred percent (100.00%) of manufacturer contracts, attributable to up to five (5) manufacturers. If the State initiates its own rebate audit, the State will be limited to three (3) employees performing the audit who have executed Contractor's Non-Disclosure Agreement (NDA). Additionally, The State's employees will not retain copies of the rebate information, reviewing information on-site at a Contractor location, electronically. The Bidder will provide a summary of Rebates received by each manufacturer, and the State will be allowed to select up to five (5) manufacturers to audit annually.

Response: The State does not accept this language.

133. 4.4.13. Please confirm that the State's intent with regard to this requirement is limited to an annual claims or rebate audit. If not, please further explain what the State will audit regarding "drug company utilization incentives."

Contractor shall allow State, or an independent firm chosen by them, to audit claims and drug company utilization incentives (e.g., Pricing Guarantees and Rebates) on an annual basis with thirty (30) calendar days advanced notice.

Response: State, or an independent firm chosen by the State may conduct audits to verify all aspects of the Contractor agreement including all guaranteed financial terms and rebates, on an annual basis with thirty (30) calendar days advanced notice.

134. 4.4.14. Please confirm the State will procure the independent firm noted in 4.4.14.

Contractor shall have each billed invoice reviewed and claims reconciled by an independent firm and shall cooperate on a timely basis to all requests for information and respond to any resulting findings from the Ongoing Claims Review process.

Response: Confirmed.

4.7 Performance Guarantees

135. PG 20 Rebate Payments, the Contractor asks for the following modification due to the timing of rebates and reporting. As an example, for December, that payment would include their 2023Q03 guarantee advance plus any collections owed on prior periods, capturing collection activity through 11/30/23. The current language is saying that the payment made in December (by 12/29/23) would have to include collection activity through 12/15/23 which is not possible with our current system and process. We can only include collection activity through 11/30/23 for a payment due 12/31/23. The Contractor is agreeable to the measurement and damages, please confirm the State is agreeable to the redline changes on the standard goal that follows:

PG-20	Rebate Payments	Agrees to reimburse the State all Rebates received on a quarterly basis to be paid no later than ninety (90) calendar days following the end of the reporting period. Payment must include all Rebates received for the quarter up to ~~ten (10) Business~~ thirty one (31) Calendar Days before the Rebate payment is due to the State. An annual reconciliation will occur no later than 120 calendar days	Quarterly Plan Performance Measurement Report Card (Report Card to be submitted by the Bidder). Receipt date as documented by vendor and confirmed by State. Frequency of measurement: Quarterly	$1,000 for each calendar day the data is not received or is incomplete

Response: Please see the Amendment to Attachment T.

136. PG 24 Clean State Prescription Drug Data

Please clarify that resending a data file not due to an error is not applicable to the penalty.

PG-24	Clean State Prescription Drug Data	All data files will be clean, accurate, complete and include all required fields as specified and mutually agreed upon by Consultant, State, and Bidder. Resending a data file or supplementing a previous data file will be considered a miss.	Date-stamp of receipt by the third-party vendor and verification of accuracy and completeness of required documentation. Frequency of measurement: Quarterly	$500 for each file that is resent.

Response: Confirmed

137. PG 26 Member Communication Approval
Contractor is agreeable to provide the State recall and drug warning templates to approve prior to start of service; however, Recalls and Drug warnings will be excluded from the guarantee measurement.

PG-26	Member Communication Approval	100.00% of Member communications will be approved by the State.	Quarterly Plan Performance Measurement Report Card (Report Card to be submitted by the Bidder). Receipt date as documented by vendor and confirmed by	$10,000 per occurrence.

Response: Please see response to question 85.

138. PG 28 Ad hoc Turn-Around Time
A number of requests are unique and custom and may require additional time; therefore requesting eleven (11) business days unless mutually agreed upon.

PG-28	Ad hoc Turn-around time	Ad hoc (non-standard) reports will be delivered within ~~five (5)~~ eleven (11) Business Days of request.	Date-stamp of receipt by the third-party vendor and verification of accuracy and completeness of required documentation.	$500 for each calendar day the data is not received or is incomplete.

Response: The State does not accept this language.

REVISED FINAL PBM MS-IFB 2024

139. The Revised Final PBM IFB document states (in the Key Information section) on page 3, that "For both functional area, three (3) year base period with two, two (2) year option periods." Section 3.1 of the Contract at Attachment M states: "The Contract shall have a period of approximately 3 years beginning January 1, 2025 and *ending December 31, 2028 ("Initial Term")*." The period from January 1, 2025 through December 31, 2028 would encompass four years rather than three years. Can the Department confirm that the end date of the Initial Term is in fact December 31, 2027?

Response: Please see Amendment #3 to the MS-IFB.

2.3.1 General Requirements

140. 2.3.11.F Contractor is agreeable to providing support in order support the State in meeting its obligations under the No Surprises Act. With regard to the stated requirements, we request the following:

(1) Advanced Explanation of Benefits for scheduled services requirement does not impact prescription drugs dispensed at Pharmacies. Since this is a PBM Services RFP, please confirm the State is agreeable to removing requirement (1) below.

(3) Providing machine-readable files (updated monthly) with in-network negotiated rates and historical out-of-network allowed amounts is not applicable to services to be provided by Contractor under this RFP. Please confirm the State is agreeable to removing requirement (3) below.

With regard to the final requirement (summarized here), to provide a monthly full file of claim activity, including SSN, to State's data warehouse vendor via VPN connection. Contractor is not aware of how this requirement is directly related to compliance with the No Surprises Act or Transparency Regulations. If the State will require Contractor to support this requirement, please confirm it can be established apart from the requirements of the No Surprise Act and Transparency Regulations requirements.

Contractor shall support the State's compliance with the No Surprises Act (NSA) and Transparency Regulations' requirements by (1) providing Advanced Explanations of Benefits for

scheduled services; (2) providing price comparison tools under the NSA; (3) providing the plan with machine-readable files (updated monthly) with in-network negotiated rates and historical out-of-network allowed amounts; (4) for prescription drug coverage, providing machine-readable files with negotiated rates and prices for covered prescription drugs; and (5) reporting on pharmacy and drug costs as required under the Consolidated Appropriations Act of 2021. Contractor shall provide, on a monthly basis, a full file of all claim activity to the State's data warehouse vendor. This file shall include Social Security Numbers and be transmitted electronically to a designated VPN connection. This process shall be established through the State of Maryland's consultant.

<u>Response:</u> Please see the response to question 37.

141. 2.3.16 With regard to 2.3.16 below, please confirm that if Bidder is not requiring the purchase of any such software, hardware or hosting service, the State would not have the right to purchase such from another source.

> *A. By responding to this MS-IFB and accepting a Contract award, the Bidder specifically agrees that for any software, hardware, or hosting service that it proposes, the State will have the right to purchase such item(s) from another source, instead of from the selected Bidder.*
>
> *B. SaaS applications shall be accessible from various client devices through a thin client interface such as a Web browser (e.g., Web-based email) or a program interface.*
>
> *C. The State shall be permitted limited user-specific application configuration settings.*
>
> *D. The Contractor is responsible for the acquisition and operation of all hardware, software and network support related to the services being provided; Contractor shall keep all software current.*
>
> *E. All Upgrades and regulatory updates shall be provided at no additional cost.*
>
> *F. The State requires that the Bidder price individual software modules separately.*
>
> *G. The State also requires that the Bidder provide fully functional, generally available software and multiple-user licenses for purchase as needed throughout the life of the Contract.*
>
> *H. The Bidder shall install and provide all documentation for the software furnished under the Contract.*
>
> *I. Hardware and software costs procured as part of the MS-IFB cannot exceed 49 percent of the total Contract value.*
>
> *J. Material costs shall be passed through with no mark-up by the Contractor.*

K. The Contractor shall prepare software releases and stage at the Department for validation in the system test environment. The Department will provide authorization to proceed. The Department will have the ability to manage the distribution of these releases to the appropriate sites. To support this requirement, the Contractor shall propose, provide and fully describe its solution for updating all sites with any new software releases.

Response: This section is specific to the successful Bidder only.

3 Contractor Requirements: General

3.3.3.2 Payment Procedures

142. Item 3 states that "For any recoveries as a result of fraud or an audit, the Contractor shall pay the State any portion due to the State via a separate check payment and provide substantiation on a monthly basis. The Contractor shall report on any aggregate activity twice a year, at six-month intervals, on August 15 and February 15." Please confirm the State would be agreeable to following revision as we would expect this can expedite payment turnaround and eliminate additional accounting effort for the State.

For any recoveries as a result of fraud or an audit, the Contractor shall pay the State any portion due to the State via a credit to State's invoice ~~separate check payment~~ and provide substantiation on a monthly basis. The Contractor shall report on any aggregate activity twice a year, at six-month intervals, on August 15 and February 15.

Response: Please see the response to question 44.

3.6 Insurance Requirements

143. 3.6.1.C.The required level of retention is not practical for a PBM that would be bidding as a potential Contractor for this RFP. Please confirm the State would be agreeable with the following redline for requirement.

Crime Insurance/Employee Theft Insurance - to cover employee theft with a minimum single loss

limit of $1,000,000 per loss, ~~and a minimum single loss retention not to exceed $10,000~~. The State of Maryland and the Department should be added as a "loss payee."

Response: Please see the response to question 46.

144. 3.6.1.D. As a potential Contractor, having the State as an Additional Insured would not be applicable to the potential Contractor's Cyber Liability policy. Please confirm the State would be agreeable to removal of the following.

~~Any "insured vs. insured" exclusions will be modified accordingly to allow the State additional insured status without prejudicing the State's rights under the policy(ies).~~

Response: The State does not accept this language.

145. 3.6.1.F. As a PBM services provider, it would not be applicable to require Contractor to retain Collision and PIP coverages as it relates to services performed under this agreement. Please confirm the State is agreeable to the following limited redline.

The Contractor shall maintain Automobile or Commercial Truck Insurance (including owned, leased, hired, and non-owned vehicles) as appropriate with Liability, ~~Collision, and PIP limits~~ no less than those required by the State

Response: The State does not accept this language.

146. 3.6.2 Additional insured is only applicable to these coverages as well as Umbrella if needed to satisfy the required limits. Please confirm the Contractor can modify the following redlines for requirement.

The State shall be listed as an additional insured on the faces of the certificates associated with the Commercial General Liability and Automobile coverages listed above, including umbrella policies, ~~excluding Workers' Compensation Insurance and professional liability~~.

Response: The State does not accept this language.

147. 3.6.3 Contractor's insurance policy provisions state that notice is required to the named insured. Insurers are not willing to accept liability for noticing all additional parties. Contractor would be willing to provide written notice in accordance with contractual obligations. As such, please confirm the State would be agreeable to the following modification to requirement 3.6.3.

All insurance policies shall be endorsed to include a clause requiring the insurance carrier to provide the ~~Procurement Officer~~ Contractor, by certified or electronic mail, not less than 30

calendar days' advance notice of any non-renewal, cancellation, or expiration.

<u>Response:</u> The State does not accept this language.

148. 3.6.6 As a PBM Services provider, Contractor is likely to hold several contracts with ancillary services providers with varying levels of engagement or requirements, necessitating flexibility in the types and limits of coverage required. The Contractor is responsible for performance of all work under contracts if done by Contractor or any of its subcontractors. If we allow subcontractors to perform services under the Agreement with insurance coverage limits less than the minimums set forth below, we shall assume all liabilities incurred as a result of such decision. Contractor would be agreeable to requiring coverage for any ancillary services provider commensurate with the scope of services being provided, and as such would request the State's agreement to the following modification to 3.6.6.

Subcontractor Insurance. The Contractor shall require any ~~subcontractors~~ ancillary or supporting services provider to obtain and maintain ~~comparable levels of~~ coverage <u>types and limits commensurate with the nature and scope of services being performed by such entity</u> and shall provide the Contract Manager with the same documentation as is required of the Contractor.

<u>Response:</u> The State does not accept this language.

3.7 Security Requirements

149. 3.7.4(a)

3.7.4.3 As a PBM Contract providing book of business services to a wide range of clients, it would not be feasible to structure the agreement to require agreement to a client's specific security policies and standards. That said, Contractor does hold several policies and standards which would provide appropriate controls in place to securely manage relevant activity it performs as the State's PBM Services provider. Please confirm that the Contractor can meet the requirements of 3.7.4 (a) with IT policies that align with industry standards such as *ISO-27002, NIST SP 800-53, NIST CSF, HIPAA, HITRUST, PCI-DSS, NYS-DFS, NIAC and CIS Benchmarks*.

(a) Contractors shall comply with and adhere to the State IT Security Policy and Standards. These policies may be revised from time to time and the Contractor shall comply with all such revisions. Updated and revised versions of the State IT Policy and Standards are available online at: www.doit.maryland.gov – keyword: Security Policy.

3) The Contractor, and Contractor Personnel, shall (i) abide by all applicable federal, State and local laws, rules and regulations concerning security of Information Systems and Information Technology and (ii) comply with and adhere to the State IT Security Policy and Standards as each may be amended or revised from time to time. Updated and revised versions of the State IT Policy and Standards are available online at:
<u>https://doit.maryland.gov/policies/Pages/default.aspx</u>

Response: The State does not agree.

150. 3.7.5.B.7 Please confirm that a Contractor's internal policies regarding logging parameters, etc We enable appropriate logging parameters to comply with our security policies and standards that align with industry standards.

To ensure appropriate data protection safeguards are in place, the Contractor shall implement and maintain the following controls at all times throughout the Term of the Contract (the Contractor may augment this list with additional controls):

Enable appropriate logging parameters to monitor user access activities, authorized and failed access attempts, system exceptions, and critical information security events as recommended by the operating system and application manufacturers and information security standards~~, including Maryland Department of Information Technology's Information Security Policy~~.

Response: The State does not accept this language.

151. 3.7.5.B.8) Please confirm that 3.7.5.B.8 can be limited to an annual assessment of Contractor's policies and procedures and performance. Contract is agreeable to hold its ancillary services providers accountable for any service or performance provided; however, such providers would be out of scope for such assessment of Contractor.

To ensure appropriate data protection safeguards are in place, the Contractor shall implement and maintain the following controls at all times throughout the Term of the Contract (the Contractor may augment this list with additional controls):

Retain the aforementioned logs and review them at least daily to identify suspicious or questionable activity for investigation and documentation as to their cause and remediation, if required. The Department shall have ~~the~~ an annual right to inspect these policies and procedures and the Contractor ~~or subcontractor's~~ performance to confirm the effectiveness of these measures for the services being provided under the Contract.

Response: The State does not accept this language.

152. 3.7.5.B.13) Contractor has regular vulnerability testing as described in place with risk level scaling in place and is agreeable to requested timelines for any Critical, High, or Medium risks identified however, would request Low vulnerability risks be exempted from such timelines and managed according to Contractor's asset level risk stratification standards. Further, please confirm that vendor can satisfy 3.7.5.B.13 by providing evidence of vulnerability scans as opposed to providing results.

Additionally, please confirm that State would be agreeable to structure its right to inspect such policies and procedures with an annual inspection of policies and procedures as otherwise

requested by Contractor with regard to 3.7.5.B. Additionally, we do not share the results of vulnerability scans but instead share evidence of vulnerability scans. Please confirm agreement to the revised timeline based on risk level for requirement 3.7.5.B.13 and an annual assessment of only the Contractor's policies and procedures and performance.

To ensure appropriate data protection safeguards are in place, the Contractor shall implement and maintain the following controls at all times throughout the Term of the Contract (the Contractor may augment this list with additional controls):

Perform regular vulnerability testing of operating system, application, and network devices. Such testing is expected to identify outdated software versions; missing software patches; device or software misconfigurations; and to validate compliance with or deviations from the security policies applicable to the Contract. Contractor shall evaluate all identified vulnerabilities for potential adverse effect on security and integrity and remediate the vulnerability no later than 30 calendar days following the earlier of vulnerability's identification or public disclosure, or document why remediation action is unnecessary or unsuitable. The Department shall have the right to inspect the Contractor's policies and procedures and the results of vulnerability testing to confirm the effectiveness of these measures for the services being provided under the Contract.

Response: The State does not accept this language.

153. 3.7.5.B.18) As requested regarding B.13, please confirm the State would be agreeable to Contractor providing evidence of vulnerability scanning as opposed to results of such and that State's right to review would be conducted through an annual review of policy and procedures.

To ensure appropriate data protection safeguards are in place, the Contractor shall implement and maintain the following controls at all times throughout the Term of the Contract (the Contractor may augment this list with additional controls):

Conduct regular external vulnerability testing designed to examine the service provider's security profile from the Internet without benefit of access to internal systems and networks behind the external security perimeter. Evaluate all identified vulnerabilities on Internet-facing devices for potential adverse effect on the service's security and integrity and remediate the vulnerability promptly or document why remediation action is unnecessary or unsuitable. The Department shall have the right to inspect these policies and procedures and the performance of vulnerability testing to confirm the effectiveness of these measures for the services being provided under the Contract.

Response: The State does not accept this language.

154. 3.7.6 As Contractor would be providing PBM Services across a book of business for services, providing the State user access logs would extend beyond information applicable to the State as Contractor's client. Contractor is agreeable to work with State to identify a mutually

agreeable solution to ensure satisfactory reports are provided in a mutually agreeable format. Please advise if State is open to additional discussion with successful Contractor to further address its needs in this regard.

For a SaaS or non-State hosted solution, the Contractor shall provide reports to the State in a mutually agreeable format.

Reports shall include latency statistics, user access, user access IP address, user access history, and security logs for all State files related to the Contract.

Response: The State does not accept this language.

155. 3.7.9.A.1) Contractor has appropriate processes in place to provide client notification; however, would request that the State agree to a 72 hour notification requirement, consistent with its processes with similar clients to the State.

The Contractor shall notify the Department in accordance with Section 3.7.9A-D when any Contractor system that may access, process, or store State data or State systems experiences a Security Incident or a Data Breach as follows: 1) notify the Department within one (1) Business Day of the discovery of a Security Incident by providing notice via written or electronic correspondence to the Contract Manager, Department chief information officer and Department chief information security officer;

Response: The State does not accept this language.

156. 3.7.11 Please confirm the State would be agreeable to such review and assessment on an annual basis, and upon a minimum notice of 30 days.

The State shall, at its discretion, have the right to review and assess the Contractor's compliance to the security requirements and standards defined in the Contract.

Response: The State does not accept this language.

157. 3.7.12 As previously requested related to 3.7.4(b), please confirm the State would be agreeable to Contractor compliance with this requirement by having IT policies that align with industry standards such as ISO-27002, NIST SP 800-53, NIST CSF, HIPAA, HITRUST, PCI-DSS, NYS-DFS, NIAC and CIS Benchmarks.

Provisions in Sections 3.7.1 – 3.7.10 shall survive expiration or termination of the Contract. Additionally, the Contractor shall flow down the same provisions of Sections 3.7.4-3.7.10 (or the substance thereof) in all subcontracts.

Response: The State does not agree.

3.9 SOC 2 Type 2 Audit Report

159. 3.9.1 Please confirm that the Contractor can meet the requirements of 3.9.1 with the Claims Processing System SOC2 report, which will cover all five trust services criteria.

A SOC 2 Type 2 Audit applies to the Contract. The applicable trust services criteria are: Security, Availability, Processing Integrity, Confidentiality, and Privacy as defined in the Guidance document identified in Section 3.9.2.

Response: The State views this as a general statement. There is no question being asked.

160. 3.9.2 Please confirm that the Contractor can meet the requirements of 3.9.2 with the Claims Processing System SOC2 report, which will cover all five trust services criteria.

In the event the Contractor provides services for identified critical functions, handles Sensitive Data, or hosts any related implemented system for the State under the Contract, the Contractor shall have an annual audit performed by an independent audit firm of the Contractor's handling of Sensitive Data or the Department's critical functions. Critical functions are identified as all aspects and functionality of the Solution including any add-on modules and shall address all areas relating to Information Technology security and operational processes. These services provided by the Contractor that shall be covered by the audit will collectively be referred to as the "Information Functions and Processes." Such audits shall be performed in accordance with audit guidance: Reporting on an Examination of Controls at a Service Organization Relevant to Security, Availability, Processing Integrity, Confidentiality, or Privacy (SOC 2) as published by the American Institute of Certified Public Accountants (AICPA) and as updated from time to time, or according to the most current audit guidance promulgated by the AICPA or similarly-recognized professional organization, as agreed to by the Department, to assess the security of outsourced client functions or data (collectively, the "Guidance") as follows:

Response: The State views this as a general statement. There is no question being asked.

161. 3.9.2.A Please confirm that the State would be aggregable to a timeframe of the audit period covering 10/01 of the prior year to 09/30 of current, with such report typically available on or after 12/31 of the year, and available to the State upon request.

The type of audit to be performed in accordance with the Guidance is a SOC 2 Type 2 Audit (referred to as the "SOC 2 Audit" or "SOC 2 Report"). All SOC2 Audit Reports shall be submitted to the Contract Manager as specified in Section F below. The initial SOC 2 Audit shall

be completed within a timeframe to be specified by the State. The audit period covered by the initial SOC 2 Audit shall start with the Contract Effective Date unless otherwise agreed to in writing by the Contract Manager. All subsequent SOC 2 Audits after this initial audit shall be performed at a minimum on an annual basis throughout the Term of the Contract, and shall cover a 12-month audit period or such portion of the year that the Contractor furnished services.

Response: *Per 3.9.2.A The audit period covered by the initial SOC 2 Audit shall start with the Contract Effective Date unless otherwise agreed to in writing by the Contract Manager.*

Attachment M

162. Attachment M (Contract), Section 4.1, states that "Contractor shall notify the Contract Manager, in writing, at least sixty (60) days before payments reach the NTE Amount." How does the Department calculate the NTE Amount?

Response: The NTE Amount is the Total Projected Cost as a result of the bidding process.

163. In order to allow the selected Contractor to provide sixty days' notice of payments reaching the NTE amount, as required under Section 4.1 of the Contract at Attachment M, will the Department be providing the Contractor the NTE amount prior to the Contract effective date?

Response: The State will provide the NTE amount.

164. Attachment M (Contract), Section 5.4, states that "[t]he Contractor shall not affix any restrictive markings upon any data, documentation, or other materials provided to the State [under the Contract]…" Based on the other provisions of Contract Article 5 (Rights to Records), Bidder is understanding this to relate to markings intending to impose restrictions on the use of such materials, such as copyright marks. Can the State confirm that the Contractor may appropriately mark documents that contain information that the Contractor asserts in good faith to be exempt from disclosure under the Maryland Public Information Act, consistent with Article 8 (Confidential or Proprietary Information and Documentation) of the Contract, with the understanding that permitting such markings would not bind the State to agree with the Contractor's assertions?

Response: Confirmed.

165. Bidder expects that in providing services the Contractor will provide the State with a significant amount of pre-existing intellectual property and also materials that are offered to Contractor's book of business clients generally. Accordingly, will the State agree to modify the terms of Attachment M (Contract), Article 6 (Exclusive Use), as follows:

6.1 The State shall have the exclusive right to use, duplicate, and disclose any data, information, documents, records, or results, in whole or in part, in any manner for any purpose whatsoever, that may be created or generated by the Contractor specifically in connection with this Contract. If any material, including software, is capable of being copyrighted, the State shall be the copyright owner and Contractor may copyright material connected with this project only with the express written approval of the State.

> 6.2 Except as may otherwise be set forth in this Contract, Contractor shall not use, sell, sub-lease, assign, give, or otherwise transfer to any third party any other information or material provided to Contractor by the Department or developed by Contractor specifically relating to the Contract, except as provided for in **Section 8: Confidential or Proprietary Information and Documentation**.

Response: The State does not accept this language.

166. Attachment M (Contract), Section 10.1 states that Contractor must indemnify the State, its employees, and agents "from and against any and all claims, demands, actions, suits, damages, liabilities, losses, settlements, judgments, costs and expenses (including but not limited to attorneys' fees and costs), whether or not involving a third party claim, which arise out of or relate to the Contractor's, or any of its subcontractors', performance of this Contract." Part of the PBM's responsibilities under the Contract in carrying out its contractual duties will be to process Claims and appeals in accordance with Plan specifications, and Plan requirements may, in some cases, require that member claims are denied. Can the State confirm that the indemnification required under Section 10.1 will not require the PBM to indemnify the State and hold it harmless from claims brought by members challenging correct denials of claims (that is, denials required per the terms of the State's Plan)? To the extent it is the State's intention to require PBM to be indemnify the State in such cases, can the State advise how many such member suits have been brought over the last five (5) years so bidders can estimate the expense of defending such actions and underwrite accordingly?

Response: Confirmed. The State would not expect indemnification due to the correct denial of claims.

167. Attachment M (Contract), Section 17, states that the State may terminate the Contract, among other reasons, if the Contractor "fails to provide any required annual and renewable bond 30 days prior to expiration of the current bond then in effect." Does the Department anticipate that the selected Contractor will be required to provide a performance bond, and if so, what is the amount of the bond the Contractor will be required to post?

Response: This solicitation does not require a bond or performance bond.

168. Attachment M (Contract), Section 25.2, states that "[u]pon three (3) Business Days' notice, the State shall be provided reasonable access to Contractor's records to perform" audits described in Section 25. While Bidder can gather and provide for the State's review of many specific individual records related to the Contract upon such short prior notice, it may not be feasible to gather many other records necessary for a comprehensive audit upon such short notice. For instance, scanned images of mail pharmacy prescriptions are generally stored offline and offsite after the prescription is no longer valid and retrieval can take several days to several weeks. Similarly, gathering and loading comprehensive claims experience files for audit purposes can take several days to a few weeks depending on the age of the claims. Can the State confirm that for comprehensive systematic audits of claims experience and/or rebates, it will, to the greatest extent feasible, provide more prior notice than three business days in order to permit the Contractor to efficiently and completely gather the appropriate records?

Response: The State will give the earliest notice as possible but the three (3) business day requirement will stay the same.

169. Attachment M (Contract), Section 29.1, the limitation on liability provision, states: "For all other claims [other than those specified in Section 29 (e.g., intellectual property, damages for bodily injury)], damages, loss, costs, expenses, suits or actions in any way related to this Contract and regardless of the basis on which the claim is made, Contractor's liability shall be unlimited." The indemnification provision in Section 10 requires Contractor to indemnify the State against all claims, demands, actions, etc. "which arise out of or relate to the Contractor's, or any of its subcontractors', performance of this Contract." In order to mitigate the risk of frivolous third party damages claims, would the State consider inserting a provision specifying that that neither party will be liable for any incidental, special, consequential, or punitive damages as a result of the performance or any default in the performance of its respective obligations under the Contract?

Response: The State does not accept this language.

Attachment J

170. Attachment J (HIPAA Business Associate Agreement), Section II.E, permits the Business Associate to Disclose PHI for the proper management and administration, or legal responsibilities, of the Business Associate, under certain circumstances. There are also circumstances where a Business Associate must *use* PHI for the proper management and administration, or legal responsibilities of the Business Associate and, in compliance with the minimum necessary rule, where the Business Associate is capable of addressing such proper management and administration, or legal responsibilities internally, rather than through disclosure to a third party, it should do so. Accordingly, and understanding that the State reserves the right to revisit the terms of Attachment J prior to execution, will the State agree to modify Section II.E of the BAA as follows:

> E. Except as otherwise limited in this Agreement, Business Associate may use PHI for the proper management and administration, or legal responsibilities of the Business Associate, and may disclose PHI for the proper management and administration, or legal responsibilities of the Business Associate, provided that disclosures are Required By Law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

Response: The State does not accept this language.

171. Attachment J (HIPAA Business Associate Agreement), Section II.C, states: "Business Associate may not use or disclose PHI in a manner that would violate Subpart E of 45 C.F.R. Part 164 if done by Covered Entity " For purposes of managing and improving the performance or outcomes of their plans, PBM clients generally seek benchmarking data on the performance of their plan as compared to a PBM's overall population of clients and certain subsections of that population.

In order to provide this information PBMs must engage in data aggregation, which is not generally permitted for covered entities. Accordingly, and understanding that the State reserves the right to revisit the terms of Attachment J prior to execution, will the State agree to modify Section II.C of the BAA as follows:

C. Business Associate may not use or disclose PHI in a manner that would violate Subpart E of 45 C.F.R. Part 164 if done by Covered Entity**,** <u>except that Business Associate may use and disclose PHI to provide Data Aggregation services to Plan as permitted by 45 CFR 164.504(e)(2)(i)(B).</u>

<u>Response:</u> The State does not accept this language.

172. Regarding Attachment J (HIPAA Business Associate Agreement): As part of the services typically provided by a PBM, the PBM will process coordination of benefit claims that are submitted to it by Medicaid, the Veteran's Administration or other payer of last resort. In addition, other Covered Entities may contact the PBM from time to time seeking PHI of plan members. For example, a hospital emergency room may contact the PBM from an ID Card carried by an unconscious patient to determine what prescription drugs may have been prescribed to such patient. Also, representatives of Plan members with proper authorization may request PHI of such Plan member from time to time. In order to efficiently and timely address such requests, Bidder typically has permission to use or disclose PHI for such purposes. Accordingly, and understanding that, as stated in response to bidder questions 59-68, that the State reserves the right to revisit the terms of Attachment K prior to execution, will the State agree to modify the Permitted Uses and Disclosures of PHI by Business Associate section of Attachment K to add a new Subsection H as follows:

<u>H. Business Associate may use and disclose PHI to respond to requests for PHI either accompanied by an authorization that meets the requirements of 45 CFR 164.508 or from a covered entity or health care provider in accordance with 45 CFR 164.506(c).</u>

<u>Response:</u> The State does not accept this language.

173. Attachment J (HIPAA Business Associate Agreement), Section III.D1, states in part that "Business Associate agrees to Report to Covered Entity any use or disclosure of PHI not provided for by the Agreement of which it becomes aware, … without <u>reasonable</u> delay, and in no case later than fifteen calendar days after the use or disclosure;" (emphasis added). Can the State confirm that the word "reasonable" should be the word "unreasonable" in this provision?

<u>Response:</u> The State does not accept this language.

174. Attachment J (HIPAA Business Associate Agreement), Section III.D1 requires "Business Associate [] to Report to Covered Entity any use or disclosure of PHI not provided for by the Agreement of which it becomes aware." In order to avoid inundating the State with reporting on de minimis inadvertent, and innocent, uses or disclosures (such as a provider inadvertently receiving PHI from another provider via a wrong number), and therefore to allow the parties to focus only on risks and other serious incidents, would the State consider inserting the following language:

For purposes of reporting under this Agreement, in order to determine whether a particular situation is a reportable "Security Incident," the Business Associate may rely upon HIPAA and its related laws for guidance to render that determination?

Response: The State does not accept this language.

175. Attachment J (HIPAA Business Associate Agreement), Section IV.C.1, requires the return or destruction of PHI following termination of the Contract. There may be circumstances where it is not feasible to return/destroy PHI directly upon termination, for example, such information may be necessary to wind down Contactor's duties under the contract or may be subject to legal record retention requirements. Accordingly, would the State consider adding the following language at the end of Section IV.C.1 to account for such circumstances:

If return or destruction of the PHI is impossible or significantly infeasible, Business Associate may discuss this matter with the Covered Entity to reach the appropriate resolution.

Response: The State does not accept this language.

Attachment I

176. Attachment I – Non-Disclosure Agreement: Bidder provided an executed copy of Attachment I in accordance with the RFP requirements. Attachment I requires, in part, that the names of any employees of the Contractor and its subcontractors that receive Confidential Information must be added to Attachment I-2 (and such staff presumably must sign Attachment I-2 based on its format). For purposes of responding to the RFP, relatively few Bidder staff require access to Confidential Information and the management of Attachment I-2 is easily achieved. In the event that Bidder is selected through this RFP, the number of Bidder's staff and its subcontractor staff that would have access to one or more aspects of Confidential Information in order to provide the services would grow exponentially into the thousands of persons. For instance, all customer services staff available to assist State plan members would have the ability to look up elements of Confidential Information; any Bidder staff processing prior authorizations, appeals or clinical programs would have access to certain Confidential Information; mail pharmacy and specialty pharmacy employees would have access to Confidential Information; and subcontractor staff performing ID card printing, retail pharmacy help desk services and retail pharmacy auditing functions would all have access to Confidential

Information, just to name a few. With this many individuals having access to Confidential Information, management of Attachment I-2 could become quite infeasible. In addition, Attachment I-2 requires that original copies of Confidentiality Agreements executed by all such staff and subcontractor staff be provided to the State. Again, obtaining and providing this volume of original Confidentiality Agreements to the State will be unduly burdensome to both the Contractor and the State. All Bidder employees are required to sign confidentiality agreements upon hire and subcontractor staff are subject to similar requirements. Will the State agree that obtaining these agreements, and permitting the review of a reasonable sample of such agreements by the State will satisfy the requirements of Attachment I-2 with respect to Contractor and subcontractor staff? If not, would the State agree to an electronic signature (or email acknowledgment) by staff in lieu of a signature of Attachment I-2?

Response: If awarded the Contract, the State will require a new NDA that addresses this concern.

Updated response to Q&A Document one (1) question one (1):

177. 2.2.10 of the MS-IFB indicates that *"DBM intends to make a single award to one bidder for a planned go-live date of January 1, 2025, … for pharmacy benefits management services (including EGWP services) for the State Pharmacy Benefits Plan… ."* As recently as Jan 23, 2024, news articles have suggested that the current Medicare retirees coverage under the plan would not be continued and eligible retirees would be encouraged to enroll in coverage under Medicare.

Response: Following the decision in recent litigation, which lifted the injunction prohibiting the State from transitioning retirees to Medicare Part D, the State has begun the process as required under the current statute. The Department notes that while the District Court issued an order granting summary judgment to the State in the referenced litigation, the retiree plaintiffs have appealed the case to the Court of Appeals for the Fourth Circuit. Therefore, The State is fully prepared for either scenario. Please review Sections 2.1.6, 4.9 and all of Section 6.