



**STATE OF WISCONSIN**  
**Department of Employee Trust Funds**  
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 SECRETARY

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Date: June 18, 2024  
 To: Potential Proposers to RFP ETC0049  
 RE: Addendum No. 5 to Request for Proposals (RFP) ETC0049  
 Administrative Services for the State of Wisconsin Pharmacy Benefit Program

This Addendum will be made available on ETF's web site at <https://etf.wi.gov/node/35431>

Acknowledgement of receipt of this Addendum No. 5:

Proposers must acknowledge receipt of this Addendum No. 5 by providing the required information in the table below and including this Page 1 with their Proposal cover letter.

Company Name:	
Authorized Person (Printed/Typed Name and Title):	
Date:	

The following question from Proposers and answer from the Department is added to ETC0049:

Q #	RFP / Appendix # and Section #	RFP Page	Question/Rationale	Department Answer
Q1	Appendix 1; Section 150B # 2	33	<p>The imposition of penalties is not in lieu of any other remedy available to the DEPARTMENT/BOARD.</p> <p>Proposed Deviation: The Performance Guarantee amounts specified shall be Client's exclusive remedy for our failure to meet such Performance Guarantees.</p> <p>Rationale: We offer aggressive operational performance guarantees which are above and beyond financial guarantees. Failure to meet these operational guarantees are tied to amounts to be paid and not subject to other remedies.</p>	The Department does not agree with this deviation at this time.

Q2	Appendix 1; Section 150H # 2	45	<p>In the event of contract termination or non-renewal, the CONTRACTOR will be responsible for processing claims during the run-out period specified by the DEPARTMENT.</p> <p>Proposed Deviation: Upon termination of this Agreement, We will process only those Claims which are for prescriptions dispensed before the termination date and which are received within ninety (90) days of the termination date. Any Claims submitted and processed after the termination date will be billed and paid for by Client consistent with the terms for pre-termination Claims, and the processing and payment of any Claims received more than ninety (90) days after termination shall be the sole responsibility of Client. Client will pay PBM in accordance with this Agreement for any Fees for Services provided during any run-off period.</p> <p>Rationale: We have identified that this timeframe is a reasonable timeframe for any claims processing transition. This would also assist in ensuring there are not duplicate claims being processed by multiple vendors and reduce impact to having multiple rebate submissions by different PBMs.</p>	The Department is open to discussing with Contractor during Contract negotiations.
Q3	Appendix 9	19	<p>Proposed Deviation: We would propose limitation of liability language be added to Appendix 9.</p> <p>Rationale: As a standard business practice, we require a limitation of liability amount based upon our administrative role in providing PBM services. Language would be negotiated upon award.</p>	The Department does not agree with this deviation at this time.
Q4	Appendix 9, Section 17.0	5	Proposed Deviation: We would request addition of amounts payable for early termination of Part D business to cover the application and renewal support services provided to Client by PBM (the amount due depends on the date the termination notice is received by PBM)	The Department does not agree with this deviation at this time. See RFP Section 2.7.5

			Rationale: Fees to cover the application and renewal support services provided by PBM.	
Q5	Appendix 9; Section 21.0	6	<p>21.0 WARRANTY: Unless otherwise specifically stated by the Contractor, equipment purchased as a result of the Contract shall be warranted against defects by the Contractor for one (1) year from date of receipt. The equipment manufacturer's standard warranty shall apply as a minimum and must be honored by the Contractor.</p> <p>Proposed Deviation: This section is intentionally omitted.</p> <p>Rationale: Not applicable to PBM Services.</p>	The Department is open to discussing with Contractor during Contract negotiations.
Q6	Appendix 12, paragraph 2	1	<p>Definition of Confidential Information.</p> <p>Proposed Deviation: Add the word "pricing" into item (i). "Confidential Information" shall mean all of the following whether disclosed directly or indirectly: (i) Data Suppliers' financial, pricing, customer, product, technical, and business information, including, but not limited to, financial statements, strategic plans, intellectual property, customer lists, other customer information, marketing plans, software, forms, service methods, personnel information, trade secrets, and know-how, both written and oral;</p> <p>Rationale: We consider pricing which includes networks and rebates to be confidential.</p>	This is something that will need to be discussed with the Department's Insurance Administration System vendor, Benefitfocus during Contract negotiations.
Q7	Appendix 12, paragraph 10	3	<p>Indemnification language.</p> <p>Proposed Deviation: Strike this sentence. "In no event will BENEFITFOCUS be liable to Data Supplier for incidental, consequential, special, or punitive damages (including loss of profits, data, business, or goodwill, or government fines, penalties, taxes, or filing fees), regardless of whether such liability is based on breach of contract, tort, strict liability, breach of warranty, failure of essential purpose or</p>	This is something that will need to be discussed with the Department's Insurance Administration System vendor, Benefitfocus, and the Contractor during Contract negotiations.

			<p>otherwise, and even if advised of the likelihood of such damages.”</p> <p>Rationale: Breach of this agreement would very likely result in primarily consequential damages, loss profits, and fines/penalties.</p>	
Q8	Appendix 11, paragraph 2	1	<p>Indemnification language.</p> <p>Proposed Deviation: Strike this sentence. “In no event will Merative be liable to Data Supplier for incidental, consequential, special, or punitive damages (including loss of profits, data, business, or goodwill, or government fines, penalties, taxes, or filing fees), regardless of whether such liability is based on breach of contract, tort, strict liability, breach of warranty, failure of essential purpose or otherwise, and even if advised of the likelihood of such damages.”</p> <p>Rationale: Breach of this agreement would very likely result in primarily consequential damages, loss profits, and fines/penalties.</p>	This is something that will need to be discussed between the Department’s Data Warehouse vendor, Merative, and the Contractor during Contract negotiations.
Q9	Appendix 11, paragraph 6	2	<p>Choice of Law.</p> <p>Proposed Deviation: This Agreement is governed by the laws of the State of <b>California</b> without regard to its conflict of laws provisions.</p> <p>Rationale: We request California as governing law, or Wisconsin due to the mutual client’s situs state.</p>	This is something that will need to be discussed between the Department’s Data Warehouse vendor, Merative, and the Contractor during Contract negotiations.
Q10	Appendix 7, paragraph B i	1	<p>Confidential Information</p> <p>Proposed Deviation: Client has requested that XYZ disclose to Vendor certain confidential information as necessary to facilitate the Services, which may contain Protected Health Information as defined under 45 C.F.R. 160.103 and XYZ’s confidential financial, pricing, customer, product, technical, and business information, both written and oral (“Confidential Information”).</p> <p>Rationale: This is to align this NDA with the other NDA templates provided under</p>	The Department does not agree with this deviation at this time.

			this RFP and to address PBM's confidential information that may be disclosed.	
Q11	Appendix 6, paragraph 4	2	<p>Indemnification language.</p> <p>Proposed Deviation: Strike this sentence. "In no event will Data Warehouse be liable to Data Supplier for incidental, consequential, special, or punitive damages (including loss of profits, data, business, or goodwill, or government fines, penalties, taxes, or filing fees), regardless of whether such liability is based on breach of contract, tort, strict liability, breach of warranty, failure of essential purpose or otherwise, and even if advised of the likelihood of such damages." Add this verbiage to the following sentence. "Except for instances of gross negligence or willful misconduct," Data Warehouse's entire liability under this DSA shall not exceed \$500,000, regardless of whether such liability is based on breach of contract, tort, strict liability, breach of warranty, failure of essential purpose or otherwise, and even if advised of the likelihood of such damages.</p> <p>Rationale: Breach of this agreement would very likely result in primarily consequential damages, loss profits, and fines/penalties. We are requesting the carve out of gross negligence and willful misconduct as \$500K is a low cap for intentional breach of confidentiality.</p>	This is something that will need to be discussed between the Department's Data Warehouse vendor, Merative, and the Contractor during Contract negotiations.
Q12	Appendix 9, Section 2.0	1	<p>Proposed Deviation: Add the following language. "The Department, as the holder" (as defined under unclaimed property laws) of uncashed checks or payments made out to member for DMR claims, shall be responsible for any required due diligence activities and escheating such amounts to the applicable states. Contractor will provide the Department with reports, in Contractor's standard forms, containing sufficient information to allow the Department to perform the escheatment activities. Such reports will be provided to the Department twice a year on or</p>	The Department does not agree with this deviation at this time.

			<p>about January 31st and July 31st for checks or amounts that remain uncashed or uncollected for at least six (6) months post issuance. In addition, Contractor will remit a check to the Department in an amount equal to the aggregate amount as reflected in each such report and Contractor shall have no further obligations related to any due diligence or escheatment requirements for such member payments.”</p> <p>Rationale: If PBM will be processing DMR claims for the Department, this outlines how PBM supports the Department’s escheatment obligations.</p>	
Q13	Appendix 9, Section 2.0	1	<p>Proposed Deviation: Add the following language. “If there is an amendment, change, or change in interpretation thereof, in laws or any government, judicial, or legal action , or any drug industry practice, or any policy, underwriting, benefit change, or management practice of a regulatory body, accreditation agency, or the Department that, among other things, materially burdens Contractor or materially alters Contractor’s rights and/or obligations hereunder, requires Contract to increase or decrease payments or shorten payment timeframes to participating pharmacies, or materially changes the scope of services hereunder (“Change in Law”), then there shall be an appropriate modification of the services, reimbursement rates, and/or dispensing fees, claims processing fees (if applicable), other administrative fees, rebates, and/or financial guarantees, as applicable to this Contract, to preserve each party’s anticipated economic benefits under this Contract.”</p> <p>Rationale: PBM requests this additional language to protect our anticipated economic benefits in the event a change in law affects the described obligations and/or contract terms.</p>	The Department does not agree with this deviation at this time.

Q14	Appendix 9, Section 3.0	1	<p>Will the Department accept liability for circumstances where the Contractor has acted at or relied upon the direction, instruction, or information provided by the Department (i.e., Will the Department accept liability for its own acts and omissions) as it relates to this highlighted language?</p> <p><b>In carrying out any provisions of the Contract or in exercising any power or authority granted to the Contractor thereby, there shall be no liability upon the Department, it being understood that in such matters the Department acts as an agent of the State.</b></p>	The Department does not agree with this deviation at this time. See RFP Section 2.7.5
Q15	Appendix 9, Section 4.0	2	<p>Proposed Deviation: Add this language to this paragraph.</p> <p>None of the Services to be provided by the Contractor shall be subcontracted or delegated to any other organization, subdivision, association, individual, corporation, partnership or group of individuals, or other such entity without prior written notification to, and acknowledgement of <b>(which shall not be unreasonably conditioned or delayed)</b>, the Department. If the Department has concerns regarding the subcontractors a meeting will be scheduled to discuss a resolution.</p> <p>Rationale: PBM needs to be able to subcontract, as needed, the services provided without undue delay upon providing the required notice.</p>	The Department is open to discussing with Contractor during Contract negotiations.
Q16	Appendix 9, Section 4.0	2	<p>Proposed Deviation: Add this language to this sentence.</p> <p>The Contractor will be responsible for payment of any losses by its subcontractors or agents <b>in the provision of services under the Contract.</b></p> <p>Rationale: PBM will accept this responsibility as it relates to Contract performance.</p>	The Department is open to discussing with Contractor during Contract negotiations.

Q17	Appendix 9, Section 5.0	2	<p>Proposed Deviation: Replace this language (the strictest quality) with accepted industry standards).</p> <p>Work under the Contract shall be performed in a timely, professional, and diligent matter by qualified and efficient personnel and in conformity with <del>the strictest quality</del> accepted industry standards mandated or recommended by all generally-recognized organizations establishing quality standards for the work of the type specified in the Contract.</p> <p>Rationale: This is a high standard. PBM requests that it be obligated to standards that are industry standard.</p>	The Department does not agree with this deviation at this time.
Q18	Appendix 9, Section 5.0	2	<p>Proposed Deviation: Replace this language.</p> <p>The Contractor shall provide the Services with all due skill, care, and diligence, in accordance with accepted industry practices and legal requirements, and to the Department's reasonable satisfaction; <del>the Department's decision in that regard shall be final and conclusive.</del></p> <p>Rationale: PBM prefers a collaborative relationship with our clients and to work closely with them in reviewing the level of services provided.</p>	The Department does not agree with this deviation at this time.
Q19	Appendix 9, Section 5.0	2	<p>Proposed Deviation: Add this language to the paragraph.</p> <p>The Contractor will make commercially reasonable efforts to ensure that Contractor's professional and managerial staff maintain a working knowledge and understanding of all federal and state laws, regulations, and administrative code appropriate for the performance of their respective duties, as well as contemplated changes in such law which affect or may affect the Services delivered under the Contract.</p> <p><b>Each party will comply with all laws and regulations applicable to its obligations hereunder. The Contractor shall have no obligation to advise the Department</b></p>	The Department is open to discussing the highlighted language during negotiations but does not agree at this time with the language that is not highlighted.



			<p>about the Department's compliance with any applicable law or regulations. The Department has obtained, or will obtain, any member authorizations required by law for Contractor to perform the services under this Contract, as well as for Contractor to contact members, their physicians, and participating pharmacies to perform any activities contemplated under this Contract.</p> <p>Rationale: This language is requested because the Department is the entity most knowledgeable about the laws and regulations that would apply to its benefit plan and setup.</p>	
Q20	Appendix 9, Section 5.0	2	<p>Proposed Deviation: Add these two paragraphs to section 5.0.</p> <p>Throughout the term of this Contract, the Department shall provide to Contractor information in a format and frequency required by Contractor for Contractor to perform the services, including but not limited to, regular and timely eligible member lists and benefit plan information. The Department shall be solely responsible for ensuring the accuracy and completeness of its eligible member list and benefit plan information provided to Contractor and shall be obligated to pay for claims accepted by Contractor based on that information. Retroactive modification of eligible member list and/or benefit plan information will not relieve the Department of liability for those claims processed prior to such modifications being implemented in Contractor's systems.</p> <p>In connection with the services provided under this Contract, the Department acknowledges and agrees that Contractor shall have the right to rely on the information and instructions provided by the Department. The Department also acknowledges and agrees that Contractor may provide participating pharmacies and/or subcontractors with access to member eligibility information,</p>	The Department is open to discussing with Contractor during Contract negotiations.

			<p>benefit plan information, and claims data in furtherance of the services provided, and that Contractor, subcontractors, and participating pharmacies are entitled to rely on the accuracy and completeness of the information provided by the Department.</p> <p>Rationale: PBM needs to be able to rely on eligible member lists and benefit plan information provided to it by the Department in order to perform the services.</p>	
Q21	Appendix 9, Section 6.3	3	<p>Proposed Deviation: Replace this language.</p> <p>The Department may schedule and arrange for an independent certified public accountant or utilize the Department's internal audit resources to perform agreed upon procedures or consulting work related to the Contractor's compliance with the Contract <del>and such audit shall be performed in accordance with the Contractor's standard Audit Protocols on a periodic basis, as determined by the Department.</del> The audit scope will be determined by the Department and may include recordkeeping, participant account activity, claims processing, administrative performance standards, and any other relevant areas to the programs under the Contract. <del>The timeline of the audit will be mutually agreed upon by the Department and the Contractor.</del> A minimum <del>ten</del> ninety (90) <del>business</del> days' notice is required. <del>All Contractor books, records, ledgers, data, and journals relating to the programs under the Contract will be open for inspection and audit by the Department or its designees in accordance with the Contractor's standard Audit Protocols.</del></p> <p>Rationale: PBM requests that all contract compliance oversight audits be conducted in accordance with its standard audit protocols so that our audit team can devote their attention to the requested audit.</p>	The Department does not agree with this deviation at this time.

Q22	Appendix 9, Section 6.4	3	<p>Proposed Deviation: All Contractor books, records, ledgers, data, and journals relating to the programs under the Contract will be open for inspection and audit by the <del>Department, its designees, or the</del> State of Wisconsin Legislative Audit Bureau, at any time during normal working hours. A minimum <del>ten (10) business</del> <b>thirty (30) day</b> notice will be provided, <del>unless a shorter notice period is required by law.</del> Records or data requested shall be provided electronically in a format mutually agreed upon by the <del>Department Legislative Audit Bureau</del> and Contractor. <del>The Department shall have access to interview any employee and authorized agent of the Contractor involved with the Contract in conjunction with any audit, review, or investigation deemed necessary by the Department or the State.</del></p> <p>Rationale: Moving the Department’s audit rights in Section 6.4 to Section 6.3 instead so they are in one place. PBM also requests a longer notice period, if allowed by law, for inspections by the State Legislative Bureau.</p>	The Department does not agree with this deviation at this time.
Q23	Appendix 9, Section 6.5	3	<p>Proposed Deviation: The Department is audited by the State of Wisconsin Legislative Audit Bureau annually, as required by Wis. Stat. § 13.94(1)(dd). The Contractor agrees to provide necessary information related to any such audit for all programs under the Contract, as requested by the Department or auditor, <del>so long as the Contractor is provided with prompt written notice that such audit is about to occur and provided with a copy of such audit request (portions not relevant to the Contractor may be redacted).</del></p> <p>Rationale: PBM agrees to provide this support if we are provided with timely notice.</p>	The Department does not agree with this deviation at this time.
Q24	Appendix 9, Section 9.0	3-4	Proposed Deviation: <del>This Section only applies to the extent that in</del> the course of performing Services under the Contract,	The Department is open to discussing with Contractor

			<p>the Contractor may have access to the personnel, premises, equipment, and other property, including data files, information, or materials (collectively referred to as “data”) belonging to the Department.</p> <p>Rationale: PBM does not anticipate having access to the Department’s premises, equipment, or personnel during Contract performance.</p>	during Contract negotiations.
Q25	Appendix 9, Section 12.0	3-4	<p>Proposed Deviation: <b>Except for payment of claims/drug spend, the Contractor agrees to accept a discount in the fees due to the Contractor under the Contract in the event any of the major deliverables is delivered by Contractor more than twenty-five (25) business days after the delivery date set forth in the then-current project work plan.</b></p> <p>Rationale: Will the Department be amenable to accepting a carveout for payment of claims/drug spend? PBM cannot discount the amounts it must pay pharmacies for prescription drug claims dispensed to the Department’s members.</p>	The Department does not agree with this deviation at this time. See RFP Section 2.7.5
Q26	Appendix 9, Section 13.0	4	<p>Proposed Deviation: Strike the current language and replace it with the following.</p> <p>“Payments due under this Contract shall be in accordance with the terms of Section 130A (Financial Provisions) of the State of Wisconsin Pharmacy Benefit Program Agreement.</p> <p>In the event of any uncured payment default, the Department authorizes the Contractor to offset the amount of such payment default against any Department-related amounts otherwise payable to Contractor (including, without limitation, any rebate amounts or security deposit, if any). “</p> <p>Rationale: The payment terms and processes are more thoroughly detailed in the referenced section of Appendix 1.</p>	The Department is open to discussing with Contractor during Contract negotiations.

Q27	Appendix 9, Section 14.0	4-5	<p>Proposed Deviation: Add the following language.</p> <p>The Department's non-payment of <b>claims/drug spend fees in breach of the Contract that are overdue by fourteen (14) calendar days or administrative</b> fees in breach of the Contract that are overdue by sixty (60) calendar days is a dispute that will always be considered to affect Contractor's responsibilities.</p> <p>Rationale: PBM requests timely payment of drug spend to comply with prompt pay.</p>	The Department does not agree with this deviation at this time. See RFP Section 2.7.5
Q28	Appendix 9, Section 14.0	4-5	<p>Proposed Deviation: Add this verbiage to the last paragraph.</p> <p><b>Except for claims/drug spend amounts,</b> the Department may withhold payments on disputed items pending resolution of the dispute.</p> <p>Rationale: PBM requests payment of drug spend.</p>	The Department does not agree with this deviation at this time. See RFP Section 2.7.5
Q29	Appendix 9, Section 16.0	5	<p>Proposed Deviation: Add the following verbiage to this section.</p> <p>If, at any time during the period of the Contract, the Department determines that the best interest of the Department or its governing boards would be best served by the Contractor temporarily suspending all Services, the Department will promptly notify the Contractor. Upon receipt of such notice, the Contractor shall suspend all Services. <b>This shall not affect the Department's payment obligation for services already rendered prior to the Contractor's receipt of such notice.</b></p> <p><b>If forty-eight (48) hours have elapsed from the time any amount due under this Contract was due the Contractor, and payment in full (including any accrued interest) has not been received at the Contractor designated bank account, then the Contractor may suspend its services and system operations for the Department upon written notice to the Department provided all past due</b></p>	The Department is open to discussing during negotiations.

			<p>amounts (including interest) have not been cured in full within forty-eight (48) hours after receiving such a notice.</p> <p>Rationale: PBM would expect that payment for services already rendered will not be impacted. PBM also needs to be able to suspend services if we are not being paid timely as pharmacies will need to be paid timely.</p>	
Q30	Appendix 9, Section 17.0	5	<p>Proposed Deviation: Add the following language.</p> <p>Upon termination, the Department’s liability shall be limited to the prorated cost of the Services performed as of the date of termination plus expenses incurred with the prior written approval of the Department. <b>To the extent that such termination is to be effective prior to the end of the contract anniversary year, the Department shall also accept waiver of any rebate and financial guarantees that are based on an annual reconciliation.</b></p> <p>Rationale: PBM retains right to manage business terms to guarantees and early termination may affect that ability.</p>	The Department does not agree with this deviation at this time. See RFP Section 2.7.5
Q31	Appendix 9, Section 18.0	5-6	<p>Proposed Deviation: Add the following language within this section.</p> <p>The Department reserves the right to cancel the Contract in whole or in part without penalty in the event one (1) or more of the following occurs <b>and is not timely cured.</b></p> <p>In the event of a termination for cause by the Department, the Department shall be liable for payments for any work accepted by the Department <b>and claims processed</b> prior to the date of termination.</p> <p>Rationale (questions for clarification):</p> <p>1)</p> <p>Will the Department accept a redline to introduce a cure option for subsections a-I?</p> <p>2)</p>	The Department does not agree with this deviation at this time. See RFP Section 2.7.5

			<p>Will the Department accept redlines to subsection I since the Department’s failure to appropriate funds is outside of PBM’s control? PBM requests that if this occurs, the Department provide prompt notice so that services may be stopped and accept waiver of financial and rebate guarantees that are based on an annual reconciliation.</p> <p>3)</p> <p>Will the Department accept a mutual termination for cause in the event that the Department materially breaches the Contract?</p>	
Q32	Appendix 9, Section 19.0	6	<p>Will the Department provide notice and an opportunity to cure prior to obtaining substitute services from another vendor to fulfil services the Department believes the Contractor has not materially provided?</p>	<p>The Department does not agree with this deviation at this time. See RFP Section 2.7.5</p>
Q33	Appendix 9, Section 20.0	6	<p>Proposed Deviation: Upon cancellation, termination, or expiration of the Contract for any reason, the <del>Contractor shall provide reasonable cooperation, assistance and Services, and shall assist the Department</del> parties will mutually develop a run-off plan to facilitate the orderly transition of the work under the Contract to the Department and/or to an alternative contractor selected for the transition upon written notice to the Contractor at least thirty (30) business days prior to termination or cancellation, and subject to the terms and conditions set forth in the Contract.</p> <p>Rationale: We collaborate with our clients to develop a post-termination plan for run-off services, which may incur additional fees depending on the services selected at that time.</p>	<p>The Department is open to discussing during negotiations.</p>
Q34	Appendix 9, Section 23.0	7	<p>Proposed Deviation: The Department will be furnished without additional charge all <del>standard</del> data, models, information, reports, and other materials associated with and generated under the</p>	<p>The Department is open to discussing with Contractor during Contract negotiations.</p>

			<p>Contract by the Contractor. <b>Requests for custom, modified, or additional materials may be subject to additional fees.</b></p> <p>Rationale: Custom or non-standard materials may incur fees.</p>	
Q35	Appendix 9, Section 23.0	7	<p>Proposed Deviation: Add the following language within this section.</p> <p>The Department shall solely own all customized software, documents, and other materials developed under the Contract <b>to the extent that such materials were developed uniquely for the Department at the Department's request and paid for by the Department.</b> Use of such software, documents, and materials by the Contractor shall only be with the prior written approval of the Department. <b>This provision shall not apply to materials that contain the Contractor's confidential information or trade secrets, or materials the Contractor develops for use with or by its clients for which a standard fee is charged.</b></p> <p>Rationale: PBM needs to protect materials that it generally develops for clients.</p>	The Department is open to discussing with Contractor during Contract negotiations.
Q36	Appendix 9, Section 23.0	7	<p>Proposed Deviation: Add the following language within this section.</p> <p>The Contract shall in no way affect or limit the Department's rights to use, disclose or duplicate, for any purpose whatsoever, all information and data pertaining to the Department, employees or members and generated by the claims administration and other Services provided by Contractor under the Contract. <b>To the extent that such information contains PBM's confidential information or trade secrets or will be accessed through the Contractor's proprietary software tools or systems, the Department shall require its third-party vendors who will have access to such information or tools to enter into a standard non-disclosure and/or license agreement with the Contractor prior to providing such access.</b></p>	The Department is open to discussing with Contractor during Contract negotiations.



			Rationale: PBM requires all of our client third-party vendors to enter into an NDA and/or license agreement with us if the vendor will have access to our proprietary software tools or confidential information/trade secrets.	
Q37	Appendix 9, Section 23.0	7	<p>Proposed Deviation: Addition of these paragraphs to Section 23.</p> <p>The Department acknowledges that the Contractor owns, licenses, or otherwise holds the rights to the entire proprietary software system used by the Contractor in processing claims and preparing reports, including, without limitation, computer programs, system and program documentation, and other documentation relating thereto (collectively "Contractor Software System"), and the Contractor Software System is the exclusive and sole property of the Contractor. The Department further acknowledges that the Contractor owns, licenses, or otherwise holds all rights to its programs, reports, MAC Lists, pricing schedules, Formularies, and other services provided to the Department under this Contract (collectively "Contractor Business Information"), and the Contractor Business Information is the exclusive and sole property of the Contractor. The Department disclaims any rights to the Contractor Software System (including access to any applicable source codes), the Contractor Business Information, and any resultant reports, procedures, or forms developed by the Contractor, any development or modification of the Contractor Software System and/or the Contractor Business Information as a result of any customization performed by any party, as well as any program, report, Contractor Formulary, or service provided hereunder, all of which shall be the property of the Contractor and are protected by copyright which shall be owned by the Contractor. In addition, the Department acknowledges and agrees that use of the Contractor Software System, including but not limited to the</p>	The Department is open to discussing with Contractor during Contract negotiations.

enterprise formulary system (“EFS”) and member website, are subject to the respective terms of use, disclaimer, and privacy policy and the Department hereby agrees with those terms and conditions prior to using the Contractor Software System. The Contractor may provide hyperlinks to other websites for the convenience of the Department. The Department understands and agrees that by clicking on the links they will be taken to websites that may not be owned or operated by the Contractor and are subject to the terms of use of those respective sites. When using the Contractor Software System, these hyperlinks and related sites are for informational purposes only and should not be solely relied on when using the Contractor Software System.

The Contractor may, in its sole discretion, make changes to the Contractor Software System including adding or removing software applications or reports provided through the Contractor Software System. The Department acknowledges and agrees that the Contractor may, in its sole discretion, eliminate or remove certain reports, software application, or Contractor Software System components. In the event the Contractor removes, eliminates, or discontinues a report, software application, or component from the Contractor Software System, the Contractor will provide the Department ninety (90) days prior written notice of such change. The Contractor will provide the Department information about Contractor alternatives to replace the removed report, software application, or component, if available.

Rationale: PBM needs to be able to retain ownership of its proprietary software systems and ancillary materials. In maintaining such systems, PBM needs the ability to make changes as needed.

Q38	Appendix 9, Section 23.0	7	<p>Proposed Deviation: <b>Subject to the limitations described above, all files</b> (paper or electronic) containing any Wisconsin plan member, claimant or employee information and all records created and maintained in the course of the work specified by the Contract are the sole and exclusive property of the Department. Contractor may maintain copies of such files during the term of the Contract as may be necessary or appropriate for its performance of the Contract. Moreover, Contractor may maintain copies of such files after the term of the Contract (i) for one hundred twenty (120) days after termination, after which all such files shall be transferred to the Department or destroyed by Contractor, except for any files as to which a claim has been made, and (ii) for an unlimited period of time after termination for Contractor's use for statistical purposes, if Contractor first deletes all information in the records from which the identity of a claimant or employee could be determined and certifies to the Department that all personal identifiers have been removed from the retained files. <b>The Contractor may also retain such files after termination to the extent the files are saved automatically to standard back-up or archival systems or required by law, and the confidentiality terms of this Contract apply for as long as such file copies are maintained.</b></p> <p>Rationale for first edit: PBM can agree to this subject to the limitations outlined in the Section with respect to materials that are not the Department's property.</p> <p>Rationale for second edit: It is overly burdensome for PBM to carve out a specific client's data/records from archived records.</p>	The Department is open to discussing with Contractor during Contract negotiations.
Q39	Appendix 9, Section 24.0	7-11	<p>Proposed Deviation: Upon award, PBM proposes adding URAC required language within the BAA.</p> <p>Obligations of Business Associate</p>	The Department does not agree with this deviation at this time. See RFP Section 2.7.5

			<p>1.</p> <p>Business Associate shall transfer and/or disclose PHI to Covered Entity via multiple media (e.g., electronically, telephonically, mail/courier) in compliance with the HIPAA Regulations and consistent with the Service Agreement to Covered Entity’s main office location as identified in the introductory paragraph to this Agreement or as otherwise mutually agreed upon by the Parties.</p> <p>2.</p> <p>Business Associate shall secure all PHI in compliance with HIPAA and the HIPAA Regulations.</p> <p>3.</p> <p>Business Associate shall provide, and shall ensure that its applicable staff participate in, appropriate HIPAA training.</p> <p>Obligations of Covered Entity</p> <p>1.</p> <p>Covered Entity shall transfer and/or disclose PHI to Business Associate via multiple media (e.g., electronically, telephonically, mail/courier) in compliance with the HIPAA Regulations and consistent with the Service Agreement to Business Associate’s main office location as identified in the introductory paragraph to this Agreement or as otherwise mutually agreed upon by the Parties.</p> <p>Rationale: PBM is URAC accredited.</p>	
Q40	Appendix 9, Section 24.0	7-11	<p>Proposed Deviation: Add the following language to section 24d (suggest it would be item 7).</p> <p>Be allowed to de-identify, use, reproduce, or adapt all Confidential Information to render services to its clients and to develop new products and services which may be outside the</p>	<p>The Department does not agree with this deviation at this time. See RFP Section 2.7.5</p>

			<p>scope of this Contract, provided it maintains the confidentiality of such information and does not use the information as prohibited by law.</p> <p>Rationale: PBM requests that it be able to use data for benchmarking and development of new services.</p>	
Q41	Appendix 9, Section 24.0	7-11	<p>Proposed Deviation: Revise section 24m (1) with the following language.</p> <p>(1)</p> <p>As soon as practical, but no later than <del>forty-eight (48) hours</del> <b>ten (10) business days</b> after Contractor <del>becomes aware of</del> <b>discovers</b> a suspected breach, impermissible use, or impermissible disclosure, Contractor shall notify in writing the Department Privacy Officer at ETFSMBPrivacyOfficer@etf.wi.gov, and the Department Program Manager. <b>For the avoidance of doubt, the parties agree that this paragraph satisfies any reporting required by Contractor of attempted but Unsuccessful Security Incidents (as defined herein) for which no additional report shall be required. For purposes of this Agreement, "Unsuccessful Security Incidents" include but are not limited to activity such as "pings" and other broadcast attacks on Contractor's firewall, port scans, unsuccessful log-on attempts, denials of service and any other activities that do not result in unauthorized access, use or disclosure of Electronic Protected Health Information.</b></p> <p>Rationale: PBM requests that this timeframe be updated to be in line with standard protocol (which meets governmental timelines). In addition, proposed language regarding what constitutes an incident proposed for clarification.</p>	The Department does not agree with this deviation at this time. See RFP Section 2.7.5
Q42	Appendix 9, Section 24.0	7-11	<p>Proposed Deviation: Revise section 24m (3) with the following language.</p>	The Department does not agree with this deviation at

			<p>(3)</p> <p>Within thirty (30) business days, <b>or as mutually agreed upon</b>, after Contractor makes the initial report under this Section, Contractor shall research the suspected breach, impermissible use, or impermissible disclosure of Confidential Information and provide a report in writing to the Department Program Manager.</p> <p>Rationale: PBM requests adding this language to allow for alternative coordination</p>	<p>this time. See RFP Section 2.7.5</p>
Q43	Appendix 9, Section 24.0	7-11	<p>Will the Department be amenable to extending the 24 hours to 3 business days under 24.0 (q) (Notice of Legal Proceedings)?</p>	<p>The Department does not agree with this deviation at this time. See RFP Section 2.7.5</p>
Q44	Appendix 9, Section 24.0 (v) (1)	7-11	<p>Proposed Deviation:</p> <p>(1)</p> <p>Retain only that Confidential Information which is necessary for Contractor to continue its proper management and administration or to carry out its legal responsibilities <b>and/or that is saved automatically to standard back-up or archival systems;</b></p> <p>Rationale: It is overly burdensome for the PBM to carve out a specific client's data/records from archived records.</p>	<p>The Department does not agree with this deviation at this time. See RFP Section 2.7.5</p>
Q45	Appendix 9, Section 25.0	11-12	<p>25(a) - Will the Department be amenable to adding clarification that this does not apply to materials provided by the Contractor, but subsequently modified by the Department or used by the Department for a purpose other than it was originally intended?</p> <p>25(b) - Will the Department be amenable to making this apply to only third-party claims, actions, etc.?</p> <p>25(e) - Will the Department accept liability for circumstances where the Contractor has acted at or relied upon</p>	<p>The Department does not agree with this deviation at this time. See RFP Section 2.7.5</p>

			the direction, instruction, or information provided by the Department? I.e., Will the Department accept liability for its own acts and omissions?	
Q46	Appendix 9, Section 26.0	12	<p>Proposed Deviation: The <del>Contractor parties</del> acknowledges and agrees that the unauthorized use, disclosure, or loss of Confidential Information may cause immediate and irreparable injury to the individuals whose information is disclosed and to the <del>State-disclosing party</del>, which injury shall not be compensable by money damages and for which there is not an adequate remedy available at law. Accordingly, the Department and the Contractor specifically agree that the <del>disclosing party Department</del>, on its own behalf or on behalf of the affected individuals, shall be entitled to obtain injunctive or other equitable relief to prevent or curtail any such breach, threatened or actual, without posting security and without prejudice to such other rights as may be available under the Contract or under applicable law.</p> <p>Rationale: PBM requests that this provision be mutual as both parties will be sharing confidential information with each other.</p>	The Department does not agree with this deviation at this time.
Q47	Appendix 9, Section 27.0	12	<p>Proposed Deviation: Throughout the term of the Contract, <del>each party the Contractor</del> must secure the <del>Department's other party's</del> written approval prior to the release of any information which pertains to work or activities covered by the Contract</p> <p>Rationale: PBM requests that this provision be mutual as both parties will be sharing confidential information with each other.</p>	The Department does not agree with this deviation at this time. See RFP Section 2.7.5
Q48	Appendix 9, Section 29.0	12-13	Can the Department clarify the intent of paragraphs 1 and 4 in this section (believe there is duplication)?	Paragraph 1 applies to the Department and its contract admin, and paragraph 4 applies to the Contractor.

Q49	Appendix 9, Section 32.0	17	<p>Proposed Deviation: Reference to or use of the <b>Contractor</b>, Department, the State, any of its departments, agencies or other subunits, or any State official or employee for commercial promotion is prohibited. News releases pertaining to the Contract, shall not be made without prior approval of the Department <b>and Contractor</b>. Release of broadcast e-mails pertaining to the Contract shall not be made without prior written authorization of the Department <b>and Contractor</b>.</p> <p>Rationale: PBM also requests that advertisements and news releases related to PBM not be made without our prior written consent.</p>	The Department does not agree with this deviation at this time.
Q50	Appendix 9, Section 36.0	18	<p>Proposed Deviation: Add the following verbiage to paragraph 2 of this section.</p> <p><b>“Notwithstanding the above, the Department shall be responsible for any applicable sales, use, excise, or other similarly assessed tax imposed on PBM or a participating pharmacy arising from a prescription drug claim.”</b></p> <p>Rationale: Although Wisconsin may not tax prescription drugs, a member may travel to another State that does. Any such tax would be passed through to the Department.</p>	The Department does not agree with this deviation at this time.
Q51	Appendix 9, Section 39.0	18	<p>Proposed Deviation: The Department shall have the right to audit <b>in accordance with Contractor’s standard Audit Protocols</b>, review, examine, copy, and transcribe any pertinent records or documents relating to the Contract held by the Contractor.</p> <p>Rationale: PBM requests that all contract compliance oversight audits be conducted in accordance with its standard audit protocols.</p>	The Department does not agree with this deviation at this time.
Q52	Appendix 9, Section 41.0	18	<p>Proposed Deviation: Add the following language to end of sentence.</p>	The Department does not agree with this deviation at this time. See RFP Section 2.7.5



			<p>“Notwithstanding the foregoing, no consent shall be required in the event of a change of control of a party.”</p> <p>Rationale: Will the Department be amenable to this language?</p>	
Q53	Appendix 9, Section 42.0	18	<p>Proposed Deviation: To the extent applicable to the services provided by Contractor under this Contract, the Contractor shall agree to implement processes that allow the Department to satisfy its obligation to purchase goods and services produced by work centers certified under the State Use Law, s. 16.752, Wis. Stat.</p> <p>Rationale: PBM believes this may not be applicable to PBM services.</p>	The Department is open to discussing with Contractor during Contract negotiations.
Q54	Appendix 9, Section 43.0	18-19	<p>Proposed Deviation: Addition of the following sentence at the end of the paragraph.</p> <p>“This shall not apply to an infringement resulting from addition or change in the original items made by the Department subsequent to the Contractor’s delivery, or the Department’s use of the items in a manner they were not originally intended for.”</p> <p>Rationale: PBM requests exceptions for these two (2) circumstances.</p>	The Department is open to discussing with Contractor during Contract negotiations.
Q55	Appendix 9, Section 44.0	19	<p>Proposed Deviation: This section is intentionally omitted.</p> <p>Rationale: Not applicable to PBM Services.</p>	The Department is open to discussing with Contractor during Contract negotiations.
Q56	Appendix 9, Section 45.0	19	<p>Proposed Deviation: Addition of the following language.</p> <p>“Except for payment obligations set forth in this Agreement, the obligations of the parties hereunder shall be suspended to the extent that all or part of this Agreement cannot be performed due to the above. As soon as the force majeure conditions cease, the parties shall resume their respective obligations as set forth under this Contract.”</p>	The Department is open to discussing with Contractor during Contract negotiations.

			Rationale: The parties obligations should resume once the force majeure event ceases.	
Q57	Appendix 1, Section 150H	45-46	<p>Proposed Deviations</p> <p>3) Membership changes and corrections not processed during the term of the contract will continue to be processed by the CONTRACTOR during the entire run-out period. <del>During the entire run-out period, all performance standards and penalties remain in force.</del></p> <p>Rationale: Performance guarantees are only valid for the term of the contract and do not apply to additional services provided during the run-off period, if any.</p>	The Department does not agree with this deviation at this time.
Q58	Appendix 1, Section 150H	45-46	<p>Proposed Deviation</p> <p>4) The CONTRACTOR will be required to coordinate turnover and transition planning and activities, <del>subject to the DEPARTMENT'S approval as mutually agreed upon by the parties.</del></p> <p>Rationale: PBM requests that transitions services be mutually agreed upon.</p>	The Department does not agree with this deviation at this time.
Q59	Appendix 1, Section 130A Financial Provisions, 1 Rebate Calculation & Payment	Page 26	<p>Part b proposed redlines:</p> <p>b)</p> <p>The DEPARTMENT will receive REBATE payments on at least a <del>QUARTERLY-ANNUAL</del> basis. The CONTRACTOR will provide additional rebate reports, as necessary.</p> <p>Rationale: True-up to rebate guarantees are provided annually.</p>	The Department does not agree with this deviation at this time.
Q60	Appendix 1, Section 130A Financial Provisions, 1 Rebate Calculation & Payment	Page 26	<p>Part C proposed redlines:</p> <p>c) Group Purchasing Organization (GPO). <del>Contractor implemented a GPO for the Department's commercial members on October 1, 2021, and will begin for Medicare Advantage employer group waiver plans (EGWP) members on January 1, 2022. Contractor's GPO rebate calculation and payments to the Department will extend through the term</del></p>	Confirmed.

			<p><del>of this Contract, December 31, 2024. Contractor will hold a limited number of direct contracts with pharmaceutical manufacturers. The majority of</del> Rebate contracts with pharmaceutical manufacturers will be held through the GPO that Contractor is a member of. Contractor will perform an annual audit and include Department and its claims as part of that audit. Department will be able to audit Contractor's rebate information allowing Department to confirm that: i) 100% of all rebates, manufacturer administration fees, and price protection were fully passed through to Department, ii) Rebates were invoiced and paid correctly, and iii) Rebate metric guarantees, if any, were met and calculated per the terms of this Agreement. Contractor will cooperate in good faith to obtain information from the GPO to the extent practicable under Contractor contract terms with the GPO. \$0.40 PMPM will be collected as a Rebate administration fee from the Rebates collected before being passed back to Department.</p> <p>Rationale: This portion of the requirement appears to be specific to the Department's current vendor.</p>	
Q61	Appendix 1, Section 130A Financial Provisions, 1 Pass Through of Drug Manufacturer Revenue	Page 26	<p>Proposed redline:</p> <p>The DEPARTMENT will receive 100% of all drug manufacturer revenue obtained by the CONTRACTOR, including, but not limited to, administrative fees <del>not categorized as bona fide service fees</del>; data fees; clinical programs fees; education and research grants; invoice charge-back fees; and product selection switching incentives.</p> <p>Rationale: Proposed changes to align with our model.</p>	The Department does not agree with this deviation at this time.
Q62	Appendix 1, Section 130C		<p>Proposed Deviation: Any overpayment caused by the CONTRACTOR'S <del>sole</del> error shall be the responsibility of the CONTRACTOR, not to be charged to the DEPARTMENT, regardless of whether or not any such overpayment</p>	The Department is open to discussing with Contractor during Contract negotiations.

			<p>can be recovered by the CONTRACTOR. The DEPARTMENT shall provide reasonable cooperation to the CONTRACTOR in its recovery efforts.</p> <p>Rationale: PBM's recovery obligations should not expand to situations where we relied on information or instructions provided by the Department.</p>	
Q63	Appendix 1, Section 130C		<p>Proposed Deviation: <b>Addition of the following language (add item (f))</b></p> <p><b>f)</b></p> <p><b>Notwithstanding the above, the CONTRACTOR shall not be required to take any action or have any liability whatsoever with respect to overpayments due to: i) provision of inaccurate or incomplete information to CONTRACTOR, or ii) CONTRACTOR'S reliance on information, authorizations, or instructions provided by the DEPARTMENT or its agents.</b></p> <p>Rationale: PBM's recovery obligations should not expand to situations where we relied on information or instructions provided by the Department.</p>	The Department is open to discussing with Contractor during Contract negotiations.
Q64	Appendix 1, Section 150A	40	<p>Proposed Deviation: Addition of the following language.</p> <p>1)</p> <p>The CONTRACTOR will provide the DEPARTMENT with standard management reports <del>as determined by the DEPARTMENT</del> mutually agreed upon.</p> <p>Non-standard reports may be requested by the BOARD as may be agreed to from time to time by the BOARD and the CONTRACTOR, <b>and may incur additional fees</b>. The BOARD will review all reports and statements provided by the CONTRACTOR and will notify the CONTRACTOR in writing of any errors or objections known to the BOARD. These reports shall cover both the</p>	The Department does not agree with this deviation at this time.

			<p>commercial and Medicare populations of the PHARMACY BENEFIT PLAN.</p> <p>Upon the DEPARTMENT'S or its designee's receipt of reports (including but not limited to all reports related to rebates, pharmacy network guarantees, and performance guarantees), statements, and other materials (including but not limited to service requests, benefit change requests, pharmacy operations change requests, acceptance requests, statement of works, etc.), the DEPARTMENT shall be responsible for promptly reviewing and confirming that the reports, statements and other materials are accurate and complete and for promptly notifying the CONTRACTOR in writing of any errors or objections. Unless the DEPARTMENT notifies CONTRACTOR in writing of any errors or objections within thirty (30) calendar days from receipt of such report, statement, or materials, all the information contained therein will be deemed accurate, complete, and acceptable to the DEPARTMENT.</p> <p>Rationale: PBM requests that reports be agreed upon, and any custom or non-standard reports may incur additional fees. We expect that our clients cooperate with timely reviewing all materials for any errors.</p>	
Q65	Appendix 1, 150D Audit and Other Services, 3 Annual Audit	Page 42	<p>The CONTRACTOR is required to submit to annual audits of its services, operations, and compliance under this CONTRACT according to audit guidelines established by the BOARD and in accordance with <del>full</del> reasonable transparency as defined in the RFP #ETC0049.</p> <p>Rationale: Some documents and records may not be released in an audit.</p>	The Department does not agree with this deviation at this time.
Q66	Appendix 1, Section 255G	70	<p>Proposed Deviation: Addition of the following language.</p> <p>Except for CONTRACTOR'S confidential information or trade secrets, all such</p>	The Department is open to discussing with Contractor during Contract negotiations.

			<p>information is the sole property of the DEPARTMENT.</p> <p>Rationale: PBM retains ownership of records that contain its confidential information or trade secrets.</p>	
Q67	Appendix 1, Section 115, Item 17	1c	<p>Proposed Deviation: Updates of this item 17.</p> <p>17)</p> <p><del>Have legal and technical staff available to the DEPARTMENT for consultation as needed for program administration, and for assistance with any appeals processes.</del> The CONTRACTOR shall, upon the Department's request, <del>monitor the development of</del> provide notification and information to the DEPARTMENT <del>in a timely manner</del> concerning a specific state or federal regulations or legislation that may affect the PHARMACY BENEFITS PLAN.</p> <p>Rationale: PBM can provide our feedback on specific laws or regulations when requested, but cannot be obligated to provide routine monitoring and updates on all laws and regulations that concern the benefit plan.</p>	The Department does not agree with this deviation at this time.
Q68	Appendix 1, Section 119	17	<p>Proposed Deviation: Updates of this item 20.</p> <p>20)</p> <p>The DEPARTMENT must be notified of any <b>material</b> changes to the CONTRACTOR'S administrative and/or operative systems. <b>For purposes of this section, "material" changes shall mean a decrease in the level of services previously provided under the Contract or an increase in fees.</b></p> <p>Rationale: PBM needs to be able to modify its services as needed as part of ongoing business maintenance.</p>	The Department does not agree with this deviation at this time.
Q69	Appendix 1, Section 150F	44	<p>Proposed Deviation: The CONTRACTOR shall comply with all state and federal laws regarding patient privacy, as well as the confidentiality</p>	The Department does not agree with this deviation at this time.

			<p>provision of terms and conditions of the CONTRACT. In addition to (and in accordance with) the provisions of section 24 of the Department Terms and Conditions, the CONTRACTOR shall notify the DEPARTMENT Program Manager and Privacy Officer within <del>forty-eight (48) hours</del> <b>ten (10) business days</b> of discovering that the protected health information (PHI) <del>and/or personally identifiable information (PII)</del> of one (1) or more PARTICIPANTS <del>may have been breached, or</del> has been breached, as defined by state and federal law, including Wis. Stat. § 134.98, HIPAA, and GINA.</p> <p>The CONTRACTOR must provide the DEPARTMENT with the information required in Section 24.0(m) of the Department Terms and Conditions related to <del>all such suspected or</del> actual breaches.</p> <p>Rationale: PBM's standard process is notification of confirmed breaches within 10 business days. PBM does not have PII as all member data is PHI. PBM does not report on suspected breaches.</p>	
Q70	Appendix 1, Section 150F	45	<p>Proposed Deviation: Strike item 5) <del>5)</del></p> <hr/> <p><del>A copy of any correspondence sent to affected PARTICIPANTS (this must be pre-approved by the DEPARTMENT).</del></p> <p>Rationale: As the Business Associate, PBM does not send communications regarding breaches to members.</p>	<p>The Department does not agree with this deviation at this time.</p> <p><u>Vendor should see Addendum 1 questions 55, 61, and 69 and the Departments answers to those questions.</u></p>
Q71	Appendix 1, Section 150F	45	<p>Proposed Deviation:</p> <p>This notification requirement shall apply only to PHI <del>or PII received or</del> maintained by the CONTRACTOR pursuant to this AGREEMENT. <del>The CONTRACTOR shall make good faith efforts to communicate with the DEPARTMENT about breaches by major provider</del></p>	<p>The Department does not agree with this deviation at this time.</p>

			<p><del>groups if the CONTRACTOR knows those breaches affect PARTICIPANTS.</del></p> <p>Rationale: This is not applicable as the physician provider groups are contracted with the Department, and not the PBM.</p>	
Q72	Appendix 1, Section 150I	46	<p>Proposed Deviation: Addition of the following language.</p> <p>The CONTRACTOR must administer a program run-out period to process claims and to handle related customer service inquiries. The run-out period begins on the CONTRACT termination date and will be no longer than one (1) year. The CONTRACTOR shall be paid three (3) months of administrative expenses based on the membership census as of November 1 of the last year of the contract. The administrative fee shall be the fee in effect during the last year of the contract. <del>Requests for run-out services beyond claims processing and call center services, including but not limited to, provision of reports, may be subject to CONTRACTOR'S discretion and quoted upon request.</del></p> <p>Rationale: Requests for run-out services beyond claims processing may incur additional fees.</p>	The Department does not agree with this deviation at this time.
Q73	Appendix 1, Section 255H	71	<p>Proposed Deviation: The CONTRACTOR agrees that the BOARD, until the expiration of <del>seven (7)</del> one (1) years after the termination of this AGREEMENT, and any extensions, shall have access to and the right to examine any of the CONTRACTOR'S pertinent books, financial records, documents, papers, and records and those of any parent, affiliate, or subsidiary organization performing under formal or informal arrangement any service or furnishing any supplies or equipment to the CONTRACTOR involving transactions related to this AGREEMENT.</p>	The Department does not agree with this deviation at this time.



			Rationale: PBM's standard process is to allow clients audit rights for one-year post-termination.	
Q74	Appendix 1, Section 255l	71	<p>Proposed Deviation: Strike this entire section. This section is intentionally omitted.</p> <p>Rationale: As an intermediary payor, the PBM does not assert subrogation rights or liens on behalf of our clients.</p>	The Department does not agree with this deviation at this time.
Q75	Appendix 1, Section 130 C 1) c)	28	<p>Proposed Deviation:</p> <p>c) Overpayments <b>solely</b> resulting from negligence of the CONTRACTOR or any of its directors, officers and employees and which are caused by a systemic problem due to the CONTRACTOR'S design and/or operation of its claims processing system, including maintenance or pricing arrangements, which are determined by the CONTRACTOR to be uncollectible, despite diligent efforts by the CONTRACTOR to recover the overpayments, shall be recoverable from the CONTRACTOR by the DEPARTMENT provided that the determination of the amount due shall be based on actual verified overpayments.</p> <p>Rationale: PBM's recovery obligations should not expand to situations where we relied on information or instructions provided by the Department.</p>	The Department is open to discussing with Contractor during Contract negotiations.
Q76	Appendix 1, Section 150 D 3 a)	42	<p>Proposed Deviation:</p> <p>a) he CONTRACTOR is required to submit to annual audits of its services, operations, and compliance under this CONTRACT according to <b>CONTRACTOR'S standard</b> audit guidelines established by the <b>BOARD CONTRACTOR</b> and in accordance with full transparency as defined in the RFP #ETC0049. The audits will be completed by the firm contracted by the BOARD to complete third party contract audits of the PHARMACY BENEFIT PLAN, and will be paid for by the BOARD. The audits by the third-party contractor will be based upon BOARD specifications and will evaluate 100% of the claims processed by the CONTRACTOR. The audit firm will deliver to both the CONTRACTOR and to the BOARD a report of findings and recommendations within the guidelines established by the BOARD.</p> <p>Rationale: PBM requests that all contract compliance oversight audits be conducted in accordance with its standard audit protocols.</p>	The Department does not agree with this deviation at this time.

Q77	Appendix 1; Section 150E 2	44	<p>Proposed Deviation:</p> <p>The CONTRACTOR, within thirty (30) DAYS of the execution of this CONTRACT, must submit a fraud and abuse review plan to the DEPARTMENT. Upon the DEPARTMENT'S approval of the plan, <b>which shall not be unreasonably withheld</b>, the CONTRACTOR must perform QUARTERLY (unless another timeframe is agreed upon by the DEPARTMENT) fraud and abuse reviews and provide results of material findings to the DEPARTMENT.</p> <p>Rationale: PBM requests that the Department's approval is not unreasonably withheld.</p>	The Department does not agree with this deviation at this time.
Q78	Appendix 2, Tab 3A Quarterly Performance, Section 315D Customer Service	Row 19	<p>3) Open Call Resolution Turn Around Time</p> <p>At least 90% of customer service calls that require follow-up or research will be resolved within 2 BUSINESS DAYS of initial call. Measured by the number of issues initiated by a call and resolved (completed without need for referral or follow-up action) within 2 BUSINESS DAYS, divided by the total number of issues initiated by a call.</p> <p><b>We can support 90% of customer service calls that require follow-up or research will be resolved within 5 BUSINESS DAYS of initial call. This applies to follow-up or research handled by the Contact Center only. This excludes follow-up or research handled outside of the Contact Center.</b></p> <p>Rationale: This is our proposed performance guarantee for open call resolution turnaround time.</p>	The Department does not agree with this deviation at this time.
Q79	Appendix 1, Section III. 000 Definitions , REBATE	Page 11	<p>REBATE means the total dollar amount paid by a PRODUCT manufacturer to CONTRACTOR for ELIGIBLE PRODUCT utilization. This includes any revenue offered by a PRODUCT manufacturer for administrative services <b>that is not classified as bona fide service fees.</b></p> <p>Rationale: This additional aligns with our definition of rebate.</p>	The Department does not agree with this deviation at this time.
Q80	Appendix 1, Section III. 000 Definitions	Page 11	<p><b>SPECIALTY DRUG LIST means PBM's list of Specialty Drugs that identifies standard Specialty Drugs and is available upon request.</b></p> <p>Rationale: It is our standard to define the specialty drug list.</p>	The Department does not agree with this deviation at this time.
Q81	Appendix 1, Section 130A Financial Provisions		<p>a. The DEPARTMENT shall deposit funds into the bank account designated by the DEPARTMENT within <b>four (4)</b> business days following the DEPARTMENT'S receipt of the request for payment by the CONTRACTOR or <b>three (3)</b> days for EGWP services as set forth above. This bank</p>	The Department is open to discussing with Contractor during Contract negotiations.

	, Banking	3	<p>account shall be used to disburse funds and make claim payments made on behalf of the DEPARTMENT.</p> <p>In order to comply with prompt pay regulations, we propose a weekly EOB cycle and the invoice terms no more than two (2) business days.</p> <p>Rationale: To comply with prompt pay regulations.</p>	
Q82	Appendix 1, Section 140 Information Systems, Requirement 4d	Page 33	<p>d)</p> <p>Does not repeat any of the last <del>twenty-four (24)</del> ten (10) passwords used, and</p> <p>Rationale: To align with our current standards.</p>	The Department does not agree with this deviation at this time.
Q83	Appendix 1, Section 210A Pharmacy & Therapeutics Committee and Population Health Management, P&T Committee	Page 49	<p><del>The DEPARTMENT will appoint at least one member who will serve on the P&amp;T Committee.</del></p> <p>Rationale: To align with our process. We do not allow clients to appoint members to our P&amp;T Committee. Anyone from the client side may listen in, but they may not speak or vote.</p>	See Addendum 1 question 59 and the Department's answer.
Q84	Appendix 1, Section 210A Pharmacy & Therapeutics Committee and Population Health Management, Pharmacy & Auditing Program	Page 51	<p>The BOARD may require use of an <del>independent mutually agreeable 3rd party</del> auditor rather than the CONTRACTOR. Auditing will be conducted in four phases starting at a high-level system audit and progressing through further drill-down and analysis to on-site audits if necessary. Desk-top audits will be conducted on a daily/weekly/monthly basis, depending on the type of audit report. On-site audits will be conducted as needed. <del>Settlements that are the result of reversing or adjusting claims found to be processed in error will be passed back through to the BOARD for inclusion in the funds for the PHARMACY BENEFIT PLAN AND HEALTH BENEFIT PROGRAM.</del> PBM will make reasonable attempts to collect overpayments based on pharmacy audit findings</p> <p>Rationale: To align with our process.</p>	The Department does not agree with this deviation at this time.

Q85	Appendix 1, Section 215 Benefits, 215B Benefit Plan specifications, requirement 1C	Page 52	<p><del>Twelve to twenty-four weeks</del> Timeline is mutually agreed upon for changes for which functionality needs to be developed in the CONTRACTOR's claims and/or eligibility processing systems.</p> <p>Rationale: Some larger changes require other department involvement and may take up to a year to complete depending on what is being asked.</p>	The Department does not agree with this deviation at this time.
Q86	Appendix 1, Section 255C Customer Service	Page 64	<p>Calls and correspondence to customer services representatives shall be tracked, recorded, and retrieved when necessary <del>by name or the DEPARTMENT'S eight (8)-digit member ID.</del></p> <p>Rationale: These items are not available in our current tracking system.</p>	The Department is open to discussing with Contractor during Contract negotiations.
Q87	Appendix 1, Section 305 Reporting Deliverables	Page 74	<p>Rebate Payments</p> <p>The DEPARTMENT will receive REBATE payments on at least a <del>QUARTERLY</del> ANNUAL basis. The CONTRACTOR will provide additional rebate reports, as necessary. See Section 130A, 4.</p> <p><del>QUARTERLY</del> ANNUALLY</p> <p>Rationale: We report on these items annually.</p>	The Department does not agree with this deviation at this time.
Q88	Appendix 1, 130 Administrative Fee and Financial Administration 130A Financial Provisions Maximum Allowable Cost List	Page 27	<p>2)</p> <p>Contractor Maximum Allowable Cost List. The CONTRACTOR maintains <del>a single</del> multiple Maximum Allowable Cost ("MAC") list for generic drug PRODUCTS that is the basis for payment of multi-source PRODUCTS from all distribution channels, including but not limited to retail, mail, and specialty pharmacies. <del>The Department will always pay the lesser of MAC, Discount guarantee or U&amp;C).</del></p> <p>Rationale: Proposed changes to reflect our offering.</p>	The Department is open to discussing with Contractor during Contract negotiations and this should be laid out clearly in your proposal.
Q89	Appendix 1, Section 255C Customer Service	Page 65	<p><del>At least five (5%) percent each month of a reasonable sample size of</del> CONTRACTOR'S Our quality program is based on our CSRs individual quality scores across our total client book of business total book of business inquiries made by each submission type (e.g. phone, email, website) must be audited by the CONTRACTOR'S</p>	The Department does not agree with this deviation at this time.

		<p>management staff (e.g. lead worker, supervisor, manager) to ensure accurate information was given to PARTICIPANTS and appropriate coaching and training is given to customer service representatives who failed to accurately respond to PARTICIPANTS.</p> <p>Rationale: Proposed changes to align with our current quality model.</p>	
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You can find the RFP and its attachments on ETF's web site at <https://etf.wi.gov/node/35431>.