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Section IV Administrative Proposal Response

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SECTION 4: ADMINISTRATIVE PROPOSAL

This section of the Specifications sets forth the requirements for the Offeror's Administrative Proposal. The Department will consider for evaluation and selection purposes only those Proposals the Department determines to be in compliance with the requirements set forth in this section of the Specifications. Any Offeror which fails to satisfy any of these requirements shall be eliminated from further consideration.

The Offeror's *Administrative Proposal* must respond to all of the following items as set forth below in the order and format specified and using the forms set forth in these Specifications. Additional details pertaining to the required forms are found in Section 2 of these Specifications.

4.1 Formal Offer Letter

The Offeror must submit a formal offer in the form of the *Formal Offer Letter* (Attachment 3). The formal offer must be signed and executed by an individual with the capacity and legal authority to bind the Offeror in its offer to the State. The copy of the Offeror's Administrative Proposal marked "ORIGINAL" requires a letter with an original signature; the remaining copies of the Offeror's Administrative Proposal may contain photocopies of the signature. Except as otherwise permitted under Section 2.1(6), Bid Deviations, the Offeror must accept the terms and conditions as set forth in these Specifications, and Appendices A, B, and C, and agree to enter into a Contract with the Department containing, at a minimum, the terms and conditions identified in these Specifications and appendices as cited herein. If an Offeror proposes to include the services of a Subcontractor(s) or Affiliate(s), the Offeror must be required to assume responsibility for those services as "Prime Contractor." The Department will consider the Prime Contractor solely responsible for contractual matters.

Please refer to (Exhibit I) Attachment 3 for a copy of the Excellus Health Plan, Inc. Formal Offer Letter.

4.2 Offeror Attestation Form

The Offeror must complete and submit an executed copy of the *Offeror Attestations Form* (Attachment 6) attesting that it meets or exceeds the criteria for eligibility to bid as set forth in Section 1 of these Specifications. A person legally authorized to represent the Offeror must execute this certification.

Please refer to (Exhibit II) Attachment 6 for a copy of the Excellus Health Plan, Inc. Offeror Attestation Form.

4.3 Subcontractors or Affiliates

The Offeror must complete the *Subcontractors or Affiliates* form (Attachment 9) to identify all Subcontractors or Affiliates. Subcontractors or Affiliates is defined as those contractors with whom the Offeror subcontracts to provide Project Services and incorporates as part of the Offeror's Project Management Team. For purposes of reporting in the *Subcontractors or Affiliates* form (Attachment 9),

Subcontractors include all vendors who will provide \$100,000 or more in Project Services over the term of the Contract that results from these Specifications, as well as any vendor who will provide Project Services in an amount lower than the \$100,000 threshold, and who is a part of the Offeror's Project Management Team. For each Subcontractor identified, the Offeror must complete and submit the *Subcontractors or Affiliates* form (Attachment 9) and indicate whether or not, as of the date of the Offeror's Proposal, a subcontract has been executed between the Offeror and the Subcontractor for services to be provided by such subcontractor relating to the Specifications. For the purpose of these Specifications, Affiliate is defined as a person or organization which, through stock ownership or any other affiliation, directly, indirectly, or constructively controls another person or organization, is controlled by another person or organization, or is, along with another person or organization, under the control of a common parent. On the *Subcontractors or Affiliates* form (Attachment 9), the Offeror must:

1. Mark the applicable box in Attachment 9 if the Offeror will not be subcontracting with any Subcontractor(s) or Affiliate(s) to provide Project Services.
2. Indicate whether or not, as of the date of the Offeror's Proposal, a subcontract (or shared services Contract) has been executed between the Offeror and the Subcontractor or Affiliate for services to be provided by the Subcontractor or Affiliate relating to these Specifications.
3. Provide a brief description of the services to be provided by the Subcontractor or Affiliate.
4. Provide a description of any current relationships with such Subcontractor or Affiliate and the clients/projects that the Offeror and Subcontractor or Affiliate are currently servicing under a formal legal Contract or arrangement, the date when such services began and the status of the Project.
5. The HMO must provide all *JLMC Contact Members* (Attachment 13) with notification of changes in Subcontractors within thirty (30) days of such changes becoming final.

Please refer to (Exhibit III) Attachment 9 for a copy of the Subcontractors or Affiliates.

4.4 New York State Standard Vendor Responsibility Questionnaire

The Offeror must complete and submit an executed copy of the New York State Vendor Responsibility Questionnaire. A person legally authorized to represent the Offeror must execute the questionnaire. The questionnaire must be completed by all Subcontractors as defined above.

The Department recommends each Offeror file the required Questionnaire online via the New York State VendRep System. To use the VendRep System, please refer to <https://www.osc.state.ny.us./vendors/index.htm>.

By submitting a Proposal, the Offeror agrees to fully and accurately complete the Questionnaire. The Offeror acknowledges that the State's execution of the Contract will be contingent upon the State's determination that the Offeror is responsible, and that the State will be relying upon the Offeror's responses to the Questionnaire when making its responsibility determination. The Offeror agrees that if it is found by the State that the Offeror's responses to the Questionnaire were intentionally false or intentionally incomplete, on such finding, the Department may terminate the Contract. In no case shall such termination of the Contract by the State be deemed a breach thereof, nor shall the State be liable for any damages for lost profits or otherwise, which may be sustained by the Contractor as a result of such termination.

We can confirm that the Excellus Health Plan, Inc. is current and last updated its Vendor Responsibility Questionnaire on June 16, 2020.

4.5 New York State Tax Law Section 5 a

Tax Law § 5 a requires certain Offerors awarded state Contracts for commodities, services and technology valued at more than \$100,000 to certify to New York State Department of Taxation and Finance (DTF) that they are registered to collect New York State and local sales and compensating use taxes. The law applies to Contracts where the total amount of such Offerors' sales delivered into New York State is in excess of \$300,000 for the four quarterly periods immediately preceding the quarterly period in which the certification is made, and with respect to any Affiliates and subcontractors whose sales delivered into New York State exceeded \$300,000 for the four quarterly periods immediately preceding the quarterly period in which the certification is made.

An Offeror is required to file the completed and notarized Form ST 220 CA with the Department certifying that the Offeror filed the ST 220 TD with DTF. The Offeror should complete and return the certification forms within five (5) Business Days from the date of request (if the forms are not completed and returned with bid submission). Failure to make either of these filings may render an Offeror non responsive and non responsible. The Offeror must take the necessary steps to provide properly certified forms within a timely manner to ensure compliance with the law.

Website links to the Offeror certification forms and instructions are provided below.

1. Form ST 220 TD must be filed with and returned directly to DTF and can be found at http://www.tax.ny.gov/pdf/current_forms/st/st220td_fill_in.pdf. Unless the information upon which the ST 220 TD is based changes, this form only needs to be filed once with DTF. If the information changes for the Offeror, its Affiliate(s), or its subcontractor(s), a new Form ST 220 TD must be filed with DTF.
2. Form ST 220 CA must be submitted to the Department. This form provides the required certification that the Offeror filed the ST 220 TD with DTF. This form can be found at http://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf

Excellus Health Plan, Inc. has filed the ST 220 TD form with New York State (NYS) in the past and has not had \$300,000 or more in sales of taxable property, therefore we do not have to file another form. As per the below excerpt from the NYS Q&A. Excellus Health Plan, Inc. does not meet the criteria of a contractor that needs to file a new form.

26) Q: When is a contractor who previously filed Form ST-220-TD with the Tax Department required to file a new Form ST-220-TD certification with the Tax Department?

A: If a contractor or an affiliate or subcontractor, is not registered with the Tax Department for sales and compensating use tax purposes on the contractor's original certification, and such contractor, affiliate, or subcontractor makes sales delivered by any means to locations within New York State of tangible personal property or taxable services having a value in excess of \$300,000 during any consecutive four sales tax quarters which follow the sales tax quarter in which the contractor's original certification was made, then the contractor shall, as soon as possible after such occurrence, file a new Form ST-220-TD with the Tax Department certifying that it, and/or its affiliates and/or subcontractors, as applicable, are registered for sales and compensating use tax purposes.

Please refer to Exhibit IV Excellus Health Plan, Inc. for a copy of the NYS signed and notarized copy of Contractor Certification St 220 TD and the Excellus Health Plan, Inc. copy of the NYS process letter.

4.6 Compliance with New York State Workers' Compensation Law

Sections 57 and 220 of the New York State Workers' Compensation Law (WCL) provide that the Department shall not enter into any Contract unless proof of workers' compensation and disability benefits insurance coverage is produced. Prior to entering into a Contract with the Department, the selected Offeror and Subcontractor(s) or Affiliates, with more than \$100,000 in expected expenses over the life of the Contract, if any, will be required to verify for the Department, on forms authorized by the New York State Workers' Compensation Board, the fact that they are properly insured or are otherwise in compliance with the insurance provisions of the WCL. The forms to be used to show compliance with the WCL are listed in *Compliance with NYS Workers' Compensation Law* (Attachment 10). Any questions relating to either workers' compensation or disability benefits coverage should be directed to the New York State Workers' Compensation Board, Bureau of Compliance at 518 486 6307. Useful information may also be found on their website: <http://www.wcb.ny.gov>.

Submission of the proof of workers' compensation and disability benefits insurance coverage is required at the time of Proposal submission. Failure to provide verification of either of these types of insurance coverage with the Offeror's Administrative Proposal may be grounds for disqualification of an otherwise successful Proposal.

To the extent that the Offeror is proposing the use of Subcontractors or Affiliates, the Offeror must verify for the Department, on forms authorized by the New York State Workers' Compensation Board, the fact that the Subcontractors or Affiliates are properly insured or are otherwise in compliance with the insurance provisions of the WCL.

Please refer to Exhibits V and VI for copies of the Excellus Health Plan, Inc.. Compliance with NYS Workers' Compensation Law reflecting proof that we are approved as a self insurer for Worker's Compensation and the Notice of Compliance as Self Insurer under the New York State Disability and Paid Family Benefits Law.

4.7 Insurance Requirements

Prior to the start of work the Offeror shall procure, at its sole cost and expense, and shall maintain in force at all times during the term of any Contract resulting from these Specifications, policies of insurance as required by this section, written by companies that have an A.M. Best Company rating of "A," Class "VII" or better. In addition, companies writing insurance intended to comply with the requirements of this Contract should be licensed or authorized by the New York State Department of Financial Services to issue insurance in the State of New York. The Department may, in its sole discretion, accept policies of insurance written by a non authorized carrier or carriers when certificates and/or other policy documents are accompanied by a completed Excess Lines Association of New York (ELANY) affidavit or other documents demonstrating the company's strong financial rating. If, during the term of a policy, the carrier's A.M. Best rating falls below "A," Class "VII," the insurance must be replaced, on or before the renewal date of the policy, with insurance that meets the requirements above. These policies must be written in accordance with the requirements of the paragraphs below, as applicable.

An Offeror shall deliver to the Department evidence of the insurance required by these Specifications and any Contract resulting from these Specifications in a form satisfactory to the Department. Policies must be written in accordance with the requirements of the paragraphs below, as applicable. While acceptance of insurance documentation shall not be unreasonably withheld, conditioned or delayed, acceptance and/or approval by the Department does not, and shall not be construed to, relieve an Offeror of any obligations, responsibilities or liabilities under these Specifications or any Contract resulting from these Specifications.

The Offeror shall not take any action or omit to take any action that would suspend or invalidate any of the required coverages during the term of any Contract resulting from these Specifications.

1. **General Conditions**

- a. All policies of insurance required by this Solicitation or any Contract resulting from these Specifications shall comply with the following requirements:
 - i. Coverage Types and Policy Limits. The types of coverage and policy limits required from the selected Offeror are specified in paragraph 12. Specific Coverages and Limits below.
 - ii. Policy Forms. Except as may be otherwise specifically provided herein or agreed to in any Contract resulting from these Specifications, all policies of insurance shall be written on an occurrence basis.
 - iii. Certificates of Insurance/Notices. The selected Offeror shall provide the Department with a Certificate or Certificates of Insurance, in a form satisfactory to the Department, as detailed below, and pursuant to the timelines set forth in Section 11 below. Certificates should reference the Solicitation or award number and shall name the New York State Department of Civil Service, Agency Building 1, Empire State Plaza, Albany, NY 12239, as the certificate holder.
- b. Certificates of Insurance shall:
 - i. Be in the form acceptable to the Department and in accordance with the New York State Insurance Law (e.g., an ACORD certificate);
 - ii. Disclose any deductible, self insured retention, aggregate limit or any exclusion to the policy that materially changes the coverage required by this Solicitation or any Contract resulting from this Solicitation;
 - iii. Be signed by an authorized representative of the insurance carrier of the referenced insurance carriers; and

- iv. Contain the following language in the Description of Operations / Locations / Vehicles section of the Certificate or on a submitted endorsement: Additional insured protection afforded is on a primary and non contributory basis. A waiver of subrogation is granted in favor of the additional insureds.
- c. Only original documents (Certificates of Insurance and any endorsements and other attachments) or electronic versions of the same that can be directly traced back to the insurer, agent or broker via e mail distribution or similar means will be accepted.

The Department generally requires an Offeror to submit only certificates of insurance and additional insured endorsements, although the Department reserves the right to request other proof of insurance. An Offeror should refrain from submitting entire insurance policies, unless specifically requested by the Department. If an entire insurance policy is submitted but not requested, the Department shall not be obligated to review and shall not be chargeable with knowledge of its contents. In addition, submission of an entire insurance policy not requested by The Department does not constitute proof of compliance with the insurance requirements and does not discharge an Offeror from submitting the requested insurance documentation.

2. **Primary Coverage**

All liability insurance policies shall provide that the required coverage shall be primary and non contributory to other insurance available to the Department and their officers, agents, and employees. Any other insurance maintained by the Department and their officers, agents, and employees shall be excess of and shall not contribute with the Offeror's insurance. Insurance policies that remove or restrict blanket contractual liability located in the "insured contract" definition (as stated in Section V, Number 9, Item f in the Insurance Services Offices (ISO) Commercial General Liability (CGL) policy) so as to limit coverage against Claims that arise out of the work, or that remove or modify the "insured contract" exception to the employers liability exclusion, or that do not cover the Additional Insured for Claims involving injury to employees of the Named Insured or subcontractors, are not acceptable.

3. **Breach for Lack of Proof of Coverage**

The failure to comply with the insurance requirements at any time during the term of any Contract resulting from this Solicitation shall be considered a breach of the terms of any Contract resulting from this Solicitation and shall allow the Department and their officers, agents, and employees to avail themselves of all remedies available under any Contract resulting from this Solicitation, at law or in equity.

4. **Self Insured Retention/Deductibles**

Certificates of Insurance must indicate the applicable deductibles/self insured retentions for each listed policy. Deductibles or self insured retentions above \$100,000.00 are subject to approval from the Department. Such approval shall not be unreasonably withheld, conditioned or delayed. An Offeror shall be solely responsible for all claim expenses and loss payments within the deductibles or self insured retentions. If the Offeror is providing the required insurance through self insurance, evidence of the financial capacity to support the self insurance program along with a description of that program, including, but not limited to, information regarding the use of a third party administrator shall be provided upon request.

5. **Subcontractors**

Prior to the commencement of any work by a Subcontractor, the Offeror shall require such Subcontractor to procure policies of insurance as required by this section and maintain the same in force during the term of any work performed by that Subcontractor. An Additional Insured Endorsement (ISO coverage form CG 20 38 04 13), or the equivalent, evidencing such coverage shall be provided to the Offeror prior to the commencement of any work by a subcontractor and pursuant to the timelines set forth in Section 4.7(11), as applicable, and shall be provided to the Department upon request. For subcontractors that are self insured, the subcontractor shall be obligated to defend and indemnify the above named additional insureds with respect to Commercial General Liability and Business Automobile Liability, in the same manner that the subcontractor would have been required to pursuant to this section had the subcontractor obtained such insurance policies.

6. **Waiver of Subrogation**

For all liability policies, the Offeror shall cause to be included in its policies insuring against loss, damage or destruction by fire or other insured casualty a waiver of the insurer's right of subrogation against the Department and their officers, agents, and employees, or, if such waiver is unobtainable (i) an express Contract that such policy shall not be invalidated if the Offeror waives or has waived before the casualty, the right of recovery against the Department and their officers, agents, and employees or (ii) any other form of permission for the release of the Department any entity authorized by law or regulation to use any Contract resulting from this Solicitation and their officers, agents, and employees. A Waiver of Subrogation Endorsement shall be provided upon request. A blanket Waiver of Subrogation Endorsement evidencing such coverage is also acceptable.

7. **Additional Insured**

The Offeror shall cause to be included in each of the liability policies required below coverage for on going and completed operations naming as additional insureds (via ISO coverage forms CG 20 10 04 13 or 20 38 04 13 and CG 20 37 04 13 and form CA 20 48 10 13, or a form or forms that provide equivalent coverage): the Department and their officers, agents, and employees. An Additional Insured Endorsement evidencing such coverage shall be provided to the Department pursuant to the timelines set forth in Section 11 below. A blanket Additional Insured Endorsement evidencing such coverage is also acceptable. For Offerors who are self insured, the Offeror shall be obligated to defend and indemnify the above named additional insureds with respect to Commercial General Liability and Business Automobile Liability, in the same manner that the Offeror would have been required to pursuant to this Attachment had the Contractor obtained such insurance policies.

8. **Excess/Umbrella Liability Policies**

Required insurance coverage limits may be provided through a combination of primary and excess/umbrella liability policies. If coverage limits are provided through excess/umbrella liability policies, then a Schedule of underlying insurance listing policy information for all underlying insurance policies (insurer, policy number, policy term, coverage and limits of insurance), including proof that the excess/umbrella insurance follows form must be provided upon request.

Please refer to Exhibit VII for a copy of the Excellus Health Plan, Inc. New York State Dept. of Civil Service General Liability, Automobile and Umbrella policy.

9. **Notice of Cancellation or Non Renewal**

Policies shall be written so as to include the requirements for notice of cancellation or non renewal in accordance with the New York State Insurance Law. Within five (5) business days of receipt of any notice of cancellation or non renewal of insurance, the Offeror shall provide the Department with a copy of any such notice received from an insurer together with proof of replacement coverage that complies with the insurance requirements of this Solicitation and any Contract resulting from this Solicitation.

10. **Policy Renewal/Expiration**

Upon policy renewal/expiration, evidence of renewal or replacement of coverage that complies with the insurance requirements set forth in this Solicitation and any Contract resulting from this Solicitation shall be delivered to the Department. If, at any time during the term of any Contract resulting from this Solicitation, the coverage provisions and limits of the policies required herein do not meet the provisions and limits set forth in this Solicitation or any Solicitation and any Contract resulting from this Solicitation, or proof thereof is not provided to the Department, the Offeror shall immediately cease work. The Offeror shall not resume work until authorized to do so by the Department.

11. **Deadlines for Providing Insurance Documents after Renewal or Upon Request**

As set forth herein, certain insurance documents must be provided to the Department contact identified in the Contract Award Notice after renewal or upon request. This requirement means that the Offeror shall provide the applicable insurance document to the Department as soon as possible but in no event later than the following time periods:

- a. For certificates of insurance: 5 business days from request or renewal, whichever is later;
- b. For information on self insurance or self retention programs: 15 calendar days from request or renewal, whichever is later;
- c. For other requested documentation evidencing coverage: 15 calendar days from request or renewal, whichever is later;
- d. For additional insured and waiver of subrogation endorsements: 30 calendar days from request or renewal, whichever is later; and
- e. For notice of cancellation or non renewal and proof of replacement coverage that complies with the requirements of this section: 5 business days from request or renewal, whichever is later.

Notwithstanding the foregoing, if the Offeror shall have promptly requested the insurance documents from its broker or insurer and shall have thereafter diligently taken all steps necessary to obtain such documents from its insurer and submit them to the Department, the Department shall extend the time period for a reasonable period under the circumstances, but in no event shall the extension exceed 30 calendar days.

12. Specific Coverage and Limits

a. Commercial General Liability

Commercial General Liability Insurance, (CGL) shall be written on the current edition of ISO occurrence form CG 00 01, or a substitute form providing equivalent coverage and shall cover liability arising from premises operations, independent contractors, products completed operations, broad form property damage, personal & advertising injury, cross liability coverage, and liability assumed in a contract (including the tort liability of another assumed in a contract). Policy shall include bodily injury, property damage, and broad form contractual liability coverage. The limits under such policy shall not be less than the following:

- i. Each Occurrence – \$2,000,000
- ii. General Aggregate – \$2,000,000
- iii. Products/Completed Operations – \$2,000,000
- iv. Personal Advertising Injury – \$1,000,000
- v. Medical Expense – \$5,000

Coverage shall include, but not be limited to, the following:

- i. Premises liability;
- ii. Independent contractors/subcontractors;
- iii. Blanket contractual liability, including tort liability of another assumed in a contract;
- iv. Defense and/or indemnification obligations, including obligations assumed under any Contract resulting from this Solicitation;
- v. Cross liability for additional insureds; and
- vi. Products/completed operations for a term of no less than 1 year, commencing upon acceptance of the work, as required by the Contract.

The CGL policy, and any umbrella/excess policies used to meet the "Each Occurrence" limits specified above, must be endorsed to be primary with respect to the coverage afforded the Additional Insureds, and such policy(ies) shall be primary to, and non contributing with, any other insurance maintained by the Department.

Any other insurance maintained by the Department shall be excess of and shall not contribute with the Contractor's or Subcontractor's insurance, regardless of the "Other Insurance" clause contained in either party's policy(ies) of insurance, if applicable.

Please refer to Exhibit VII for a copy of the Excellus Health Plan, Inc. New York State Dept. of Civil Service General Liability, Automobile and Umbrella policy.

b. Business Automobile Liability Insurance

The Offeror shall maintain Business Automobile Liability Insurance in the amount of at least \$2,000,000 each occurrence, covering liability arising out of any automobile used in connection with performance under any Contract resulting from these Specifications, including owned, leased, hired and non owned automobiles bearing or, under the circumstances under which they are being used, required by the Motor Vehicles Laws of the State of New York to bear, license plates.

Please refer to Exhibit VII for a copy of the Excellus Health Plan, Inc. New York State Dept. of Civil Service General Liability, Automobile and Umbrella policy.

c. Professional Errors and Omissions Insurance

The Offeror shall maintain Professional Errors and Omissions (Professional Liability) in the amount of at least \$1,000,000 each occurrence, for claims arising out of but not limited to delay or failure in diagnosing a disease or condition and alleged wrongful acts, including breach of Contract, bad faith and negligence. Such insurance shall apply to professional errors, acts, or omissions arising out of the scope of services.

- i. Such insurance shall include coverage of all professionals and technical personnel whose actions could be considered "professional services" arising out of the scope of services as additional named insureds.
- ii. If coverage is written on a claims made policy, the Offeror warrants that any applicable retroactive date precedes the start of work; and that continuous coverage will be maintained, or an extended discovery period exercised, throughout the performance of the services and for a period of not less than three years from the time work under any Contract resulting from this Solicitation is completed. Written proof of this extended reporting period must be provided to the Department upon request.

- iii. The policy shall cover professional misconduct or lack of ordinary skill for those positions defined in the Scope of Services of any Contract resulting from this Solicitation.

d. Technology Errors & Omissions Insurance

The Offeror shall maintain, during the term of any Contract, Technology Errors and Omissions Insurance in the amount of at least \$10,000,000 each occurrence, for claims for damages arising from computer related services including, but not limited to, the following: consulting, data processing, programming, system integration, hardware or software development, installation, distribution or maintenance, systems analysis or design, training, staffing or other support services, any electronic equipment, computer software developed, manufactured, distributed, licensed, marketed or sold. The policy shall include coverage for third party fidelity including cyber theft if coverage is not met in a Data Breach and Privacy/Cyber Liability policy-

Excellus Health Plan Inc. coverage for third party fidelity, including cyber theft, is provided under our Fidelity/Employee Dishonesty coverage and not our Technology E&O/Cyber Liability insurance.

Please refer to Exhibit VIII for a copy of the Excellus Health Plan, Inc. New York State Dept. of Civil Service Errors & Omissions policy.

If the policy is written on a claims made basis, the Offeror must provide to the Department proof that the policy provides the option to purchase an Extended Reporting Period ("tail coverage") providing coverage for no less than one (1) year after work is completed in the event that coverage is cancelled or not renewed. This requirement applies to both primary and excess liability policies, as applicable.

e. Data Breach/Cyber Liability Insurance

An Offeror is required to maintain during the term of any Contract and as otherwise required herein, Data Breach and Privacy/Cyber Liability Insurance in the amount of at least \$10,000,000 each occurrence, including coverage for failure to protect confidential information and failure of the security of the Offeror's computer systems or the Department systems due to the actions of the Offeror which results in unauthorized access to the Department or their data.

Said insurance shall provide coverage for damages arising from, but not limited to the following:

- i. Breach of duty to protect the security and confidentiality of nonpublic proprietary corporate information;
- ii. Personally, identifiable nonpublic information (e.g., medical, financial, or personal in nature in electronic or non electronic form);
- iii. Privacy notification costs;
- iv. Regulatory defense and penalties;
- v. Website media liability; and
- ~~vi. Cyber theft of customer's property, including but not limited to money and securities.~~

Please refer to Exhibit IX for a copy of the Excellus Health Plan, Inc. New York State Dept. of Civil Service Cyber Liability policy.

Date: July 27, 2020

NYS Department of Civil
Service Agency Building
#1, 17th Floor Empire
State Plaza
Albany, New York 12239

RE: "Health Maintenance Organizations Specifications for the New York State Health Insurance Program"

Firm Offer to the State of New York

Excellus Health Plan, Inc. hereby submits this firm and binding offer to the State of New York in response to the Department's specifications request, entitled "Health Maintenance Organizations Specifications for the New York State Health Insurance Program". The Proposal hereby submitted meets or exceeds all terms, conditions, and requirements set forth in the above-referenced specifications and in the manner set forth in the specifications.

Excellus Health Plan, Inc. accepts the terms and conditions as set forth in the specifications, Section 8 and Appendices A, B, and C, as modified by the Department and Offeror's negotiations in response to the *Non-Material Deviations Template* (Attachment 8) and agrees to satisfy the comprehensive programmatic duties and responsibilities outlined in the specifications in the manner set forth in the specifications.

Excellus Health Plan, Inc. agrees to execute a contractual agreement that includes the terms and conditions set forth in Section 8 of these specifications and accepts as non-negotiable the terms and conditions set forth in Appendix A. Offeror agrees to only submit for consideration non-material deviations to these specifications and Appendices B, and C using the *Non-Material Deviations Template* (Attachment 8).

Excellus Health Plan, Inc. further agrees, if selected as a result of these specifications, to comply with 1) the provisions of Tax Law Section 5-a, Certification Regarding Sales and Compensating Use Tax; and 2) the Workers' Compensation Law as set forth in Section 4.6 and 4.7 of the specifications.

This formal offer will remain firm and non-revocable for a minimum period of 365 days from the Proposal Due Date as set forth in the specifications. In the event that a contract is not approved by the NYS Comptroller within the 180 day period, this offer shall remain firm and binding beyond the 365 day period and until a contract is approved by the NYS Comptroller, unless **Excellus Health Plan, Inc.** delivers to the Department of Civil Service written notice of withdrawal of its Proposal.

Excellus Health Plan, Inc.'s complete offer is set forth as follows:

Administrative and Technical Proposal:

Total of eight (8) electronic copies on a USB drive that each contain the Administrative and Technical Proposal and three (3) hard copy volumes, including one ORIGINAL hard copy.

Complete Electronic Master Proposal:

One (1) USB drive containing all two sections (Administrative and Technical) of the Offeror's Proposal and electronic copies of all materials and documents present in the Original hard copies.

Offeror's Senior Officer Responsible for Account contact information

Name: **Mary Bowe, Regional Vice President of Sales**

Address: **Excellus BlueCross BlueShield 165 Court Street Rochester, N.Y. 14647**

Phone number: **585-454-1700**

Email address: **Mary.Bowe@excellusbcb.com**

(Remainder of this page intentionally left blank)

The undersigned affirms and swears s/he has the legal authority and capacity to sign and make this offer on behalf of, **Excellus Health Plan, Inc.** and possesses the legal authority and capacity to act on behalf of **Excellus Health Plan, Inc.** to execute a contract with the State of New York.

The Offeror certifies that all information provided to the Department with respect to State Finance Law §139-k is complete, true and accurate. The undersigned affirms and swears as to the truth and veracity of all documents included in this offer.

**Excellus Health Plan,
Inc.**

Signature: _____ **Title:** Regional Vice President of Sales

PRINT SIGNATORY'S NAME: Mary Bowe

Date: 7-16-20

**INDIVIDUAL, CORPORATION, PARTNERSHIP, OR LLC
ACKNOWLEDGMENT STATE OF } New York**

Sworn Statement:

COUNTY OF } Monroe

On the 16 day of July in the year **2020**, before me personally appeared **Mary Bowe**, known to me to be the person who executed the foregoing instrument, who, being duly sworn by me did depose and say that she maintains an office at
Town of 165 Court St Rochester
County of Monroe, State of **New York**; and further that:

____ (If an individual): he executed the foregoing instrument in his/her name and on his/her own behalf.

X (If a corporation): she is the **Regional Vice President of Sales of Excellus Health Plan, Inc.**, the corporation described in said instrument; that, by authority of the Board of Directors of said corporation, she is authorized to execute the foregoing instrument on behalf of the corporation for purposes set forth therein; and that, pursuant to that authority, he executed the foregoing instrument in the name of and on behalf of said corporation as the act and deed of said corporation.

____ (If a partnership): he is the _____
of _____

____, the partnership described in said instrument; that, by the terms of said partnership, he is authorized to execute the foregoing instrument on behalf of the partnership for purposes set forth therein; and that, pursuant to that authority, he executed the foregoing instrument in the name of and on behalf of said partnership as the act and deed of said partnership.

____ (If a limited liability company): he is a duly authorized member of _____

____, LLC, the limited liability company described in said instrument; that, he is authorized to execute the foregoing instrument on behalf of the limited liability company for purposes set forth therein; and that, pursuant to that authority, he executed the foregoing instrument in the name of and on behalf of said limited liability company as the act and deed of said limited liability company.

Notary Public _____

Date: 7/16/20

LISA M. SANTELLI
Notary Public in the State of New York
Monroe County
Commission Expires Dec. 26, 2022

ATTACHMENT 6



**Department of
Civil Service**

Offeror Attestations Form - "Health Maintenance Organizations Specifications for the New York State Health Insurance Program"

A representative of the Offeror who is legally authorized to bind the Offeror must complete and sign the Offeror Attestations Form and provide all requested information. Please note that the narrative stated below with regard to each requirement is provided as a convenience to the Offeror and the requirement(s) identified in the Specifications referenced section is the controlling language.

Offeror Name:		Excellus Health Plan, Inc. – HMOBlue 25
Offeror's Legal Form:		<input checked="" type="checkbox"/> Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Sole Proprietorship <input type="checkbox"/> Other
No.	Ref.	Requirement:
1.	Section 1.5(1)	At time of Proposal submission, Offeror represents and warrants that it: <input checked="" type="checkbox"/> possesses <input type="checkbox"/> does not possess the legal capacity to enter into a contract with the Department.
2.	Section 1.5(2)	At time of Proposal submission, the Offeror represents and warrants that it: <input checked="" type="checkbox"/> attests <input type="checkbox"/> does not attest a. is licensed as an insurer under Articles 42 or 43 of New York State Insurance Law or certified under Article 44 of New York State Public Health Law, in good standing, and in compliance with state solvency requirements; and b. If applicable, be certified/licensed in accordance with the certification and oversight jurisdiction imposed by another state.
3.	Section 1.5(3)	At time of Proposal submission, Offeror represents and warrants that: <input checked="" type="checkbox"/> attests <input type="checkbox"/> does not attest it has been in operation as a going concern at least two (2) years prior to the Proposal Due Date set forth in Section 1.6 of this specifications.
4.	Section 1.5(4)	At time of Proposal submission, Offeror represents and warrants that: <input checked="" type="checkbox"/> attests <input type="checkbox"/> does not attest it is accredited by the National Committee on Quality Assurance (NCQA) and/or Utilization Review Accreditation Committee (URAC).
5.	Section 1.5(6)	At time of Proposal submission, Offeror represents and warrants that: <input checked="" type="checkbox"/> acknowledges and agrees <input type="checkbox"/> does not acknowledge and agree: to accept all determinations of eligibility made by the Department and must provide a rider that includes all NYSHIP dependent eligibility provisions.

ATTACHMENT 6



**Department of
Civil Service**

Offeror Attestations Form - "Health Maintenance Organizations Specifications for the New York State Health Insurance Program"

6.	Section 1.5(7)	<p>At time of Proposal Due Date, Offeror represents and warrants that:</p> <ul style="list-style-type: none"> ✓ acknowledges and agrees does not acknowledge and agrees: <p>It must use any enrollment data transmission protocol and encryption method stipulated by the Department. The current data transmission protocol must be Secure FTP, and the current encryption methodology must be PGP or as otherwise specified by the Department. Secure FTP must be compatible with the Open SSH implementation of Secure FTP. Further, the HMO must agree to comply with the Department's Information Security Requirements (Appendix C) including any additional protocols required by the Department to ensure the security of its data transmissions.</p>
7.	Section 1.5(8)	<p>At time of Proposal Due Date, Offeror represents and warrants that:</p> <ul style="list-style-type: none"> ✓ acknowledges and agrees does not acknowledge and agrees: <p>It must provide coverage to both NYSHIP primary and Medicare primary enrollees and dependents that comply with the requirements of the Specifications throughout the term of the Agreement. If the HMO has an approved Medicare Advantage Plan with Part D coverage in a Commercial Plan service area it MUST offer the Medicare Advantage Plan to Medicare primary enrollees.</p>
8.	Section 1.5(9)	<p>The Offeror represents and warrants:</p> <ul style="list-style-type: none"> ✓ acknowledges and agrees does not acknowledge and agrees: <p>The Offeror must accept a signed and valid <i>NYSHIP Authorization for Release of Protected Health Information forms</i> (Attachment 27), or any alternative form developed by the Department during the contract term, for the purpose of the release of Protected Health Information to Enrollees' designees.</p>
9.	Section 3.6(1)(a)	<p>Offeror represents and warrants that:</p> <ul style="list-style-type: none"> ✓ acknowledges and agrees does not acknowledge and agree that: <p>all Member communication material developed by the Offeror are subject to the Department's final approval.</p>

ATTACHMENT 6



Department of Civil Service

Offeror Attestations Form - "Health Maintenance Organizations Specifications for the New York State Health Insurance Program"

CERTIFICATION:

The Offeror: (1) recognizes that the following representations are submitted for the express purpose of assisting the State of New York in making a determination to award a contract; (2) acknowledges and agrees by submitting the Attestation, that the State may at its discretion, verify the truth and accuracy of all statements made herein; and (3) certifies that the information submitted in this certification and any attached documentation is true, accurate and complete

Signature: [Redacted] Title: Regional Vice President of Sales

PRINT SIGNATORY'S NAME: Mary Bowe Date: 7-16-20

INDIVIDUAL, CORPORATION, PARTNERSHIP, OR LLC ACKNOWLEDGMENT

STATE OF } New York

Sworn Statement:

COUNTY OF } Monroe

On the 16 day of July in the year 2020, before me personally appeared Mary Bowe, known to me to be the person who executed the foregoing instrument, who, being duly sworn by me did depose and say that she maintains an office at Town of Rochester County of Monroe, State of New York; and further that:

(If an individual): he executed the foregoing instrument in his/her name and on his/her own behalf.

(If a corporation): she is the Regional Vice President of Sales of Excellus Health Plan, Inc. the corporation described in said instrument; that, by authority of the Board of Directors of said corporation, she is authorized to execute the foregoing instrument on behalf of the corporation for purposes set forth therein; and that, pursuant to that authority, she executed the foregoing instrument in the name of and on behalf of said corporation as the act and deed of said corporation.

(If a partnership): he is the of the partnership described in said instrument; that, by the terms of said partnership, he is authorized to execute the foregoing instrument on behalf of the partnership for purposes set forth therein; and that, pursuant to that authority, he executed the foregoing instrument in the name of and on behalf of said partnership as the act and deed of said partnership.

(If a limited liability company): he is a duly authorized member of the limited liability company described in said instrument; that, he is authorized to execute the foregoing instrument on behalf of the limited liability company for purposes set forth therein; and that, pursuant to that authority, he executed the foregoing instrument in the name of and on behalf of said limited liability company as the act and deed of said limited liability company.

Notary Public: [Redacted] Date: 7/16/20

LISA M. SANTELLI
Notary Public in the State of New York
Monroe County
Commission Expires Dec. 26, 2022

ATTACHMENT 9



**Department of
Civil Service**

Subcontractors or Affiliates - "Health Maintenance Organizations Specifications for the New York State Health Insurance Program"

INSTRUCTION: Prepare this form for each Subcontractor or Affiliate. For purposes of completing this form, Subcontractors include all vendors who will provide \$100,000 or more in Project Services over the term of the Agreement that results from these Specifications, as well as any vendor who will provide Project Services in an amount lower than the \$100,000 threshold, and who is a part of the Offeror's account team.

Offeror's Name: Excellus Health Plan, Inc. (HMOBlue)

The Offeror:

is
 is not

proposing to utilize the services of a Subcontractor(s) or Affiliate(s) to provide Project Services

**Subcontractor or Affiliate's
Legal Name:** Express Scripts, Inc

Business Address: One Express Way, St. Louis, MO 63121

**Subcontractor's Legal
Form:** Corporation Partnership Sole Proprietorship
Other _____

As of the date of the Offeror's Proposal, a subcontract or agreement

has
 has not

been executed between the Offeror and the subcontractor(s) or Affiliate for services to be provided by such subcontractor(s) or Affiliate(s) relating to the Project.

In the space provided below, describe the Subcontractor's or Affiliate's role(s) and responsibilities regarding Project Services to be provided:

Excellus Health Plan, Inc. partners with Express Scripts to provide high level PBM (Pharmacy Benefits Management) services, including claims processing.

Relationship between Offeror and Subcontractor or Affiliate for Current Engagements:
(Complete items 1 through 5 for each client engagement identified)

1. Client: Excellus Health Plan, Inc.

2. Client Reference Name and Phone #: Nicholas Carbone
(585) 399 - 6650

3. Project Title: Pharmacy Benefits Management

4. Project Start Date: 1/1/2017

5. In the space provided below, Project Status:

Active

6. In the space provided below, describe the roles and responsibilities of the Offeror and Subcontractor or Affiliate in regard to the project identified in 3, above:

ATTACHMENT 9



**Department of
Civil Service**

Subcontractors or Affiliates - “Health Maintenance Organizations Specifications for the New York State Health Insurance Program”

Excellus Health Plan, Inc. partners with Express Scripts to provide high level PBM (Pharmacy Benefits Management) services, including claims processing.

ATTACHMENT 9



Subcontractors or Affiliates - “Health Maintenance Organizations Specifications for the New York State Health Insurance Program”

INSTRUCTION: Complete the following chart listing any Subcontractors or Affiliates the HMO will employ to deliver a category of services to NYSHIP enrollees. A Subcontractor or Affiliate is a vendor with whom the HMO subcontracts to provide Program Services and incorporates as a part of the HMOs Program Team. If service is performed in-house by Contractor, indicate “self-administered” in appropriate column.

Type of Service	Name of Organization	Contract Term and Renewal Dates	Description of Subcontracted Services
Mental Health and Substance Abuse Program Administration	Services are provided in-house.		
Prescription Drug Benefit Administration: Retail Mail Order Specialty Pharmacy	Express Scripts	Contract with Express Scripts is effective January 1 st , 2016 and expires December 31 st , 2022.	Drug claims adjudication and retail pharmacy network administration
	Express Scripts Wegmans	Contract with Express Scripts is effective January 1 st , 2016 and expires December 31 st , 2022. Contract with Wegmans is effective until December 31 st , 2021.	Mail-Order Management
	Accredo Specialty Pharmacy Noble Pharmacy Onco360	Contract with Accredo is effective January 1 st , 2016 and expires December 31 st , 2022. Contract with Noble is ongoing Contract with Onco360 is ongoing	Specialty Pharmacy Management
Laboratory Services	Services are provided in-house.		
Utilization Review	Services are provided in-house. - NICU admission (Progeny Health) - High cost radiology (eviCore) - Sleep Study(eviCore) - Cardiac(eviCore) - Devices (eviCore) - Radiation Oncology (eviCore)	*We contract with ProgenyHealth for our NICU admissions. Progeny Health’s contract expires on February 1, 2025. Our eviCore contract was renewed and expires in July 31, 2023.	- NICU admission (Progeny Health) - High cost radiology (eviCore) - Sleep Study(eviCore) - Cardiac(eviCore) - Devices (eviCore) - Radiation Oncology (eviCore) Musculoskeletal (Joint, Nerve, Spine) Services as of July 31, 2023 completed by eviCore as well.

ATTACHMENT 9



**Department of
Civil Service**

Subcontractors or Affiliates - “Health Maintenance Organizations Specifications for the New York State Health Insurance Program”

Medical Necessity Reviews	Services are provided in-house with the exception of NICU admissions, high cost radiology, sleep studies, cardiac devices and radiation oncology. All Appeals and grievances for utilization reviews that have exhausted the internal review process can utilize our external review process in which Excellus BCBS partners with Advanced Medical Reviews (AMR) for an external independent medical case review and utilization management program.	*We contract with Progeny Health for our NICU admissions. Progeny Health’s contract expires on February 1, 2025. Our eviCore contract was renewed and expires in 7/31/23.	<ul style="list-style-type: none"> - NICU admission (Progeny Health) - Musculoskeletal (Joint, Nerve, Spine) Services - High cost radiology (eviCore) - Sleep Study (eviCore) - Cardiac (eviCore) - Devices (eviCore) - Radiation Oncology (eviCore)
Communication Materials	Services are provided in-house.		
Claims Processing	Services are provided in-house.		
Call Center	Services are provided in-house.		
Benefit Card	Services are provided in-house.		
Other (list each and describe)			
Health Survey	Rally Health	The latest Rally Health agreement went into effect August 31, 2019 and runs its three year term through December 31, 2022.	Health Survey determines the “Rally Age” triggered from behavioral questions that drive a personalized experience for the user
Worksite Wellness	Wellness Programs with Value (WPV)	Ongoing.	Preventative screenings and health education programs.
High Complexity Imaging	eviCore (formerly known as Care Core National).	Our eviCore contract was renewed and expires in 7/31/23.	Manage high complexity imaging services
Telemedicine	MDLIVE, Inc.	3/1/19 – 3/1/22	Remote delivery of healthcare services and clinical information using electronic technology such as a telephone or videoconferencing via a smartphone, computer or tablet.