



As of May 10, 2016

Scott D. Fischer
Special Deputy Superintendent
New York Liquidation Bureau
110 William Street
New York, NY 10038

Dear Mr. Fischer:

This letter confirms and sets forth the terms and conditions of the engagement of Alvarez & Marsal Healthcare Industry Group, LLC (“A&M”) by Maria T. Vullo, Superintendent of Financial Services of the State of New York in her capacity as liquidator (the “Liquidator”) of Health Republic Insurance of New York, Corp. (“Health Republic” or “HRI”) in connection with the liquidation of Health Republic pursuant to Article 74 of the New York Insurance Law (the “Liquidation Proceeding”) in accordance with that certain Order of Liquidation issued by the Supreme Court of the State of New York, County of New York on May 10, 2016 (the “Liquidation Order”). This Agreement includes the scope of the services to be performed and the basis of compensation for those services. Upon execution of this letter by each of the parties below, this letter will constitute an agreement between the Liquidator and A&M effective as of the date set forth above (the “Agreement”).

1. Description of Services

- (a) Consultants: In connection with this engagement, A&M shall make available to the Liquidator *employees of A&M and/or its affiliates, including Ronald Vance the former Chief Restructuring Officer of HRI, to provide consulting services as representatives of the Liquidator in connection with the matters described in the Liquidation Order (the “Engagement Personnel”)*

A&M personnel providing services to the Liquidator may also work with other A&M clients in conjunction with unrelated matters.

- (b) The Engagement Personnel shall perform the following duties as representatives of the Liquidator in executing on the duties described in the Liquidation Order:
- (i) *Assisting the Liquidator in developing and executing a plan for the orderly wind-down and liquidation of Health Republic*

- (ii) Assisting with the coordination of third party administrators, vendors and consultants in connection with claims processing, adjudication and resolution*
- (iii) Providing support for any litigation matters and coordinating with counsel identified and/or approved by the Liquidator, as applicable*
- (iv) Responding to inquiries made by policy holders, contracted healthcare providers (hospitals, physicians and other providers), external vendors and other parties regarding issues arising from the Liquidation Proceeding. This does not include inquiries from media and public relations firms.*
- (v) Assisting with the coordination of audits of claims processed by POMCO to identify duplicate claims and assess the accuracy of adjudicated claims, if deemed necessary*
- (vi) Updating the Wind-Down Plan described in Paragraph 4(d) below on a monthly basis, showing completed services and remaining services in progress*
- (vii) Coordinating the preparation of (and reporting to the Liquidator regarding) any required CMS or State of New York data submissions or data reconciliation*
- (viii) Coordinating all operational data services, databases and software while in use and necessary to the run-out and wind-down*
- (ix) Storing of data images previously produced by A&M personnel for HRI as a historical archive for possible future forensic use*
- (x) Coordinating transfers to the Liquidator of any or all data in A&M possession required for access or secure long-term storage upon the Liquidator's request*
- (xi) Provide a plan for an orderly shutdown and purging of all data systems and the transfer of all active domains subject to the Liquidator's authorization*
- (xii) Provide a bi-weekly activity report of IT-related functions*
- (xiii) Providing support to the Liquidator during the FY 2015 Financial Audit*

- (xiv) *Providing ad-hoc support, including internal and external reporting as needed*
- (xv) *Identifying, assisting with, and performing such other services as requested or directed by the Liquidator during the Liquidation Proceeding and agreed to by A&M*
- (c) The Engagement Leader shall report to the Liquidator, Special Deputy Superintendent, and Assistant Special Deputy Superintendents, and will make recommendations to and consult directly with them.
- (d) The duties and responsibilities of A&M may be subject to revision upon the agreement of A&M and the Liquidator
- (e) The Engagement Personnel will continue to be employed by A&M and, while rendering services for the Engagement, may continue to work with other personnel at A&M in connection with unrelated matters
- (f) In connection with the services to be provided hereunder, from time to time, A&M may use the services of employees of its affiliates as Engagement Personnel. Such affiliates are wholly owned by A&M's parent company and employees. However, A&M shall not use the services of any employees who worked on the Morneau Shepell engagement described in Section 8(b) of this Agreement and will institute an "information screen" between such employees and the Engagement Personnel to prevent the exchange of information relating to the engagements

2. Information Provided by the Health Republic and Forward Looking Statements

- (i) *In connection with the provision of the services described herein, A&M shall rely, without further independent verification, on the accuracy and completeness of publicly available information and information that is or was furnished by or on behalf of HRI and/or the Liquidator to A&M in connection with the services performed. The Liquidator acknowledges and agrees that the Engagement Personnel are not responsible for the accuracy or completeness of such information and shall not be responsible for any inaccuracies or omissions therein. A&M and the Engagement Personnel are under no obligation to update data submitted to it or to review any other areas unless specifically requested by the Liquidator to do so.*

You understand that the services to be rendered by A&M may include the preparation of projections and other forward-looking statements, and numerous factors can affect actual results, which may materially and adversely differ from those projections.

3. Limitation of Duties

The Engagement Personnel's role in this engagement is to support and advise the Liquidator in a consulting capacity with respect to matters associated with liquidation of HRINY. It is expressly understood that all implementation decisions are those of the Liquidator and neither *A&M* nor the *Engagement Personnel* assume any responsibility for the Liquidator's decision to pursue, or not pursue any strategy, or to effect, or not to effect any transaction.

4. Compensation

- a) A&M will receive fees for the services of the Engagement Personnel based on the following standard hourly rates:

<i>Managing Directors</i>	<i>\$675/hour</i>
<i>Sr. Directors</i>	<i>\$575/hour</i>
<i>Directors</i>	<i>\$500/hour</i>
<i>Sr. Associates</i>	<i>\$400/hour</i>
<i>Associates</i>	<i>\$300/hour</i>
<i>Analysts</i>	<i>\$200/hour</i>

Such rates shall be subject to adjustment annually at such time as A&M adjusts its rates generally subject to the approval of the Liquidator.

The total amount billed each month by A&M for professional services rendered (not including reimbursed expenses), under the scope of services outlined in this agreement, will be for actual hours worked each month multiplied by the firm's stated hourly rate for each individual. All fees and expenses will be billed on a monthly basis or, at A&M's discretion, more frequently. Invoices are payable upon receipt and are subject to the Liquidator's approval

Invoices shall identify the services performed, grouped by the open categories set forth in the Wind-Down Plan, with the charges by each of the Engagement Personnel reported in quarter hour increments accompanied by a narrative description of the services performed

- (a) In addition, A&M will be reimbursed for its reasonable out-of-pocket expenses incurred in connection with this assignment, such as travel, lodging, duplicating, messenger, computer research and telephone charges, however, travel, lodging, and any expenses in excess of \$1,000 must be pre-approved by the Liquidator.
- (b) A&M received a retainer of \$395,000 from HRI in January 2016. The amount of the retainer shall be reduced to \$150,000, which the Liquidator agrees may be carried over to be held by A&M under this Agreement. The retainer will be

credited against any amounts due at the termination of this engagement, and returned upon the satisfaction of all obligations hereunder.

- (c) The Liquidator has the sole and exclusive right to determine, subject to A&M's right to refute and/or dispute such determination, whether the invoices and associated services were in accordance with the terms of this Agreement, as well as to adjust payments to reflect the Liquidator's determinations and to seek A&M's refund (or credit against future invoices) for fees and expenses paid which are ultimately rejected by the Liquidator following the date of payment.
- (d) A&M will develop, in coordination with the Liquidator, a work plan and budget that shall separately outline and describe expected major tasks, the estimated amount of time necessary to complete such tasks, and the estimated cost to complete such tasks (the "Wind-Down Plan"). A&M commits to use reasonable efforts to cause the Engagement Personnel to provide services to the Liquidator in accordance with the Wind-Down Plan, recognizing, however, that the Wind-Down Plan and budget are estimates, and the actual tasks performed and the time and cost to complete them, may vary from the Wind-Down Plan and budget.

5. Termination

- (a) This Agreement will apply from the commencement of the services referred to in Section 1 and may be terminated by either party without cause upon thirty days written notice to the other party or by mutual agreement of A&M and the Liquidator.
- (b) On termination of the Agreement, (i) any fees and expenses due to A&M shall be remitted promptly (including fees and expenses that accrued prior to but are invoiced subsequent to such termination), (ii) A&M shall transfer to the Liquidator any of Health Republic's or the Liquidator's information or property in A&M's possession; and (iii) A&M shall provide reasonable assistance, subject to compensation consistent with Section 4 above, in connection with the orderly transition of the engagement.
- (c) The provisions of this Agreement that give the parties rights or obligations beyond its termination shall survive and continue to bind the parties.

6. Relationship of the Parties

The parties intend that an independent contractor relationship will be created by this engagement letter. The Liquidator acknowledges and agrees that A&M's engagement shall not constitute an audit, review or compilation, or any other type of financial statement reporting engagement that is subject to the rules of the AICPA, SEC or other state or national professional or regulatory body.

7. No Third Party Beneficiary

The Liquidator acknowledges that all advice (written or oral) provided by A&M and the Engagement Personnel to the Liquidator in connection with this engagement is intended solely for the benefit and use of the Liquidator in considering the matters to which this engagement relates. The Liquidator agrees that no such advice shall be used for any other purpose or reproduced, disseminated, quoted or referred to at any time in any manner or for any purpose other than accomplishing the tasks referred to herein without A&M's prior approval (which shall not be unreasonably withheld), except as required by law.

8. Conflicts

(a) A&M is not currently aware of any relationship that would create a conflict of interest with the Liquidator (as it relates to HRI) or those parties-in-interest of which we have been made aware, other than with respect to the relationships described in subsections 8(b) and 8(c) below. Because A&M and its affiliates and subsidiaries comprise a consulting firm (the "Firm") that serves clients on a global basis in numerous cases, both in and out of court, it is possible that the Firm may have rendered or will render services to or have business associations with other entities or people which may have had relationships with Health Republic, including creditors of HRI. The Firm will not be prevented or restricted by virtue of providing the services under this Agreement from providing services to other entities or individuals, including entities or individuals whose interests may be in competition or conflict with the Liquidator's, provided the services are unrelated to the services under this Agreement and the Firm makes appropriate arrangements to ensure that the confidentiality of information is maintained and provided further that during the term of this engagement.

(b) We note that Alvarez & Marsal Business Consulting, LLC ("A&M BC") (a Firm entity) previously provided consulting services to Morneau Shepell ("MS") from approximately May 2014 to August 2015 in connection with MS's efforts to improve performance of the back office services (billing, enrollment and other member services) provided by MS to Health Republic. In connection with these services, A&M BC personnel at times worked directly with Health Republic personnel on the implementation of the improvements and resolution of performance issues. In addition (i) in or around February 2015, Ron Vance and certain other A&M personnel were involved in internal firm discussions regarding a proposal to provide certain strategy and assessment work to MS regarding their technology platform whose services would not have been directly related to the MS/HRI relationships (this proposal was not accepted by MS, Mr. Vance never met with MS regarding this matter and Mr. Vance never received any of MS's confidential information in connection with such internal discussions), and (ii) an A&M BC Managing Director involved in the engagement was contacted in or around May 2015 directly by a then member of Health Republic's management team regarding the potential for A&M to assist Health Republic in standing up their own back office process. Considering the ongoing work with MS (at that

time), A&M BC declined to pursue the opportunity described in (ii) above. A&M will ensure that no one who worked on the MS engagement works on this engagement by instituting an “information screen” between the respective engagement teams prohibiting the sharing of information between the teams regarding their respective matters. In light of the foregoing, it is agreed that the Engagement Personnel will recuse themselves from any disputes (including identifying/investigating any causes of action, if any may exist) between MS and HRI. In those instances, the Liquidator shall make any necessary decisions.

(c) In addition, we note that A&M provided services to various Health Republic constituents including, but not limited to, certain vendors and New York State entities solely on matters unrelated to Health Republic. We note in particular the following matters unrelated to Health Republic:

- a. *The firm provides consulting services to RackSpace*
- b. *In 2013 and early 2014, the Firm provided certain tax consulting services to a private equity fund in connection with such client’s investment in MagnaCare. We also note that around that time, Ronald Vance was involved in a proposal to MagnaCare and/or the fund in connection with the potential for the Firm to provide business consulting services relating to MagnaCare, which matter never commenced*
- c. *From 2011 into 2012, the Firm provided certain consulting services to a prior owner of HealthX in matters related to its sales of HealthX*
- d. *Dentons, HRI’s legal counsel, has provided and may continue to provide legal services to the Firm on matters unrelated to Health Republic. In addition, the Firm has provided services to Dentons’ clients (and in certain matters Dentons has engaged the Firm on behalf of such client)*

9. Confidentiality

A&M and the Engagement Personnel shall keep as confidential all non-public information received from Health Republic or the Liquidator in conjunction with this engagement, except:

- (i) *as requested by the Liquidator or its legal counsel;*
- (ii) *as required by legal proceedings; or*
- (iii) *as reasonably required in the performance of this engagement. All obligations as to non-disclosure shall cease as to any part of such information to the extent that such information is or becomes public other than as a result of a breach of this provision.*

- (a) In connection with the services to be performed by A&M hereunder, A&M will be furnished with certain Confidential Information concerning Health Republic. The term “Confidential Information” includes all such information relating to the HRI’s past business activities so obtained by A&M. The term “Confidential Information” does not include information that:
- (i) *is or becomes generally available to the public other than as a result of a wrongful disclosure by A&M*
 - (ii) *is or becomes available to A&M from sources other than the Liquidator or Health Republic, provided that such source is not known by A&M, after reasonable inquiry, to be a breach of a written confidentiality agreement with Liquidator or Health Republic*
 - (iii) *was approved for release by written authorization of the Liquidator*
 - (iv) *was independently developed by A&M without reference to the Confidential Information*
 - (v) *was lawfully within A&M possession prior to it being furnished to A&M by the Liquidator or Health Republic, provided that the source of such information was not known to be in breach of a written confidentiality agreement with the Liquidator or Health Republic in respect thereof*
- (b) A&M shall use the same standard of care to protect the Confidential Information as it uses to protect its own Confidential Information of a similar nature, but in no instance shall it use a standard of care less than a commercially reasonable standard of care. A&M agrees that the Confidential Information will be used solely for the purpose of this engagement. A&M also agrees that it will keep the Confidential Information confidential and that it will not disclose any of the Confidential Information to anyone except the Liquidator without the prior written consent of the Liquidator. In the event that the Engagement Personnel believe that a disclosure is reasonably necessary to the performance of A&M’s duties under this Agreement, A&M shall so advise the Liquidator and, to the extent the proposed disclosure is to a party that is unknown to the Liquidator, seek the Liquidator’s consent to the disclosure.
- (c) Certain data provided by Health Republic or the Liquidator may be of a particularly sensitive nature, such as personal, private or sensitive information (PPSI) (e.g., social security numbers or home addresses), information pertaining to an individual’s medical conditions and information specifically identified by Health Republic or the Liquidator as a trade secret or commercially sensitive. A&M agrees to store and safeguard all such sensitive information, to the extent to which it is maintained in A&M’s physical or technical environment, in a secure manner, either in hard copy, electronic form, or both as may otherwise be required by law. If A&M uses email to transmit any such sensitive information,

transmissions will be encrypted. For the avoidance of doubt, A&M may rely on the information technology and security of Health Republic with respect to information maintained in Health Republic's environment and/or transmitted from HRI via email or other similar means.

- (d) A&M recognizes the confidential nature of the Confidential Information and the damage that could result if information contained therein is disclosed in violation with the terms of this Agreement. A&M agrees that all of its representatives who have or will have access to the Confidential Information, as defined and contemplated herein, will first be advised of the confidential nature thereof and the requirement that the same be maintained in the strictest confidence in accordance with this Agreement. A&M is responsible for assuring that its agents, servants, contractors and employees, including Engagement Personnel, with access to such information are advised of and adhere to the confidentiality provisions herein.
- (e) In the event of an actual or suspected data breach that has the potential to threaten the security of the Confidential Information, A&M shall notify the Liquidator of such actual or suspected breach promptly upon the discovery of such actual or suspected breach. In addition, A&M shall at its own cost promptly investigate any actual or suspected breach to determine if such security breach actually occurred, the causes thereof, and the nature and extent of all personal, private or sensitive information, if any, affected by such security breach. A&M shall at its own cost proceed promptly to:
 - (i) *mitigate any adverse impact to the affected individuals resulting from such security breach, as the Liquidator may direct; and*
 - (ii) *prevent similar security breaches from occurring in the future*

A&M will keep the Liquidator fully informed of all stages of the investigation and all actions taken as a result thereof.

- (f) Unless instructed otherwise by the Liquidator, A&M shall, to the fullest extent possible, first consult with and receive authorization from the Liquidator prior to undertaking any notifications required, including notifications to any individuals affected by the breach or to the appropriate regulatory body.
- (g) A&M shall provide the Liquidator with evidence that A&M has in place cyber liability insurance coverage adequate to protect the Liquidator from any claims or suits arising from A&M's acts relating to information on A&M's systems

10. Limitations on Liability

The Liquidator agrees that (a) A&M's total liability relating to or arising from the services provided under this Agreement shall in no event exceed the fees A&M receives hereunder for the portion of the work giving rise to the liability and (b) in no

event will A&M have any liability for special, consequential, incidental or exemplary damages or loss (nor any lost profits, savings or business opportunity).

It is understood by the Liquidator that A&M and the Engagement Personnel are acting in this engagement as a representative of the Liquidator in connection with the Liquidation Order and A&M and the Engagement Personnel are entitled to assert the judicial immunity and other protections described in the Liquidation Order that run to the benefit of representatives of the Liquidator.

11. Sunset Provision

Subject to Section 5(c) above, this agreement will terminate on March 31, 2017, at which time the Liquidator and A&M will revisit and renew (if applicable) the terms of this Engagement

12. Miscellaneous

This Agreement, including, without limitation, the construction and interpretation of thereof and all claims, controversies and disputes arising under or relating thereto, shall be governed and construed in accordance with the laws of the State of New York, without regard to principles of conflict of law that would defer to the laws of another jurisdiction. The Liquidator and A&M agree to waive trial by jury in any action, proceeding or counterclaim brought by or on behalf of the parties hereto with respect to any matter relating to or arising out of the engagement or the performance or non-performance of A&M hereunder. The Liquidator and A&M agree that the New York State Supreme Court that is Supervising the Liquidation Proceeding shall have exclusive jurisdiction over any litigation arising out of this Agreement; to submit to the personal jurisdiction of the Courts of the State of New York; and to waive any and all personal rights under the law of any jurisdiction to object on any basis (including, without limitation, inconvenience of forum) to jurisdiction or venue within the State of New York for any litigation arising in connection with this Agreement.

This Agreement shall be binding upon A&M, the Liquidator, their respective heirs, successors, and assignees, and any heir, successor, or assignee of a substantial portion of A&M's or HRI's respective businesses and/or assets, including any Chapter 11 Trustee. This Agreement incorporates the entire understanding of the parties with respect to the subject matter hereof and may not be amended or modified except in writing executed by the Liquidator and A&M. Notwithstanding anything herein to the contrary, A&M may reference or list HRI's name and/or logo and/or a general description of the services in A&M's marketing materials, including, without limitation, on A&M's website.

If the foregoing is acceptable to you, kindly sign the enclosed copy to acknowledge your agreement with its terms.

Very truly yours,

Alvarez & Marsal Healthcare Industry Group, LLC

By:



Ronald J. Vance, Jr.

Title: Managing Director

Accepted and agreed:

Maria T. Vullo, Superintendent of Financial Services of the State of New York in her capacity as Liquidator of Health Republic Insurance of New York, Corp., by her Agent

By:



Scott D. Fischer

Special Deputy Superintendent and Agent of the Superintendent of Financial Services of the State of New York in her capacity as Liquidator of Health Republic Insurance of New York, Corp.

SKA
7/27/2016