

## Services Agreement

This Services Agreement ("Agreement"), effective as of May 1, 2017 ("Effective Date"), is entered into by and between the Superintendent of Financial Services of the State of New York, in her capacity as court-appointed liquidator ("Liquidator") of Health Republic Insurance of New York, Corp., and POMCO, Inc. ("POMCO"). The Liquidator and POMCO are each a "Party" and collectively the "Parties" to this Agreement.

WHEREAS, the Liquidator is the liquidator of Health Republic Insurance of New York, Corp. ("Health Republic") pursuant to an Order of Liquidation issued by the Supreme Court of the State of New York, County of New York ("Liquidation Court") on May 10, 2016, in the matter styled, *In the Matter of the Liquidation of Health Republic Insurance of New York, Corp.*, Index No. 450500/2016 ("Liquidation Proceeding");

WHEREAS, POMCO has the capability and capacity to provide the Services (as defined in this Agreement); and

WHEREAS, the Liquidator desires to retain POMCO to provide the Services under the terms and conditions set forth in this Agreement, and POMCO is willing to perform the Services under those terms and conditions;

NOW, THEREFORE, the Liquidator and POMCO agree as follows:

### 1. Services

POMCO shall provide to the Liquidator the services (the "Services") described in the Description of Services and Compensation set forth in "Exhibit A" attached to this Agreement. POMCO shall provide the Services: (a) in accordance with the terms and subject to the conditions set forth in Exhibit A and this Agreement; (b) using personnel of required skill, experience, and qualifications; (c) in a timely, workmanlike, and professional manner; and (d) in accordance with generally recognized industry standards.

### 2. Term

The term ("Term") of this Agreement commences on the Effective Date and expires on the earliest of: (a) completion of the Services in accordance with the terms of this Agreement; (b) termination of this Agreement in accordance with Section 4 of this Agreement; or (c) December 31, 2017, provided that the Liquidator may, at her sole option, renew this Agreement for one additional six-month period by providing thirty (30) days' notice prior to the date on which the Term would otherwise have expired.

### 3. Default

POMCO shall be in default under this Agreement upon the occurrence of any one or more of the following events:

(a) The dissolution of POMCO; an assignment for the benefit of creditors of POMCO; the commencement of any legal action or proceeding under any bankruptcy or

insolvency laws for POMCO's relief or against POMCO, which, if filed against POMCO, is consented to or remains un-discharged for thirty (30) days; or the appointment and continuance for thirty (30) days of a receiver, trustee, guardian, or other similar person for all or part of the property of POMCO.

(b) The prohibition by law of POMCO from conducting its business, or a substantial part thereof, in the State of New York or any other state in which this Agreement will or should be performed.

(c) POMCO's material failure to perform any of the obligations provided for in this Agreement. Examples of such failure include, but are not limited to: (i) nonperformance or performance of the Services in an unsatisfactory or unprofessional manner; (ii) failure or refusal to proceed according to the direction of the Liquidator if said direction is within the capabilities of POMCO; (iii) unnecessary or unreasonable delay in performing the Services; or (iv) abandonment of the Services.

(d) POMCO's material breach or material violation of a provision of this Agreement.

(e) POMCO's material failure to meet the standards provided by the Liquidator.

(f) POMCO's failure to maintain any licenses necessary to do business in New York.

#### 4. Termination

(a) Termination for cause. Either Party may terminate this Agreement by reason of a default by the other Party immediately upon written notice of the intent to terminate.

(b) Termination without cause. Either Party may terminate this Agreement without reason upon thirty (30) days written notice of the intent to terminate.

(c) Termination pursuant to Liquidation Court direction. In the event the Liquidation Court directs the rescission or reformation of this Agreement, the Liquidator may terminate the Agreement without cause upon written notice to POMCO.

On termination of this Agreement, any fees and expenses due to POMCO as of the date of termination shall be remitted within forty-five (45) days. The Liquidator shall not be liable to POMCO by reason of termination of this Agreement for compensation, reimbursement, or damages on account of any loss of prospective profits, loss of other commitments or any adverse effect to the goodwill of POMCO.

Notwithstanding anything to the contrary and regardless of any dispute over compensation, upon termination of this Agreement or completion of the Services, POMCO will, at the written direction of the Liquidator, promptly return to the Liquidator all property belonging to the Liquidator.

5. Compensation

The sole compensation for POMCO under this Agreement will be the payment based on the pricing indicated in the Description of Services and Compensation set out in Exhibit A attached to this Agreement. The Deposit, Deposit Account, and use of such Deposit and Deposit Account, as defined in the Amended and Restated Administrative Services Agreement executed on March, 4, 2016 by POMCO, shall remain in place during the Term of this Agreement. The Liquidator shall have no obligation to transfer any additional funds to the Deposit Account. POMCO shall return any remaining portion of the Deposit to the Liquidator within 5 days of termination of this Agreement.

6. Bill Payment

POMCO shall submit invoices to the Liquidator c/o Michael Ferreira, Assistant Director, Creditor & Ancillary Operations, New York Liquidation Bureau, 110 William Street, New York, NY 10038 via email at mferreira@nylb.org, on the first business day of each month for the preceding month's services. All invoices shall be paid within forty-five (45) days of receipt unless the Liquidator objects in writing.

7. Representations and Warranties

POMCO warrants and represents the following:

- (a) POMCO has not provided, and will not provide, any reward whatsoever or give anything of value to any person or entity that might influence the Liquidator on POMCO's behalf. POMCO enters into this Agreement in good faith without performing any act that may be deemed collusion or fraud.
- (b) POMCO has not offered and will not offer any gratuities or other inducements (in the form of entertainment, gifts, offers of employment or any other thing of value) to any officer, employee, or agent of the Liquidator or the New York Liquidation Bureau.
- (c) POMCO shall ensure that all obligations and duties are carried out in a competent and timely manner.
- (d) POMCO knows of no legal, business, or financial impediment at the time of execution to the successful completion of its obligations pursuant to this Agreement. If POMCO learns of any impediment (including bankruptcy, liquidation, etc.), POMCO shall notify the Liquidator in writing immediately.
- (e) POMCO agrees to perform its obligations in accordance with all of the conditions, covenants, statements, and representations contained in this Agreement, during the Term of the Agreement.
- (f) During the Term of this Agreement, POMCO will maintain and make available the necessary levels of qualified personnel to ensure proper performance by POMCO of its obligations and responsibilities under this Agreement; and all work will be performed in a professional, expeditious manner.

(g) A breach of any provision of this section shall be deemed a material breach of this Agreement for purposes of default under this Agreement.

**8. Waiver of Breach**

No term or provision of this Agreement shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented. Any Party's consent to, waiver of, or excuse for a breach under this Agreement shall not constitute consent to, waiver of, or excuse for any other, different or subsequent breach.

**9. Indemnification and Hold Harmless**

POMCO shall be fully liable for the actions of its agents, employees, partners, and sub-contractors and shall fully indemnify and save harmless the Liquidator, the New York Liquidation Bureau, and their officers, agents or employees from and against any and all damages and expenses (including attorney's fees) from suits, actions, and claims of every name and description arising out of POMCO's negligent performance under this Agreement. However, POMCO shall not indemnify the Liquidator to the extent that any claim, loss, or damage arising hereunder is caused solely by the negligent act or failure to act of the Liquidator.

**10. Insurance**

POMCO shall, during the Term of this Agreement, without expense to the Liquidator, procure and maintain insurance of the following kinds and limits of liability:

(a) POMCO shall maintain Professional liability/errors and omissions insurance with a minimum limit of \$5,000,000 per occurrence and \$5,000,000 annual aggregate, to include coverage for all errors and omissions which result in financial loss to POMCO or the Liquidator. Such policy shall include coverage for losses arising from the breach of information security or cyber liability (including Technology Errors & Omissions, Network Security and Privacy Liability and Media Liability), whether combined with the Professional Liability policy or placed as a separate policy, but carrying the same limits of liability.

(b) POMCO shall maintain and will require its subcontractor(s), if any, to maintain crime / employee fidelity insurance with a minimum limit of liability of \$1,500,000. POMCO agrees to include the Liquidator as a loss payee for crime / employee fidelity insurance.

(c) POMCO shall maintain at least the minimum Workers' Compensation Insurance required by New York law for all employees of POMCO and the employees of any subcontractor that directly or indirectly provides services to the Liquidator under the Agreement.

Before commencing performance of this Agreement, POMCO shall provide the Liquidator with certificates of insurance evidencing that all insurance required by this Agreement has been obtained, and that a copy of any notice sent to POMCO indicating that the policy of insurance shall be changed or canceled will also be sent to Liquidator. The insurance policies referenced in this Section shall not be canceled or reduced in required limits of liability until notice has been given to the Liquidator of such cancellation or reduction; the date of cancellation or reduction shall not be less than thirty (30) days after the date of notice.

**11. Subcontracting**

POMCO may subcontract the performance of its duties or obligations under this Agreement only with the prior written consent of the Liquidator. The Liquidator shall not be a party to any approved subcontract of POMCO's duties and obligations under this Agreement.

POMCO shall give the Liquidator immediate notice in writing of any claim, legal action, or suit filed, and prompt notice of any claim made, against POMCO, by any subcontractors or other third party that may result in litigation related in any way to this Agreement or that may affect the performance of the POMCO's duties under this Agreement.

**12. Assignment**

POMCO shall not assign, transfer, convey, or otherwise dispose of the Agreement or its right, title, or interest in the Agreement, other than its right to receive payment; the right to receive payment may be assigned with the prior written consent of the Liquidator.

All provisions contained in this Agreement shall be binding upon, inure to the benefit of, and be enforceable by the respective successors and assigns of the Parties to the same extent as if each such successor or assign were named a party hereto.

**13. Conflict of Interest**

If during the Term of the Agreement and any extension thereof, POMCO becomes aware of an actual or potential relationship that may be considered a conflict of interest, POMCO shall notify the Liquidator in writing immediately.

**14. Notices**

All notices required to be given by one Party to the other under this Agreement shall be in writing and shall be sent by certified or registered mail, or by commercial overnight courier that guarantees next day delivery, postage prepaid, to the following addresses:

To Liquidator: Superintendent of Financial Services of the State of New York  
as Liquidator of Health Republic Insurance of New York, Corp.  
110 William Street, 15th Floor  
New York, New York 10038  
Attention: General Counsel

To POMCO: POMCO, Inc.  
2425 James Street  
Syracuse, New York 13206  
Attention:

**15. Entire Agreement**

This Agreement (including the attached Exhibit A) sets forth the entire understanding and agreement between the Parties as to the subject matter of this Agreement and supersedes all prior

and contemporaneous oral and written agreements and discussions. The Parties have not relied on any representations, warranties or statements as an inducement to enter into this Agreement other than what is expressly set forth in this Agreement.

**16. Severability**

If any term of this Agreement is for any reason invalid or unenforceable, the rest of the Agreement shall remain fully valid and enforceable.

**17. Counterparts**

This Agreement may be executed in one or more counterparts, each of which will be deemed an original, and all of which will constitute one and the same Agreement.

**18. Captions**

The captions and headings in this Agreement have been inserted for convenience of reference only and shall not have the effect of amending or changing the express terms or provisions of this Agreement.

**19. Modification**

This Agreement may be modified or amended only by a written agreement entered into subsequent to the date of this Agreement and duly executed by the Parties.

**20. Governing Law**

This Agreement shall be construed and governed by the laws of the State of New York without regard to its rules concerning conflict of laws.

**21. Forum Selection**

The Parties agree that all actions or proceedings arising out of or related to this Agreement shall be referred to and determined solely by the Liquidation Court that is supervising the Health Republic Liquidation Proceeding.

**22. Capacity**

This Agreement is being entered into by the Superintendent of Financial Services of the State of New York solely in her capacity as Liquidator of Health Republic. Nothing in this Agreement shall impose any personal liability whatsoever on the Superintendent of Financial Services of the State of New York or any of her employees, agents, attorneys, representatives, successors or assigns.

**23. Third Party Rights**

This Agreement is solely for the benefit of POMCO and the Liquidator and does not confer, nor shall it be deemed to confer, any rights of any kind on any other party.

IN WITNESS WHEREOF, the Parties hereto have duly executed this Agreement as of the Effective Date.

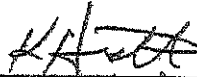
Superintendent of Financial Services of the State  
of New York as Liquidator of Health Republic  
Insurance of New York, Corp., by her Agent



Name: David Axinn

Title: Special Deputy Superintendent

POMCO, Inc.



Name: Kimberly Hiatt

Title: Sr Assoc Gen Counsel

  
6/24/2017

## Exhibit A

### Description of Services and Compensation

#### Description of Services

At the request and direction of the Liquidator, POMCO shall provide services consistent with POMCO's expertise and experience in support of the Liquidator's receipt, processing, review, adjudication, and finalization of health care claims submitted in the Health Republic Liquidation Proceeding.

All Services are to be performed on an hourly basis by POMCO on an as-needed basis solely as (i) expressly requested and (ii) pre-approved by Michael Ferreira, or such other person designated by the Liquidator.

#### Compensation

Compensation will be \$150 per hour of Services rendered by POMCO. No compensation will be paid for any hourly Services that were not (i) expressly requested and (ii) pre-approved by the Liquidator.

Invoices shall be submitted on the first business day of each month for the preceding month's Services to Michael Ferreira via email at [mferreira@nylb.org](mailto:mferreira@nylb.org).

The Liquidator and POMCO acknowledge that POMCO, at the Liquidator's request, has rendered 59 hours of Services between January 1, 2017, and the Effective Date, which Services will be compensated in accordance with the fee schedule set forth above.

#### Pass-through expenses for production of Explanations of Benefits ("EOBs")

Pass-through expenses for the production and distribution of Provider Remittance statements and Member Explanation of Benefits ("EOBs") will be billed at cost and supported by the vendor's invoices. No administrative fee markup for the production of these documents will be billed by POMCO.

#### Pass-through expenses for medical records review

Pass-through expenses for medical records review, if any, shall be incurred solely as (i) expressly requested and (ii) pre-approved by Michael Ferreira, or such other person designated by the Liquidator, and will be charged at the rate of \$150 per hour.



## Business Associate Agreement

This Business Associate Agreement ("Agreement") is effective as of May 1, 2017 ("Effective Date"), is entered into by and between the Superintendent of Financial Services of the State of New York, in her capacity as court-appointed liquidator of Health Republic Insurance of New York, Corp. ("Covered Entity"), and POMCO, Inc. ("Business Associate"). Covered Entity and Business Associate are each a "Party" and collectively the "Parties" to this Agreement.

WHEREAS, Covered Entity possesses Individually Identifiable Health Information that is protected under HIPAA, the HIPAA Privacy Regulations, the HIPAA Security Regulations, and the HIPAA Breach Notification Regulations (as such terms are defined in this Agreement) and is permitted to use or disclose such information only in accordance with such laws and regulations;

WHEREAS, Business Associate may receive such information from Covered Entity, or create, receive, maintain, or transmit such information on behalf of Covered Entity, in connection with the Services (as defined in this Agreement) it will provide to the Covered Entity; and

WHEREAS, Covered Entity wishes to ensure that Business Associate will appropriately safeguard the privacy, confidentiality, integrity, and availability of Individually Identifiable Health Information;

NOW THEREFORE, the Parties agree as follows:

### 1. Definitions

The Parties agree that the following terms, when used in this Agreement, shall have the following meanings, provided that the terms set forth below shall be deemed to be modified to reflect any changes made to such terms from time to time as defined in HIPAA, the HIPAA Privacy Regulations, the HIPAA Security Regulations, and the HIPAA Breach Notification Regulations.

(a) "Breach" shall mean the acquisition, access, use, or disclosure of PHI (as defined in this Agreement) in a manner not permitted under 45 C.F.R. Part 164, Subpart E ("HIPAA Privacy Rule") which compromises the security or privacy of the PHI. "Breach" shall not include:

(i) Any unintentional acquisition, access, or use of PHI by a workforce member or person acting under the authority of the Covered Entity or Business Associate, if such acquisition, access, or use was made in good faith and within the scope of authority and does not result in further use or disclosure in a manner not permitted under the HIPAA Privacy Rule; or

(ii) Any inadvertent disclosure by a person who is authorized to access PHI at the Covered Entity or Business Associate to another person authorized to access PHI at the Covered Entity or Business Associate, respectively, or Organized Health Care Arrangement in

which the Covered Entity participates, and the information received as a result of such disclosure is not further used or disclosed in a manner not permitted under the HIPAA Privacy Rule; or

(iii) A disclosure of PHI where the Covered Entity or Business Associate has a good faith belief that an unauthorized person to whom the disclosure was made would not reasonably have been able to retain such information.

(b) "Data Aggregation" means, with respect to PHI created or received by Business Associate in its capacity as the Business Associate of Covered Entity, the combining of such PHI by Business Associate with the PHI received by Business Associate in its capacity as a Business Associate of another covered entity, to permit data analyses that relate to the health care operations of the respective covered entities.

(c) "Electronic Protected Health Information" or "Electronic PHI" means PHI that is transmitted by or maintained in electronic media as defined in the HIPAA Security Regulations.

(d) "HIPAA" means the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, as amended by the Health Information Technology for Economic and Clinical Health Act ("HITECH"), Title XIII of the American Recovery and Reinvestment Act of 2009 (Public Law 111-5), and as amended by the 2013 HIPAA Omnibus Final Rule, and as otherwise may be amended from time to time.

(e) "HIPAA Breach Notification Regulations" means the regulations promulgated under HIPAA by the United States Department of Health and Human Services to require notification of breaches of unsecured PHI, including, but not limited to, 45 C.F.R. Part 160 and 45 C.F.R. Part 164, Subpart A and Subpart D, as amended by the HIPAA Omnibus Rule, and as otherwise may be amended from time to time.

(f) "HIPAA Omnibus Rule" means the recently promulgated final rule entitled, "Modifications to the HIPAA Privacy, Security, Enforcement, and Breach Notification Rules under the Health Information Technology for Economic and Clinical Health Act and the Genetic Information Nondiscrimination Act Other Modifications to the HIPAA Rules." Any standards or implementation specifications described herein that have been added or modified by the HIPAA Omnibus Rule shall have a compliance date of September 23, 2013.

(g) "HIPAA Privacy Regulations" means the regulations promulgated under HIPAA by the United States Department of Health and Human Services to protect the privacy of PHI, including, but not limited to, 45 C.F.R. Part 160 and 45 C.F.R. Part 164, Subpart A and Subpart E, as amended by the HIPAA Omnibus Rule, and as otherwise may be amended from time to time.

(h) "HIPAA Security Regulations" means the regulations promulgated under HIPAA by the United States Department of Health and Human Services to protect the security of Electronic PHI, including, but not limited to, 45 C.F.R. Part 160 and 45 C.F.R. Part 164, Subpart A and Subpart C, as amended by the HIPAA Omnibus Rule, and as otherwise may be amended from time to time.

(i) "Individually Identifiable Health Information" means information that is a subset of health information, including demographic information collected from an individual, that is;

(i) created or received by a health care provider, health plan, employer, or health care clearinghouse; and

(ii) relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and

(a) that identifies the individual; or

(b) with respect to which there is a reasonable basis to believe the information can be used to identify the individual.

(j) "Protected Health Information" or "PHI" means Individually Identifiable Health Information transmitted or maintained in any form or medium, including electronically, that (i) is received by Business Associate from Covered Entity, (ii) is created by Business Associate for its own purposes from Individually Identifiable Health Information that Business Associate receives from Covered Entity, or (iii) is created, received, transmitted or maintained by Business Associate on behalf of Covered Entity. PHI excludes Individually Identifiable Health Information in education records covered by the Family Educational Rights and Privacy Act, as amended, 20 U.S.C. § 1232g, records described at 20 U.S.C. § 1232g(a)(4)(B)(iv), and employment records held by the Covered Entity in its role as employer.

(k) "Security Incident" means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system.

(l) "Services" shall have the meaning ascribed to such term in that certain Services Agreement ("Services Agreement") dated as of May \_\_, 2017 by and between Business Associate and the Superintendent of Financial Services of the State of New York, in her capacity as court-appointed Liquidator of the Covered Entity.

(m) Any terms capitalized, but not otherwise defined, in this Agreement shall have the same meaning as those terms have under HIPAA, the HIPAA Privacy Regulations, the HIPAA Security Regulations, and the HIPAA Breach Notification Regulations and shall be deemed to be modified to reflect any changes made to such terms from time to time as defined in HIPAA, the HIPAA Privacy Regulations, the HIPAA Security Regulations, and the HIPAA Breach Notification Regulations.

## 2. Obligations and Activities of Business Associate

(a) Use or Disclosure. Business Associate agrees to not use or further disclose PHI other than as expressly permitted or required by this Agreement, court order, court-approved settlement agreement, or as required by law.

(b) Safeguards and Compliance with the HIPAA Privacy and Security Regulations. Business Associate agrees to use appropriate safeguards under the HIPAA Privacy and Security Regulations to appropriately protect the confidentiality, integrity, and availability of PHI and prevent unauthorized use or disclosure of the information. Notwithstanding the generality of the foregoing, Business Associate agrees to comply with each of the Standards and Implementation Specifications of 45 C.F.R. §§ 164.308 (Administrative Safeguards), 164.310 (Physical Safeguards), 164.312 (Technical Safeguards), 164.314 (Organizational Requirements), and 164.316 (Policies and Procedures and Documentation Requirements) with respect to Electronic PHI.

(c) Mitigation. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of the requirements of this Agreement.

(d) Reporting. Business Associate agrees to report to Covered Entity any use or disclosure of PHI in violation of this Agreement by Business Associate or by a third party to which Business Associate disclosed PHI pursuant to Section 2(e) of this Agreement in the time and manner reasonably designated by Covered Entity. Business Associate further agrees to report in writing promptly to Covered Entity any Security Incident of which Business Associate becomes aware; provided, however, that the Parties agree that Business Associate need not report Unsuccessful Security Incidents to Covered Entity. "Unsuccessful Security Incidents" shall include, but not be limited to, "pings" and other broadcast attacks on Business Associate's firewall, port scans, unsuccessful log-on attempts, so long as no such incident results in unauthorized access to, or use or disclosure of, Covered Entity's PHI.

Notwithstanding the foregoing provisions of this Section 2(d), Business Associate shall immediately, and in no case longer than five (5) days after discovery of a Breach, report to Covered Entity any Breach consistent with the Breach Notification Regulations. Business Associate must also, without unreasonable delay, identify each individual whose unsecured PHI has been, or is reasonably believed to have been, accessed, acquired or disclosed as a result of the Breach and provide such information to Covered Entity as needed in order to meet the data breach notification requirements under the HIPAA Breach Notification Regulations, and in any event within twenty (20) calendar days after the discovery of the Breach. The Breach shall be considered "discovered" when the Business Associate knew or reasonably should have known when the Breach occurred.

Business Associate agrees to fully cooperate, coordinate with and assist Covered Entity in gathering the information necessary to notify the affected individuals. Business Associate agrees that it shall be solely responsible for all costs and expenses incurred as a result of the Breach, including costs associated with mitigation, preparation and delivery of the notices. In the event that Business Associate creates, receives, maintains, or transmits PHI on behalf of other covered entities in addition to Covered Entity, Business Associate agrees that it has the capability to identify the covered entity to which the breached information relates.

In the event of any use or disclosure of PHI in violation of this Agreement by Business Associate or by a third party to which Business Associate disclosed PHI pursuant to Section 2(e) of this Agreement that arises from the acts or omissions of Business Associate or its employees,

subcontractors, agents, or representatives, and that requires notification of government agencies and patients, Business Associate will cooperate fully with Covered Entity.

(e) Subcontractors and Agents. In accordance with 45 C.F.R. 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, Business Associate agrees to ensure that any agents, including subcontractors, that create, receive, maintain, or transmit PHI on behalf of Business Associate agree, in writing, to the same restrictions, conditions, and requirements that apply through this Agreement to Business Associate with respect to such information.

(f) Requests for Restrictions. Business Associate agrees to comply with requests for restrictions on use or disclosure of PHI to which Covered Entity has agreed or is required to abide by under 45 C.F.R. §164.522 and of which Business Associate has been notified, to the extent that such restriction may affect Business Associate's use or disclosure of such PHI.

(g) Access to PHI. Upon request by Covered Entity for access to PHI about an individual contained in a Designated Record Set, Business Associate shall make available to Covered Entity, in the time and manner reasonably designated by Covered Entity, such PHI for so long as such information is maintained in the Designated Record Set. In the event any individual requests access to PHI directly from Business Associate, Business Associate shall forward such request to Covered Entity in the time and manner reasonably designated by Covered Entity such that Covered Entity can respond to such individual in accordance with 45 C.F.R. § 164.524. Any denials of access to the PHI requested shall be the responsibility of Covered Entity.

(h) Amendment of PHI. Upon receipt of a written request by or on behalf of Covered Entity for the amendment of an individual's PHI or record contained in a Designated Record Set (for so long as the PHI is maintained in the Designated Record Set), Business Associate shall provide such information to Covered Entity for amendment, in the time and manner reasonably designated by Covered Entity, and incorporate any such amendments in the PHI as required by 45 C.F.R. §164.526.

(i) Audit and Inspection. Business Associate agrees to make its internal practices, books, and records, including policies and procedures and PHI, relating to the use and disclosure of PHI and the security of Electronic PHI, available to the Covered Entity, Secretary of Health and Human Services ("Secretary of HHS") or any officer or employee of HHS to whom the Secretary of HHS has delegated such authority for the purposes of the Secretary of HHS determining Covered Entity's compliance with the HIPAA Privacy Regulations, the HIPAA Security Regulations, and the HIPAA Breach Notification Regulations. Such information shall be made available in a time and manner designated by Covered Entity or the Secretary of HHS.

(j) Documentation of Disclosures. Business Associate agrees to document such disclosures of PHI, and such information related to such disclosures, as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528, and as otherwise may be amended from time to time.

(k) Accounting of Disclosures of PHI. Upon receipt of notice by or on behalf of Covered Entity that Covered Entity has received a request for an accounting of disclosures of

PHI, Business Associate shall make available to Covered Entity, in the time and manner reasonably designated by Covered Entity, that information collected in accordance with Section 2(j) of this Agreement, including disclosures of PHI held by Business Associate for treatment, payment, or health care operations purposes contained within an Electronic Health Record maintained by Business Associate on behalf of Covered Entity pursuant to this Agreement, to permit Covered Entity to respond to the request in accordance with 45 C.F.R. § 164.528, and as otherwise may be amended from time to time.

(l) Prohibition on Sale of PHI. Business Associate agrees to comply with the prohibition of sale of PHI without authorization unless an exception under 45 C.F.R. § 164.508 applies.

(m) Minimum Necessary Use and Disclosure. In conducting functions and/or activities under this Agreement that involve the use and/or disclosure of PHI, Business Associate shall limit the use and/or disclosure of PHI to the minimum amount of information necessary as determined by Covered Entity to accomplish the intended purpose of the use or disclosure, as required by 45 C.F.R. 164.502(b).

(n) Electronic Transactions Regulations. If Business Associate conducts any Transaction for or on behalf of Covered Entity which is covered under the Electronic Transactions Standards from and after the Effective Date, Business Associate agrees that it will comply with, and cause its employees, agents and representatives, and subcontractors to comply with, the applicable requirements of the Electronic Transactions Standards.

(o) Training. Business Associate trains its employees, agents, representatives, and other members of its workforce on privacy and confidentiality and Business Associate requires its employees, agents, representatives, subcontractors, and other members of its workforce to execute confidentiality and nondisclosure agreements.

### 3. Permitted Uses and Disclosures by Business Associate

(a) General Use and Disclosure Provisions. Except as otherwise limited in this Agreement, Business Associate may use or disclose PHI in connection with its performance of the Services if such use or disclosure of PHI would not violate the HIPAA Privacy Regulations if done by Covered Entity or such use or disclosure is expressly permitted under Section 3(b) of this Agreement.

(b) Specific Use and Disclosure Provisions.

(i) Except as otherwise limited in this Agreement, Business Associate may use and disclose PHI for the proper management and administration of the Business Associate or to meet its legal responsibilities; provided, however, that such PHI may only be disclosed for such purposes only if the disclosures are required by law or the Business Associate obtains certain reasonable assurances from the person to whom the information is disclosed. The required reasonable assurances are that:

(a) the information will remain confidential;

(b) the information will be used or further disclosed only as required by law or for the purpose for which the information was disclosed to the person; and

(c) the person will notify the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

(ii) Business Associate may use and disclose PHI to report violations of law to appropriate Federal and State authorities, consistent with 45 C.F.R. § 164.502(j)(1).

(iii) De-Identification. Business Associate is authorized to use PHI to de-identify the information in accordance with 45 CFR 164.514(a)-(c).

#### 4. Obligations of Covered Entity

Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the HIPAA Privacy Regulations if done by Covered Entity or that is not otherwise expressly permitted under Section 3 of this Agreement.

#### 5. Term and Termination

(a) Term. This Agreement shall be effective as of the Effective Date and shall continue until the earlier of (i) the termination of the Services Agreement, or (ii) the termination of this Agreement in accordance with the provisions of Section 5(b) or Section 7(b) of this Agreement.

(b) Termination for Cause. Upon Covered Entity's knowledge of a material breach by Business Associate, Covered Entity may, in its sole discretion, either (i) provide Business Associate with notice of and an opportunity to cure such breach and then terminate this Agreement if Business Associate does not cure the breach within time period specified by Covered Entity, or (ii) terminate this Agreement immediately. In the event that termination of the Agreement is not feasible, Business Associate acknowledges and agrees that Covered Entity has the right to report the breach to the Secretary of HHS.

Upon Business Associate's knowledge of a material breach by the Covered Entity of this Agreement, Business Associate may, in its sole discretion, provide Covered Entity with notice of and an opportunity to cure such breach and then terminate this Agreement if Covered Entity does not cure the breach within time period specified by Business Associate. In the event that termination of the Agreement is not feasible, Covered Entity acknowledges and agrees that Business Associate has the right to report the breach to the Secretary of HHS.

#### (c) Effect of Termination.

(i) Upon termination of this Agreement, for any reason, Business Associate shall return or destroy all PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall also apply to PHI that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the PHI.

(ii) Notwithstanding the foregoing, in the event that Business Associate determines that returning or destroying the PHI is not feasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction not feasible. Business Associate shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction not feasible, for so long as Business Associate maintains such PHI.

**6. Compliance with Applicable Law**

The Parties acknowledge and agree that beginning with the Effective Date, Business Associate shall comply with its obligations under this Agreement and with all obligations of a business associate under HIPAA, HITECH, and other related laws and any implementing regulations, as they exist at the time this Agreement is executed and as they are amended, for so long as this Agreement is in place. To the extent that Business Associate is to carry out one or more of Covered Entity's obligations under Subpart E of 45 CFR Part 164, Business Associate shall comply with the requirements of Subpart E that apply to Covered Entity in the performance of such obligations.

**7. Miscellaneous**

(a) **Regulatory References.** A reference in this Agreement to a section in HIPAA, the HIPAA Privacy Regulations, the HIPAA Security Regulations, or the HIPAA Breach Notification Regulations means the section as in effect or as amended from time to time, and for which compliance is required, except that any standards or implementation specifications described herein that have been added or modified by the HIPAA Omnibus Rule shall have a compliance date of September 23, 2013.

(b) **Amendment.** Covered Entity and Business Associate agree that amendment of this Agreement may be required to ensure that Covered Entity and Business Associate comply with changes in state and federal laws and regulations relating to the privacy, security and confidentiality of PHI, including, but not limited to, changes under the HIPAA Privacy Regulations, the HIPAA Security Regulations and the HIPAA Breach Notification Regulations. Business Associate agrees that Covered Entity may amend this Agreement, in its sole discretion, upon thirty (30) days written notice in order to ensure that Covered Entity will be able to comply with such laws and regulations. For the avoidance of doubt, in the event Business Associate has not objected in writing to such amendment within such thirty (30) day notice period, the amendment shall be deemed to have been accepted by Business Associate.

(c) **Survival.** The respective rights and obligations of Business Associate under Section 5(c), Section 7(f), and Section 7(g) of this Agreement shall survive the termination of this Agreement.

(d) **Interpretation.** Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits Covered Entity to comply with applicable law protecting the privacy, security and confidentiality of PHI, including, but not limited to, HIPAA, the HIPAA Privacy Regulations, the HIPAA Security Regulations or the HIPAA Breach Notification Regulations.



(e) State Law. Nothing in this Agreement shall be construed to require Business Associate to use or disclose PHI without a written authorization from an individual who is a subject of the PHI, or written authorization from any other person, where such authorization would be required under state law for such use or disclosure.

(f) Injunctions. Covered Entity and Business Associate agree that any violation by Business Associate of any of the provisions of this Agreement may cause irreparable harm to Covered Entity. Accordingly, in addition to any other remedies available to Covered Entity at law, in equity, or under this Agreement, Covered Entity shall be entitled to an injunction or other decree of specific performance with respect to any violation by Business Associate of any of the provisions of this Agreement, or any explicit threat thereof, without any bond or other security being required and without the necessity of demonstrating actual damages.


(g) Indemnification. Business Associate shall indemnify, hold harmless and defend Covered Entity from and against any and all third party claims, losses, liabilities, costs and other expenses resulting from, or relating to, the acts or omissions of Business Associate in connection with the representations, duties and obligations of Business Associate under this Agreement.

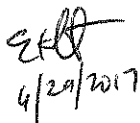
(h) No Third Party Beneficiaries. Nothing express or implied in this Agreement is intended or shall be deemed to confer upon any person other than Covered Entity, Business Associate, and their respective successors and assigns, any rights, obligations, remedies or liabilities.

(i) Primacy. To the extent that any provisions of this Agreement conflict with the provisions of any other agreement or understanding between the Parties, this Agreement shall control with respect to the subject matter of this Agreement.


IN WITNESS WHEREOF, the Parties hereto have duly executed this Agreement as of the Effective Date.

Superintendent of Financial Services of the State  
of New York as Liquidator of Health Republic  
Insurance of New York, Corp., by her Agent

  
Name: David Axinn  
Title: Special Deputy Superintendent

  
4/29/2017

POMCO, Inc.

  
Name: Kimberly Hiatt  
Title: Sr. Assoc Gen. Counsel