



**Request for Proposal
Health Insurance Claims Auditor**

NOVEMBER 9, 2016

Table of Contents

	<u>Page</u>
I. DESCRIPTION OF SERVICES	1
II. RULES AND INSTRUCTIONS.....	2
III. INSURANCE REQUIREMENTS	5
IV. CONTENTS OF PROPOSAL.....	6
A. General Information.....	6
B. Expertise	6
C. Quality Assurance.....	7
D. Reputation and Integrity	7
E. Potential Conflicts Of Interest	8
F. Fees	9
G. EEO/Diversity/MWBE Status	9
V. EVALUATION AND AWARD	9
VI. ADDITIONAL TERMS AND INFORMATION	11

The New York Liquidation Bureau (“NYLB”) carries out the responsibilities of the Superintendent of Financial Services of the State of New York (“Superintendent”) in her capacity as receiver or liquidator (“Receiver”) administering the affairs of impaired or insolvent insurance companies that are in court-ordered receivership.

The NYLB invites all qualified companies (“Proponents”) to draft and submit, at the Proponent’s expense, a proposal (“Proposal”) in accordance with the requirements outlined in this request for proposal (“RFP”). The selected Proponent, if any, (“Awardee”) will be performing services solely on behalf of the Superintendent as liquidator (the “Liquidator”) of Health Republic Insurance of New York, Corp. (“HRINY”), not in her capacity as Regulator. The Proponent shall provide the products and services described below without limitation.

I. DESCRIPTION OF SERVICES

The NYLB is seeking an experienced health insurance claims auditing firm to conduct a comprehensive 100% audit of approximately 650,000 unpaid medical claims from providers and members submitted to HRINY in connection with HRINY’s liquidation proceeding pending in Supreme Court, New York County under Index #450500/16.

HRINY was a member-led CO-OP created as part of the Affordable Care Act. It enrolled members and paid claims from approximately January 2014 to November 2015. Claims were reviewed and benefits determined by a third-party business process outsourcing organization (“BPO”), which was responsible for receipt of claims from clearing houses, paper forms and a direct feed from the provider of a leased provider network. The BPO was also responsible for the update and distribution of accumulator files that were shared with the pharmacy benefit manager and dental benefit manager. Explanations of Benefits (“EOBs”) were generated based on BPO determinations.

The provider network was leased and claims were priced by the provider network as per contracts between providers and the provider network. In certain cases, providers were paid directly by the provider network. EOBs were also generated for these providers by the provider network.

Enrollments were processed and maintained by another third-party vendor, which maintained the master enrollment database.

Claims processed by the BPO were passed to the provider network vendor for pricing.

To ensure accuracy of EOBs and the Liquidator’s allowance or disallowance of claims, the Liquidator seeks an audit of the approximately 650,000 HRINY claims that have yet to be finalized.

Specifically, Proposals should include the following services:

- Proponent must be able to perform a 100% audit of the remaining approximately 650,000 unpaid claims.
- The 100% audit must recreate all edits performed by the BPO (excluding pricing).
- Proponent must be able to validate approximately 30 unique benefit plans for deductibles, copays, coverages and audit all claims based on these benefit plans.
- Proponent must be able to confirm the application of deductibles from either a point in time accumulator file or be able to recalculate balances from historical claims database.
- Awardee's results must be able to update accumulator files as claims are validated.
- Proponent must be able to produce custom output Files for the creation of EOB by a method that transmits the audit results and edits to a vendor selected by the NYLB who will issue EOBs based on those audit results.
- Proponent must be able to interface with external vendor for EOB production and/or mailing.
- Alternatively, if necessary, Proponent must be able to create an EOB per the Liquidator's specifications.

Prospective Proponents who are qualified companies engaged in the business of claims auditing and sign the Confidentiality Agreement attached hereto may receive access to all information necessary to formulate a Proposal. All information provided to any prospective Proponent is offered in good faith; however, the Superintendent, the NYLB, and its officers, employees and agents make no certification that any information provided is without error.

II. RULES AND INSTRUCTIONS

Please carefully review the instructions set forth herein. In order to facilitate a fair evaluation of all Proposals, the NYLB requires that all Proposals maintain a uniform format. Accordingly, all Proposals must strictly adhere to the requirements outlined in this RFP. The NYLB may, in its sole discretion, modify, rescind or provide an addendum to this RFP, may require that Proponents revise their Proposals or supply additional information in response to questions, and/or may invite any Proponent to appear for an interview.

The Proponent must possess, in its own name, all of the necessary licenses, certifications, permits, approvals, and authorizations necessary to perform the services for which the Proponent is contracting and to conduct business in the State of New York, and

each of the foregoing shall be in good standing and not subject to any regulatory proceedings which could result in its revocation, suspension, or limitation.

This RFP shall not be construed (1) to create an obligation on the part of the NYLB to enter into a contract with any Proponent submitting a response to this RFP or (2) to serve as the basis of a claim for reimbursement for expenditures related to the development of a Proposal. No binding contractual or other obligation shall be created between the NYLB and any Proponent responding to this RFP unless expressly set forth in a definitive written agreement for auditing services for which the NYLB and such Proponent desire to contract and such written agreement has been duly executed by an authorized representative of each of the NYLB and such Proponent.

Notwithstanding other provisions of this RFP, Proponents responding to this RFP are hereby advised that this RFP is an informal solicitation of proposals only. It is not to be construed as engaging in formal competitive bidding pursuant to any statute, ordinance, policy, or regulation. Accordingly, the NYLB shall be permitted to accept or reject any response to this RFP at the NYLB's sole discretion and may choose to contract with any Proponent responding to this RFP (or even firms which have not responded to this RFP) for health insurance claims auditing services as the NYLB deems appropriate.

The NYLB may investigate the qualifications of any Proponent under consideration, require confirmation of information furnished by any Proponent, and require additional evidence of qualifications to perform the services sought in this RFP.

All compliant Proposals will be reviewed by a committee that will, under the supervision of the NYLB's Chief Compliance Officer, consider Proponents based exclusively on the Proposals submitted and any subsequent interviews with Proponents and/or additional information submitted by Proponents at the request of the NYLB.

Proposals must specifically supply all items of information requested in Section IV below in the exact format set forth below. Material deviations from the required format may result in disqualification of the Proposal. If any item in Section IV does not apply to Proponent, Proponent must specifically indicate that the item is not applicable. Proponents may not satisfy an item of requested information by submitting or referring to a brochure, promotional or descriptive literature, or any other document, unless the request expressly permits such submission or reference.

Proposals must be formatted in 12-point or larger font. The cover of each Proposal shall include the name of the Proponent and the subject, matter as follows: RFP for Health Insurance Claims Auditor. Each Proponent shall submit one original and three copies of its Proposal. Each Proposal must be signed and dated in the name of Proponent and must bear the signature of the person authorized to sign proposals on behalf of Proponent. By submitting a signed Proposal, Proponent certifies that (1) the information in the Proposal is materially complete, truthful and accurate; (2) Proponent has thoroughly examined and become familiar with the work required under this RFP; and (3) Proponent possesses adequate and appropriate staffing, administrative capacity, and resources (including financial,

operational, and information and technology systems) to perform quality and cost-effective work to achieve the NYLB's objectives.

Proponent shall be bound by the information contained in its Proposal including fees quoted for services.

Proposals must be sent to:

New York Liquidation Bureau
110 William Street
New York, New York 10038
Attn: Richard Rubinstein, Acting Chief Compliance Officer
RFP for Health Insurance Claim Auditor

Proposals must be received no later than 5:00 p.m., EST, on November 30, 2016, unless such deadline is extended in writing by and at the sole discretion of, the NYLB. Late Proposals will be disqualified from consideration.

Proponents may submit written questions no later than 5:00 p.m., EST, on November 23, 2016, to Michael Ferreira at mferreira@nylb.org with a copy to Richard Rubinstein at rrubinstein@nylb.org. All questions must be received by the date and time stated above. Responses from the NYLB will be communicated by e-mail. Inquiries received after the date and time stated above will not be accepted and will be returned to the sender(s) without response.

Proposals may be withdrawn from consideration at any time or modified after submission at any time prior to the submission deadline by written notice signed by, or on behalf of Proponent, to Acting Chief Compliance Officer, Richard Rubinstein, at the address listed above or by email at rrubinstein@nylb.org. The signature of the person authorized to sign proposals on behalf of Proponent may be sent electronically. Any resubmission must be made before the time and the date specified for submission of Proposals. Modifications will not be considered if offered in any other manner.

During the evaluation, validation, and selection process, the NYLB may request telephonic or in-person meetings with Proponents representatives to request answers to specific questions or may request that specific questions be answered in writing. The NYLB may require that Proponent make presentations that are pertinent to the evaluation process.

Except as provided in this RFP and as otherwise necessary for conducting business operations previously established with the NYLB, Proponents may not communicate with NYLB personnel who are involved in the review, evaluation or selection of Proponents. The NYLB will disqualify Proponents who engage in prohibited communications of a material nature, as determined by the NYLB.

III. INSURANCE REQUIREMENTS

Proponent will satisfy the insurance requirements in this RFP, including the maintaining of Professional Errors and Omissions Liability Insurance, before performing any services under the contract.

Proponent will 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 the vendor, or the NYLB. 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. Such cyber liability shall include, but not be limited to, coverage for any actual or alleged breach of duty, neglect, error, act, mistake, omission, or failure arising out of Proponent's internet and network activities including coverage for, but not limited to, the following events: An attack that has the intent to affect, alter, copy, corrupt, destroy, disrupt, damage, or provide unauthorized access or unauthorized use of Proponent's or computer system; computer crime or information theft; denial of service; extortion, including ransomware; introduction, implantation, or spread of a computer virus; loss of service; unauthorized access or use, including the gaining of access to Proponent's computer systems by an unauthorized person or persons or an authorized person in an unauthorized manner.

Proponent will maintain and will require its subcontractor(s), if any, to maintain crime insurance with a minimum limit of liability of \$1,500,000, and Proponent shall include the NYLB as a loss payee.

Proponent will maintain at least the minimum Workers' Compensation Insurance required by New York law for all employees of Proponent and the employees of any subcontractor that directly or indirectly provides services to the NYLB under the contract.

The policies of insurance required to be maintained by Proponent shall be issued by insurance companies which are admitted or licensed insurers in the State of New York and have an A. M. Best rating of not less than "A-", and are in a size category which is not lower than "VIII."

Proponent shall not commence work under the awarded contract until it has obtained all required insurance and certificates of insurance have been delivered to and approved by the Special Deputy Superintendent at the NYLB, and Proponent has verified that all required insurance has been obtained for its subcontractor(s). Proponent's certificates and insurance policies shall include the following clause:

"This policy shall not be canceled or reduced in required limits of liability until notice has been given to the Special Deputy Superintendent of the New York Liquidation Bureau, of such cancellation or reduction. Date of Cancellation or reduction shall not

be less than sixty (60) days after the date of notice is given."

Additional Named Insureds Requirement and Definition: Proponent's Certificates and Commercial Crime and Workers Compensation insurance policies shall name the following as Additional Named Insureds:

"New York Liquidation Bureau, its officers, representatives, agents, employees, and interns, the Superintendent of Financial Services, and her predecessors in office, as Receiver of all insurance companies under her statutory supervision pursuant to New York Insurance Law Article 74."

In addition, said certificates shall state the extent of insurance, the locations and operations to which insurance applies, and the expiration date of the insurance.

IV. CONTENTS OF PROPOSAL

Proposals shall set forth the following information:

A. General Information

1. Name of Proponent.
2. Primary Office Address (include County).
3. Other Office Addresses (include Counties).
4. General Telephone and Fax Numbers.
5. Contact Person (include specific contact information).
6. Alternate Contact Person (include specific contact information).
7. List Proponent's tax identification number and Certificate of Authority to do business in the State of New York.
8. List all relevant licenses held by Proponent in New York.
9. A general overview and history of Proponent including, without limitation, the number of years in business, total number of employees, business locations, business focus and brief description of Proponent's organization, including ownership and any operating divisions or working groups.
10. Provide a list of all governments or quasi-governmental agencies for which Proponent has provided this type of services within the past five years.
11. Provide a list of all other vendors with whom Proponent has a working or contractual relationship to assist in providing the services specified. Describe how Proponent manages vendors and charges for their services.

B. Expertise

Proponent shall provide a detailed statement of Proponent's qualifications and experience in performing the services, including a summary of comparable projects, along with project dates. Proponent shall provide the names of insurance companies,

state guaranty funds and government entities for whom it has contracted to perform auditing. Proponent must demonstrate that it has sufficient experience to provide the services.

Proponent shall also provide resumes of all professional personnel, including auditors and IT staff, for approval prior to being assigned to work on this project. Each resume should set forth the staff member's number of years of health insurance claim auditing related experience, the type of health insurance claim audit experience, the position the staff member currently occupies, the length of time the staff member has been employed by Proponent and a detailed description of the staff member's involvement with projects of similar scope. The NYLB will have final approval of all staff assigned to this project.

Proponent shall identify roles and responsibilities for others expected to be actively involved in the NYLB account. Please provide specific number of years' experience involving auditing. Describe online access capabilities available to staff.

C. Quality Assurance

1. Confirm that Proponent will establish and maintain a quality control plan to assure the requirements of the contract are met by Proponent and its subcontractors, if any.
2. Confirm that Proponent will assure that its staff are qualified, properly trained, appropriately instructed and monitored to perform the services required under the contract.
3. Confirm that Proponent will develop a system for monitoring compliance with all services. Please outline the methods of identifying, correcting, and preventing deficiencies in the quality of service performed before the level of performance becomes unacceptable and disruptive.

D. Reputation and Integrity

1. State Proponent's number of years in business.
2. State all names used by Proponent within the past 10 years.
3. Certify that Proponent and all of the staff who will potentially work on the assignments are in good standing in all jurisdictions in which they have been licensed or certified.
4. Set forth a brief statement regarding the integrity and reputation of Proponent and its employees, including whether in the last ten years Proponent or any of its partners or senior officers have been the subject of any criminal conviction or any final non-appealable civil judgments for financial misconduct, fraud or other malfeasance (including actions or proceedings by governmental authorities).
5. For every judgment entered against Proponent and/or any of its staff as a result of a claim against Proponent and/or any of its staff for professional malpractice,

- negligence, financial misconduct, fraud or other malfeasance, Proponent shall set forth the date, all monetary relief granted, all injunctive relief granted, and the amount of the monetary judgment that currently remains unsatisfied, if any.
6. Set forth the number of settlements within the last 10 years resulting in a payment of greater than \$25,000 in connection with any claims for professional malpractice, negligence, financial misconduct, fraud or other malfeasance brought against Proponent or any of its staff.
 7. If any of Proponent's staff has been convicted of any felony, set forth the relevant facts relating thereto.
 8. Provide a brief statement regarding whether Proponent has ever been disciplined, fined or sanctioned by any governmental or regulatory authority, licensing body, trade group or association, or disciplinary or ethics panel(s). Provide a detailed description of the underlying complaint and a summary of the finding.
 9. Submit at least three (3) separate references from entities other than the NYLB. For each reference include the following:
 - a. Name of company/agency for which work was performed and a brief description of its business;
 - b. Name, address, phone number, email and fax number of the primary contact person for the company/agency;
 - c. Description of work performed and/or services provided, including description of (i) all deliverables (reports, presentations, etc.) and (ii) all timeframes and deadlines of work performed and/or services provided, noting whether or not these timelines and deadlines were met;
 - d. Period of engagement; the beginning and ending dates of the work performed; and
 - e. Result(s)/outcome(s) for the client.

E. Potential Conflicts Of Interest

1. Provide a list of all known employees of Proponent, or any parents, subsidiaries or affiliates of Proponent, who are related by blood or marriage to any NYLB employee and/or who are living in the same household as any NYLB employee.
2. Provide a list of all known employees of Proponent or any parents, subsidiaries or affiliates of Proponent, who were previously employed by the NYLB.
3. Provide a list of all known NYLB employees previously employed by Proponent or any parents, subsidiaries or affiliates of Proponent.
4. Indicate whether Proponent or any of its parents, subsidiaries or affiliates has been involved in litigation against the Superintendent, the NYLB and/or its estates within the last 10 years as a party, witness or otherwise.
5. List the names of all persons or entities, if any, asserting claims against the NYLB and/or its estates for which Proponent is currently performing work.
6. Provide a brief statement regarding whether Proponent has previously provided services to the NYLB, including whether Proponent has any financial interest in any organization that has contracted to provide services to the NYLB.

F. Fees

Set forth a statement of fees and expenses for the services to be provided. Proponents may, at their discretion, discuss alternate pricing models they wish to propose.

G. EEO/Diversity/MWBE Status

1. Proponent shall set forth facts sufficient to demonstrate that Proponent is an equal opportunity employer and complies with all relevant federal, state and municipal equal employment opportunity and non-discrimination laws, regulations and executive orders. Proponent may attach hard copies of any equal employment opportunity policy statements or other relevant official firm documents.
2. Proponent shall indicate if it is certified as an MWBE with the New York State Department of Economic Development, and if so, shall provide a copy of its certification. If not, Proponent shall list any other jurisdictions and/or certifying bodies that have deemed Proponent to be minority or women owned, and shall provide a copy of any such certification.
3. If Proponent has applied for, but has not, as of the date of this RFP, been awarded certification as an MWBE by the New York State Department of Economic Development, please submit proof of a pending application, and indicate the filing date thereof.
4. Proponent shall provide any additional information that may demonstrate its commitment to equal employment opportunity and diversity in the workplace.

V. EVALUATION AND AWARD

All Proposals are subject to a review process by the NYLB. A primary consideration shall be the effectiveness of Proponent in the delivery of comparable or related services based on demonstrated performance and the cost of these services. The selection committee may interview Proponents identified as finalists or request demonstrations of their system. The assigned evaluation committee will make a final recommendation to the Special Deputy Superintendent of which Proposal to select, which is subject to the Special Deputy Superintendent's approval and the negotiation of a contract acceptable to both parties.

All Proposals will be initially evaluated to determine if they meet the minimum requirements as outlined in this RFP. Proposals meeting the above requirements will be evaluated on the basis of whether Proponent: (1) has the appropriate expertise to provide the particular services sought under this RFP; (2) has demonstrated that it will commit appropriate staffing and resources to perform the services; and (3) is in good standing in the State of New York and conducts its business in an ethical manner.

Each Awardee must assume full responsibility for the services offered in the Proposal for the duration of the agreement.

If one or more Awardees are selected to provide the services sought under this RFP, such selection will be based upon the proposal which the NYLB deems best achieves its goals and best meets the requirements of this RFP document, except for irregularities waived by the NYLB.

If necessary, finalists will be notified by phone or e-mail of the scheduling of in-person interviews. All in-person interviews, if necessary, shall take place at the NYLB.

Written notification will be made to successful and unsuccessful Proponents.

The selection of an Awardee remains subject to negotiation of a final definitive written agreement between the NYLB and the Awardee respecting health insurance claims auditing services for which the NYLB and the Awardee desire to contract, which written agreement shall have been duly executed by an authorized representative of each of the NYLB and such Awardee. An Awardee will be required to sign a Business Associate Agreement in a form that is acceptable to the NYLB. Any contract awarded to an Awardee resulting from this RFP is subject to final approval of the NYLB's Special Deputy Superintendent.

This RFP does not commit the NYLB to select an Awardee or enter into a contract with any Proponent. The NYLB reserves the right to do some or all of the following:

- a. Reject any and all proposals;
- b. Issue subsequent requests for proposals;
- c. Extend proposal submission deadlines and other pertinent deadlines;
- d. Remedy technical errors in the RFP process;
- e. Request clarification, additional information and/or new proposals from some or all potential Proponents;
- f. Make counter-offers to some or all Proponents;
- g. Negotiate with any, all, or none of the Proponents;
- h. Solicit best and final offers from all or some of the Proponents;
- i. Award a contract to one or more Proponents;
- j. Decide to proceed with only a portion of the services described in this RFP and therefore select an Awardee for only a portion of the services described;
- k. Accept other than the lowest offer;
- l. Waive minor discrepancies and informalities in any Proposal;
- m. Rescind, revoke or modify this RFP prior to execution of a contract with an Awardee;
- n. Waive, in whole or in part, any requirement set forth in this RFP; and
- o. Utilize any ideas from the Proposals.

All materials submitted in response to this RFP become the property of the NYLB and will not be returned.

VI. ADDITIONAL TERMS AND INFORMATION

Failure of an Awardee to comply with any of the requirements specified above, if discovered after selection of an Awardee but before entry into an agreement with such Awardee in respect of some or all of the services specified in this RFP and in its Proposal, may result in rescission of such selection and re-opening of the RFP at the NYLB's discretion, and if discovered after entry into such agreement, may be considered grounds for termination of such agreement by the NYLB. The Awardee shall be liable for any costs incurred by the NYLB in connection with any such agreement if it is terminated because the Awardee failed to perform.

The information contained herein shall be used for the sole purpose of responding to this RFP. The NYLB will not, and is under no obligation to, pay the costs, in whole or in part, incurred by Proponent during the preparation of Proposals. The NYLB disclaims responsibility and liability for any costs related to Proponent's participation in this RFP.

All information supplied under a Confidentiality Agreement in connection with this RFP must be returned to the NYLB or destroyed in accordance with the terms of the Confidentiality Agreement.

**REQUEST FOR PROPOSAL OF HEALTH INSURANCE CLAIMS AUDITOR
SAMPLE CONFIDENTIALITY AGREEMENT**

This Confidentiality Agreement (“Agreement”), effective as of the later date signed below, is executed by and between [Insert Name of Proponent] (the “Proponent”) and Maria T. Vullo, Superintendent of Financial Services of the State of New York (“Superintendent”), in her capacity as court-appointed liquidator of Health Republic Insurance Corporation of New York (“Liquidator” or “Receiver”) to permit the Proponent and Liquidator to exchange Confidential Information (as defined below) in connection with the Liquidator’s request for proposal process initiated by the Liquidator’s RFP for retention of a health insurance claims auditor (“RFP Process”) and by which the Proponent proposes to provide the services described therein. The Liquidator and the New York Liquidation Bureau are collectively referred to herein as “Liquidator.” The Proponent and Liquidator are each a “Party” to this Confidentiality Agreement.

DEFINITIONS

“Confidential Information” shall mean all written or digital/electronic information, data and/or documents received from the Disclosing Party in connection with the RFP, including without limitation any analyses, compilations, studies, communications, documents, summaries, reports, notes or other material provided to the Receiving Party or any of its Representatives by the Disclosing Party or any of its Representatives. “Confidential Information” does not include information which (i) the Receiving Party already possesses through means other than a breach of this or any other confidentiality agreement; (ii) becomes available to the Receiving Party on a non-confidential basis from a source that the Receiving Party believes, after reasonable inquiry, is not bound by a confidentiality agreement with the Disclosing Party relating to such information; (iii) is independently developed by the Receiving Party without use of or access to Confidential Information; or (iv) is or becomes available in the public domain.

“Disclosing Party” shall mean the Party providing Confidential Information to the other Party under this Confidentiality Agreement.

“New York Liquidation Bureau” and/or “NYLB” shall mean the organization that carries out the duties of the Superintendent in her capacity as court-appointed Receiver, pursuant to Article 74 of the New York Insurance Law, and shall include any employee of or any accountant, attorney, actuary, or other professional or technical consultant or advisor retained by the Superintendent in her capacity as court-appointed Receiver, or the NYLB.

“Person” shall be broadly construed and shall include without limitation any corporation, partnership, joint venture, trust or individual.

“Receiving Party” shall mean the Party receiving Confidential Information from the other Party under this Confidentiality Agreement.

“Representatives” shall mean, with respect to a Party, any director, officer, employee, any member of that Party’s group of companies and their directors, officers, employees or consultants or any of that Party’s advisors (including attorneys, accountants and other professional advisors engaged by it) and agents.

NOW, THEREFORE, in consideration of the mutual promises and covenants made herein, and with the intent to be legally bound, the Parties agree as follows:

1. Except as provided in Paragraph 7, the Receiving Party shall not use the Confidential Information, other than in connection with the RFP Process, without the prior written consent of the Disclosing Party and shall not disclose the Confidential Information except to any Receiving Party Representative who:
 - a. needs to know the Confidential Information as it relates to the RFP Process;
 - b. has been informed that the Confidential Information is subject to the terms of this Confidentiality Agreement;
 - c. has reviewed a copy of this Confidentiality Agreement; and
 - d. has agreed to be bound by the terms of this Confidentiality Agreement to the same extent as if he or she were a party hereto.
2. The Receiving Party may be held liable for direct and/or compensatory damages for any breach of this Confidentiality Agreement by the Receiving Party and for any use of Confidential Information by any other Person if such Person acquired the Confidential Information through the Receiving Party’s breach of this Confidentiality Agreement.
3. The Parties hereby acknowledge that money damages may not be a sufficient remedy for any breach of this Confidentiality Agreement and agree that the Disclosing Party shall be entitled to seek injunctive relief and specific performance as a remedy for any such breach.
4. As between the Parties, Confidential Information shall be the sole and exclusive property of the Disclosing Party. At any time upon written request by the Disclosing Party, and in any event at the conclusion of the RFP Process, the Receiving Party will either promptly return all Confidential Information to the Disclosing Party or destroy it, with a written certification to the Disclosing Party that it has destroyed all Confidential Information not returned to the Disclosing Party. The Receiving Party shall, however, be entitled to retain only so much of the Confidential Information as the Receiving Party or its Representatives may be required to retain under any applicable law or regulation. The Receiving Party shall not be obligated to destroy electronic back-up copies made automatically in the ordinary course of safe-guarding electronic records, provided that such confidential Information, if any, remains subject to the terms of this Confidentiality Agreement, and the Receiving Party remains liable

for damages relating to the unauthorized disclosure of any Confidential Information.

5. In the event that the Receiving Party is legally compelled by requests for information or documents, subpoenas, investigative demand or similar process to disclose any Confidential Information, the Receiving Party shall (unless legally prohibited) promptly provide the Disclosing Party with written notice of the existence, terms and circumstances of such request so that the Disclosing Party may seek a protective order or other appropriate remedy and/or waive compliance with the provisions of this Confidentiality Agreement. The Receiving Party shall furnish only that Confidential Information that it is legally required to furnish and shall exercise its reasonable efforts to obtain such assurance as may be reasonably available in the circumstances that, consistent with the terms of this Confidentiality Agreement, the Confidential Information will be treated confidentially.
6. All Confidential Information shall remain confidential, privileged or protected when communicated to the Receiving Party and the sharing of Confidential Information pursuant to this Confidentiality Agreement shall not constitute, and shall not be construed in any way to constitute, a waiver of any attorney-client privilege, work product doctrine or any other applicable privilege or immunity. If, in violation of this Confidentiality Agreement (whether intentional or otherwise), the Receiving Party or any of the Receiving Party's Representatives discloses to a third party any Confidential Information, such disclosure shall not waive any other party's right to claim any applicable privilege or protection, and shall not affect the privileges, rights and/or protections that are or may be applicable to such Confidential Information.
7. This Confidentiality Agreement and any dispute related hereto or arising hereunder shall be governed by the laws of the State of New York without regard to any conflicts of laws principles.
8. Each Party agrees that all actions or proceedings seeking enforcement of this Confidentiality Agreement shall be tried and litigated exclusively in the Supreme Court of the State of New York, County of New York, that is supervising the Health Republic liquidation proceeding. In connection with such actions or proceedings, but not for any other actions or proceedings, each Party hereby: (a) stipulates that the foregoing courts shall have *in personam* jurisdiction over such Party; (b) waives any right such Party may have to assert the doctrine of *forum non conveniens* or similar doctrine or to object to venue; and (c) waives its right to a jury trial.
9. Notices required hereunder shall be provided by hand or overnight courier to:

New York Liquidation Bureau 110 William Street New York, New York 10038 Attn.: General Counsel	Attn.:
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10. Each Party represents that this Confidentiality Agreement has been duly executed and delivered on its behalf by a duly authorized individual and constitutes its legal, valid, binding and enforceable obligation.

Maria T Vullo, Superintendent of Financial Services of the State of New York as Receiver	
By: _____	By: _____
John Pearson Kelly, Assistant Special Deputy Superintendent and Agent of the Superintendent as Receiver	
Date: _____	Date: _____