Amended and Restated Administrative Services Agreement

By and Between

Health Republic Insurance of New York, Corp.
(called “Health Republic” in this Agreement)

And

POMCO, Inc.
(called “POMCO” in this Agreement)

(referred to individually as “Party” and collectively as “Parties”)

WHEREAS, Health Republic and POMCO were parties to that certain Administrative Services Agreement dated February 1, 2013 (together with all Addendums thereto, the “Original Agreement”), pursuant to which POMCO acted as Health Republic’s agent for the payment of certain medical plan benefits and furnished certain administrative services related to such benefit plans;

WHEREAS, the New York State Department of Financial Services (the “NYSDFS”) directed Health Republic to terminate all policies as of November 30, 2015;

WHEREAS, on November 9, 2015, the NYSDFS issued an order (the “1311 Order”) pursuant to Section 1311 of the New York Insurance Law (the “NYIL”) directing Health Republic to suspend paying any and all claims and otherwise operate only in the ordinary course, except as otherwise expressly approved by the Superintendent of Financial Services of the State of New York (“Superintendent”);

WHEREAS, the Parties desire to enter into this Amended and Restated Administrative Services Agreement (the “Agreement”) in order to effectuate certain amendments to the terms of the Original Agreement and to set forth the terms and conditions pursuant to which POMCO will provide the Run-Out Services (as defined below) to Health Republic;

NOW, THEREFORE, in consideration of the mutual promises contained in this Agreement, Health Republic and POMCO hereby agree as set forth below.

Section 1. Definitions

“Benefits” means health insurance benefits which Eligible Persons were entitled to receive from Health Republic under the Plans.

“Eligible Person” means a person who was enrolled in, and was eligible to receive Benefits under, a Plan.
“Liquidation Order” means an order of the Supreme Court of the State of New York (the “Liquidation Court”) placing Health Republic into a liquidation proceeding (the “Liquidation Proceeding”) under Article 74 of the NYIL and appointing the Superintendent as liquidator (the “Liquidator”) of Health Republic.

“Participating Provider” means a provider of health care services who entered into a contract with Health Republic or a third-party vendor of Health Republic to provide medical services to Eligible Persons under the Plans.

“Plans” means the medical benefit plans that were underwritten by Health Republic, as filed and approved by the NYSDFS, under the Patient Protection and Affordable Care Act (the “ACA”), pursuant to the Consumer Operated and Oriented Plan program created under Section 1332 of the ACA, and as terminated by the NYSDFS as of November 30, 2015.

“Run-Out Services” means those services described in Schedule A of this Agreement.

Section 2. Term

Unless terminated earlier pursuant to Section 9 hereof, the term of this Agreement (the “Term”) shall expire December 31, 2016; provided that Health Republic may, at its sole option, extend the Term for additional one-year periods by providing thirty (30) days’ notice prior to any date on which the Term would have otherwise expired.

Section 3. Health Republic Responsibilities

Subject to the 1311 Order and any other order or direction of the Superintendent and, after the entry of the Liquidation Order, any order of the Liquidation Court or order or direction of the Liquidator (collectively, the “Orders”):

(a) Health Republic has the final authority and responsibility for the administration and payment of any claims under the Plans;

(b) Health Republic grants POMCO the authority to act on behalf of Health Republic in connection with the Run-Out Services, in each case only to the extent expressly stated in this Agreement or as hereafter mutually agreed in writing by Health Republic and POMCO;

(c) In consideration for POMCO providing the Run-Out Services and for entering into this Agreement, Health Republic shall pay POMCO in accordance with Section 5 hereof;

(d) Health Republic shall furnish the information needed by POMCO to perform its functions under the Agreement, including information concerning the Plans and information concerning the eligibility of individuals that received Benefits, including the dates of such individuals’ enrollments in the Plans and the dates of termination of coverage for such individuals;
(e) Without limiting the obligations of either Party hereunder, the Parties acknowledge that Health Republic rather than POMCO is financially responsible for any valid claims made pursuant to the Plans as well as taxes, penalties, interest, surcharges or similar assessments incurred in conjunction with the Plans, and POMCO does not insure or underwrite the liability of Health Republic under the Plans or otherwise. Except for expenses, liabilities and other obligations expressly assumed by POMCO under this Agreement, Health Republic is responsible for all expenses incident to the administration of claims under the Plans; and

(f) All Run-Out Services provided to Health Republic pursuant to this Agreement are to be based upon the written criteria and the standards and guidelines of POMCO that have been provided to and approved by Health Republic and which are set forth in Attachment C, which POMCO may not materially amend without express written consent from Health Republic. However, Health Republic shall have the ultimate and final authority over decisions and policies, to include but not be limited to the allowance or disallowance of all or a portion of any claims and the payment or non-payment of claims.

Section 4. POMCO Responsibilities

(a) POMCO shall, as agent of Health Republic, provide the Run-Out Services;

(b) During the Term of this Agreement, POMCO agrees to maintain such policies of general liability, professional liability, criminal liability and other insurance of the types and amounts customarily carried by its business. Specifically, POMCO agrees to maintain at its sole expense general liability insurance with limits of at least four million dollars, professional liability coverage with limits of at least five million dollars per occurrence/per year, crime liability insurance with limits of at least five million dollars and workers’ compensation insurance as required by law. POMCO must provide Health Republic with thirty (30) days prior written notice of any intent to cancel or to make any other material change in status, coverage, or scope of the required insurance. POMCO agrees to provide evidence of its insurance coverage to Health Republic on request.

(c) POMCO shall maintain, for the duration of the Agreement and for ten (10) years thereafter, the usual and customary books, records and documents that relate to the Plans and Eligible Persons, except in cases in which downstream vendors are only obligated to seven (7) years based on their existing agreement(s) with POMCO, in which case they shall be maintained for seven (7) years. These books, records and documents are the property of Health Republic and, after entry of the Liquidation Order, will be the property of the Liquidator. Upon the termination of this Agreement, POMCO shall, at Health Republic’s or the Liquidator’s request, deliver all such books, records and documents in a readable format to Health Republic. Health Republic may be required to pay POMCO reasonable charges for duplication of such records.

(d) POMCO shall use reasonable care and due diligence in the exercise of its powers and the performance of its duties under this Agreement.

(e) POMCO shall defend, indemnify and hold Health Republic harmless from and against all loss, liability, damage, expense (including reasonable attorneys' fees) and other
obligations of any nature resulting from, or arising out of, claims, demands, or lawsuits against
Health Republic in connection with Run-Out Services performed under this Agreement to the
extent such loss, liability, damage, expense, attorneys’ fees or other obligation results from or out
of the negligence, willful misconduct or fraudulent or criminal action of POMCO or its
employees, agents or subcontractors.

Section 5. Compensation of POMCO

In consideration for all services provided by POMCO to Health Republic from
December 1, 2015 through and including January 31, 2016 incident to the Original Agreement,
and in further consideration for POMCO’s entry into the Agreement, Health Republic shall pay
POMCO $4 million contemporaneous with the execution hereof.

In consideration for all services provided by POMCO to Health Republic from
and after February 1, 2016, Health Republic shall pay POMCO the fees as set forth in Schedule
A hereto on a monthly basis, with remittances within 10 business days of receipt of invoice
except with respect to any portion thereof that is subject of a good faith dispute.

As security for payment of consideration due to POMCO solely with respect to
services actually rendered after February 1, 2016 (collectively, “New Run-out Services”),
contemporaneous with execution hereof, Health Republic shall transfer to POMCO the amount
of $400,000 to be held by POMCO on Health Republic’s behalf as a deposit to secure the
payment by Health Republic for New Run-out Services (the “Deposit”). In no event may any
portion of the Deposit be applied against anything other than New Run-out Services in
accordance with the terms hereof. POMCO shall maintain the Deposit in an interest-bearing
account reasonably acceptable to both parties that is used for no other purpose (the “Deposit
Account”), and any interest thereon shall inure to the benefit of Health Republic. With respect
to any invoice for New Run-out Services that Health Republic has failed to pay in full within 10
business days after receipt thereof, POMCO may apply a portion of the Deposit in an amount not
to exceed the unpaid amount of such invoice, except for any portion thereof that is subject of a
good faith dispute, which shall constitute full satisfaction of Health Republic’s obligations to pay
the amount so applied to POMCO. To the extent any portion of the Deposit is applied against
outstanding invoices in accordance with the foregoing sentence, Health Republic shall transfer
additional funds to the Deposit Account in the amount necessary to restore the balance thereof to
$400,000. In the event this Agreement terminates, POMCO shall promptly issue an invoice for
New Run-out Services rendered through the date of termination and shall have the right to apply
the Deposit against all outstanding invoices for New Run-out Services. After payment of all
outstanding invoices for New Run-out Services, POMCO shall return any remaining portion of
the Deposit to Health Republic within 5 days following payment of the last outstanding invoice
for New Run-out Services. Notwithstanding anything contained herein, in the event this
Agreement is rejected by the Liquidator or Health Republic or the Liquidator terminates this
Agreement pursuant to Section 9, POMCO shall only be entitled to apply the Deposit against
outstanding invoices for New Run-out Services actually rendered, and POMCO shall return any
remaining portion of the Deposit to Health Republic within 5 days after such rejection or
termination.
Section 6. Contract Compliance – Non-Waiver

Failure by Health Republic or POMCO to insist upon strict performance of any provision of this Agreement will not modify such provision, render it unenforceable, or waive any subsequent breach. No waiver or modification of any of the terms or provisions of this Agreement shall be valid unless in each instance the waiver or modification is accomplished pursuant to the Amendment provisions set forth in Section 8 of this Agreement.

Section 7. Assignment & Subcontracting

(a) Subject to Section 9(b), neither Health Republic nor POMCO can assign this Agreement or any rights or obligations thereunder without the other Party’s prior written consent.

(b) POMCO may not subcontract any of its obligations under this Agreement without the prior written consent of Health Republic.

Section 8. Amendment

This Agreement may only be amended by written agreement between Health Republic and POMCO, except that Health Republic may unilaterally amend this Agreement to the extent required to comply with any federal or state law or any Order, in each case by providing written notice of such amendment to POMCO.

Section 9. Termination

(a) This Agreement may be terminated by either Party in the event of any material breach by the other Party that is not cured (to the extent curable) within sixty (60) days of written notice from the non-breaching Party to the breaching Party, excepting, however, POMCO may terminate this Agreement upon notice to Health Republic in the event of nonpayment of any consideration due under Section 5 of this Agreement where such amount exceeds the Deposit entitled to be applied in satisfaction of such nonpayment or any failure of Health Republic to replenish the Deposit in accordance with Section 5 of this Agreement, which nonpayment or failure to replenish is not cured within ten business (10) days of receipt by Health Republic of written notice from POMCO. This Agreement may also be terminated by order of the Liquidation Court or pursuant to any action by the Liquidator approved by the Liquidation Court.

(b) Termination of this Agreement shall not terminate the rights or obligations of either Party arising out of a period prior to such termination.

Section 10. Right to Audit

(a) Health Republic shall have the right to examine and audit all documents in possession of POMCO in connection with the Run-Out Services performed pursuant to this Agreement. Health Republic shall have the right to such examination and audit during usual business hours at the offices of POMCO upon the giving of ten (10) business days advance notice of such examination or audit. In the event that Health Republic retains an accountant, the
choice of such accountant shall be at Health Republic’s sole discretion. All such records shall be retained by POMCO in accordance with the appropriate New York statutes on records retention.

(b) POMCO shall make records relating to the Run-Out Services it provides in this Agreement available to federal and state government agencies, including but not limited to, NYSDFS and the U.S. Department of Health and Human Services, upon request, within the timeframes specified by the government agency.

**Section 11. Governing Law**

This Agreement, and all disputes, claims and matters arising out of or relating to this Agreement (including without limitation the negotiation, execution and performance hereof) and any of the transactions contemplated hereby, shall be governed by and construed in accordance with the laws of the State of New York, without giving effect to the choice of law provisions thereof.

**Section 12. Jurisdiction; Trial by Jury Waived**

Any litigation arising directly or indirectly out of, under or in connection with this Agreement shall be commenced and maintained solely in a state or federal court located in New York, New York, and each Party hereby expressly and irrevocably submits to the exclusive jurisdiction of such courts in New York, New York and waives any claim of *forum non conveniens* or any other jurisdiction to which it might be entitled by virtue of its present or future domicile or otherwise. Each Party hereby waives, to the fullest extent permitted by law, any right to a trial by jury in respect of any litigation arising directly or indirectly out of, under or in connection with this Agreement.

**Section 13. Notices**

Any notice, payment, demand or communication required or permitted to be given by an provision of this Agreement shall be deemed to have been effectively given and received when delivered by overnight mail, by hand or by email to the following address, or such other address as shall subsequently be provided by a Party:

If to POMCO:
POMCO, Inc.
2425 James Street
Syracuse, NY 13206
ATTN: Donald Napier
DNapier@pomco.com

If to Health Republic:
Health Republic Insurance of New York, Corp.
30 Broad Street
New York, NY 10004
ATTN: Christine Testaverde
CTestaverde@healthrepublicny.org

**Section 14. Compliance**

(a) The Parties shall each perform under this Agreement in compliance with applicable laws and regulations and the Orders.
(b) POMCO shall maintain all necessary licenses, certifications, or registrations needed to perform the Run-Out Services under New York State Law, including, but not limited to, a license as a claims adjuster under Section 2108 of the NYIL and registration as a utilization review agent under Article 49 of the New York Public Health Law.

(c) POMCO acknowledges and agrees that it is acting as a “business associate,” as such term is defined in the privacy regulations issued pursuant to HIPAA, of Health Republic and any other health insurers that provided benefits under the Plans. In order to enable POMCO to carry out its obligations as a business associate, POMCO shall abide by the terms of the Business Associate Agreement attached hereto as Attachment B.

Section 15. Confidential and Proprietary Information

(a) Scope of Confidential and Proprietary Information. All information and materials of a nonpublic, confidential or proprietary nature provided by a Party or its affiliates (the “Disclosing Party”) to the other Party or its affiliates (the “Receiving Party”) in connection with this Agreement shall be considered “Confidential and Proprietary Information” of the Disclosing Party, whether or not such information is otherwise protected under applicable law. Confidential and Proprietary Information includes, but is not limited to: trade secrets; lists of customers or vendors; customer requirements, preferences and methods of operation; management information, reports, pricing policies and details’ and details of contracts, operational methods, plans or strategies, business acquisition plans, marketing plans, personnel plans and other business affairs of the Disclosing Party learned by the Receiving Party in connection with this Agreement. Notwithstanding the foregoing, Confidential and Proprietary Information shall not include any information which: (i) the Receiving Party obtains rightfully from a third party who is not bound to a similar confidentiality agreement; (ii) is or becomes generally known by the public or the health insurance industry through no fault of the Receiving Party; (iii) at the time of disclosure, was already known to the Receiving Party and not otherwise required to be kept confidential, or (iv) is independently developed by the Receiving Party without reference to Confidential and Proprietary Information.

(b) Use of Confidential and Proprietary Information. All Confidential and Proprietary Information of the Disclosing Party is, and shall remain, the exclusive property of the Disclosing Party. The Receiving Party acknowledges that any Confidential and Proprietary Information of the Disclosing Party is a valuable asset of the Disclosing Party. The Receiving Party agrees for itself and on behalf of its employees and agents that they shall adequately guard against disclosure of the Disclosing Party’s Confidential and Proprietary Information and shall retain such Confidential and Proprietary in strictest confidence. Confidential and Proprietary Information may be used by the Receiving Party only in connection with performing its obligations under this Agreement, and shall not be disclosed by the Receiving Party to any third party (other than its agents, consultants or other advisors with a need to know such information in order for the Receiving Party to perform its obligations hereunder and who have entered into an appropriate written confidentiality agreement with the Receiving Party) without the prior written consent of the Disclosing Party. Upon termination of this Agreement, or otherwise as requested by the Disclosing Party, the Receiving Party shall deliver promptly to the Disclosing Party all Confidential and Proprietary Information of the Disclosing Party, in whatever form, which may be in the Receiving Party’s possession or under the Receiving Party’s control.
(c) **Remedy in the Event of Improper Use or Disclosure.** The Receiving Party shall be liable to the Disclosing Party for damages caused by a breach of this Section 15 or by any unauthorized use or disclosure of the Disclosing Party’s Confidential and Proprietary Information by the Receiving Party or its employees or agents unless the Disclosing Party is required to use or disclose information required by law or requested by court order or other similar document. In addition to any other rights or remedies which may be available to the Disclosing Party, the Disclosing Party shall be entitled to pursue appropriate injunctive relief or specific performance against the Receiving Party or its agents or employees to prevent further unauthorized use or disclosure of the Disclosing Party’s Confidential and Proprietary Information or other breach of this provision by the Receiving Party or its agents or employees. The Receiving Party acknowledges and agrees that such unauthorized use, disclosure or other breach of this provision may cause irreparable injury to the Disclosing Party and that monetary damages may not provide adequate remedy to the Disclosing Party. The Disclosing Party shall be entitled to pursue temporary, preliminary and injunctive relief without posting any security or bond, which is expressly waived, and without regard to equitable defenses including, without limitation, laches and unclean hands, which are expressly waived by the Receiving Party. The provisions of this Section 15 shall survive the termination or expiration of this Agreement.

**Section 16. Trademarks**

(a) **Trademark License.** Subject to the terms and conditions specified in this Agreement, Health Republic hereby grants to POMCO a nonexclusive, nontransferable, and limited license to use, solely in connection with the performance of POMCO’s services under this Agreement, the trademarks, service marks and logos of Health Republic, and other marks developed by Health Republic or its affiliations for use in connection with the Plans (the **“Trademarks”**). Health Republic shall approve in writing in advance the manner in which any Trademark is used by POMCO. POMCO acknowledges and agrees that Health Republic or one of its affiliates is the exclusive owner of the Trademarks.

(b) **Protection of Trademark Rights.** POMCO will not at any time commit or cause to be committed any act contesting or in any way impairing any part of Health Republic’s or its affiliates’ rights, title and interest in the Trademarks. POMCO agrees to reasonably assist Health Republic in protecting Health Republic’s and its affiliates’ rights to the Trademarks. Without limiting the generality of the foregoing, POMCO agrees to notify Health Republic immediately upon becoming aware of any claim, suit or other action brought against POMCO for use of any of the Trademarks or the unauthorized use of any of the Trademarks by a third party. POMCO shall not take any other actions to protect the Trademarks without the prior written consent of Health Republic. Health Republic hereby agrees to defend, indemnify and hold POMCO and its affiliates, officers, directors, employees, agents, contractors, successors and assigns (“**POMCO Infringement Indemnities**”) harmless from and against any and all liabilities, damages, costs (including reasonable attorneys’ fees), losses, fines and/or penalties arising from or in connection with any claim, demand or cause of action made or brought against POMCO Infringement Indemnities relating to or arising from any allegation that any Trademark, or any part thereof, infringes upon or misappropriates, in any way, the intellectual property rights of any third party.
(c) **Termination of Trademark Rights.** Upon termination of this Agreement, POMCO shall immediately cease using the Trademarks and take any action required by law or otherwise to make the Trademarks available for use by any other party designated by Health Republic. POMCO acknowledges that its failure to cease use of the Trademarks under this Agreement may result in immediate and irreparable harm to Health Republic. POMCO further acknowledges that there may be no adequate remedy at law for such failure, and that in the event of such failure, Health Republic shall be entitled to pursue equitable relief by way of an injunction and/or temporary restraining order, as well as such other relief as any court with jurisdiction may deem just and proper. POMCO shall be responsible for the payment of all reasonable attorneys’ fees and associated costs incurred by Health Republic in enforcing its rights under this Section.

**Section 17.** **Miscellaneous**

(a) **Waiver.** Waiver of any obligation under this Agreement on any occasion shall not excuse performance of that obligation at a subsequent time.

(b) **Severability.** If any provision of this Agreement is held or deemed to be invalid or unenforceable to any extent when applied to any person or circumstance, the remaining provisions hereof and the enforcement of such provision to another extent, shall not be affected thereby and each provision hereof shall be enforced to the fullest extent allowed by law.

(c) **Relationship of Parties.** The Parties are independent and separate legal entities. Nothing in this Agreement is intended to create any relationship between the Parties other than that of independent contracting entities. Neither of the Parties, nor any of their respective representatives, shall be construed to be the agent, employer or representative of the other Party.

(d) **Force Majeure.** No Party shall be liable for any delay or failure to perform its obligations under this Agreement to the extent such delay or failure arises out of a cause beyond its control or without its fault or negligence. Such causes may include but are not limited to, fires, floods, and natural disasters. The existence of the cause of such delay or failure shall extend the terms of performance on the part of the Party to such extent as may be necessary to enable it to complete performance in the exercise of reasonable diligence after the cause of delay or failure has been removed.

**Section 18.** **Complete Agreement**

1. This Agreement and any Attachment(s) hereto supersedes all prior agreements and representations between the Parties, including the Original Agreement.

This Agreement and any Attachment(s) hereto constitute the full Agreement of the Parties.

*BALANCE OF PAGE BLANK; SIGNATURE PAGE FOLLOWS*
IN WITNESS WHEREOF, HEALTH REPUBLIC and POMCO have caused this Agreement to be executed in their names by their undersigned officers, the same being duly authorized to do so.

Health Republic Insurance of New York, Corp.

BY: [Signature]
TITLE: C.R.O.
DATE: 3/14/16
WITNESS: [Signature]

POMCO, Inc.

BY: [Signature]
TITLE: C.E.O.
DATE: 3/14/16
WITNESS: [Signature]
Attachment A – Fees and Run-Out Services

Pricing for February 1, 2016 through December 31, 2016 (the “Initial Run-Out Term”)

“Claims Centric Adjudication Services” are defined to include the following:

1. Claim receipt
2. Claim capture
3. Claim repricing
4. Claim review
5. Claim adjudication against benefits
6. Claim clinical editing
7. Claim finalization, including but not limited to the issuance of Eligible Person EOBs and Provider remittances
8. Upon Health Republic approval, individual Eligible Person and Provider claim payments*
9. Reopening and adjusting individual claims at a claim level of detail
10. Standard Claim Reporting**
11. Up to 10 hours of reporting/research services
12. Up to 12,000 claim transactions, adjustments and refund processings per month for Claims Centric Adjudication Services 1 through 9 above, for claims received by POMCO after the date this Agreement is executed.

- No work will be performed on claims received by POMCO after the date this Agreement is executed beyond the limits set forth in items 11 and 12 of the Claims Centric Adjudication Services (“Threshold Limits”) without the prior approval of Health Republic. Such work above the Threshold Limits will be priced according to the Schedule for the Run-Out Extension and Additional Services.

- Claims received and/or processed by POMCO before this Agreement is executed (“Current Inventory Claims”) will not be subject to the Threshold Limits.

- *The fees paid under this Agreement will include the actual claim payment services if the claim payment information is received within 6 months of the end of the Initial Run-Out Term. Provider and Eligible Person payments for claims fully adjudicated by POMCO shall refer to settlement payments that will be calculated at an aggregate level for all outstanding claims and require one check payment per creditor based upon the payment amount calculated by the Liquidator or its designee (“Settled Claims”). This activity does not include the re-opening/adjusting of Settled Claims and the remittance of payment at a claim level of detail.

- **POMCO and Health Republic agree to use their best efforts to jointly define “Standard Claim Reporting” requirements within the first thirty (30) days after execution of this Agreement.

“Maintenance and Support Services” are defined to include the following:
IVR Maintenance
834 Support and Reconciliation
Carrier File Transfers/MOOP processing
MagnaCare, Health Republic and Reinsurance claims transmission

“Run-Out Services” and “New Run Out Services” shall include “Services” and “Additional Services”, as defined below.

Payment Structure

- $4 million for the services provided by POMCO to Health Republic from December 1, 2015, through and including January 31, 2016, incident to the Original Agreement and in further consideration for POMCO’s entry into the Agreement. Payment is due upon execution of the Agreement.


- Current Inventory Claims will not be subject to any additional charges regardless of when Services are performed and completed. Claims received by POMCO after the execution of this Agreement will not be subject to any additional charges, regardless of when Services are performed and completed, unless the transactions exceed the Threshold Limits and are approved by Health Republic.

- Additional services during the Initial Run-Out Term will ONLY be performed by POMCO upon request and approval by Health Republic (“Additional Services”).

Schedule for Run-Out Extension and Additional Services Pricing

- Professional, Case Management, Technical, Research/Reporting Services - $150 per hour
- Claims, Exception and Refund Processing - $8.00 per claim
- Third-party expenses to meet the requirements of Health Republic and/or the Liquidator will be billed at cost and may carry a 12% administrative expense.
- The production and distribution of Eligible Person EOBs and Provider remittances and third-party expenses billed at cost and may carry a 12% administrative expense.

Run-Out Extension Maintenance and Support Services:
- IVR Maintenance - $5,000 per month
- 834 Support and Reconciliation - $5,000 per month
- Standard Claims Reporting - $3,000 per month
- MagnaCare, Health Republic and Reinsurance transmission - $5,000
Attachment B – Business Associate Agreement

This Business Associate Agreement ("Agreement"), effective as of [DATE] (the "Effective Date"), is entered into by and between Health Republic Insurance of New York, Corp. (the "Covered Entity"), with an address at 30 Broad Street, New York, NY 10004 and POMCO, Inc. (the "Business Associate"), with an address at 2425 James Street, Syracuse, NY 13206 (each a "Party" and collectively the "Parties").

WITNESSETH:

WHEREAS, in connection with providing services under the Agreement, Business Associate will receive, use, disclose, create, maintain and/or transmit Protected Health Information on behalf of Covered Entity; and

WHEREAS, Covered Entity and Business Associate wish to enter into this Agreement governing Business Associate’s use and disclosure of Protected Health Information for the purpose of complying with the privacy and security regulations set forth at 45 C.F.R. Parts 160 through 164, as amended (the "Regulations") issued by the United States Department of Health and Human Services ("HHS") under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), as well as the Health Information Technology for Economic and Clinical Health Act and the regulations promulgated by HHS thereunder ("HITECH");

NOW, THEREFORE, in consideration of the foregoing recitals and mutual promises herein made, the parties agree as follows:

1. **Definitions.** Any capitalized terms used in this Agreement not otherwise defined herein shall have the meanings ascribed to them in the Regulations or in HITECH.

2. **Permitted Uses and Disclosures by Business Associate.** Business Associate may use or disclose Protected Health Information only for the following purposes:

   2.1 Business Associate may use or disclose Protected Health Information to carry out its obligations under the Run-Out Services Agreement.

   2.2 Business Associate may use or disclose Protected Health Information, if necessary, for Business Associate’s proper management and administration or to fulfill any present or future legal responsibilities of Business Associate; provided, however, that if Business Associate discloses Protected Health Information to a third party for such purpose, Business Associate (i) obtain reasonable assurances from the person to whom the Protected Health Information is disclosed that it will be held confidentially and used or further disclosed only as Required By Law or for the purpose for which it was disclosed to such person and (ii) obligate such person to notify Business Associate of any instances of which it is aware in which the confidentiality of the Protected Health Information has been breached.

   2.3 Business Associate may use or disclose Protected Health Information as required by law.
3. **Limitations on Use and Disclosure.** Business Associate shall use or disclose Protected Health Information, except as permitted by Section 2 hereof. Business Associate shall not use or disclose Protected Health Information received from or created on behalf of Covered Entity in a manner that would violate the Regulations (including the minimum necessary requirements thereof) if done by Covered Entity. Business Associate acknowledges and agrees that the requirements of HITECH that relate to privacy or security are applicable to Business Associate in the same manner that such requirements are applicable to Covered Entity. All such requirements are incorporated by reference into this Agreement.

4. **Safeguards.** Business Associate shall employ administrative, physical and technical safeguards, consistent with the size and complexity of Business Associate’s operations, ensure that Protected Health Information is used and disclosed in accordance with the terms of this Agreement. Without limiting the generality of the foregoing, Business Associate shall comply with the security standards set forth in 45 C.F.R. Sections 164.308, 164.310, 164.312 and 164.316.

5. **Disclosure to Agents.** In the event Business Associate discloses to any agent, including a subcontractor, Protected Health Information received from, or created or received by Business Associate on behalf of Covered Entity, Business Associate shall obtain from each such agent an agreement in writing to be bound by the same restrictions and conditions regarding the use and disclosure of Protected Health Information as are applicable to Business Associate under this Agreement. Business Associate shall provide Covered Entity with copies of such written agreements.

6. **Reporting and Mitigation of Improper Disclosures.** Business Associate shall immediately report to Covered Entity any use or disclosure of Protected Health Information not provided for by, or in violation of, this Agreement of which Business Associate becomes aware. Business Associate shall fully cooperate with Covered Entity and make best efforts to mitigate, to the extent practicable, any harmful effects of any improper use or disclosure of Protected Health Information of which it becomes aware.

7. **Notification of Breach.** Business Associate shall notify Covered Entity of any Breach involving Covered Entity’s Unsecured Protected Health Information as soon as reasonably possible after Business Associate’s discovery of the Breach, but in no event more than thirty (30) days following discovery thereof. Business Associate shall provide Covered Entity with all information necessary for Covered Entity to comply with Covered Entity’s obligations under HITECH and shall provide full cooperation to Covered Entity in connection with the investigation of the Breach and notification of affected individuals. Without limiting Covered Entity’s remedies under Section 13 or any other provision of this Agreement, in the event of a Breach involving Unsecured Protected Health Information maintained, used or disclosed by Business Associate, Business Associate shall reimburse Covered Entity for the cost of providing any legally required notice to affected individuals and the cost of credit monitoring for such individuals to extent deemed necessary by Covered Entity in its reasonable discretion.
8. Individual Rights.

8.1 Within twenty (20) days of a request by Covered Entity, Business Associate shall provide to Covered Entity all Protected Health Information in Business Associate’s possession necessary for Covered Entity to provide individuals or their representatives with access to or copies thereof in accordance with the Regulations and HITECH.

8.2 Within twenty (20) days of a request by Covered Entity, Business Associate shall provide to Covered Entity all information and records in Business Associate’s possession necessary for Covered Entity to provide individuals or their representatives with an accounting of disclosures thereof in accordance with the Regulations and HITECH. Business Associate shall track and record all such disclosures to ensure compliance with this section.

8.3 Within twenty (20) days of a request by Covered Entity, Business Associate shall provide to Covered Entity all Protected Health Information in Business Associate’s possession necessary for Covered Entity to respond to a request by an individual to amend such Protected Health Information in accordance with the Regulations. In the event that Covered Entity amends any Protected Health Information in its possession, a copy of which is also retained by Business Associate, Covered Entity shall promptly notify Business Associate of such amendment. At Covered Entity’s direction, Business Associate shall promptly incorporate any amendments to Protected Health Information made by Covered Entity into the information maintained by Business Associate.

8.4 Business Associate shall promptly comply with any restrictions on the uses of Protected Health Information agreed to by Covered entity in accordance with the Regulations immediately upon written notification by Covered Entity.

9. Access by HHS and Covered Entity. Business Associate shall make its internal practices, books and records relating to the use and disclosure of Protected Health Information received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity, available, without charge, to HHS or Covered Entity to enable HHS or Covered Entity to evaluate Business Associate’s compliance with the Regulations and HITECH.

10. Return of Protected Health Information. Upon termination of this Agreement, Business Associate shall, if feasible, return or destroy (as directed by Covered Entity) all Protected health Information received from, or created or received by Business Associate or any of its agents or subcontractors on behalf of, Covered Entity that Business Associate or any of its agents and subcontractors still maintains in any form, and Business Associate and its agents and subcontractors shall retain no copies such information. If such return or destruction is not feasible, Business Associate shall provide notice to Covered Entity of the conditions that make such return or destruction infeasible. Upon mutual agreement by the parties that such return or destruction is infeasible, Business Associate shall extend the protections of this Agreement to such information and limit further uses and disclosures to those purposes that make the return or destruction of the Protected Health Information infeasible. The parties agree that return or destruction of Protected Health Information is infeasible to the extent retention of such information by Business Associate is necessary for Business Associate to comply with its
agreements with health care providers and other vendors. This provision shall apply to Protected Health Information that is in the possession of agents or subcontractors of Business Associate.

11. **Electronic Protected Health Information.**

11.1 With respect to Protected Health Information maintained or transmitted by Business Associate in an electronic form. In addition to complying with the other terms of this Agreement, Business Associate shall (i) implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of such information, (ii) ensure that any agent, including a subcontractor to whom Business Associate provides such information, agrees to implement reasonably and appropriate safeguards to protect such information and (iii) report to Covered Entity any security incident of which Business Associate becomes aware.

11.2 Both parties represent that in exchanging electronic data, they will comply with applicable HIPAA regulations concerning security and standard transactions, and specifically, neither party will (a) change the definition, data condition, or use of a data element or segment in a standard transaction; (b) add any data elements or segments to the maximum defined data set; (c) use any code or data elements that are either marked “not used” in the standard’s implementation specification(s) or are not in the standard’s implementation specification(s); or (d) change the meaning or intent of the standard’s implementation specifications.

12. **Obligations of Covered Entity.**

12.1 Covered Entity shall notify Business Associate of any limitation(s) in its notice of privacy practices issued by Covered Entity pursuant to 45 C.F.R. § 164.520 to the extent that such limitation may affect Business Associate’s use or disclosure of Protected Health Information.

12.2 Covered Entity shall notify Business Associate of any restriction to the use or disclosure of Protected Health Information that Covered Entity has agreed to in accordance with 45 CFR § 164.522, to the extent that such restriction may affect Business Associate’s use or disclosure of Protected Health Information.

12.3 Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by an individual to use or disclose Protected Health Information to the extent that such changes may affected Business Associate’s use or disclosure of such information.

13. **Indemnification.**

Business Associate shall indemnify, defend and hold harmless Covered Entity and its affiliates from and against any claims, losses, expenses or other costs (including reasonable attorneys’ fees) arising from or relating to (i) the breach of this Agreement solely by Business Associate or (ii) any use or disclosure of Protected Health Information solely by Business Associate or its employees that does not comply with the terms of this Agreement.
14. **Term and Termination.**

14.1 The term of this Agreement shall be from the date hereof until termination of the Run-Out Services Agreement.

14.2 Covered Entity is authorized to terminate this Agreement if Covered Entity determines that Business Associate has violated a material term of this Agreement.

14.3 In the event either party becomes aware that the other party has engaged in a pattern of activity or practice that constitutes a material breach or violation of the terms of this Agreement, the non-breaching party may request in writing that the breaching party cure the breach or violation. If the breach or violation is not cured within a reasonable time period specified by the non-breaching party, the non-breaching party may terminate this Agreement; provided, however, if termination is not feasible, the non-breaching party shall report the breach or violation to the Secretary of HHS.

15. **Miscellaneous.**

15.1 **Amendment.** If HIPAA, the Regulations or HITECH are amended or interpreted in any manner that renders this Agreement inconsistent therewith, Covered Entity may, on thirty (30) days written notice to Business Associate (or any shorter notice period necessary to comply with such amendment or interpretation), amend this Agreement to the extent necessary to comply with such amendments or interpretations.

15.2 **Survival.** Business Associate’s obligations under Sections 6, 8, and 9 shall survive the termination of this Agreement for any reason.

15.3 **Full Authority.** Each party hereto represents and warrants to the other party that it has the legal power and authority to enter into and perform its obligations under this Agreement without violating the rights or obtaining the consent of any third party.

15.4 **Fees, Expenses.** Each of the parties hereto shall pay its own fees and expenses incurred in connection with the Agreement and the consummation of the transactions contemplated hereby.

15.5 **Independent Contractors.** The relationship between the parties is solely that of independent contractors and this Agreement shall not create an agency, partnership, joint venture or employer/employee relationship. Nothing herein shall be deemed to authorize either party to act, represent or bind the other party except as expressly provided by this Agreement.

15.6 **Successors and Assigns.** All covenants and agreements contained in this Agreement by or on behalf of any of the parties hereto shall bind and inure to the benefit of the respective successors and assigns of the parties hereto.
15.7 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of which together shall be deemed to be one and the same instrument.

15.8 Assignment. Neither party shall assign this Agreement without the prior written consent of the other party.

15.9 Not Third Party Beneficiaries. None of the provisions of this Agreement is or shall be construed as for the benefit of or enforceable by any person or entity not a party to this Agreement.

15.10 Notice. All requests, reports, approvals and notices required or permitted to be given under this Agreement shall be in writing and, unless specifically provided otherwise in this Agreement, shall be deemed to have been given when sent if personally delivered, faxed (with receipt confirmed) or mailed by registered or certified air mail, return receipt requested, or by overnight mail with receipt confirmed, postage prepaid, to the party concerned, at its address or addresses as set forth below or as designated from time to time by notice in writing.

Client:
Health Republic of New York, Corp. 30 Broad Street
New York, NY 10004
Attn: Christine Testaverde, General Counsel

Business Associate:
POMCO Inc., 2425 James Street, Syracuse, NY 13206
Attn: Kathleen Lamb, General Counsel

15.11 Severability. If any portion of this Agreement is construed to be illegal, invalid or unenforceable, such portion shall be deemed stricken and deleted from this Agreement to the same extent and effect as if it were never incorporated herein, but all other portions shall continue in full force and effect; provided that such resulting construction of the Agreement does not frustrate a material purpose of the Agreement.

15.12 Governing Law. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of New York (without regard to the principles of conflicts of law embodied therein) applicable to contracts executed and performable in such state. Each party submits to the jurisdiction of the State and Federal Courts located in New York County in the State of New York for any action or proceeding relating to this Agreement.