

Independent Medical Expert Consulting Services, Inc
INDEPENDENT MEDICAL REVIEW SERVICES AGREEMENT

This INDEPENDENT MEDICAL REVIEW SERVICES AGREEMENT (the "Agreement") is made and entered into this June 13, 2017 by and between, Independent Medical Expert Consulting Services, Inc. d.b.a IMEDECS ("IMEDECS"), a Pennsylvania corporation and the Superintendent of Financial Services of the State of New York in her capacity as liquidator of Health Republic Insurance of New York, Corp. ("Client").

RECITALS

- A. Client 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.
- B. IMEDECS is an independent review entity, accredited by URAC, providing independent medical expert consulting services to meet client needs in accordance with applicable law and/or plan documents.
- C. Client desires to enter into this Agreement in order to obtain independent review services by qualified experts. The mutually agreed upon services are set forth at Exhibit A.
- D. IMEDECS desires to enter into this Agreement in order to arrange for independent reviews, in accordance with the terms and conditions set forth in this Agreement.

NOW, THEREFORE, Client and IMEDECS hereby agree as follows:

ARTICLE 1

SERVICE REFERRAL

- 1.1 Review Referrals/Provision of Documents. Client shall, in its discretion, refer cases to IMEDECS for independent review. Unless otherwise agreed, nothing herein shall require Client to agree to refer any minimum or maximum number of cases to IMEDECS.
- 1.2 Unless otherwise agreed, Client is responsible for obtaining the relevant medical records and sending these medical records and other relevant documents and information to IMEDECS. IMEDECS shall not be held accountable or responsible for any failure by Client to collect and provide such medical records, documents and information to IMEDECS, nor any failure by Client to forward any medical records thereafter provided to Client after the initial documents have been submitted to IMEDECS.

ARTICLE 2

DUTIES OF IMEDECS

- 2.1 Arrange Independent Reviews. IMEDECS shall arrange for an independent review by a qualified expert or panel of qualified experts, as appropriate or requested, of each case referred to IMEDECS by Client for an independent review. In arranging or performing independent reviews pursuant to this Agreement, IMEDECS and the experts on the panel shall follow and adhere to all requirements and procedures, including time frames, if any, prescribed by applicable state and/or federal laws, statutes, rules and/or regulations and/or applicable Client policy or plan documents.
- 2.2 Accreditation. IMEDECS represents and warrants that it will maintain its URAC accreditation.
- 2.3 Confidentiality
- 2.3.1 Confidential Medical Information. IMEDECS recognizes that claimant medical records ("Confidential Medical Information") which will be provided to, and reviewed by, IMEDECS and its expert reviewers in the course of arranging or performing independent reviews pursuant to this Agreement are confidential under applicable state and federal laws and regulations. IMEDECS affirms that it and the expert reviewers are themselves either "Covered Entities" as defined under the Privacy Provisions of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) or are covered under an existent HIPAA-Compliant Business Associate Agreement. IMEDECS and its employees and expert reviewers shall hold confidential medical information in the strictest of confidence and take reasonable care to preserve the confidentiality of Confidential Medical Information in compliance with all applicable state and/or federal law or regulation governing confidentiality of claimant records. IMEDECS and its employees and expert reviewers shall take reasonable care not to disclose or publish any Confidential Medical Information or any information or data that identifies any Insured to any third party, except with the prior written authorization of the Insured or as otherwise required by law. IMEDECS and its employees and expert reviewers may use the Confidential Medical Information for the sole purpose of arranging or performing independent reviews pursuant to this Agreement. Compliance by IMEDECS with reporting requirements required by law and disclosure as required by legal process shall not constitute a disclosure in violation of this provision.
- 2.3.2 Client Proprietary Information. IMEDECS acknowledges that it may be provided proprietary information about Client and its contracting customers, providers, internal methods and systems, practices, operations, reports, or any other information relating solely to Client ("Client Proprietary Information") in the course of arranging independent reviews under this Agreement. IMEDECS acknowledges and agrees that all Client Proprietary Information shall be and remain the sole property of Client. IMEDECS and its employees and expert reviewers shall hold Client Proprietary Information in the strictest of confidence and shall take reasonable care not to disclose or publish any Client Proprietary Information or any information or data which identify Client or a particular provider to any third party, except with the prior written permission of Client. IMEDECS may use the Client Proprietary Information for the sole purpose of arranging or performing independent reviews pursuant to this Agreement. Compliance by IMEDECS with reporting requirements required by law and disclosure as required by legal process shall not constitute a disclosure in violation of this provision.
- 2.3.3 IMEDECS Proprietary Information. Client acknowledges that it may be provided proprietary information about IMEDECS and its internal methods and systems, procedures, practices, operations, fees, financial information or any other information relating solely to IMEDECS ("IMEDECS Proprietary Information") in the course of performing this Agreement.

Client acknowledges and agrees that all IMEDECS Proprietary Information shall be and remain the sole property of IMEDECS. Client and its employees shall hold all IMEDECS Proprietary Information in the strictest of confidence and shall take reasonable care not to disclose or publish any IMEDECS Proprietary Information to any third party, except with the prior written permission of IMEDECS. Client shall use the IMEDECS Proprietary Information for the sole purpose of performing its obligations pursuant to this Agreement and complying with applicable legal requirements.

2.3.4 Independent Review Information. IMEDECS and the expert reviewers shall maintain the confidentiality of all discussions, deliberations, analysis, records and information engaged in, generated or reviewed by IMEDECS and the expert reviewers in the course of arranging or performing independent reviews pursuant to this Agreement ("Independent Review Information"). IMEDECS and the expert reviewers shall not discuss, disclose, or voluntarily testify about any such Independent Review Information except as may be required by law. Compliance by IMEDECS with reporting requirements required by law and disclosure as required by legal process shall not constitute a disclosure in violation of this provision.

2.3.5 Survival of Confidentiality Obligations; Breach of Sections. The terms and conditions of Sections 2.3.1 through 2.3.4 shall survive the termination of this Agreement. Breach of the terms and conditions of Sections 2.3.1 through 2.3.4 shall constitute cause for immediate termination of this Agreement.

2.4 Retention of Records. IMEDECS shall retain all documents, information and records generated and obtained by IMEDECS, and its expert reviewers, in the course of arranging or performing independent reviews pursuant to this Agreement for six (6) years after completion of each review, or such other longer time period as may be required by law. These records shall be available to Client for inspection and copying upon request to the extent required by law.

2.5 Intentionally Omitted

2.6 Conflict of Interest Mitigation.

2.6.1 Reviewer Conflict of Interest. IMEDECS shall not assign a review to a reviewer who has a material familial, professional or financial affiliation with the covered person, authorized representative, treating provider, treating facility, referring entity, health plan, treatment, manufacturer of the principal drug or device, the Client or her agents, or any claimant or creditor in the Health Republic liquidation, to the extent known. A reviewer who has a contract to provide health care services to enrollees of a health benefit plan of an insurance issuer or group health plan that is the subject of a review shall not, in and of itself, constitute a conflict of interest.

2.6.2 Organizational Conflict of Interest. IMEDECS and client will determine and agree upon applicable state, federal or client specific organizational conflicts of interest, if any and attest to same on the Organizational Conflict of Interest Attestation (Exhibit B) when present. IMEDECS will not conduct a review in which it has an organizational conflict of interest unless, after full disclosure, IMEDECS obtains written consent to conduct the review from the covered person, insurance issuer or group health plan, and the referring entity.

ARTICLE 3

FEES

- 3.1 Fees and Charges. Client shall pay to IMEDECS such fees and charges as are mutually agreed upon. The fee schedule is set forth at Exhibit A.
- 3.2 Submission of Invoices: Time of Payment. Invoicing shall be periodic or upon completion of the requested case review (or additional service). Client shall remit payment of invoiced fees to IMEDECS so that full payment is received by IMEDECS within thirty (30) calendar days of the invoice date.

ARTICLE 4

TERM AND TERMINATION

- 4.1 Term. This Agreement shall commence on the Effective Date specified on the first page of this Agreement and shall continue for an initial term of one (1) year unless earlier terminated by either party pursuant to Section 4.2 below. After the initial term, this Agreement shall automatically renew for successive one (1) year terms on each anniversary of the Effective Date unless terminated by either party pursuant to Section 4.2 below.
- 4.2 Termination. This Agreement may be terminated only as follows:
- 4.2.1 Either party may terminate this Agreement at any time with cause upon thirty (30) calendar days prior written notice to the other party in the event of a material breach of any term, covenant or condition of this Agreement by the other party. The party receiving the written notice of termination shall have thirty (30) calendar days from the receipt of such notice to cure the breach. If such party fails to cure the breach within the thirty (30) calendar-day period, this Agreement shall terminate thirty (30) calendar days from the date of expiration of the curing period.
- 4.2.2 Either party may terminate this Agreement effective immediately upon written notice to the other in the event that (i) any license, certificate and/or accreditation required to be maintained by one of the parties in order to perform this Agreement is revoked, suspended or restricted, or one of the parties fails to obtain any such license, certificate and/or accreditation, or (ii) any court or government agency determines that one of the parties is operating in violation of law or regulation, or otherwise orders that the party cease operation, or (iii) applicable laws or regulations require the deletion of any provision of this Agreement which, if deleted, would destroy the underlying purpose of this Agreement.
- 4.2.3 Either party may terminate this Agreement at any time without cause upon sixty (60) calendar days prior written notice to the other party.
- 4.2.4 In the event the Liquidation Court directs the rescission or reformation of this Agreement, Client may terminate the Agreement immediately upon written notice to IMEDECS.

ARTICLE 5

GENERAL PROVISIONS

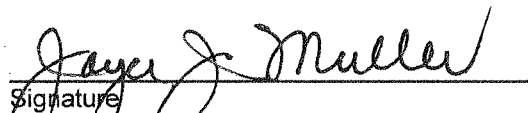
- 5.1 Independent Contractors. The relationship between Client and IMEDECS is an independent contractor relationship. Neither Client nor its employees or agents are employees or agents of IMEDECS and neither IMEDECS nor its employees, agents or independent reviewers are employees or agents of Client. None of the provisions of this Agreement shall be construed to create a relationship of agency, representation, joint venture, ownership, control or employment between the parties other than that of independent parties contracting for the purposes of effectuating this Agreement.
- 5.2 Amendments. This Agreement may be modified or amended only by a written instrument signed by authorized signatories of Client and IMEDECS.
- 5.3 Assignment. This Agreement and the rights, interests and benefits hereunder shall not be assigned or transferred in whole or in part by either party, without the prior written consent of the other party.
- 5.4 Entire Agreement. This Agreement constitutes the entire agreement between Client and IMEDECS with respect to the subject matter of this Agreement. No other agreements, representations, or warranties have been made by either party to the other with respect to the subject matter of this Agreement.
- 5.5 Governing Law and Interpretation. This Agreement shall be construed, interpreted and enforced in accordance with, and governed by, the laws of the State of New York without regard to its rules concerning conflict of laws. Any provisions required by law to be in this Agreement shall be deemed incorporated herein and binding upon Client and IMEDECS whether or not specifically included in this Agreement. There shall be no presumption against IMEDECS with regard to drafting or any ambiguities of this Agreement.
- 5.6 Cooperation in the Event of a Legal Proceeding. IMEDECS shall reasonably cooperate with Client in connection with any legal proceedings (e.g. mediation, arbitration or litigation) arising out of a determination for which a review was requested and/or provided. IMEDECS will make reasonable efforts to make a reviewer available for assistance with legal proceeding. Compensation arrangements and expert witness fees shall be agreed to directly with the reviewer without IMEDECS involvement. If applicable, Client shall reimburse IMEDECS for all reasonable expenses incurred for such cooperation in any legal proceeding.
- 5.7 Forum Selection. Any claim or controversy relating to or arising out of this Agreement shall be referred to and determined solely by the Liquidation Court.
- 5.8 Hold Harmless. Notwithstanding any provision of this Agreement to the contrary, neither IMEDECS nor its expert reviewers shall be liable to Client or any other party to an independent review for any action, including those involving or resulting from a decision or opinion rendered in a review, unless the action, decision or opinion was the result of bad faith, negligence, or intentional misrepresentation of factual information about the individual's medical condition.
- 5.9 Indemnification. Each party (such party, the "Indemnifying Party") shall indemnify, defend, and hold harmless the other party and its affiliates, officers, directors, agents, employees and representatives ("Indemnified Parties"), from and against all expenses, (including legal fees and expenses and court costs) losses, claims, demands, damages (including any extra-contractual, consequential or punitive damages alleged by a third-party) and judgments (collectively, the "Losses" and individually, a "Loss") which arise or are alleged to arise from

Indemnifying Party's actions or failure to act under or comply with this Agreement, its breach of any term, condition, representation or warranty of this Agreement or violation of any law in connection with the provision of services hereunder. Indemnifying Party shall not have any obligation under this Section 5.9 for any portion of a Loss finally determined by a court of competent jurisdiction to arise from Indemnified Parties' negligence or willful misconduct. The provisions of this section shall survive expiration or termination of this Agreement.

- 5.10 Insurance. IMEDECS, at its sole cost and expense, shall maintain throughout the term of this Agreement professional liability insurance covering its Expert Reviewers in the minimum amount of one million dollars (\$1,000,000) per occurrence and three million dollars (\$3,000,000) annual aggregate. If the policy (or policies) is canceled or not renewed and coverage is provided on a claims-made basis, IMEDECS agrees to exercise any option contained in the policy (or policies) to extend the reporting period to the maximum period permitted under the policy (or policies); provided, however, that IMEDECS need not exercise such option if the superseding insurer will accept all prior claims.
- 5.11 Notices. Any notices required or permitted by this Agreement shall be in writing and may be delivered in person or may be sent by registered or certified mail or U.S. Postal Service Express Mail, with postage prepaid, or by Federal Express or other overnight courier that guarantees next day delivery, to either Client or IMEDECS at the addresses listed on the signature page of this Agreement, or at such other addresses as either Client or IMEDECS may hereinafter designate to the other.
- 5.12 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which shall be considered one and the same agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on June 13, 2017.

**Independent Medical Expert Consulting
Services, Inc.**


Signature

Name: Joyce J. Muller
Title: President and CEO, IMEDECS

Address: IMEDECS
2060 Detwiler Road, Suite 100
Harleysville, PA 19438
(215) 855-4633 (Tel.)

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


Authorized Representative

Name: David Axinn
Title: Special Deputy Superintendent

Address: Superintendent of Financial
Services of the State of New York
as Liquidator of Health Republic
Insurance of New York, Corp
110 William Street
New York, NY 10038
Attn.: General Counsel


7/11/2017

Exhibit A

SERVICES AND FEE SCHEDULE

Services

Objections will be assigned to IMEDECS for review by one of the referees appointed by the Liquidation Court.

Upon receipt of the assigned objection for review IMEDECS will:

- Identify, recruit and assign the case to a clinical or legal expert with the appropriate expertise to conduct the review
- Case specific Conflict of Interest (COI) screening will be completed on every review verifying no financial or personal conflicts

IMEDECS will consider the following when conducting the review:

- The claimant's medical records, the attending health care professional's recommendation, reports from appropriate health care professionals or other documents submitted, the terms of the claimant's plan, appropriate practice guidelines, applicable clinical review criteria, and the opinion of the IMEDECS expert reviewer

IMEDECS will provide a decision within forty-five (45) days after the request for review is received

- The decision will be sent to the referee who assigned the objection for review
- The decision may contain any or all of the of the following, as appropriate:
 - A general description of the reason for the external review
 - The date IMEDECS received the assignment for external review
 - References to evidence including specific coverage provisions utilized in reaching the decision
 - Rationale supporting the decision

IMEDECS maintains case related information, including all records and notices, in its case review database for 6 years.

CASE-SPECIFIC REVIEWS

1. Medical Necessity Reviews

These reviews are not evidence-based but rather consensus or normative-based. Reviews typically incorporate the use of clinical practice guidelines and practice standards as they relate to medically necessary treatment. Medical consensus as reflected in the peer-reviewed literature, via consensus statements of professional associations, survey of experts, and normative patterns of care are the basis for review criteria. A review of the literature (e.g., database searches) is not performed with each treatment-specific review. Rather, criteria are reviewed annually, or more frequently, if an important and wide-spread shift in consensus occurs.

- Must be de novo, claimant-specific reviews. IMEDECS must have applicable medical records, plan language, and criteria. In addition, the review question must be worded so that the expert is permitted to consider all credible, relevant medical evidence and/or criteria, as well as his/her expert judgment.

2. Coverage Determination Reviews

These reviews typically involve appeals whereby services have been denied for contractual reasons. Issues may include but are not limited to coverage exclusions, out-of-network services, and pre-existing condition exclusions. The medical records, the Certificate of Coverage, other plan materials and applicable state and federal law are considered during the review. A single reviewer is usually required in most cases for this level of review. Legal experts with experience in health benefit contract interpretation will be utilized for these reviews however, a physician may be needed, depending on case requirements.

Fee Schedule

FIXED FEES

Medical Necessity Reviews/ Coverage Determination Reviews

	<u>Standard</u>	<u>Expedited</u>
Single Reviewer	\$ 425	\$ 475

Expedited Reviews are conducted within 72 hours from receipt of case information. Standard reviews will be conducted in the timeframe identified by the client or as mandated by state or federal requirements.

In the event Client requests that IMEDECS perform services outside the scope of Medical Necessity Reviews and/or Coverage Determination Reviews as set forth above, such services, which shall be performed only as expressly requested by Client, will be billed at the following hourly rates:

<u>Resources</u>	<u>Hourly Rate</u>
Clinical/Legal Reviewers	\$ 250 to \$400+ *
Allied Health Practitioners	\$100-150
Case Review Manager (RN)	\$75
Administrative Assistant	\$40
* Some fees may be higher based on reviewer specialty requirements	

Extensive Record Fees

For fixed fees only

150 to 300 pages	\$100
301 to 500 pages	\$200
501 and greater	Hourly

IMEDECS standard terms are net 30 days, following receipt of the invoice.

Exhibit B

IMEDECS Organizational Conflict of Interest Attestation

IMEDECS attests that, according to applicable client, state or federal laws or regulations, it is not owned or controlled by or a subsidiary of or in any way exercises control with an insurance issuer or group health plan, a national, state or local trade association of issuers or plans, or a national, state or local trade association of health care providers that would cause a conflict of interest with this Client. IMEDECS further attests that no relationship exists between itself and any insurance issuer's or group health plan's parent company, sister companies, or subsidiaries that constitutes a known conflict of interest with this Client.

IMEDECS attests that it has discussed, agreed to and disclosed only the names of those entities for which it conducts internal review where it would be considered a conflict of interest for this client.

IMEDECS attests to identifying the following material professional, familial or financial conflicts of interests as it relates to this Client:

Identify relevant entities or list N/A if none identified

An insurance issuer – N/A

Any officer, director or management employee of an insurance issuer – N/A

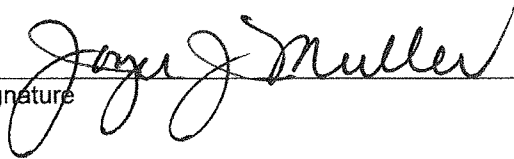
Any group health plan administrator, plan fiduciary, or plan employee – N/A

A medical group or independent practice association – N/A

A facility providing health care service and treatments – N/A

The developer or manufacturer of a drug, device, procedure, or other therapy – N/A

Signature



6/13/17
Date

Joyce J. Muller
President & CEO

Business Associate Agreement

This Business Associate Agreement ("Agreement") is effective as of July 11, 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 Independent Medical Expert Consulting Services, Inc. d.b.a IMEDECS ("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 July 11, 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.

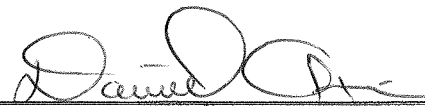
(h) No Third Party Beneficiaries. Nothing express or implied in this Agreement is intended or shall be deemed to confer upon any person other than Covered Entity, Business Associate, and their respective successors and assigns, any rights, obligations, remedies or liabilities.

(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


7/11/2017


Name: David Axinn
Title: Special Deputy Superintendent

Independent Medical Expert Consulting
Services, Inc. d.b.a IMEDECS


Name: Joyce J. Muller
Title: President & CEO