

**INDEPENDENT HEALTH CORPORATION  
ADMINISTRATIVE SERVICES AGREEMENT**

This Administrative Services Agreement ("Agreement") is made by and between **KEN-TON UNION FREE SCHOOL DISTRICT** ("Sponsor"), and **INDEPENDENT HEALTH CORPORATION** ("IHC"). Sponsor has established an employee benefit welfare plan (or plans) providing group health coverage (collectively, if applicable, the "Plan"), which are funded out of Sponsor's general assets, for its employees, their dependents or other eligible persons and Sponsor desires to arrange for IHC or its subsidiary (collectively herein "IHC") to provide certain administrative services to and on behalf of Sponsor in regard to the Plan, as set forth in this Agreement. The Effective Date of this Agreement is July 1, 2016.

1. **DEFINITIONS.** For the purpose of this Agreement, the following terms shall have the meanings set forth below:

- 1.1 "Administrative Service Fee" means the fee for administrative services provided by IHC to Sponsor and the Plan under this Agreement.
- 1.2 "Assignment of Benefits" means a legally binding document in which a Participant assigns his/her right to benefits under the Plan to a provider of Health Services.
- 1.3 "COBRA" means the portion of the Consolidated Omnibus Budget Reconciliation Act of 1985 (29 USC 1161, et seq.) as amended from time to time, which requires most employers to offer continuation coverage to employees and dependents who meet certain requirements, as well as the applicable regulations.
- 1.4 "COBRA Beneficiary(s)" means a former Participant who has elected to continue receiving Health Services under the Plan pursuant to COBRA.
- 1.5 "Code" means the Internal Revenue Code, as amended.
- 1.6 "Covered Employee" means an eligible employee or former employee of Sponsor who has coverage under the Plan.
- 1.7 "ERISA" means the Employee Retirement Income Security Act of 1974, as amended.
- 1.8 "Health Services" means the health care services or supplies, set forth in **Exhibit C**, which are covered by this Agreement and the Plan, and received by Participants.
- 1.9 "HIPAA" Health Insurance Portability and Accountability Act of 1996, as amended.



- 1.10 "Network" means a group of Network Providers who have entered into agreements to provide medically necessary services to Participants, if applicable.
- 1.11 "Network Provider" means a Health Services provider who has entered into an agreement to provide medically necessary services to Participants, if applicable.
- 1.12 "Participant" means a Covered Employee, such employee's spouse, dependent or other eligible person who has coverage under the Plan. Sponsor shall in its sole discretion determine who are Covered Employees and Participants, unless otherwise specified in this Agreement.
- 1.13 "Plan" means the plan of group health coverage established by Sponsor for its Participants and described in the Plan Document and Summary Plan Description, as may be amended from time to time. The Plan is self-funded and is an "Employee Welfare Benefit Plan" as the term is defined under ERISA (if applicable).
- 1.14 "Plan Administrator" means the Sponsor.
- 1.15 "Plan Document" means the document(s) establishing and setting forth the terms of the Plan.
- 1.16 "Plan Year" means the period of coverage designated by the Sponsor.
- 1.17 "Qualified Beneficiary" means a Participant who was covered under the Plan on the day before he or she experienced a Qualifying Event.
- 1.18 "Qualifying Event" means the occurrence of any one of the specific events defined in the COBRA regulations that result in a loss of coverage by a Participant under the Plan.
- 1.19 "Summary Plan Description" or "SPD" means the document(s) which the Sponsor provides to the Covered Employee or Participant containing a summary of benefits provided under the Plan, including eligibility requirements, funding arrangements, claims procedures and, if applicable, ERISA rights.

## **2. THE PLAN**

- 2.1 Sponsor is solely responsible for establishing and maintaining the Plan. Except as otherwise provided in this Agreement, the Sponsor shall be the sole fiduciary of the Plan.
- 2.2 Sponsor shall be solely responsible for maintaining and preparing the Plan Document and Summary Plan Description, except that any references in the

document to Network Providers or to IHC or services provided by IHC must be approved in writing by IHC before any distribution of the documents to Participants. Sponsor is responsible for providing IHC with the current and most up to date copy of its Plan Document and SPD. The SPD shall be attached as **Exhibit A**, and shall serve as the administrative document for the Plan as set forth in Section 3.4. The SPD may be changed and/or updated from time to time without the need for an amendment to this Agreement.

In the event Sponsor elects to have IHC draft its SPD (as set forth in **Exhibit C**), Sponsor shall be solely responsible for the final content of the SPD.

- 2.3 The Plan Document and Summary Plan Description may be amended by Sponsor at its discretion, but with respect to changes requiring implementation revisions by IHC, Sponsor shall give IHC written notice of any such amendment at least ninety (90) days before its implementation date.
- 2.4 Any amendment which would increase or change the nature of the services provided by IHC under this Agreement must be approved in writing by IHC and the Sponsor in order for the change in services to be included under this Agreement. Any such approved increase or change shall also be a basis for IHC to request renegotiation of the fee paid to IHC by Sponsor. In the event the parties cannot agree on a new fee or an unapproved increase or change is made, IHC may terminate this Agreement upon sixty (60) days written notice to Sponsor and IHC shall continue to administer the Plan without the proposed amendments during the transition period.
- 2.5 If required by the applicable Network (if any), the Plan shall provide a higher level of coverage for Health Services received from Network Providers than those received from non-Network Providers.
- 2.6 IHC does not insure nor underwrite the liability of Sponsor under the Plan. Sponsor retains the ultimate responsibility for claims made pursuant to the Plan and is responsible for all expenses incident to the Plan, except expenses specifically assumed by IHC in this Agreement.
- 2.7 IHC shall have the right to attend any informational meetings for potential Participants relating to the Plan and shall cooperate with Sponsor's efforts to provide information regarding the Plan and the Network Providers.
- 2.8 IHC will use its best efforts to provide Sponsor with information in IHC's possession to assist Sponsor in its compliance with any laws or regulations applicable to the Plan, including, if applicable, ERISA, HIPAA, the Code and any applicable regulations promulgated thereunder. However, Sponsor's and Plan's compliance with any such laws and regulations shall be the sole responsibility of Sponsor, and Sponsor shall comply and ensure that the Plan complies with all

such laws and regulations. Such compliance shall include but not be limited to all notifications required to be provided to Participants, unless otherwise agreed to by the parties.

- 2.9 Sponsor shall not name IHC or represent that IHC is, and IHC shall not be, the Plan Administrator or a named fiduciary of the Plan as those terms are used in ERISA (or other applicable law) except as otherwise provided in this Agreement. If at any time IHC is in doubt as to the proper interpretation of the Plan with respect to eligibility for benefits or otherwise, it shall promptly notify Sponsor, which shall render its judgment on the interpretation to be followed by IHC.
- 2.10 In the event that the Plan, the Sponsor, the arrangement established by this Agreement, or any payments for claims for Health Services or fees to IHC are subjected to any form of governmental or regulatory charges, including but not limited to any premium taxes, insolvency fund fees, guarantee fund fees, licensing fees or any similar charges, such charges shall be the sole responsibility of the Sponsor or the Plan and the Sponsor shall hold harmless and indemnify IHC from the payment of any such charges.
- 2.11 In the event IHC's performance of its duties under this Agreement is made materially more burdensome or expensive due to a change in federal, state or local laws or regulations during the term of this Agreement, the parties shall negotiate an appropriate adjustment to the fee paid to IHC. If the parties cannot agree on an adjusted fee within thirty (30) days after IHC has sent written notice of the material change and its wish to negotiate an adjusted fee to Sponsor, then IHC or Sponsor may terminate this Agreement by sixty (60) days prior written notice to the other party and IHC shall continue to administer the Plan without the required changes during the transition period.
- 2.12 So that IHC can perform its services under this Agreement, Sponsor shall timely provide IHC with all information that IHC reasonably requests and otherwise cooperate with IHC. Sponsor understands and acknowledges that IHC shall rely on any information provided by Sponsor as accurate, valid and complete and that IHC's performance of its obligations under this Agreement is dependent on receiving such accurate, valid and complete information.

### 3. SERVICES PROVIDED BY IHC

- 3.1 IHC shall provide the services described in **Exhibit B**, in the manner described in **Exhibit B** and in this Agreement. It is understood and acknowledged by Sponsor that IHC shall provide its services in accordance with its standard policies and business practices. In the event Sponsor requests non-standard or customized services, i.e., other than the services set forth in this Agreement, the additional cost of such services shall be paid to IHC by Sponsor in accordance with the

schedule set forth in **Exhibit C**.

- 3.2 In the event Sponsor has elected to have IHC make final claim determinations as set forth in **Exhibit B** and **Exhibit C**, Sponsor delegates to IHC the limited “fiduciary duty” and “discretionary authority” for the sole and only purpose of making adverse benefits determinations for review of appealed claims under the Plan in accordance with 29 CFR §2560.503-1(h).

IHC accepts only the foregoing fiduciary duties and, in performing these duties, shall at all times follow the provisions of the Summary Plan Description, to the extent consistent with ERISA (if applicable). Sponsor shall be solely responsible for payment of all claims which IHC upholds.

In the event that any action or proceeding is brought against IHC arising out of the performance of its fiduciary duties under this Agreement, any expense, cost and fees, including attorneys fees, incurred by IHC in defense of such action or proceeding shall be reimbursed by Sponsor.

- 3.3 IHC shall administer the Plan in accordance with the SPD which has been approved, finalized and provided to IHC by the Sponsor and attached as **Exhibit A**. In the event the Sponsor has not approved and finalized an SPD upon the effective date of this Agreement, until such time as IHC receives a final SPD, IHC shall administer the Plan in accordance with the benefit information it has in its possession and solely determines is applicable for Plan administration purposes. Absent an SPD, IHC shall administer the Plan in accordance with its standard policies and practices.

- 3.4 In the event Sponsor has elected to have IHC provide COBRA administrative services as set forth in **Exhibit B** and **Exhibit C**, IHC’s performance of COBRA administrative services will be dependent upon Sponsor providing IHC with the following:

- (a) Complete and accurate COBRA eligibility information in the form and manner requested by IHC. Sponsor must notify IHC of Qualified Beneficiaries within fourteen (14) days of the Qualifying Event. The notification must include the following:
- name, social security number;
  - date and type of Qualifying Event;
  - current mailing address of Qualified Beneficiary; and
  - any other information reasonably requested by IHC and available to Sponsor.
- (b) Updated information about the eligibility of a Qualified Beneficiary or eligible dependent of a Qualified Beneficiary, including, but not limited

to:

- a change in address of the Qualified Beneficiary;
- the death or disability of a Qualified Beneficiary;
- the divorce or separation of a Qualified Beneficiary; and
- the enrollment of the Qualified Beneficiary in Medicare or other group health plan coverage after electing COBRA.

- (c) Complete and accurate premium information for each coverage option.
- (d) Notification of any pertinent change in Plan coverage, such as premium rate changes or changes in Sponsor information no later than ninety (90) days prior to the effective date of change.
- (e) Notification of any election, premium payment or communication regarding COBRA coverage made directly to Sponsor as soon as received, but no later than five (5) business days following receipt.

3.5 In the event IHC is the “Registered Reporting Entity” for purposes of required Medicare Secondary Payer (“MSP”) reporting under Section 111 of the Medicare, Medicaid, and SCHIP Extension Act of 2007 (“MMSEA”), IHC may rely upon the enrollment and census information provided to it by Sponsor and Sponsor’s Plan Participants. Sponsor shall indemnify and hold IHC harmless for penalties associated with noncompliance under the MMSEA.

#### **4. RECORDS AND REPORTS**

4.1 IHC shall maintain records relating to its responsibilities under this Agreement, including records relating to claims processing. Original paper records may be converted to film and/or electronic media, in which case the original paper records will not be retained by IHC. Sponsor shall maintain records relating to the terms and operation of the Plan, including the identification of Participants, payments to IHC and payments for Health Services.

To the extent allowable under state and federal law, including but not limited to HIPAA, and in accordance with this Agreement, any Business Associate Agreement or related documents between the parties, each party may have access to the records directly relating to the Plan and maintained by the other party during normal business hours and upon reasonable notice, provided, however, that IHC shall not have to disclose provider payment fee schedules or other proprietary information. A party shall pay the cost of copies of any records which it requests from the other party at a rate of \$.25 per single page. This copying charge applies only to copies requested as part of an audit and does not apply to the regular reports provided pursuant to the terms of this Agreement.

- 4.2 If a party wishes to inspect or audit the records of the other party under this Section, such party must provide the other with at least sixty (60) days advance notice. The scope and parameters of such audit shall be mutually agreed upon by the parties. However, in no event will the scope of the audit include records dating back further than the past twenty-four (24) months of Health Service claims administered by IHC (unless legally required otherwise).

In the event Sponsor wishes for a third party to conduct an audit or inspection, Sponsor shall provide IHC with a copy of the business associate agreement in effect between third party auditor and Sponsor. Sponsor accepts and agrees that third party auditor may be required to sign a business confidentiality agreement protecting IHC's business information prior to conducting any such audit. Sponsor further agrees that any audits must be conducted in accordance with state and federal law, including but not limited to HIPAA and IHC policies and procedures in effect for such compliance purposes.

Any audits conducted by Sponsor shall be at its own expense.

- 4.3 The parties shall maintain the confidentiality of any information relating to Participants in accordance with any applicable laws and shall make arrangements as to how information regarding Participants shall be managed. Neither party shall disclose any confidential business information of the other party without the prior written consent of that party.
- 4.4 The parties shall act in conformance with HIPAA and all regulations issued from time to time, and the Business Associate Agreement entered into between the parties.
- 4.5 Sponsor acknowledges that it is required to take certain steps to safeguard the privacy and confidentiality of individually identifiable health information regarding Plan Participants. In order for Sponsor to be able to receive protected health information, it shall execute a Business Associate Agreement, adopt policies and procedures, and amend its Plan documents to the extent required by HIPAA. Upon request, Sponsor will provide to IHC a signed HIPAA Plan Sponsor Certification indicating its compliance with applicable HIPAA requirements. Sponsor will not request that IHC disclose protected health information to Sponsor except as consistent with the HIPAA regulations, the HIPAA Plan Sponsor Certification provided to IHC by Sponsor, the Sponsor's Notice of Privacy Practices, the Plan documents, and any relevant federal or state laws or regulations. Sponsor will indemnify and hold IHC harmless from and against any and all claims arising out of Sponsor's use or disclosure of protected health information received from IHC.

- 4.6 In the event of any termination of this Agreement, IHC shall provide Sponsor with copies of records in IHC's possession relating to the Plan and necessary for the continued operation of the Plan. The copies may be provided in hard copy or machine readable form, at IHC's discretion. Any costs related to record transfer will be passed through to Sponsor.
- 4.7 All records maintained by either party relating to the Plan shall be kept for at least 6 years after the date the records were created at which time they may be returned to the other party at that party's request. If Sponsor is required to keep claim records for a longer period of time, they will have to make their own arrangements for storage.
- 4.8 IHC shall provide Sponsor with periodic reports as set forth in **Exhibit B** and as allowed by state and federal law, including but not limited to HIPAA. Sponsor shall provide or file all reports required by law including, if applicable, ERISA in connection with the operation of the Plan.
- 4.9 In the event Sponsor maintains stop-loss insurance for the Plan, Sponsor shall provide IHC a copy of the stop-loss/reinsurance policy which shall be deemed incorporated into this Agreement, attached hereto as **Exhibit E**. Sponsor agrees to notify IHC of any changes in the terms thereof.

Sponsor is solely responsible for selecting the stop-loss insurance broker, carrier and policy coverage. Policy coverage includes Sponsor's deductible/retention exposures, claim submission requirements/limitations and contract exclusions.

- 4.10 As allowable under state and federal law, including but not limited to HIPAA, IHC agrees to disclose claims information to other business associates of Sponsor, as well as any applicable stop-loss carrier, provided Sponsor provides proof it has entered into applicable business associate agreements with such business associates, and such business associates and stop-loss carrier sign business confidentiality agreements protecting IHC's business information in such circumstances where IHC deems it necessary to have a business confidentiality agreement. Sponsor shall identify and authorize IHC in the HIPAA Plan Sponsor Certification to disclose claims information to specific business associates and/or the stop loss carrier (if applicable).
- 4.11 Before the effective date of this Agreement, or prior to renewal (as applicable), Sponsor shall provide IHC with the current or new enrollment applications of eligible employees and their dependents, including COBRA Beneficiaries. On an ongoing basis prior to the start of coverage, Sponsor will supply IHC with enrollment updates including, where appropriate, enrollment files and/or applications of Participants. IHC shall be entitled to rely on this enrollment information for purposes of eligibility of Participants in paying claims and providing services under this Agreement.



If either party determines that a Participant was included in the list of Participants in error, IHC shall use its best efforts to recoup payments made to Providers. Such recoupment efforts shall be limited to a retroactive date no more than sixty (60) days prior to the date the error was discovered and/or communicated to IHC by Sponsor. IHC does not guarantee repayment. In the event Sponsor requests that IHC attempt recoupment of payments made to Providers for a greater period of time, such recoupment efforts will be at an additional fee as set forth in **Exhibit C**.

With respect to administrative service fees, any adjustments shall be limited to a retroactive date no more than sixty (60) days prior to the date the request for such adjustment is made.

## **5. PAYMENTS TO PROVIDERS**

- 5.1 Sponsor is solely responsible for payment for Health Services and Sponsor shall indemnify and hold IHC harmless from any claims asserted against IHC by any provider or any Participant for payment for Health Services. The parties acknowledge that claims under the Plan are to be paid by Sponsor from its general assets and that this is an unfunded plan.
- 5.2 Payments to Network Providers shall be made in accordance with the terms of the applicable agreement IHC maintains with each Network Provider, as may be amended from time to time. Non-Network Providers shall be paid according to the terms and conditions of the Plan upon execution of an Assignment of Benefits by Participants. In the event that a dispute arises between Sponsor and any provider regarding payment of a claim, IHC shall use its best efforts to facilitate resolution of the dispute. IHC shall not be liable for payment of claims based upon incorrect information received from Sponsor, any Providers (including networks), or Participants.
- 5.3 Sponsor shall be solely responsible for depositing from its general assets, amounts into the account out of which claims for Health Services shall be paid (the "Claims Account"). The Claims Account shall be set up as provided in **Exhibit D**.
- 5.4 Upon production of the "checkwrite," IHC shall notify Sponsor of the total claims payment for that checkwrite. The Claims Account shall be funded immediately, but in no event later than two (2) business days following notification of amounts necessary for claims payment. IHC shall review large claims, as IHC shall determine are in need of review, and notify, as permitted by applicable law, the stop-loss carrier of claims according to the Sponsor's stop/loss policy.

- 5.5 In the event that for any reason funds are not available to complete a checkwrite in the required amount and Sponsor fails to provide the required amount of funds within forty-eight (48) hours after notice of the need to provide such funds, IHC reserves the right to terminate this Agreement and its obligations under this Agreement and may provide notice of such termination to Providers.
- 5.6 In the event that Sponsor has at any time failed to make funds available to pay claims for Health Services or fees to IHC, in addition to any other remedies, IHC shall have the right to offset any unpaid amounts against any amounts owed to Sponsor by IHC, or any entity related to IHC.
- 5.7 If IHC, after undertaking steps to effectuate termination of services pursuant to Section 5.5 above, agrees to reinstate administrative services for the Plan, IHC shall invoice Sponsor and Sponsor agrees to pay any and all fees incurred as a result of time spent by IHC employees to reinstate the Plan, as set forth in **Exhibit C**.
- 5.8 The details of the banking arrangement for the Claims Account are set forth in **Exhibit D**.
- 5.9 In the event of erroneous payment of a claim, IHC will make reasonable attempts to recoup the amount paid but shall not be required to utilize collection agencies, attorneys, or to commence litigation. Sponsor shall assign the claim and/or cooperate so that IHC can recoup the erroneous claim payment.
- 5.10 In the event that the Centers for Medicare and Medicaid Services (CMS) determines that Sponsor's Plan has underpaid a claim under "Medicare Secondary Payer" laws, both parties acknowledge that Plan assets will be used to correct such underpayment. Under no circumstances will IHC be required to make such payment with IHC funds, regardless of when CMS requires such payment, during or after the term of this Agreement.

## **6. COMPENSATION**

- 6.1 For services provided by IHC under this Agreement, payment shall be made as follows:
- (a) In the event Sponsor has elected in **Exhibit C** to remit payment of Administrative Service Fees to IHC using the "Invoice" payment method, IHC shall invoice Sponsor on the 15<sup>th</sup> of the month prior to the month during which the administrative services will be provided by IHC, for the applicable Administrative Service Fees set forth in **Exhibit C**, with payment due and payable on the 1<sup>st</sup> day of that following month. If

payment is not received by IHC within fifteen (15) days of the due date, interest shall be due and payable at a rate of 1.5% per month.

- (b) In the event Sponsor has elected in **Exhibit C** to remit payment of Administrative Service Fees to IHC using the "Direct Bill" payment method, Sponsor agrees to allow IHC to withdraw the Administrative Service Fees from its Claims Account based on the monthly employee census, and provide appropriate documentation, on or about the first of each month for that month's administrative services. In the event that Sponsor delays funding of the Claims Account beyond the 15th of the month, a 1.5% late charge per month will be assessed on the Administrative Service Fees.
- 6.2 For any leased networks, or where IHC acts as an intermediary only, the administrative charges are determined by a "third party" (i.e., leased PPO networks, prescription drug companies, etc.) and are not under IHC's control. If any leased networks are accessed on behalf of Sponsor, IHC will use its best efforts to obtain, negotiate, or otherwise arrange service price reductions or "preferred provider groups" on Sponsors behalf. Any discounts offered by leased networks are not guaranteed. Sponsor will be billed an access fee or a percentage of savings fee as applicable. Fees or administrative charges are determined by the leased networks and are subject to change at any time.
- 6.3 With respect to administrative services provided to Sponsor's medical plan only, in the event Sponsor utilizes an external Pharmacy Benefits Manager ("PBM"), IHC may be required to provide eligibility information to the PBM on behalf of Sponsor, issue enrollee ID cards containing information about the prescription drug program, assist on coverage issues, and/or handle Sponsor billing. In the event IHC does not charge for this additional service, Sponsor consents that IHC is permitted to receive from the PBM a fee, which may be in the form of commission payments, rebates, administrative fees or otherwise, for such services provided to the Plan by IHC. IHC shall disclose any fees it is required to by law.
- 6.4 Sponsor agrees to pay the following charges:
- (a) Charges associated with cost containment services including, but not limited to: (i) any cost or bill review; and (ii) fees for negotiated provider discounts received from providers other than primary Network Providers.
  - (b) When IHC provides or arranges for the services indicated in Section 6.4 (a) above, Sponsor agrees to pay IHC 35% of the net Plan savings generated.

- (c) IHC may process non claims-based charges through the periodic claims payment (check write) process (including, but not limited to, HCRA surcharges, access fees, case management fees).
- 6.5 IHC may propose changes to the Administrative Service Fee charged to the Sponsor by notifying Sponsor in writing of such proposed change at least thirty (30) days prior to the end of the current term of the Agreement. If the parties are unable to agree on a change to the Administrative Service Fee, IHC may terminate this Agreement by giving at least thirty (30) days prior written notice to the Sponsor. IHC will continue to administer the Plan under the prior agreed upon Administrative Service Fee during the transition period.

## 7. TERM AND TERMINATION

- 7.1 This Agreement shall have an initial term from July 1, 2016 through June 30, 2019. Renewal is automatic for subsequent one (1) year terms (or a longer renewal term as referenced in **Exhibit C**) unless Sponsor notifies IHC of its intent not to renew the Agreement ninety (90) days prior to the expiration of the current term.
- 7.2 If Sponsor fails to make any payment to IHC or to a Network Provider when such payment is due under this Agreement, or to meet its obligations to pay amounts into the Claims Account as required by Section 5.3, IHC may terminate this Agreement effective immediately upon sending written notice to the Sponsor.
- 7.3 Either party may terminate this Agreement as specified below if the other party has breached a material provision of this Agreement. In the event of a material breach, the breaching party must be notified of the breach and that the other party is exercising its right to terminate in sixty (60) days. Upon receipt of such notification, the breaching party shall have thirty (30) days within which to cure the breach or diligently pursue a cure of the breach which will take more than thirty (30) days. In the event that the breach has been cured, or a cure has been commenced and diligently pursued prior to the expiration of the 30th day, then the Agreement shall not be terminated and the parties shall continue in accordance with its terms and conditions. In the event that the breach has not been cured, this Agreement shall terminate.
- 7.4 The Agreement may be terminated effective immediately at any time upon written notice thereof given by one party to the other in the event the following occurs: any party becomes insolvent; is adjudicated bankrupt; its business comes into possession or control, even temporarily, of any trustee in bankruptcy; a receiver is appointed for it; or it makes a general assignment for the benefit of creditors.

If any of these events occurs, no interest in this Agreement shall be deemed an asset or liability of such insolvent party, nor shall any interest in this Agreement pass by the operation of law without the consent of the parties.

- 7.5 IHC may terminate this Agreement effective immediately upon written notice to Sponsor in the event Sponsor ceases to be actively engaged in business, if the Plan is terminated or if Sponsor or the Plan are in substantial non-compliance with ERISA or other applicable laws, rules, or regulations.
- 7.6 In the event of termination of this Agreement for any reason set forth in this Article 7, IHC shall provide reasonable cooperation to the person or entity selected by Sponsor to assume administration of the Plan, but shall have no obligation to provide any services under this Agreement after the effective date of termination including claims incurred, but not received prior to the effective date of termination. Notwithstanding the above, should Sponsor request IHC to render services and IHC agree to provide services beyond the termination date, IHC shall be paid the charges specified in **Exhibit C**.
- 7.7 The parties agree that in the event of termination of this Agreement, neither party shall make any statement to the media unless such statement has been mutually agreed to.

## 8. **DISPUTES**

Any dispute arising hereunder except a dispute relating to Sponsor's failure to make payments to IHC or Network Providers when due, shall be resolved pursuant to arbitration under the auspices of the American Health Lawyers Association, utilizing one arbitrator who shall be chosen from a list of arbitrators maintained by the AHLA and is mutually acceptable to both parties. Arbitration shall commence within thirty (30) days of notice and shall be heard in the County of Erie, New York. A decision of the arbitrators shall be final and may be reduced to judgment and filed and enforced in any Court or appropriate jurisdiction. The parties agree that the arbitrators shall not have the authority to award punitive damages.

## 9. **DISCLAIMER**

EXCEPT AND ONLY AS INDICATED OTHERWISE IN THIS AGREEMENT, THE SPONSOR ACKNOWLEDGES AND AGREES THAT IHC IS NOT TO BE DEEMED A FIDUCIARY, AND ACTS ONLY AS A PROVIDER OF SPECIFIED SERVICES WITH RESPECT TO SPONSOR'S WELFARE BENEFIT PLAN(S).

IHC DOES NOT INSURE OR OTHERWISE PROVIDE ANY GUARANTEES WITH RESPECT TO THE OPERATION OF THE PLAN.

THE SERVICES TO BE PERFORMED BY IHC SHALL BE MINISTERIAL IN NATURE. EXCEPT AS OTHERWISE PROVIDED IN THIS AGREEMENT, IHC WILL HAVE NO FINAL DISCRETIONARY AUTHORITY OR CONTROL OVER THE MANAGEMENT OR DISPOSITION OF PLAN ASSETS, AND NO AUTHORITY OVER, OR RESPONSIBILITY FOR, PLAN ADMINISTRATION EXCEPT FOR PERFORMANCE OF THOSE SERVICES DESCRIBED IN THIS AGREEMENT.

IHC IS NEITHER THE SPONSOR OF THE PLAN NOR PLAN ADMINISTRATOR, AND IS NOT A PROVIDER OF HEALTH SERVICES TO PARTICIPANTS. THEREFORE, IHC WILL HAVE NO RESPONSIBILITY FOR: (A) FUNDING OF PLAN BENEFITS; (B) ANY INSURANCE COVERAGE RELATING TO THE PLAN, PARTICIPANTS OR SPONSOR; (C) PLAN DESIGN, INCLUDING ADOPTION OF ANY AMENDMENTS TO THE PLAN DOCUMENT OR SUMMARY PLAN DESCRIPTION; OR (D) THE NATURE OR QUALITY OF PROFESSIONAL HEALTH SERVICES RENDERED TO PARTICIPANTS.

## **10. MISCELLANEOUS**

- 10.1 This Agreement constitutes the entire agreement between the parties and supersedes all other agreements between the parties hereto, and no representations or agreements, oral or otherwise, between the parties not embodied herein or attached hereto shall be of any force and effect. Any additions or amendments to this Agreement subsequent hereto shall be of no force and effect unless in writing and signed by the parties.
- 10.2 None of the provisions of this Agreement are intended to create nor shall be deemed or construed to create any relationship between Sponsor and IHC other than that of independent entities contracting with each other hereunder solely for the purpose of effecting provisions of this Agreement. Neither of the parties, nor any of their respective employees or designated agents, shall be construed to be the agent, employee or representative of the other.
- 10.3 Neither party may assign this Agreement without the written consent of the other party, which shall not be unreasonably withheld, except that a party may assign this Agreement to: (i) a subsidiary, parent, affiliate, division, or corporation controlled by majority control of the assigning party; (ii) a successor corporation related to the assigning party by merger, consolidation, non-bankruptcy reorganization, or governmental action, or (iii) a purchaser of substantially all of the assigning party's assets. Any attempt to assign this Agreement in contravention of the preceding sentence is void. Notwithstanding the foregoing,

IHC may subcontract with its parent, affiliates and subsidiaries to perform services for Sponsor under this Agreement.

- 10.4 Sponsor acknowledges that IHC will not be deemed to be providing legal or tax advice to Sponsor as a result of the duties undertaken pursuant to this Agreement.
- 10.5 Except as limited further in this Section, each party agrees to indemnify, defend, and hold the other party and its directors, employees, officers, attorneys, agents and subcontractors harmless from and against all actions, suits, claims, losses, liabilities, and demands whatsoever, including costs, expenses, and attorneys' fees (including fees relating to the enforcement of this indemnification) (collectively "Claims") to the extent such Claims arise out of the intentional conduct, willful misconduct, or fraud of the indemnifying party under this Agreement or applicable law.

Sponsor agrees that any liability incurred by IHC under this Agreement shall not exceed the amount of the event or occurrence upon which such action, claims, or demands are based, and in no event to exceed one month of Administrative Service Fees paid to IHC.

Sponsor further agrees that in no event shall IHC be liable to Sponsor or any eligible participant or their beneficiaries, representatives, successors or assigns, for any indirect, incidental, special, consequential, compensatory or punitive damages or damages for lost profits, arising under or in connection with this Agreement.

This Section 10.5, and all other indemnification provisions, shall survive termination of this Agreement.

- 10.6 The Sponsor and IHC reserve the right to control the use of their respective (corporate) names and any of their respective symbols, trademarks and service marks, presently existing or subsequently established. Neither party will issue any press release or other third party communication relative to this Agreement without the prior written consent of the other party. Neither party will use the name of the other party nor of the other party's employees in any advertising or sales promotional material or in any other way not required by law or regulation without the prior written consent of the other party.
- 10.7 The waiver by either party of a breach or violation of any provision of this Agreement shall not operate as or be construed to be a waiver of any subsequent breach or violation thereof.
- 10.8 In the event any provision hereof is declared null and void by a Court of law, the remaining provisions of this Agreement shall remain in full force and effect.

10.9 Any notice required to be given hereunder shall be sent to the parties at their respective addresses as set forth below.

Independent Health Corporation  
511 Farber Lakes Drive  
Williamsville, New York 14221  
Attn: General Counsel

Ken-Ton Union Free School District  
1500 Colvin Boulevard  
Buffalo, NY 14226  
Attn:

10.10 Each party agrees that it will comply with all applicable laws, rules and regulations pertaining to its business operations ("Applicable Laws"). Failure by either party to comply with Applicable Laws may be considered a material breach of this Agreement.

10.11 All headings are included for convenience of reference only and are not of substantive effect.

**IN WITNESS WHEREOF**, the undersigned have executed this Agreement on the date set forth below, to be effective as July 1, 2016.

**INDEPENDENT HEALTH CORPORATION**

**KEN-TON UNION FREE SCHOOL DISTRICT**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title \_\_\_\_\_

Title \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_



**EXHIBIT A**  
**SUMMARY PLAN DESCRIPTION**

## EXHIBIT B

### INDEPENDENT HEALTH CORPORATION ADMINISTRATIVE SERVICES

1. Implementation. For initial implementation, IHC will: (a) prepare and provide access to claim forms, enrollment forms and benefit summaries necessary for it to provide services under this Agreement for up to 110% of the number of eligible employees under the Plan; and (b) prepare and print ID cards. Any additional amounts of documents, forms or ID cards shall be quoted upon request and charged to Sponsor. Ongoing annual enrollment/renewal costs will be charged as set forth in **Exhibit C**.

Sponsor shall provide to IHC its preferences for the style, look, and content of the ID cards. If any changes or revisions are required for these forms, ID cards or documents, or if Sponsor requests customized forms, ID cards or documents, Sponsor shall bear the cost of preparing and printing such forms, ID cards or documents.

2. Provider Network Access. IHC has created or has access to a list of Network Providers. A current list is available to Participants on IHC's web site. IHC makes no representations or promises regarding the continued availability to the Plan or Participants of a Network Provider. Deletions or additions to the list of Network Providers may be made in the sole discretion of IHC.

IHC shall provide such services as are necessary in its judgment to administer and maintain the Provider network, including providing information to the Network Providers regarding the terms of the Plan, such as amounts of any co-payments or deductibles, and providing identification of Participants to Network Providers.

3. Claims Processing.

- 3.1 IHC shall perform the adjudication and payment of claims for Health Services under the Plan. IHC shall require the Network Providers to submit claims for Health Services directly to IHC. IHC shall provide access to standard forms for the submission of claims by Participants for Health Services received from providers who are not in the network. Claims shall be paid in accordance with the terms and conditions of the Plan and the terms of this Agreement. Sponsor has the final, binding and exclusive discretionary authority with regard to the payment of any claim.

- 3.2 IHC shall perform the following functions in connection with the adjudication of claims:

- (a) Establish claims processing criteria including timeliness of submission and payment of claims.

- (b) Establish claims review criteria (edit lists).
  - (c) Produce and distribute an Explanation of Benefits in accordance with Plan set-up.
  - (d) Prepare and issue periodic reports.
  - (e) Establish a toll free 800 number good in North America for Participants and Providers.
- 3.3 IHC shall conduct coordination of benefits consistent with the terms of the Plan. Sponsor shall obtain from Participants and provide IHC with any information in its possession regarding the existence of other coverage for a Participant. If another plan or carrier is primary for a Health Service, IHC shall direct Providers to first seek payment from that plan or carrier.
- 3.4 IHC may, but shall not be obligated to, assert, or may arrange for a third party to assert, any subrogation rights of Sponsor in regard to payments for Health Services. Sponsor shall cooperate with any such subrogation efforts. Sponsor shall receive any net subrogation recoveries, after deduction of the costs of recovery, including any costs IHC or a third party has incurred or amounts they are entitled to receive in regard to such subrogation efforts. However, IHC shall have no affirmative duty to pursue, or to contract with any third party to pursue, such rights of subrogation, and Sponsor may independently pursue such rights after 60 days written notice to IHC of its intent to do so on its own or through a third party. Subrogation shall be administered at the rates set forth in **Exhibit C**.
4. Online Enrollment.
- 4.1 In the event the parties utilize online enrollment of Participants, the following guidelines shall apply:
- (a) It is the sole responsibility of the Sponsor to input enrollment data. Sponsor warrants and represents that such data shall be accurate, and shall hold IHC harmless for any claims by Participants relating to the input of any enrollment information.
  - (b) Upon request, Sponsor shall forward to IHC within forty-eight (48) hours a hard copy or electronic copy of the Participant's enrollment application, or any such form necessary to process the claim.
5. On Site Meetings. Unless specified in **Exhibit C**, if Sponsor requires IHC's or any subcontractor's attendance at on-site meetings, or if any materials are requested by

Sponsor, the charges for such attendance at meetings or materials shall be quoted upon request.

6. Reports. IHC shall provide Sponsor with a standard monthly, quarterly and annual reporting package.
7. Audit. IHC shall perform random and large claim audit in accordance with its standard practices. A copy of audit procedures will be made available to the Sponsor upon request.
8. Service. IHC shall provide Sponsor with a dedicated Account Representative.
9. Standard Medical Management (administration of medical plan only). IHC shall establish utilization review/quality assurance criteria for review of claims. Individual criteria for specific procedures and protocols will be made available to the Sponsor upon request.

IHC shall provide the following medical management services in accordance with IHC's standard practice:

- Pre-certification or Preauthorization
- Medical necessity review

IHC shall provide the following medical management services in accordance with IHC's standard practice:

- Case Management (Level I)
- Quality Management
- Utilization Management

10. HCRA Administration (administration of medical plan only). As required under the 1996 and 2000 New York Health Care Reform Acts ("HCRA"), IHC shall calculate and forward HCRA surcharge payments to New York State on Sponsor's behalf.
11. Medical Help Line (administration of medical plan only). IHC shall provide access to a 24-hour medical help line for persons covered under the Plan, if elected, at the rate set forth in **Exhibit C**.
12. HIPAA Certificates (administration of medical plan only). IHC shall provide HIPAA Certificates of Creditable Coverage upon termination of coverage or upon request.
13. Claim Fiduciary. IHC shall provide second level appeals of adverse benefits determinations under the Plan at the rate set forth in **Exhibit C**, if elected.
14. Management of External Appeals. IHC shall manage external appeals at the rate set forth

in **Exhibit C**, if elected. Rates charged for the external review by the independent review organization will be passed through to the Sponsor.

15. COBRA Administration. If elected, at the rate set forth in **Exhibit C**, IHC shall provide COBRA administrative services to Sponsor as set forth below:

15.1 COBRA administrative services will include:

- (a) Initial takeover of current COBRA Beneficiaries.
- (b) Creation and mailing of COBRA notice and election form to Qualified Beneficiaries upon receiving from Sponsor notice of a Qualifying Event.
- (c) Enrollment in COBRA benefits of Qualified Beneficiaries' who elect COBRA.
- (d) Provision of toll-free "Help Line" and support regarding eligibility, enrollment and billing to Qualified Beneficiaries and COBRA Beneficiaries.
- (e) Notification to COBRA Beneficiaries of the termination of COBRA.
- (f) Notification to COBRA Beneficiaries of premium charges (as provided by Sponsor).
- (g) Transmission of premiums received from COBRA Beneficiaries to the Sponsor.
- (h) Keeping track of Qualified Beneficiaries' enrollment and disenrollment.
- (i) Reports to Sponsor regarding COBRA payments by Qualified Beneficiaries.

15.2 Unless otherwise notified by the Sponsor in writing, IHC will be entitled to conclusively presume that a Qualified Beneficiary's eligibility for continuation of coverage under the Plan has not terminated for any reason.

15.3 Based upon premium information provided by Sponsor, IHC will determine the applicable COBRA premium for each Qualified Beneficiary and may include in that premium amount an administrative fee as permitted by law.

16. Wellness and Disease Management. IHC shall provide access to online and/or onsite wellness and disease management programs, if elected, at the rate(s) set forth in **Exhibit C**.

17. Optional Medical Management. IHC shall provide access to additional utilization management, if elected, at the rate set forth in **Exhibit C**.
  
18. Optional Transitional Reinsurance Fee Administration. If elected, at the rate set forth in **Exhibit C**, IHC shall manage the administration of the Transitional Reinsurance Fee contributions to the Centers for Medicare and Medicaid Services (CMS) on Sponsor's behalf, as required by the Reinsurance and Risk Adjustment provision of the Patient Protection and Affordable Care Act (PPACA), and subsequent regulations and rulings.

IHC shall provide the following services in accordance with IHC's standard practice:

- complete the needed registration on the federal website;
- calculate the number of covered lives under the plan;
- submit the necessary forms and reporting via the federal website; and
- make payment on behalf of the Plan via the federal website.
  - The payment will be in accordance with the installment selection determined by the plan.

The payment will be made using plan assets as it is an expense of the plan as determined by the Internal Revenue Service (IRS).

Following are the fee amounts required per the Health and Human Services (HHS) Notice of Benefit and Payment Parameters for 2016:

- The 2015 fee of \$44.00 per covered life is due to be paid in 2016. The fee can be paid all at once in January 2016, or in two installments: \$33.00 in January 2016 and \$11.00 in the fourth quarter of 2016.
- The 2016 fee of \$27 per covered life is due to be paid in 2017. The fee can be paid all at once in January 2017, or in two installments: \$21.60 in January 2017 and \$5.40 in the fourth quarter of 2017.

## EXHIBIT C

### ADMINISTRATIVE SERVICE FEE SCHEDULE FOR SERVICES

Sponsor shall pay the following Administrative Service Fees for the administrative services provided by IHC under this Agreement:

1. Sponsor has elected to make payment of the Administrative Service Fees under this Agreement using the Direct Bill payment method as more particularly described in Section 6.1 of the Agreement.

For Health Services administration, Sponsor agrees to pay the following fees Per Employee Per Month ("PEPM"):

<b>ADMINISTRATION</b>	July 1, 2016 through June 30, 2017	July 1, 2017 through June 30, 2018	July 1, 2018 through June 30, 2019
<p>Medical Claims Administration:</p> <ul style="list-style-type: none"> <li>• Adjudication</li> <li>• Coordination of benefits administration</li> <li>• Issuance of Explanation of Benefits (EOBs)</li> <li>• Check printing</li> <li>• First level appeal management</li> <li>• Large claim and random claims audit</li> <li>• Standard reporting package</li> </ul> <p>Network Access:</p> <ul style="list-style-type: none"> <li>• Access to Independent Health's proprietary networks for members in the eight counties of Western New York</li> </ul> <p>Eligibility Management Services:</p> <ul style="list-style-type: none"> <li>• Entry (electronic or paper)</li> <li>• Eligibility maintenance</li> <li>• Initial and maintenance ID Cards upon member enrollment (one card per member to a maximum of four per family)</li> <li>• New member kits</li> <li>• Issuance of HIPAA certificates</li> </ul>	\$36.80	\$37.90	\$38.65

<p>Stop Loss:</p> <ul style="list-style-type: none"> <li>• Reporting</li> </ul> <p>HCRA Administration:</p> <ul style="list-style-type: none"> <li>• Monthly reporting and submission of New York State Surcharges</li> </ul> <p>Medical Management Services:</p> <ul style="list-style-type: none"> <li>• Provider Preauthorization (consistent with Independent Health established policy)</li> <li>• Member Precertification (if applicable based on benefit design)</li> <li>• High-Tech Radiology Precertification</li> <li>• 24-Hour Medical Help Line</li> <li>• Level I Case Management</li> <li>• Wellness Discounts (cost of programs not included, pass-through to client)</li> </ul> <p>Account and Member Services:</p> <ul style="list-style-type: none"> <li>• Designated account manager and account service representative</li> <li>• Toll-Free 800 number available Monday – Friday, 8 a.m. – 8 p.m. EST</li> <li>• Quarterly employer meetings</li> <li>• Annual plan performance review, including clinical and reporting analysis</li> <li>• Premium equivalent development services</li> </ul>			
Claims Fiduciary- Second Level Appeals	\$1.00	\$1.00	\$1.00
Vision Administration-EyeMed Vision	\$2.00	\$2.00	\$2.00
Premier Linx	\$1.30	\$1.30	\$1.30
COBRA Administration	\$1.50	\$1.50	\$1.50
<b>TOTAL</b>	\$42.60	\$43.70	\$44.45
First Choice Fee	+\$2.50	+\$2.50	+\$2.50



The following additional services provided by IHC are exclusive of the above quoted Administrative Service Fee and will be charged in accordance with the fees listed below:

Cost Containment Services	35% of Savings
Claim Audits	35% of savings
Subrogation	35% of Savings
Wrap Network Access	35% of Savings
External Review Services	Fee Pass Through
Level II Case Management	\$175.00 per hour
Printing for member materials	Cost +10%
Custom Programming	\$175.00 per hour
Global ID card reissue	\$1.75 per card carrier
Healthy Benefits Card Fee	\$1.35 per card
Quality Program Payments*	Built into fee schedule and billed through claims.
Summary Plan Description Development	\$2,000.00 each document
Summary Plan Description Printing & Distribution	Cost + 10%
Summary Material Modification (Amendment) Development	\$250.00 per amendment
Summary of Benefits and Coverage**	\$500.00 per document
Summary of Benefits and coverage Amendments or Changes	\$50.00 (10 or fewer) \$75.00 (11-20 changes) \$100.00 (20 or more changes)

\*Client will be notified if alternative payment methodologies are negotiated in the future.

\*\*Printing and distribution will be the responsibility of the Sponsor.

Upon renewal of this Agreement, the Administrative Service Fees set forth in the "Administrative Renewal Addendum" executed by the Sponsor shall replace this Paragraph 1 of **Exhibit C** and be incorporated by reference into this Agreement without the need for an amendment to the Agreement.

2. A start up fee of \$1,500.00 plus \$5.00 per employee. As a courtesy to Ken-Ton Union Free School District this will be waived.
3. Any additional services not listed in this **Exhibit C**, as agreed upon by both parties and performed by IHC shall be billed on an hourly basis in accordance with the fees listed below:

<u>Employee</u>	<u>Fee Per Hour</u>
Executive Officers	\$200.00
Directors	\$125.00
Staff	\$ 75.00
<u>Service</u>	<u>Fee Per Hour</u>
Ad Hoc or Custom Reporting	\$175
Custom Programming	\$175

Payments for additional services rendered are to be made in accordance with the procedure for payment of the Administrative Service Fee pursuant to Paragraph 1 of this **Exhibit C**, and Section 6.1 of this Agreement.

4. Run-Out: If requested in writing by Sponsor, IHC will continue to administer claims payment for dates of service incurred prior to the termination date of the Agreement for three (3) months after the termination date of the Agreement at the current Administrative Service Fee as set forth in Paragraph 1 (or the Administrative Renewal Addendum) above. In the event IHC continues to provide administrative services beyond the third month, the fee for such continued administrative services shall be fifty percent (50%) of the current Administrative Service Fee noted above for the fourth, fifth and sixth month beyond the termination date of this Agreement, then fifteen dollars (\$15) per claim thereafter.
5. Preparation of SPD. IHC may prepare a draft SPD for Sponsor at an additional fee. Such fee shall be quoted upon request, unless otherwise specified above.
6. Amendments to SPD. IHC may prepare draft amendments to the SPD for Sponsor, of required or discretionary amendments, at an additional fee. Such fee shall be quoted upon request.

## EXHIBIT D

### BANKING ARRANGEMENT

Health Service claims are submitted by Participants or Providers to IHC for Payment.

1. IHC processes the claims and produces a weekly check write and check register. The Sponsor maintains a claims checking account ("Claims Account") at the bank selected by Sponsor for the payment of Health Service claims. The Sponsor performs all bank reconciliations on this account and pays all bank fees.
2. IHC will provide 2 business days' notice to the Sponsor by fax or e-mail of the amounts necessary for claims payments.
3. Within 2 business days of notification from IHC, the Sponsor will transfer funds to the Sponsor's Claims Account.
4. Two business days after notifying Sponsor of the amount necessary for claims payment, IHC will release the claim payment checks to the Providers and/or Participants on the check issue date.
5. IHC will forward copies of the check register to the Sponsor at that time.
6. Monthly, IHC will forward any voids and refunds received during that month to the Sponsor for the Sponsor to deposit either in the Claims Account or an account of their choosing.
7. Administrative Service Fees are invoiced monthly by IHC, or deducted from the Claims Account, as elected by the Sponsor in **Exhibit C**.

**EXHIBIT E**  
**STOP-LOSS INSURANCE**  
**(if applicable)**