

**BUSINESS ASSOCIATE AGREEMENT
FOR HIPAA COMPLIANCE**

This Business Associate Agreement for HIPAA Compliance ("Agreement") is made and entered between CITY OF GLENDALE, an Arizona municipal corporation ("City" or "Covered Entity"), and Educators Benefit Consultants, LLC ("EBC" or "Business Associate"), a third-party administration company registered with the Arizona Department of Insurance as of 12th day of February, 2013 ("Effective Date").

RECITALS

- A. EBC is the Administrator for the City-sponsored retiree health savings account plan; and
- B. EBC regularly uses and comes into contact with Protected Health Information in its performance of contracted services for the City; and
- C. Both City and EBC are committed to complying with the Standards for Privacy of Individually Identifiable Health Information (the "Privacy Regulation") and other regulations issued under 45 C.F.R. parts 142 and 160-164 pursuant to the Health Insurance Portability and Accountability Act of 1996 (HIPAA).

AGREEMENT

In consideration of the Recitals, which are confirmed as true and correct and incorporated by this reference, the mutual promises and covenants contained in this Agreement, and other good and valuable consideration, City and EBC agree as follows:

1. Permitted Uses and Disclosures.

- 1.1 *Services.* Pursuant to the Administrative Services Agreement for City of Glendale Retiree Health Savings Account between the City ("Covered Entity) and EBC ("Business Associate") ("Services Agreement"), Business Associate provides services ("Services") for Covered Entity that involve the use and disclosure of Protected Health Information (PHI). Except as otherwise specified herein, Business Associate may make any and all uses of PHI necessary to perform its obligations under the Service Agreement. All other uses not authorized by this Agreement are prohibited.
- 1.2 *Business Activities of Business Associate.* Unless otherwise limited herein, Business Associate may disclose the PHI in its possession to third parties for the purpose of its proper management and administration or to fulfill any present or future legal responsibilities of Business Associate, provided that Business Associate warrants to Covered Entity, in writing, that the disclosures are in compliance with HIPAA and any applicable state laws or regulations governing health information.
- 1.3 *Additional Activities of Business Associate.* Business Associate may:
 - a) Aggregate the PHI in its possession with the PHI of other covered entities that Business Associate has in its possession through its capacity as a business associate with other covered entities provided that the purpose of such aggregation is to provide Covered Entity with data analyses relating to the RHSA Plan Operations of Covered Entity. Under no circumstances may Business Associate disclose PHI of one Covered Entity to another covered Entity absent the express, written authorization of Covered Entity.
 - b) De-identify all PHI provided that the de-identification conforms to the requirements of HIPAA and further provided that Covered Entity maintains the documentation required by HIPAA.

2. Use and Disclosure of Protected Health Information (PHI)

2.1 *Responsibilities of Business Associate.* With regard to its use and/or disclosure of PHI, Business Associate hereby agrees to do the following:

- a) Use and/or disclose the PHI only as required by this Agreement or as otherwise permitted or required by law.
- b) Report to the designated Privacy Officer of Covered Entity, in writing, any use and/or disclosure of the PHI that is not permitted or required by this Agreement of which Business Associate becomes aware of within 10 days of Business Associate's discovery of such unauthorized use and/or disclosure.
- c) Establish procedures for mitigating, to the greatest extent possible, any effects from any improper use and/or disclosure of PHI that Business Associate reports to Covered Entity or otherwise becomes known.
- d) Use commercially reasonable efforts to maintain the security of the PHI and to prevent unauthorized use and/or disclosure of such PHI.
- e) Require all if its subcontractors and agents that receive, use, or have access to PHI under this Agreement to agree, in writing, to adhere to the same restrictions and conditions on the use and/or disclosure of PHI that apply to Business Associate pursuant to this Agreement.
- f) Make available all records, books, agreements, policies and procedures relating to the use and/or disclosure of PHI to the Secretary of HHS for purposes of determining Covered Entity's compliance with the Privacy Regulation, subject to attorney-client and other applicable legal privileges.
- g) Upon prior written request, make available during normal business hours at Business Associate's offices all records, books, agreements, policies and procedures relating to the use and/or disclosure of PHI to Covered Entity within 15 days for purposes of enabling Covered Entity to determine Business Associate's compliance with the terms of this Agreement.
- h) Within 45 days of receiving a written request from Covered Entity, provide to Covered Entity such information as is requested by Covered Entity to permit Covered Entity to determine compliance with the terms of this Agreement or respond to a request by an individual for an account of the disclosures of the individual's PHI in accordance with HIPAA.
- i) Subject to Section 4.5 below, return to Covered Entity or destroy, within 15 days of the termination of this Agreement, the PHI in its possession and retain no copies (which for purposes of this Agreement shall include destroying all backup tapes).
- j) Disclose to its subcontractors, agents or other third parties, and request from Covered Entity, only the minimum PHI necessary to perform or fulfill a specific function required or permitted hereunder.

2.2 *Responsibilities of Covered Entity.* With regard to the use and/or disclosure of PHI by Business Associate, Covered Entity hereby agrees to do the following:

- a) Inform Business Associate of any changes in the form of notice of privacy practices (the "Notice") that Covered Entity provides to individuals pursuant to HIPAA, and provide the Business Associate a copy of the Notice currently in use.

- b) Inform Business Associate of any changes in, or withdrawal of, the consent or authorization provided to Covered Entity by individuals pursuant to HIPAA.
- c) Notify Business Associate, in writing and in a timely manner, of any arrangements permitted or required of Covered Entity under HIPAA that may impact in any manner the use/or disclosure of PHI by Business Associate under this Agreement.
- d) Allow Business Associate to make any use and/or disclosure of PHI permitted under HIPAA, except use or disclosure for research is not permitted without prior approval by Covered Entity.

3. Handling of Designated Record Sets

3.1 *Responsibilities of Business Associate.* In the event that the parties mutually agree in writing that the PHI constitutes a Designated Record Set (as defined under HIPAA), Business Associate hereby agrees to do the following:

- a) At the request of, and in the time and manner designated by Covered Entity, provide access to the PHI to Covered Entity or the individual to whom such PHI relates or his or her authorized representative in order to meet a request by such individual under HIPAA.
- b) At the request of, and in the time and manner designated by Covered Entity, make any amendment(s) to the PHI that Covered Entity directs pursuant to HIPAA. Provided, however, that Covered Entity makes the determination that the amendment(s) are necessary because the PHI that is the subject of the amendment(s) has been, or could foreseeably be, relied upon by Business Associate or others to the detriment of the individual who is the subject of the PHI that is amended.

3.2 *Responsibilities of Covered Entity.* In the event that the parties mutually agree in writing that the PHI constitutes a Designated Record Set (as defined under HIPAA), Covered Entity hereby agrees to do the following:

- a) Notify Business Associate, in writing, of any PHI that Covered Entity seeks to make available to an individual pursuant to HIPAA and the time, manner and form in which Business Associate shall provide such access.
- b) Notify Business Associate, in writing of any amendment(s) to the PHI in the possession of Business Associate that Business Associate shall make and inform Business Associate of the time, form and manner in which such amendment(s) shall be made.

4. Additional Use, Disclosure, and HIPAA Obligations

Additional requirements for the use and disclosure of PHI were imposed by the Health Information Technology for Economic and Clinical Health Act of 2009 ("HITECH Act"). The parties agree to implement these additional requirements and the obligations set forth and incorporated herein by Exhibit A, Business Associate HIPAA HITECH Obligations. To the extent the obligations of Business Associate or the permitted uses and disclosures set forth in Exhibit A conflict with those set forth in the body of this Agreement, the requirements and obligations set forth in Exhibit A take precedence and are the obligation of the parties under this Agreement.

5. Term and Termination

5.1 *Term.* This Agreement shall become effective on the date set forth above and shall continue in effect until all obligations of the parties have been met, unless terminated as provided in this Section 4. In addition, certain provisions and requirements of this Agreement shall survive its expiration or other termination in accordance with this Agreement.

- 5.2 *Termination by Covered Entity.* As provided under HIPAA, Covered Entity may immediately terminate this Agreement and any related agreements if Covered Entity makes the determination that Business Associate has breached a material term of this Agreement. Alternatively, Covered Entity may choose to: (i) provide Business Associate with 10 days written notice of the existence of an alleged material breach; and (ii) afford Business Associate an opportunity to cure said alleged material breach upon mutually agreeable terms. Nonetheless, in the event that mutually agreeable terms cannot be achieved within 15 days, Business Associate must cure said breach to the satisfaction of Covered Entity within 15 days. Failure to cure in the manner set forth in this paragraph is grounds for the immediate termination of this Agreement.
- 5.3 *Termination by Business Associate.* If Business Associate makes the determination that a material condition of performance has changed under the Services Agreement or this Agreement, or that Covered Entity has breached a material term of this Agreement, Business Associate may provide (30) days notice of its intention to terminate this Agreement. Business Associate agrees, however, to cooperate with Covered Entity to find a mutually satisfactory resolution to the matter prior to terminating and further agrees that, notwithstanding this provision, it shall not terminate this Agreement so long as the Services Agreement is in effect.
- 5.4 *Automatic Termination.* This Agreement will automatically terminate without any further action of the Parties upon the termination or expiration of the Services Agreement between the parties.
- 5.5 *Effect of Termination.* Upon the event of termination pursuant to this Section 4, Business Associate agrees to return or destroy all PHI pursuant to HIPAA, if it is feasible to do so. Prior to doing so, Business Associate further agrees to recover any PHI in the possession of its subcontractors or agents.

If it is not feasible for Business Associate to return or destroy said PHI, Business Associate will notify Covered Entity in writing. Said notification shall include: (i) identification of PHI that is not destroyable or returnable; (ii) a statement that Business Associate has determined that it is not feasible to return or destroy the PHI in its possession, and (iii) the specific reasons for such determination. Business Associate further agrees to extend any and all protections, limitations and restrictions contained in this Agreement to the PHI retained by Business Associate and to use and/or disclose any of the PHI retained after termination of this Agreement only upon express written authorization by Covered Entity.

If it is not feasible for Business Associate to obtain, from a subcontractor or agent any PHI in the possession of the subcontractor or agent, Business Associate must provide a written explanation to Covered Entity and require the subcontractors and agents to agree to extend any and all protections, limitations and restrictions contained in this Agreement to the PHI retained by the subcontractor and/or agent and to use and/or disclosure of any PHI retained after the termination of this Agreement only upon express written authorization by Covered Entity.

6. **Confidentiality.** As used in this Agreement, the term "Confidential Information" shall mean any and all information of either party in any media, tangible or intangible, that is not generally known or readily ascertainable, including but not limited to: (i) any and all technical information, know-how, formulae, processes, inventions, and product or service protocols; (ii) any and all business information, such as accounting, financial, sales, and marketing information; (iii) any and all employee and client information. Notwithstanding the above, Confidential Information shall not include information that (a) was generally known or available to the public at the time of disclosure, or which may later become generally known or available to the public, except where such knowledge or availability is the result of an unauthorized disclosure by either party; (b) has been rightfully received by either party from a third party without confidential limitations; (c) has been independently developed by either party or any agents having no access to the Confidential Information of the other party; (d) was available to either party prior to disclosure by the

other party, as evidenced by the receiving or third party's files and records in existence prior to such disclosure. Both parties shall take all steps reasonably necessary to maintain the other party's Confidential Information in confidence and shall not use, publish, disclose or otherwise make available, directly or indirectly, such Confidential Information to any third party without the prior written consent of the other party. Each party's obligations with respect to the other party's Confidential Information also extends to any third party's proprietary or Confidential Information disclosed in the course of providing services hereunder. Each party acknowledges and agrees that the other party would be irreparably harmed if any Confidential Information were to be disclosed to third parties in violation of this Agreement, or if any use were to be made of the Confidential Information other than that specified in this Agreement, and further agrees that the other party shall have the right to seek and obtain injunctive relief upon any violation or threatened violation of the terms of this Agreement, in addition to all other rights and remedies available to the other party at law or in equity. Notwithstanding any other provisions, only information expressly identified as "Confidential Information" in writing is subject to the provisions of this paragraph, except that any PHI is Confidential Information.

7. Insurance.

- 7.1 EBC shall be fully responsible for providing Workers' Compensation or other applicable insurance coverage for itself and its employees and the Employer shall have no responsibility of liability for such insurance coverage.
- 7.2 EBC shall provide to the Employer a copy of the policy or a certification by the insurance carrier, showing EBC to have in effect during the term of this Agreement, a General Liability Insurance policy, which shall be the primary coverage for EBC activities under this Agreement. The coverage limits of such insurance shall not be less than those listed below.
- 7.3 EBC certificate(s) shall include all sub-contractors as additional insured's under its policies or EBC shall furnish to the Employer separate certificates and endorsements for each subcontractor. All coverage's for sub-contractors shall be subject to the minimum requirements identified above.
- 7.4. The insurance company issuing the policy required above shall have an AM Best financial rating of "A-" or better and be authorized by the State of Arizona Department of Insurance to transact business within the State. **The certificate and policy shall name the Employer as an additional insured and shall be primary and the Employer's insurance/self-insurance shall be non-contributory coverage. The Employer shall also be an additional insured to the full limits of the liability insurance purchased by EBC even if those limits are in excess of those required by this Agreement.**
- 7.5 The Employer reserves the right to terminate this Agreement if EBC fails to maintain such insurance coverage.
- 7.6 EBC must provide certification of insurance compliance within ten (10) calendar days after notification of award. Certification must include: name and address of insurance company; policy number; liability coverage amounts; a statement the policy will not be canceled or failed to be renewed without thirty (30) days written notice to the Employer. Certification to be submitted to: Materials Management, 5850 West Glendale Avenue, Suite 317, Glendale, Arizona 85301.

<u>Type of Insurance</u> <u>(Minimum)</u>	<u>Limits of Liability</u>
Workers' Compensation	Statutory
Employer's Liability	
Each Accident	\$100,000
Disease-Each Employee	\$100,000
Disease-Policy Limit	\$500,000

Commercial General Liability shall cover liability arising from bodily injury, property damage, products-completed operations, personal and advertising injury, independent contractors, and broad form contractual coverage.

Each Occurrence	\$1,000,000
Personal and Advertising	\$1,000,000
General Aggregate	\$2,000,000
Products-Completed Operations	\$1,000,000

Automobile Liability – Including bodily injury and property damage for any owned, hired and non-owned vehicles used in the performance of the services

Combined Single Limit (CSL)	\$1,000,000
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Professional Liability (Errors and Omissions) coverage shall apply to liability for a professional error, act or omission arising out of the scope of services as defined. EBC warrants that any retroactive date under a claims-made policy shall precede the effective date of this Agreement; and that either continuous coverage will be maintained or an extended discovery period will be exercised for a period of two (2) years beginning at the time work under this Agreement is completed. The policy shall contain a waiver of subrogation in favor of the City of Glendale.

Per Claim	\$1,000,000
Policy Aggregate	\$2,000,000

8. **Workers Compensation.**

- 8.1 Workers' Compensation Law (Title 23, Chapter 6, Arizona Revised Statutes) as amended, and all rules and regulations of the Industrial Commission of Arizona made in pursuance thereof. EBC shall secure payment of compensation to employees by insuring the payment of such compensation with the State Compensation Fund or any insurance company authorized by the Insurance Department of Arizona to transact business in the State of Arizona.
- 8.2 EBC further agrees that he shall require any and all sub-contractor performing work under the agreement to comply with said Workers' Compensation Law. It is expressly understood and agreed that all persons employed directly or indirectly by the EBC, or any of his sub-contractor(s), shall be considered the employees of EBC or his sub-contractor(s), and not the employees of the Employer of Glendale.

9. **Indemnification.** Business Associate shall indemnify, defend, save and hold harmless the Covered Entity and its officers, officials, agents, and employees (hereinafter referred to as "Indemnatee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys' fees, and costs of claim processing, investigation and litigation) (hereinafter referred to as "Claims") for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Business Associate or any of its owners, officers, directors, agents, employees or subcontractors. This indemnity includes any claim or amount arising out of or recovered under the Workers' Compensation Law or arising out of the failure of Business Associate or any of its owners, officers, directors, agents, employees or subcontractors to conform to any Federal, State or local law, statute, ordinance, rule, regulation or court decree. It is the specific intention of the parties that the Indemnatee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnatee, be indemnified by Business Associate from and against any and all claims. It is agreed that Business Associate will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable. In consideration of the award of this contract, the Business Associate agrees to waive all rights of subrogation against the Covered Entity, its officers, officials, agents, and employees for losses arising from the work performed by the Business Associate or any of its owners, officers, directors, agents, employees or subcontractors for the Covered Entity.

10. Miscellaneous.

10.1 *Business Associate Definition.* For purposes of this Agreement, the term "Business Associate" shall mean the named Business Associate herein, including any and all officers, directors, employees, subsidiaries, contractors, subcontractors, and agents. However, in the event that Business Associate is otherwise a covered entity under the Privacy Regulation, that entity may appropriately designate a Health Care Component of the entity, pursuant to HIPAA, as Business Associate for purposes of this Agreement.

10.2 *Amendments and Waiver.* This Agreement may not be modified, nor shall any provision hereof be waived or amended, except in writing duly signed by authorized representatives of the Parties. A waiver with respect to one event shall not be construed as continuing, or as a bar to or waiver of any right or remedy as to subsequent events. Any amendment may be subject to City Council approval. Electronic signature blocks do not constitute execution.

10.3 *Notices.*

A notice, request or other communication that is required or permitted under this Agreement (each a "Notice") will be effective only if:

- a) The Notice is in writing; and
- b) Delivered in person or by overnight courier service (delivery charges prepaid), certified or registered mail (return receipt requested); and
- c) Notice will be deemed to have been delivered to the person to whom it is addressed as of the date of receipt, if:
 - (1) Received on a business day, or before 5:00 p.m., at the address for Notices identified for the Party in this Agreement by U.S. Mail, hand delivery, or overnight courier service on or before 5:00 p.m.; or
 - (2) As of the next business day after receipt, if received after 5:00 p.m.
- d) The burden of proof of the place and time of delivery is upon the Party giving the Notice; and
- e) Digitalized signatures and copies of signatures will have the same effect as original signatures. All notices shall be in writing and sent by registered mail, overnight mail, courier or transmitted by facsimile (if confirmed by such mailing) to the addresses indicated on the signature page of this Agreement or such other addresses as either party may indicate by at least ten (10) days prior written notice.

10.4 *Definitions.* Capitalized terms used, but not otherwise defined, in this Appendix shall have the same meanings as those terms in the Health Insurance Portability and Accountability Act of 1996 and the privacy and security regulations there under, as amended from time to time (collectively, "HIPAA").

11. Immigration Law Compliance.

11.1 Contractor, and on behalf of any subcontractor, warrants, to the extent applicable under A.R.S. § 41-4401, compliance with all federal immigration laws and regulations that relate to their employees as well as compliance with A.R.S. § 23-214(A) which requires registration and participation with the E-Verify Program.

11.2 Any breach of warranty under subsection 9.1 above is considered a material breach of this Agreement and is subject to penalties up to and including termination of this Agreement.

11.3 City retains the legal right to inspect the papers of any Contractor or subcontractor employee who performs work under this Agreement to ensure that the Contractor or any subcontractor is compliant with the warranty under subsection 9.1 above.

- 11.4 City may conduct random inspections, and upon request of City, Contractor shall provide copies of papers and records of Contractor demonstrating continued compliance with the warranty under subsection 9.1 above. Contractor agrees to keep papers and records available for inspection by the City during normal business hours and will cooperate with City in exercise of its statutory duties and not deny access to its business premises or applicable papers or records for the purposes of enforcement of this section.
- 11.5 Contractor agrees to incorporate into any subcontracts under this Agreement the same obligations imposed upon Contractor and expressly accrue those obligations directly to the benefit of the City. Contractor also agrees to require any subcontractor to incorporate into each of its own subcontracts under this Agreement the same obligations above and expressly accrue those obligations to the benefit of the City.
- 11.6 Contractor's warranty and obligations under this section to the City is continuing throughout the term of this Agreement or until such time as the City determines, in its sole discretion, that Arizona law has been modified in that compliance with this section is no longer a requirement.
- 11.7 The "E-Verify Program" above means the employment verification program administered by the United States Department of Homeland Security, the Social Security Administration, or any successor program.

12. Foreign Prohibitions. Contractor certifies under A.R.S. §§ 35-391 *et seq.* and 35-393 *et seq.*, that it does not have, and during the term of this Agreement will not have, "scrutinized" business operations, as defined in the preceding statutes, in the countries of Sudan or Iran.

13. Representatives.

- a) Contractor. Contractor's representative for Notice delivery is:

Educators Benefit Consultants, LLC
 c/o Paige McNeal
 3125 Airport parkway, NE
 Cambridge, MN 55008

- b) City. City's representative for Notice delivery is:

City of Glendale
 c/o Jim Brown
 Acting Executive Director of Human Resources and Risk Management
 5850 West Glendale Avenue
 Glendale, Arizona 85301

With required copy to:

City Manager
 City of Glendale
 5850 West Glendale Avenue
 Glendale, Arizona 85301

City Attorney
 City of Glendale
 5850 West Glendale Avenue
 Glendale, Arizona 85301

- c) Concurrent Notices.

- (1) All notices to City's representative must be given concurrently to City Manager and City Attorney.
- (2) A notice will not be deemed to have been received by City's representative until the time that it has also been received by City Manager and City Attorney.
- (3) City may appoint one or more designees for the purpose of receiving notice by delivery of a written notice to Contractor identifying the designee(s) and their respective addresses for notices.

- d. Changes. Contractor or City may change its representative or information on Notice, by giving Notice of the change in accordance with this section at least ten days prior to the change.

14. Entire Agreement; Survival; Counterparts; Signatures.

14.1 *Integration.* This Agreement contains, except as stated below, the entire agreement between City and Contractor and supersedes all prior conversations and negotiations between the parties regarding the Project or this Agreement.

- a. Neither Party has made any representations, warranties or agreements as to any matters concerning the Agreement's subject matter.
- b. Representations, statements, conditions, or warranties not contained in this Agreement will not be binding on the parties.
- c. The solicitation, any addendums and the response submitted by the Contractor are incorporated into this Agreement as if attached hereto. Any Contractor response modifies the original solicitation as stated. Inconsistencies between the solicitation, any addendums and the response or any excerpts attached as Exhibit A and this Agreement will be resolved by the terms and conditions stated in this Agreement.

14.2 *Interpretation.*

- a. The parties fairly negotiated the Agreement's provisions to the extent they believed necessary and with the legal representation they deemed appropriate.
- b. The parties are of equal bargaining position and this Agreement must be construed equally between the parties without consideration of which of the parties may have drafted this Agreement.
- c. The Agreement will be interpreted in accordance with the laws of the State of Arizona.

14.3 *Survival.* Except as specifically provided otherwise in this Agreement, each warranty, representation, indemnification and hold harmless provision, insurance requirement, and every other right, remedy and responsibility of a Party, will survive completion of the Project, or the earlier termination of this Agreement.

14.4 *Remedies.* All rights and remedies provided in this Agreement are cumulative and the exercise of any one or more right or remedy will not affect any other rights or remedies under this Agreement or applicable law.

14.5 *Severability.* If any provision of this Agreement is voided or found unenforceable, that determination will not affect the validity of the other provisions, and the voided or unenforceable provision will be deemed reformed to conform to applicable law.

14.6 *Counterparts.* This Agreement may be executed in counterparts, and all counterparts will together comprise one instrument..

15. Dispute Resolution. Each claim, controversy and dispute (each a "Dispute") between Contractor and City will be resolved in accordance with Exhibit B. The final determination will be made by the City.

16. Exhibits. The following exhibits, with reference to the term in which they are first referenced, are incorporated by this reference.

Exhibit A HIPAA HITECH Obligations

Exhibit B Dispute Resolution

The parties enter into this Agreement as of the effective date shown above.

City of Glendale,
an Arizona municipal corporation

Horatio Skeete

By: Horatio Skeete
Its: Acting City Manager

ATTEST:

Dawn McCarter
City Clerk (SEAL)

APPROVED AS TO FORM:

[Signature]

City Attorney

Educators Benefit consultants, LLC,
an insurance company registered with the Arizona
Department of Insurance

Paige McNeal

By: Paige McNeal
Its: VP

EXHIBIT A

HIPAA HITECH Obligations

- A. Capitalized terms used, but not otherwise defined, in this Appendix shall have the same meanings as those terms in the Health Insurance Portability and Accountability Act of 1996 and the privacy and security regulations there under, as amended from time to time (collectively, "HIPAA").
- B. The parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for the employer's benefit plans (Plan(s)) covered under this Agreement to comply with requirements of HIPAA. Educators Benefit Consultants (the Business Associate) and employer (the Covered Entity) agree that any requirements relating to business associates contained in regulations issued pursuant to the Health Information Technology for Economic and Clinical Health Act of 2009 (HITECH Act) shall be automatically, without further action, be incorporated into this Addendum. The parties recognize and agree that they are obligated by law to meet the applicable provisions of the HITECH Act.
- C. *Obligations*
1. EBC agrees to implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of PHI that it receives, maintains, or transmits on behalf of Plans. It shall maintain reasonable and appropriate policies and procedures to effect this.
 2. EBC agrees to report to the Covered Entity within thirty (30) business days of the discovery of any use or disclosure of PHI not provided for by the Agreement and of any Security Incidents. "Discovery" shall mean for these purposes at least one employee of EBC, other than the person responsible for the breach, having knowledge.
 3. EBC agrees to ensure that any agent, including a subcontractor, to whom it provides or receives PHI, on behalf of a Plan, agrees to the same restrictions and conditions that apply through this Addendum to EBC with respect to such information.
 4. EBC agrees to provide access at the request of a Covered Entity or individual in the Plan, to PHI in a designated Record Set to Covered Entity, or the individual, in order to meet the requirements under 45 CFR 164.524.
 5. EBC agrees to make any amendment(s) to PHI in a Designated Record Set that Covered Entity or individual in the Plan directs or agrees to pursuant to 45 CFR 164.526, at the request of Covered Entity or an individual in the Plan as appropriate.
 6. EBC agrees to make internal practices, books and records relating to the use and disclosure of PHI received on behalf of the Plan, available to the Covered Entity, or the Secretary of the U.S. Department of Health and Human Services (HHS), for purposes of HHS determining the Plan's compliance with HIPAA.
 7. EBC agrees to document such disclosures of PHI and information related to such disclosures as would be required for a Plan to respond to a request by an individual for an accounting of disclosures of PHI in accordance with 45 CFR 164.528.
 8. EBC agrees to provide, Covered Entity or an individual in the Plan information collected in accordance with paragraph 7 above, to permit Covered Entity to respond to a request by an individual for an account of disclosures of PHI in accordance with 45 CFR 164.528.
- D. *Permitted Uses and Disclosures*
1. EBC may use or disclose PHI on behalf of, or to provide services to, Covered Entity as specified in this Agreement, if such use or disclosure of PHI would not violate HIPAA.
 2. EBC may use PHI:
 - For the proper management and administration of the Plan or to carry out the legal responsibilities of the Plan; and
 - To provide data aggregation services to a Covered Entity as permitted by 45 CFR 164.504 (e)(2)(i)(B).

EXHIBIT B

DISPUTE RESOLUTION

1. Disputes.

- 1.1 Commitment. The parties commit to resolving all disputes promptly, equitably, and in a good-faith, cost-effective manner.
- 1.2 Application. The provisions of this Exhibit will be used by the parties to resolve all controversies, claims, or disputes ("Dispute") arising out of or related to this Agreement-including Disputes regarding any alleged breaches of this Agreement.
- 1.3 Initiation. A party may initiate a Dispute by delivery of written notice of the Dispute, including the specifics of the Dispute, to the Representative of the other party as required in this Agreement.
- 1.4 Informal Resolution. When a Dispute notice is given, the parties will designate a member of their senior management who will be authorized to expeditiously resolve the Dispute.
 - a. The parties will provide each other with reasonable access during normal business hours to any and all non-privileged records, information and data pertaining to any Dispute in order to assist in resolving the Dispute as expeditiously and cost effectively as possible;
 - b. The parties' senior managers will meet within 10 business days to discuss and attempt to resolve the Dispute promptly, equitably, and in a good faith manner, and
 - c. The Senior Managers will agree to subsequent meetings if both parties agree that further meetings are necessary to reach a resolution of the Dispute.

2. Arbitration.

- 2.1 Rules. If the parties are unable to resolve the Dispute by negotiation within 30 days from the Dispute notice, and unless otherwise informal discussions are extended by the mutual agreement, the parties may agree, in writing, that the Dispute will be decided by binding arbitration in accordance with Commercial Rules of the AAA, as amended herein. Although the arbitration will be conducted in accordance with AAA Rules, it will not be administered by the AAA, but will be heard independently.
 - a. The parties will exercise best efforts to select an arbitrator within 5 business days after agreement for arbitration. If the parties have not agreed upon an arbitrator within this period, the parties will submit the selection of the arbitrator to one of the principals of the mediation firm of Scott & Skelly, LLC, who will then select the arbitrator. The parties will equally share the fees and costs incurred in the selection of the arbitrator.
 - b. The arbitrator selected must be an attorney with at least 10 years experience, be independent, impartial, and not have engaged in any business for or adverse to either Party for at least 10 years.
- 2.2 Discovery. The extent and the time set for discovery will be as determined by the arbitrator. Each Party must, however, within ten (10) days of selection of an arbitrator deliver to the other Party copies of all documents in the delivering party's possession that are relevant to the dispute.
- 2.3 Hearing. The arbitration hearing will be held within 90 days of the appointment of the arbitrator. The arbitration hearing, all proceedings, and all discovery will be conducted in Glendale, Arizona unless otherwise agreed by the parties or required as a result of witness location. Telephonic hearings and other reasonable arrangements may be used to minimize costs.

2.4 Award. At the arbitration hearing, each Party will submit its position to the arbitrator, evidence to support that position, and the exact award sought in this matter with specificity. The arbitrator must select the award sought by one of the parties as the final judgment and may not independently alter or modify the awards sought by the parties, fashion any remedy, or make any equitable order. The arbitrator has no authority to consider or award punitive damages.

2.5 Final Decision. The Arbitrator's decision should be rendered within 15 days after the arbitration hearing is concluded. This decision will be final and binding on the Parties.

2.6 Costs. The prevailing party may enter the arbitration in any court having jurisdiction in order to convert it to a judgment. The non-prevailing party shall pay all of the prevailing party's arbitration costs and expenses, including reasonable attorney's fees and costs.

3. **Services to Continue Pending Dispute.** Unless otherwise agreed to in writing, Contractor must continue to perform and maintain progress of required services during any Dispute resolution or arbitration proceedings, and City will continue to make payment to Contractor in accordance with this Agreement.

4. **Exceptions.**

4.1 Third Party Claims. City and Contractor are not required to arbitrate any third-party claim, cross-claim, counter claim, or other claim or defense of a third-party who is not obligated by contract to arbitrate disputes with City and Contractor.

4.2 Liens. City or Contractor may commence and prosecute a civil action to contest a lien or stop notice, or enforce any lien or stop notice, but only to the extent the lien or stop notice the Party seeks to enforce is enforceable under Arizona Law, including, without limitation, an action under A.R.S. § 33-420, without the necessity of initiating or exhausting the procedures of this Exhibit.

4.3 Governmental Actions. This Exhibit does not apply to, and must not be construed to require arbitration of, any claims, actions or other process filed or issued by City of Glendale Building Safety Department or any other agency of City acting in its governmental permitting or other regulatory capacity.