

**SUBROGATION AMENDMENT TO
ADMINISTRATIVE SERVICE AGREEMENT
GROUP CONTRACT NUMBER 11250
Alternative Funding**

PARTIES:

The Parties to this Amendment are Blue Cross and Blue Shield of Arizona, Inc. ("BCBSAZ"), an Arizona non-profit corporation and an independent licensee of the Blue Cross and Blue Shield Association, and City of Glendale (the "Employer").

EFFECTIVE DATE:

The effective date of this Amendment will be July 1, 2016.

RECITALS:

- A. BCBSAZ and the Employer are Parties to an Administrative Service Agreement, Group Contract Number 11250 (the "Agreement"), effective July 1, 2014, whereby BCBSAZ shall provide hospital, medical, and/or dental benefits to employees of the Employer and dependents of such employees in consideration of Administrative Fees; and
- B. The Parties desire to amend the Contract as set forth in this Amendment.

NOW THEREFORE, in consideration of the premises, the Parties agree as follows:

- 1. Section F. Subrogation shall be added to Attachment A of the Administrative Service Agreement as follows:

F. Subrogation

- 1. Services. BCBSAZ shall perform, on behalf of Plan, Subrogation and/or Reimbursement Third Party Recovery Services ("Services") as set forth herein, provided however that BCBSAZ shall have the right to subcontract any or all of these Services. Any reference in this Agreement to BCBSAZ's performance or act shall be satisfied by BCBSAZ's Vendor performing the act. "Subrogation and/or Reimbursement Third Party Recovery Services" means recovery services related to cases that include among others medical malpractice, motor vehicle, tort, worker compensation and/or product liability cases. Any reference to "BCBSAZ" in this Agreement shall mean BCBSAZ and/or BCBSAZ's contracted Vendor. The decision to retain a subrogation/third party recovery vendor ("Vendor"), the particular Vendor and the terms of the Vendor's compensation shall be within the sole and absolute discretion of BCBSAZ.
- 2. Authority and Assignment. The Plan acknowledges and agrees that any authority the Plan provides to BCBSAZ shall also constitute authority to

BCBSAZ's Vendor and that any assignment of rights the Plan provides to BCBSAZ also constitutes an assignment of rights to BCBSAZ's Vendor.

3. **Pay and Pursue.** With respect to the Services provided under this Agreement, BCBSAZ will use the "pay and pursue" method as described in this subsection with respect to all covered claims. BCBSAZ's administration of the Plan's health benefits plan includes processing and paying the health benefits claim(s) of the Participant(s) and/or his/her/their covered dependent(s) (hereafter "Participant") by paying the Participant's health care provider (provider) if the provider is contracted with BCBSAZ or by paying the Participant directly if the provider is not contracted with BCBSAZ. Because the Plan is self-insured, the Plan reimburses BCBSAZ for these claims. BCBSAZ shall continue to administer health benefits claims under this Agreement in this manner, i.e., BCBSAZ shall always first pay the Participant's covered health benefits claims without regard to whether the case is or may be a subrogation and/or recovery or potential subrogation and/or recovery case, the Plan shall always reimburse BCBSAZ for such claims payments without regard to whether the case is a subrogation and/or recovery or potential subrogation and/or recovery case, and then and only then will BCBSAZ attempt to pursue any subrogation recoveries for the Plan.
4. **Notice & Discontinuance.** BCBSAZ shall provide the Plan with at least thirty (30) days prior notice of any change in Vendors, including the name of the new Vendor and a description of how cases being worked on by the prior Vendor at the time the change will be concluded or transitioned. BCBSAZ reserves the right to discontinue providing the Services upon thirty (30) days prior notice to the Plan.
5. **Recoveries to Plan.** The percentage of recoveries to the Plan shall be as set forth in Exhibit B, attached hereto and incorporated herein by reference, and shall be net of all fees and expenses related to the recovery services as stated in Exhibit B. Any Plan that terminates BCBSAZ-provided subrogation services on a date when BCBSAZ or its contracted subrogation vendor has already begun to perform subrogation services on a case(s) shall pay BCBSAZ the standard contingency fee/payment on any recovery the Plan receives for that case.
6. **Recoveries Do Not Affect Plan's Health Benefits Claims Experience.** The Plan acknowledges and agrees that subrogation recoveries shall not affect, directly or indirectly, the Plan's health benefits claims experience for any purpose including but not limited to the Plan's rates and/or fees for any product.
7. **Claims Recoveries.** BCBSAZ shall make reasonable efforts to pursue third party Claims where another party is liable ("Claims") and will make

reasonable efforts to obtain what BCBSAZ considers in its sole and absolute discretion to be the best recovery available. The Plan acknowledges and agrees that although BCBSAZ agrees to use reasonable efforts to obtain recoveries, BCBSAZ neither promises, guarantees nor implies that BCBSAZ will either pursue all cases or recover any amount or any percentage of any Plan Paid Amount or of any Claim.

8. Claims Settlement. BCBSAZ has authority to settle Claims ("Claims Settlement Authority") where the Plan Paid Amount is one hundred thousand dollars (\$100,000) or less. In cases where the Plan Paid Amount is greater than one hundred thousand dollars (\$100,000), BCBSAZ shall have Claims Settlement Authority only if approved in writing by the Plan.

Any subrogation settlement agreed to by BCBSAZ will be deemed acceptable by the Plan. BCBSAZ may forego any and all subrogation efforts where, in BCBSAZ's sole and absolute discretion, the circumstances in a particular subrogation matter warrant such a decision.

9. Litigation. BCBSAZ may in its sole and absolute discretion, institute litigation against persons, including but not limited to any Plan Participant, on any subrogation case, without the prior written consent of the Plan. However, BCBSAZ may also choose to obtain the Plan's written consent prior to instituting such litigation.
10. Plan Assignment of Interest. The Plan hereby assigns to BCBSAZ the Plan's interest in any and all litigated Subrogation Claims. The Plan also authorizes BCBSAZ to sign any and all documents, including releases and settlement checks necessary to finalize settlement. The Plan authorizes BCBSAZ to: (a) act as the Plan's agent for pursuit of Subrogation Claims; (b) communicate with BCBSAZ's legal counsel and/or any other person or party necessary to effect settlement of a Subrogation Claim; (c) have final decision-making authority on any issue which may arise during subrogation operations concerning whether to: (i) initiate litigation; and/or (ii) sue a Plan Participant.
11. Method for Crediting Recoveries. BCBSAZ shall forward to or credit the Plan or shall cause the third party vendor to forward or credit the Plan with, within thirty (30) days of receipt, payment for any subrogation recoveries received from any third party.
12. Indemnification. In addition to the indemnification stated in the Agreement, the Plan agrees to defend and hold harmless BCBSAZ from any and all damages including reasonable attorneys fees (for attorneys chosen by BCBSAZ) and court costs resulting from, arising out of, based

on, or in connection with any claim arising out of this Agreement unless such damages are the direct consequence of criminal conduct, fraud, or willful misconduct on the part of BCBSAZ. This indemnification includes but is not limited to any claim(s) that the Plan documents do not contain adequate and/or appropriate disclosure of the Plan's subrogation rights to permit subrogation.

BCBSAZ agrees to indemnify and hold harmless the Plan from any and all damages including reasonable attorneys' fees (for attorneys chosen by the Plan) arising out of or related to this Agreement if resulting from BCBSAZ's criminal conduct, fraud, or willful misconduct.

13. Plan Representations. The Plan and the Plan Administrator represent that:

- (a) The Plan has authority to give and hereby gives its consent to provide BCBSAZ all claims, utilization or other data as reasonably necessary to provide these subrogation Services; and
- (b) The Plan has authority to authorize and hereby authorizes and directs BCBSAZ to provide all claims, utilization or other data as reasonably necessary to provide these Services to BCBSAZ's contracted Vendor; and
- (c) The Plan is either: (a) a single employer "employee welfare benefit plan," as defined in the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. § 1001 et seq. including but not limited to Part 5 of Title I, 29 U.S.C. §§1131 – 1145; or (b) the State of Arizona or a political subdivision thereof within the meaning of A.R.S. §12-962.
- (d) The Plan Document(s), including but not limited to the Summary Plan Description, include all necessary subrogation recovery information and notice to Plan Participants including, **but not limited to notice that:**
 - (i) the Plan has the right to be reimbursed one hundred percent (100%) of the amounts it pays for a Plan Participant's health claim(s) by third parties who may be responsible for the Plan Participant's injury or condition, without reduction for attorneys' fees and/or court costs and regardless of whether the Participant was made whole or not;
 - (ii) the Plan has first priority from any judgment, payment or settlement;

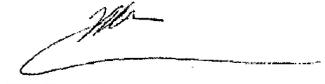
- (iii) the Participant and his/her representative must, at the Plan's request and at its direction take any action, give information and execute documents so required by the Plan and that failure to aid the Plan and to comply with such requests may result in the Plan's withholding or recovering benefits, services, payments or credits due or paid under the Plan; and
- (iv) the Plan will pursue its subrogation recovery rights.
- (e) The Plan acknowledges and understands that is not required by BCBSAZ to use BCBSAZ to perform subrogation services for the Plan and has chosen to do so of its own accord.

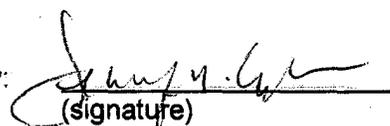
2. Except as amended by this Amendment the Agreement shall remain in full force and effect as first written.

Intending to be legally bound, the Parties have executed this Amendment as of its Effective Date.

BCBSAZ
BLUE CROSS AND BLUE SHIELD
OF ARIZONA, INC., an Arizona
 nonprofit corporation

EMPLOYER
CITY OF GLENDALE

By: 
 (signature)

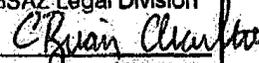
By: 
 (signature)

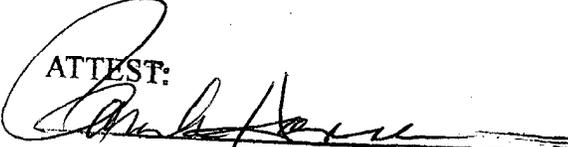
Michael Tilton
 (printed)

John Campbell

Title: Vice President, Sales
06/07/2016

Title: Asst. City Manager
6/13/16

APPROVED AS TO FORM
 BCBSAZ Legal Division
 By: 
 Attorney
 Date: 6-6-16

ATTEST:

 City Clerk

Approved as to form

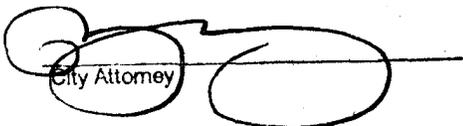

 City Attorney

EXHIBIT B

SUBROGATION/THIRD PARTY RECOVERY SERVICES

BCBSAZ's (or BCBSAZ's Vendor's) contingency fee for subrogation recovery services shall be equal to twenty-five percent (25%) of the recovery as stated in the following example.

An example of how the fees will be calculated is as follows:

EXAMPLE:

FACTS: Vendor's Fee is 25% contingency. Vendor obtains a settlement of \$12,000. Vendor's Fees and costs are \$2,000.

RESULT: The Net Recovery to BCBSAZ (for the Plan) is \$7,500. Vendor's' Fee is \$2,500.

CALCULATION METHODOLOGY: 1) Vendor first subtracts the \$2,000 fees/costs from the \$12,000 Recovery which equals \$10,000; (2) Vendor next calculates its contingency fee by taking 25% of \$10,000 which equals \$2,500; (3) Vendor then subtracts its fee of \$2,500 from \$10,000 which equals \$7,500; (4) Vendor remits \$7,500 to BCBSAZ for BCBSAZ's Customer.

Amount Recovered Per Case

Plan's Percentage of Recovery