



State of New Jersey

DEPARTMENT OF COMMUNITY AFFAIRS
101 SOUTH BROAD STREET
PO Box 819
TRENTON, NJ 08625-0819

PHILIP D. MURPHY
Governor

TAHESHA L. WAY
Lieutenant Governor

JACQUELYN A. SUÁREZ
Commissioner

FINAL DECISION

February 18, 2025 Government Records Council Meeting

Enza Cannarozzi
Complainant

Complaint No. 2021-74

v.

Jersey City Board of Education (Hudson)
Custodian of Record

At the February 18, 2025, public meeting, the Government Records Council (“Council”) considered the February 11, 2025, Supplemental Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council voted unanimously to adopt the entirety of said findings and recommendations. The Council, therefore, finds that:

1. The Council should accept the Administrative Law Judge’s Initial Decision “**FIND[ING]** that the [Custodian] has demonstrated by a preponderance of the credible evidence that the limited, narrowly tailor remaining redactions meet the standards enunciated in [Newark Morning Ledger Co. v. New Jersey Sports & Exposition Auth., 423 N.J. Super. 140 (App. Div. 2011)] and reaffirmed in [Carol v. Rutgers, 2022 N.J. Super. Unpub. LEXIS 1441 (App. Div. 2022).]” Id. at 12. Thus, a copy of the requested Horizon health benefits contract with the redactions as proposed by the Administrative Law Judge accompanies this order and is marked as “Exhibit B.”
2. The Council need not address the issue of a knowing and willful violation, as Complainant withdrew the claim per the August 1, 2024 Stipulation of Facts.
3. Pursuant to the Administrative Law Judge’s Initial Decision, the Complainant has achieved “the desired result because the complaint brought about a change (voluntary or otherwise) in the custodian’s conduct.” Teeters v. DYFS, 387 N.J. Super. 423, 432 (App. Div. 2006). Additionally, a factual causal nexus exists between the Complainant’s filing of a Denial of Access Complaint and the relief ultimately achieved. Mason v. City of Hoboken and City Clerk of the City of Hoboken, 196 N.J. 51, 76 (2008). Specifically, the Complainant is receiving a redacted version of the record after being compelled to file this complaint due to the Custodian failure to respond to the subject OPRA request. Further, the relief ultimately achieved had a basis in law. Therefore, the Complainant is a prevailing party entitled to an award of a reasonable attorney’s fee. See N.J.S.A. 47:1A-6, Teeters, 387 N.J. Super. 432, and Mason, 196 N.J. 51. **Based on this determination, the parties shall confer in an effort to decide the amount of reasonable attorney’s fees to be paid to Complainant within twenty (20) business days. The parties shall promptly notify**

the GRC in writing if a fee agreement is reached. If the parties cannot agree on the amount of attorney's fees, Complainant's Counsel shall submit a fee application to the Council in accordance with N.J.A.C. 5:105-2.13.

This is the final administrative determination in this matter. Any further review should be pursued in the Appellate Division of the Superior Court of New Jersey within forty-five (45) days. Information about the appeals process can be obtained from the Appellate Division Clerk's Office, Hughes Justice Complex, 25 W. Market St., PO Box 006, Trenton, NJ 08625-0006. Proper service of submissions pursuant to any appeal is to be made to the Council in care of the Executive Director at the State of New Jersey Government Records Council, 101 South Broad Street, PO Box 819, Trenton, NJ 08625-0819.

Final Decision Rendered by the
Government Records Council
On The 18th Day of February 2025

John A. Alexy, Chair
Government Records Council

I attest the foregoing is a true and accurate record of the Government Records Council.

Steven Ritardi, Esq., Secretary
Government Records Council

Decision Distribution Date: February 20, 2025

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Supplemental Findings and Recommendations of the Executive Director
February 18, 2025 Council Meeting**

**Enza Cannarozzi¹
Complainant**

GRC Complaint No. 2021-74

v.

**Jersey City Board of Education (Hudson)²
Custodial Agency**

Records Relevant to Complaint: Electronic copies via e-mail of: “[t]he entire health benefits contract between the Jersey City Board of Education [“(Board”)”] and Horizon Blue Cross Blue Shield of NJ [“(Horizon”)”]. To clarify and be more specific, I want the full copy of the employee health benefits contract (signed from [the Board] and [Horizon]) that covers the members of the [Jersey City Education Association (“JCEA”)”] for the contract term of July 1, 2019 through June 30, 2023.”

Custodian of Record: Regina Robinson³

Request Received by Custodian: March 3, 2021

Response Made by Custodian: N/A

GRC Complaint Received: April 1, 2021

Background

January 31, 2023 Council Meeting:

At its January 31, 2023 public meeting, the Council considered the January 24, 2023 Supplemental Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council voted unanimously to adopt the entirety of said findings and recommendations. The Council, therefore, found that:

1. The Custodian failed to comply with the Council’s September 29, 2022 Interim Order because she failed to provide nine (9) copies of the requested record for *in camera* review. The Custodian also failed to simultaneously provide certified confirmation of compliance to the Executive Director. The Council therefore finds the Custodian in violation of the Council’s Order.

¹ As of October 27, 2023, represented by Walter M. Luers, Esq. of Cohn, Lifland, Pearlman, Herrmann & Knopf, LLP (Saddle Brook, NJ).

² As of October 31, 2023, represented by Adam S. Herman, Esq. of Adams, Gutierrez & Lattiboudere, LLC (Iselin, NJ).

³ The current Custodian of Record is Francine Luce. Dr. Dennis Frohnpfel was the Custodian of Record from September 12, 2022, until November 15, 2024.

2. Due to the lack of information in the record, the GRC is unable to determine whether the Custodian unlawfully denied access to the requested contract. The Administrative Procedures Act provides that the Office of Administrative Law (“OAL”) “shall acquire jurisdiction over a matter only after it has been [determined] to be a contested case by an agency head and has been filed with the [OAL]” N.J.A.C. 1:1-3.2(a). Accordingly, it is necessary to refer this matter to the OAL for a hearing to resolve the facts and determine whether the Custodian lawfully denied access to the requested contract. Further, for the reasons set forth below, the OAL should determine whether the Custodian knowingly and willfully violated OPRA under the totality of the circumstances.
3. The Custodian violated OPRA by failing to timely respond to the Complainant. Furthermore, the Custodian failed to provide an SOI to the Council. The Custodian also failed to comply with the Council’s July 26, 2022 Interim Order by failing to provide a timely response. The Custodian also failed to comply with the Council’s September 29, 2022 Interim Order by not providing nine (9) copies of the requested record for *in camera* review. The Custodian also failed to deliver certified confirmation of compliance to the Executive Director. The Council therefore finds the Custodian in violation of the Council’s Order and concludes that the Custodian’s actions may be intentional and deliberate, with knowledge of their wrongfulness, and not merely negligent, heedless or unintentional. As such, this complaint should be referred to the OAL for a proof hearing to determine whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances.

Procedural History:

On February 2, 2023, the Council distributed its Interim Order to all parties. On August 7, 2023, the complaint was transmitted to the Office of Administrative Law (“OAL”).

On or before May 6, 2024, the Custodian provided the Honorable Matthew G. Miller, Administrative Law Judge (“ALJ”) with redacted and unredacted copies of the requested Horizon health benefits contract (“Contract”). On May 6, 2024, the ALJ issued correspondence to the parties detailing the results of an *in camera* review of the Contract.

On August 1, 2024, the parties entered into a Joint Stipulation of Facts (“Stipulation”) in which the Complainant withdrew his claim of a knowing and willful violation of OPRA. The parties also stipulated their consent that the ALJ’s May 6, 2024 correspondence could be formed into an initial decision, but the Complainant retained the right to object to the scope of any approved redactions.

On November 27, 2024, the ALJ, issued an Initial Decision in this matter. The ALJ’s November 27, 2024 Initial Decision, set forth as “Exhibit A”, determined that:

I **FIND** that respondent has demonstrated by a preponderance of the credible evidence that the limited, narrowly tailor remaining redactions meet the standards enunciated in [Newark Morning Ledger Co. v. New Jersey Sports & Exposition

Auth., 423 N.J. Super. 140 (App. Div. 2011)] and reaffirmed in [Carol v. Rutgers, 2022 N.J. Super. Unpub. LEXIS 1441 (App. Div. 2022)].

A copy of an amended redacted Administrative Services Agreement that reflects the above analysis is attached (under seal) for review by the GRC.

[Exhibit A at 12.]

Based on the forgoing, the ALJ ordered the matter returned to the GRC, with certain exhibits provided under seal. Those exhibits included the requested Contract without redactions, the Custodian's arguments in favor of said redactions, and the requested Contract with proposed redactions as determined by the ALJ.

On November 27, 2024, the ALJ's Initial Decision was mailed to the parties and the parties were allotted thirteen (13) days to submit formal exceptions to the decision.

Complainant's Exceptions:

On December 10, 2024, Complainant's Counsel filed Exceptions to the ALJ's Initial Decision. Therein, Counsel objected to the ALJ's approval of the Contract's redactions. Counsel asserted the Custodian failed to file a certification addressing the trade secrets argument in favor of redaction, and the ALJ's determinations were based solely upon *in camera* review and attorney arguments. Counsel therefore argued the Custodian failed to sustain their burden of proof and the entire Contract should be released to the Complainant without any redactions.

Additional Submissions:

On January 7, 2025, the GRC sought a forty-five (45) day extension, or until February 27, 2025, to adopt, modify, or reject the ALJ's Initial Decision. On the same day, the OAL granted the requested extension of time.

Analysis

Administrative Law Judge's Initial Decision

The Administrative Procedures Act ("APA") provides that:

The head of the agency, upon a review of the record submitted by the [ALJ], shall adopt, reject or modify the [Initial Decision] no later than 45 days after receipt of such recommendations . . . Unless the head of the agency modifies or rejects the report within such period, the decision of the administrative law judge shall be deemed adopted as the final decision of the head of the agency.

[N.J.S.A. 52:14B-10(c).]

The ALJ's findings of fact are entitled to deference from the GRC because they are based upon the ALJ's determination of the credibility of the parties. "The reason for the rule is that the administrative law judge, as a finder of fact, has the greatest opportunity to observe the demeanor of the involved witnesses and, consequently, is better qualified to judge their credibility." In the Matter of the Tenure Hearing of Tyler, 236 N.J. Super. 478, 485 (App. Div. 1989) (certif. denied 121 N.J. 615 (1990)). The Appellate Division affirmed this principle, underscoring that, "under existing law, the [reviewing agency] must recognize and give due weight to the ALJ's unique position and ability to make demeanor-based judgments." Whasun Lee v. Bd. of Educ. of the Twp. of Holmdel, Docket No. A-5978-98T2 (App. Div. 2000), slip op. at 14. "When such a record, involving lay witnesses, can support more than one factual finding, it is the ALJ's credibility findings that control, unless they are arbitrary or not based on sufficient credible evidence in the record as a whole." Cavalieri v. Bd. of Tr. of Pub. Emp. Ret. Sys., 368 N.J. Super. 527, 537 (App. Div. 2004).

The ultimate determination of the agency and the ALJ's recommendations must be accompanied by basic findings of fact sufficient to support them. State, Dep't of Health v. Tegnazian, 194 N.J. Super. 435, 442-43 (App. Div. 1984). The purpose of such findings "is to enable a reviewing court to conduct an intelligent review of the administrative decision and determine if the facts upon which the order is grounded afford a reasonable basis therefor." Id. at 443. Additionally, the sufficiency of evidence "must take into account whatever in the record fairly detracts from its weight"; the test is not for the courts to read only one side of the case and, if they find any evidence there, the action is to be sustained and the record to the contrary is to be ignored. St. Vincent's Hosp. v. Finley, 154 N.J. Super. 24, 31 (App. Div. 1977) (citation omitted).

In the instant complaint, the ALJ issued an Initial Decision on November 27, 2024. The ALJ, after fairly summarizing the facts and outlining the relevant case law, determined that the Custodian's redactions were proper except for a handful of words, phrases and sentences, which were enumerated within his written decision. See Exhibit A at 11-12. The ALJ also determined that:

While simply marking a document "Confidential and Proprietary" does not exempt it from coverage[,] I **FIND** there is at least an expectation that some of the plan would remain confidential. That being said, having reviewed the remaining redactions, they concern the very specific machinations of Horizon's proprietary Blue Card program and of its Medical Claim Discount Guarantee. Given my interpretation of the case law cited above and the arguments of counsel, I **FIND** that the redactions concern the inner workings of two proprietary aspects of Horizon's plan.

If the specific discount benchmarks, fees and performance guarantees, particularly for products that are exclusive to Horizon are disclosed, I **FIND** that there is no arguable question that competitors in the public health insurance (or self-insurance as is the case here) market will utilize that information to better their own negotiating position and/or tailor their products to become more competitive to Horizon's disadvantage.

[Exhibit A at 12.]

Upon review of the Initial Decision, along with the documents provided under seal, the GRC finds the ALJ's conclusions are clearly aligned and consistent with the determinations set forth in his Initial Decision. The GRC finds the ALJ applied OPRA's trade secrets exemption consistent with prevailing caselaw. As such, the GRC is satisfied that it can clearly ascertain how the ALJ analyzed the Custodian's redactions to the Contract, and how the results of that analysis provided a reasonable basis for the ALJ's conclusions.

Regarding the Complainant's exceptions, the GRC should reject same. The Complainant does not dispute that the ALJ conducted an *in camera* review of the unredacted and redacted Contract in accordance with the GRC's Interim Order. The Complainant also provides no legal basis supporting the argument that the lack of a supporting certification nullifies the ALJ's factual findings stemming from the *in camera* review. Further, the Complainant does not argue that the ALJ misapplied the prevailing caselaw. Thus, the GRC is not persuaded by the Complainant's argument in favor of rejecting the ALJ's decision and disclosing the Contract without any redactions.

Accordingly, the Council should accept the ALJ's Initial Decision "**FIND[ING]** that the [Custodian] has demonstrated by a preponderance of the credible evidence that the limited, narrowly tailor remaining redactions meet the standards enunciated in Newark Morning Ledger Co. and reaffirmed in Carol v. Rutgers." *Id.* at 12. Thus, a copy of the requested Contract with the redactions as proposed by the ALJ accompanies this order and is marked as "Exhibit B."

Knowing & Willful

The Council need not address the issue of a knowing and willful violation, as Complainant withdrew the claim per the August 1, 2024 Stipulation.

Prevailing Party Attorney's Fees

OPRA provides that:

A person who is denied access to a government record by the custodian of the record, at the option of the requestor, may: institute a proceeding to challenge the custodian's decision by filing an action in Superior Court . . .; or in lieu of filing an action in Superior Court, file a complaint with the Government Records Council . . . A requestor who prevails in any proceeding shall be entitled to a reasonable attorney's fee.

[N.J.S.A. 47:1A-6.]

In Teeters v. DYFS, 387 N.J. Super. 423 (App. Div. 2006), the Appellate Division held that a complainant is a "prevailing party" if he achieves the desired result because the complaint brought about a change (voluntary or otherwise) in the custodian's conduct. *Id.* at 432. Additionally, the court held that attorney's fees may be awarded when the requestor is successful

(or partially successful) via a judicial decree, a quasi-judicial determination, or a settlement of the parties that indicates access was improperly denied and the requested records are disclosed. Id.

Additionally, the New Jersey Supreme Court has ruled on the issue of “prevailing party” attorney’s fees. In Mason v. City of Hoboken and City Clerk of the City of Hoboken, 196 N.J. 51, 71 (2008), the Court discussed the catalyst theory, “which posits that a plaintiff is a ‘prevailing party’ if it achieves the desired result because the lawsuit brought about a voluntary change in the defendant’s conduct” (quoting Buckhannon Bd. & Care Home v. West Virginia Dep’t of Health & Human Res., 532 U.S. 598, 131 S. Ct. 1835, 149 L. Ed. 2d 855 (2001)). In Buckhannon, the Supreme Court held that the phrase “prevailing party” is a legal term of art that refers to a “party in whose favor a judgment is rendered.” Id. at 603 (quoting Black’s Law Dictionary 1145 (7th ed. 1999)). The Supreme Court rejected the catalyst theory as a basis for prevailing party attorney fees, in part because “[i]t allows an award where there is no judicially sanctioned change in the legal relationship of the parties” Id. at 605, 121 S. Ct. at 1840, 149 L. Ed. 2d at 863. Further, the Supreme Court expressed concern that the catalyst theory would spawn extra litigation over attorney’s fees. Id. at 609, 121 S. Ct. at 1843, 149 L. Ed. 2d at 866.

However, the Court noted in Mason that Buckhannon is binding only when counsel fee provisions under federal statutes are at issue. 196 N.J. at 72, citing Teeters, 387 N.J. Super. at 429; see, e.g., Baer v. Klagholz, 346 N.J. Super. 79 (App. Div. 2001) (applying Buckhannon to the federal Individuals with Disabilities Education Act), certif. denied, 174 N.J. 193 (2002). “But in interpreting New Jersey law, we look to state law precedent and the specific state statute before us. When appropriate, we depart from the reasoning of federal cases that interpret comparable federal statutes.” 196 N.J. at 73 (citations omitted).

The Mason Court accepted the application of the catalyst theory within the context of OPRA, stating that:

OPRA itself contains broader language on attorney’s fees than the former RTKL did. OPRA provides that “[a] requestor who prevails in any proceeding shall be entitled to a reasonable attorney’s fee.” N.J.S.A. 47:1A-6. Under the prior RTKL, “[a] plaintiff in whose favor such an order [requiring access to public records] issues . . . may be awarded a reasonable attorney’s fee not to exceed \$500.00.” N.J.S.A. 47:1A-4 (repealed 2002). The Legislature’s revisions therefore: (1) mandate, rather than permit, an award of attorney’s fees to a prevailing party; and (2) eliminate the \$500 cap on fees and permit a reasonable, and quite likely higher, fee award. Those changes expand counsel fee awards under OPRA.

[196 N.J. at 73-76.]

The Court in Mason, further held that:

[R]equestors are entitled to attorney’s fees under OPRA, absent a judgment or an enforceable consent decree, when they can demonstrate (1) “a factual causal nexus between plaintiff’s litigation and the relief ultimately achieved”; and (2) “that the

relief ultimately secured by plaintiffs had a basis in law.” Singer v. State, 95 N.J. 487, 495, cert. denied, New Jersey v. Singer, 469 U.S. 832 (1984).

[Id. at 76.]

In the instant matter, the Complainant requested the Contract from the Custodian, who did not respond to the request. The Complainant thereafter filed the instant complaint on March 3, 2021. The Custodian did not respond to the GRC’s SOI request, and failed to respond to the September 29, 2022 Interim Order requesting copies of the Contract for *in camera* review. The matter was transferred to the OAL on August 7, 2023. Thereafter, on October 27, 2023, the Complainant retained Complainant’s Counsel to represent him in this complaint.

In determining whether the Complainant is a prevailing party entitled to attorney’s fees, the GRC is satisfied that the evidence of record supports a conclusion in the affirmative. The Custodian failed to provide any response to the Complainant. While the matter was with the OAL, the Custodian provided the ALJ with redacted and unredacted copies of the requested Contract. Upon conducting an *in camera* review, the ALJ issued his Initial Decision, finding the redactions appropriate and lawful. Therefore, a causal nexus exists between this complaint and the change in the Custodian’s conduct. See id. at 76. Accordingly, the Complainant is a prevailing party entitled to attorney fees billed from October 27, 2023 to the present, reflecting Counsel’s date of retention.

Therefore, pursuant to the ALJ’s Initial Decision, the Complainant has achieved “the desired result because the complaint brought about a change (voluntary or otherwise) in the custodian’s conduct.” Teeters, 387 N.J. Super. 432. Additionally, a factual causal nexus exists between the Complainant’s filing of a Denial of Access Complaint and the relief ultimately achieved. Mason, 196 N.J. 51. Specifically, the Complainant is receiving a redacted version of the record after being compelled to file this complaint due to the Custodian failure to respond to the subject OPRA request. Further, the relief ultimately achieved had a basis in law. Therefore, the Complainant is a prevailing party entitled to an award of a reasonable attorney’s fee. See N.J.S.A. 47:1A-6; Teeters, 387 N.J. Super. 432; and Mason, 196 N.J. 51. **Based on this determination, the parties shall confer in an effort to decide the amount of reasonable attorney’s fees to be paid to Complainant within twenty (20) business days. The parties shall promptly notify the GRC in writing if a fee agreement is reached. If the parties cannot agree on the amount of attorney’s fees, Complainant’s Counsel shall submit a fee application to the Council in accordance with N.J.A.C. 5:105-2.13.**

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. The Council should accept the Administrative Law Judge’s Initial Decision “**FIND[ING]** that the [Custodian] has demonstrated by a preponderance of the credible evidence that the limited, narrowly tailor remaining redactions meet the standards enunciated in [Newark Morning Ledger Co. v. New Jersey Sports & Exposition Auth., 423 N.J. Super. 140 (App. Div. 2011)] and reaffirmed in [Carol v. Rutgers, 2022 N.J. Super. Unpub. LEXIS 1441 (App. Div. 2022).]” Id. at 12. Thus, a copy of the requested

Horizon health benefits contract with the redactions as proposed by the Administrative Law Judge accompanies this order and is marked as “Exhibit B.”

2. The Council need not address the issue of a knowing and willful violation, as Complainant withdrew the claim per the August 1, 2024 Stipulation of Facts.
3. Pursuant to the Administrative Law Judge’s Initial Decision, the Complainant has achieved “the desired result because the complaint brought about a change (voluntary or otherwise) in the custodian’s conduct.” Teeters v. DYFS, 387 N.J. Super. 423, 432 (App. Div. 2006). Additionally, a factual causal nexus exists between the Complainant’s filing of a Denial of Access Complaint and the relief ultimately achieved. Mason v. City of Hoboken and City Clerk of the City of Hoboken, 196 N.J. 51, 76 (2008). Specifically, the Complainant is receiving a redacted version of the record after being compelled to file this complaint due to the Custodian failure to respond to the subject OPRA request. Further, the relief ultimately achieved had a basis in law. Therefore, the Complainant is a prevailing party entitled to an award of a reasonable attorney’s fee. See N.J.S.A. 47:1A-6, Teeters, 387 N.J. Super. 432, and Mason, 196 N.J. 51. **Based on this determination, the parties shall confer in an effort to decide the amount of reasonable attorney’s fees to be paid to Complainant within twenty (20) business days. The parties shall promptly notify the GRC in writing if a fee agreement is reached. If the parties cannot agree on the amount of attorney's fees, Complainant’s Counsel shall submit a fee application to the Council in accordance with N.J.A.C. 5:105-2.13.**

Prepared By: Samuel A. Rosado
Senior Staff Attorney

February 11, 2025



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. GRC 07132-23

AGENCY DKT. NO. 2021-74

ENZA CANNAROZZI,

Petitioner,

v.

JERSEY CITY BOARD OF EDUCATION,

HUDSON

Respondent.

Walter M. Luers, Esq., for petitioner (Cohn, Lifland, Pearlman, Herrmann & Knopf, L.L.P., attorneys)

Adam S. Herman, Esq., for respondent (Adams, Gutierrez & Lattiboudere, L.L.C., attorneys)

Record Closed: October 31, 2024

Decided: November 27, 2024

BEFORE **MATTHEW G. MILLER**, ALJ:

STATEMENT OF THE CASE

Petitioner, Enza Cannarozzi, filed a denial of access complaint, per the New Jersey Open Public Records Act (N.J.S.A. 47:1A-1, et seq.) against the Jersey City Board of Education ("Board"). Petitioner claims that the respondent, first by and through its then Custodian of Records, Regina Robinson and later by its successor Custodian of

Records, Dr. Dennis Frohnappel¹, failed to comply with her record request and further ignored the Government Records Council's Interim Orders of September 29, 2022 and January 31, 2023 by failing to turn over a copy of the July 1, 2018 Administrative Services Agreement between respondent and Horizon Healthcare Services, Inc. d/b/a, Horizon Blue Cross Blue Shield of New Jersey ("Horizon").

PROCEDURAL HISTORY

On March 3, 2021, petitioner filed an Open Public Records Act request for a copy of the Administrative Services Agreement between the Horizon and the Jersey City Board of Education ("Board"). Having received acknowledgement of the request, but no records in response to it, she filed a Denial of Access Complaint on or about March 31, 2021.

Following continued failures by respondent to respond to either Ms. Cannarozzi or the GRC, by letter dated August 7, 2023, the Government Records Council transmitted the matter to the Office of Administrative Law ("OAL") as a contested case, pursuant to N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -13 and N.J.S.A. 47:1A-7(e).

An initial conference was scheduled for August 29, 2023 for which respondent did not appear (although there appears that there may have been a notice issue). The conference was rescheduled for both September 15 and 29, 2023. After respondent again failed to appear for either scheduled event, the matter was set down for a peremptory hearing for November 9, 2023. After counsel entered an appearance for respondent, the hearing was transformed into a status conference. Conferences ensued on December 5, 2023 and January 19, 2024. After both parties failed to appear on February 22, 2024, additional conferences were held on March 14 and May 23, 2024. Both redacted and unredacted versions of the contract were then provided to counsel and a preliminary opinion was supplied to counsel regarding what redactions were thought to be appropriate. The parties then stipulated that the preliminary opinion could be incorporated into an Initial Decision, about which the parties reserved their

¹ Mr. Fronapfel resigned effective November 15, 2024. <https://www.nj.com/hudson/2024/10/jersey-city-school-districts-acting-business-administrator-resigns.html> (last accessed Nov. 23, 2024)

rights to file exceptions with the GRC and that there was no need for a hearing. The record was kept open until October 31, 2024 to allow for a complete review of the stipulated facts and current case and statutory law at which time it was formally closed.

STIPULATION

Following multiple conferences and an in-camera review of both the redacted and unredacted administrative services agreement, the parties entered into a stipulation concerning the resolution of this matter, which reads in relevant part:

STIPULATED AND AGREED by and between the parties hereto that Complainant hereby withdraws and will not further pursue their claim that the Records Custodian knowingly and willfully violated the Open Public Records Act and unreasonably denied access to records under the totality of the circumstances; and it is further

STIPULATED AND AGREED that the parties consent to the form of the OAL's May 6, 2024 correspondence to the parties as its initial decision in this case, and that Complainant does not consent to the entry of that decision so that she may retain the right to file objections, if any, to the OAL's Initial Decision regarding the scope of redactions to the Administrative Services Agreement between Horizon Healthcare Services and the Jersey City Board of Education.

(J-1.)

Both parties set out their respective positions as to the resolution of this case in correspondence. It should be noted that the issue of attorneys' fees as permitted by N.J.S.A. 47:1A-6, was deferred by petitioner to the GRC and that no ruling on same was requested of, nor will it be made by the OAL. (C-5 and C-6.)

FACTUAL DISCUSSION

The factual discussion in this matter can be truncated to a degree, since the stipulation detailed above severely limited the issues in dispute. However, the below facts are effectively uncontested, and I therefore **FIND** the following as **FACTS**:

1. Petitioner submitted her OPRA request to respondent through its website on March 3, 2021 and received an automated reply acknowledging its receipt that same day.
2. Having had no response to the request, on or about March 31, 2021, petitioner filed a Denial of Access complaint, noting that:

I requested a digital (PDF) copy of the entire health benefits contracts between the Jersey City Board of Education and Horizon Blue Cross Blue Shield of NJ. To clarify and be more specific, I want the full copy of the employee health benefits contract (signed from JCBOE and HBCBC) that covers the members of the JCEA for the contract term July 1, 2019 through June 30, 2023.

(G-7.)

3. On April 27, 2021, the GRC emailed a letter to Regina Robinson, respondent's Records Custodian, advising that the complaint had been filed, mediation had either failed or had not occurred and requesting that she complete a Statement of Information ("SOI"), which would provide her "an opportunity to respond to the Complaint...". (G-8.)
4. Having received no response to its April 27, 2021 letter, on May 6, 2021, the GRC emailed Ms. Robinson a second letter, advising that if the SOI were not received within three business days, the complaint would proceed to adjudication based only upon the information included in the Denial of Access complaint. (G-9.)
5. Ms. Robinson's final day of work for respondent was July 1, 2022.²
6. On July 26, 2022, the GRC issued "Findings and Recommendations of the Executive Director". The findings noted the history cited above, including the

² <https://hudsonreporter.com/jersey-city-news/jersey-city-school-business-administrator-sues-claiming-work-discrimination/> (last accessed Nov. 20, 2024)

fact that no SOI had been received from respondent. In addition to finding a violation for that failure and the failure to timely reply to the OPRA request itself, it also found that since "(o)n its face, the request for an employee benefits contract is not exempt from disclosure...the Custodian may have unlawfully denied access to responsive records...", it was ordered that the respondent "must locate and disclose those records" within five business days "with appropriate redactions" and include a separate document detailing those redactions. A determination of the issue of a knowing and willful violation was deferred. (G-6.)

7. On August 15, 2022, respondent sent a letter to the GRC that was signed by "Karen C. Johnson for Regina Robinson", acknowledging receipt of petitioner's OPRA request, advising that the request had been denied and that it had forwarded a response to Ms. Cannarozzi, citing the reason for denial as follows:

Please be advised that your request for a copy of the signed contract between the district and Horizon is denied. The reason for this denial is covered under OPRA statute N.J.S.A. 47:1A-1.1, which states, in part, that a public entity is not required to produce materials that are "trade source" or "information which, if disclosed, would give an advantage to competitors or bidders." Without disclosing the contract, one section of the contract with Horizon requires the district to keep the contract "confidential".

(G-10.)

8. On September 12, 2022, Dr. Dennis Frohnafel was hired as respondent's Interim Business Administrator and Custodian of Records.³⁴

³ <https://www.nj.com/hudson/2022/10/jersey-city-school-district-hires-interim-business-administrator-judge-asked-to-toss-former-bas-lawsuit.html> (last accessed Nov. 23, 2024)

⁴ Francine Luce was appointed to replace Mr. Fronafel on November 21, 2024.

https://www.nj.com/hudson/2024/11/jersey-city-school-districts-assistant-business-administrator-is-promoted-to-acting-ba.html?itm_source=parsely-api (last accessed Nov. 23, 2024)

9. Following the GRC's September 29, 2022 meeting, an Interim Order was issued which found that the respondent had failed to timely comply with its July 26, 2022 Order. It was also noted that the GRC "must conduct an *in-camera* review of the contract" so as to determine whether respondent's denial of the OPRA request was proper and that the contract must be delivered within five business days. Once again, the issue of a willful and knowing violation was deferred. (G-3 and G-4.)

10. Then, following the January 24, 2023 GRC meeting, another Interim Order, this one dated January 31, 2023, was entered. In same, it was noted that:
 - a. Respondent had failed to comply with the September 29, 2022 Order.
 - b. The GRC was unable to determine whether the Custodian unlawfully denied access to the contract.
 - c. The custodian had violated OPRA by failing to provide an SOI and by failing to comply with the September 29, 2022 Order.
 - d. The matter should be referred to the OAL.

(G-1 and G-2.)

11. Ultimately, respondent retained counsel and both redacted and unredacted versions of the Administrative Services Agreement in question were supplied to the court for *in camera* review and the stipulation above was entered into. (C-2 and C-3.⁵)

12. In addition to supplying both versions of the agreement, respondent's counsel supplied a letter explaining the basis for the redactions. (C-4.)⁶

Respondent's Position:

⁵ The unredacted Administrative Services Agreement is being attached as C-3, but under seal for *in camera* review by the GRC.

⁶ This letter is being attached as C-4, but under seal for *in camera* review by the GRC.

Respondent's counsel argues that the redactions were proper pursuant to OPRA's "trade secrets" exemption. (C-4.) All of the redactions were in areas of the agreement that were marked "Confidential and Proprietary" and involve how Horizon operates and structures its programs, how it determines adjustments and working capital and performance guarantees.

Petitioner's Position:

Petitioner argues that the entirety of the agreement should be produced and that the redactions, while relatively minimal, are important to the understanding of the terms of the contract and should not be exempt under N.J.S.A. 47:1A-1.1. (C-5.)

LEGAL DISCUSSION

While the Open Public Records Act ("OPRA") has been amended following petitioner's records request, those amendments do not impact the factual and legal analysis in this case.⁷

OPRA embodies the Legislature's determination that it is the "public policy" of the State that "government records shall be readily accessible for inspection, copying, or examination by the citizens of this State, with certain exceptions, for the protection of the public interest, and any limitations on the right of access . . . shall be construed in favor of the public's right of access[.] N.J.S.A. 47:1A-1. Toward that end, OPRA sets forth a comprehensive framework for access to government records. Subject to various statutory exclusions, N.J.S.A. 47:1A-1.1 broadly defines a "government record" or "record".

"OPRA calls for the prompt disclosure of government records." Mason v. City of Hoboken, 196 N.J. 51, 65 (2008). Custodians of government records "shall grant

⁷ At least as far as the OAL's role. N.J.S.A. 47:1A-6 has been amended (effective September 3, 2024) to eliminate the guarantee of an award of attorneys' fees to the prevailing party to make that award discretionary in the absence of a specific finding of the custodian having unreasonably denied access, acted in bad faith, or knowingly and willfully violated the Act.

access to a government record or deny a request for access to a government record as soon as possible, but not later than seven business days after receiving the request, provided that the record is currently available and not in storage or archived.” N.J.S.A. 47:1A-5(i).⁸ The failure to respond within seven business days “shall be deemed a denial of the request[.]” Ibid. If the government record is in storage or archived, custodians must report that fact within seven business days and advise when the record will be available. Ibid. “If the record is not made available by that time, access shall be deemed denied.” Ibid.

A requestor who is denied access to a government record by the custodian may file a complaint with the GRC, which has a statutory power to “receive, hear, review and adjudicate a complaint filed by any person concerning a denial of access to a government record by a records custodian[.]” N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-7(b). If the GRC determines that “the complaint is within its jurisdiction and is neither frivolous nor without factual basis, the . . . [GRC] shall proceed with the adjudication process.” N.J.A.C. 5:105-2.1; see, N.J.S.A. 47:1A-7(e).

However, as in this case, if the GRC “is unable to make a determination as to a record’s accessibility based upon the complaint and the custodian’s response thereto,” the GRC may transmit the matter to the OAL for a contested-case hearing. N.J.S.A. 47:1A-7(e); see N.J.A.C. 5:105-2.7(a). “The public agency shall have the burden of proving that the denial of access is authorized by law.” N.J.S.A. 47:1A-6. While there are penalties for a custodian or employee who is found to have “knowingly and willfully” violated OPRA, given the stipulation detailed above, the petitioner has waived its claim that respondent’s employee may have acted “knowingly and willfully”.

In fact, at this point, with respondent now having produced a redacted version of the Administrative Services Agreement, the only issue in dispute between the parties is whether the relatively minimal redactions were proper. Respondent claims that its redactions were proper based upon OPRA’s “trade secrets” exemption, which reads in pertinent part:

⁸ In the case of a municipality, the “custodian of a government record” or “custodian” is defined as the municipal clerk. N.J.S.A. 47:1A-1.1.

As used in P.L.1963, c.73 (C.47:1A-1 et seq.) as amended and supplemented:

...

A government record shall not include the following information which is deemed to be confidential for the purposes of P.L.1963, c.73 (C.47:1A-1 et seq.) as amended and supplemented:

...

trade secrets and proprietary commercial or financial information obtained from any source. For the purposes of this paragraph, trade secrets shall include data processing software obtained by a public body under a licensing agreement which prohibits its disclosure;

...

information which, if disclosed, would give an advantage to competitors or bidders;

N.J.S.A. 47:1A-1.1

Case law concerning the "trade secrets" exemption and targeted redactions is not extensive, but it is relatively consistent. Newark Morning Ledger Co. v. New Jersey Sports & Exposition Auth., 423 N.J. Super. 140 (App. Div. 2011), concerned the NJSEA's claim of a trade secret exemption concerning contract information with concert promoters. More specifically,

Defendant declined to release the full contracts, claiming the information was exempt from disclosure as proprietary financial information and because its release would create a competitive disadvantage or reveal trade secrets.

Id. at 147.

The defendant argued that there was "no legal authority to withhold the requested contractual information from public disclosure under OPRA as proprietary or trade secret information." Id. at 149. It also pointed to the fact that the terms of the

contract with the IZOD Center “are widely known among promoters, artists, ticket agents and possibly other arenas.” Id. at 168. However, it also pointed to Commc’ns Workers of Am. v. Rousseau, 417 N.J. Super. 341 (App. Div. 2010), in which the defendant had objected to the release of limited partnership agreements with private investment companies. There, those companies explicitly stated in the agreements what information could be released and that they would not have entered into the agreement if they were to be disclosed. In comparing Rousseau, the Newark Morning Ledger Co. court noted that the variations in contract terms was due not to proprietary strategies, but rather other factors such as the popularity of the talent, talent preference and availability were often the determining factor in venue choice. Id. at 165-66.

While agreeing that some non-financial contractual terms could be exempt from disclosure, the Court concluded that:

Simply stated, we conclude defendant fails to identify the detrimental effects of disclosure. A broad assertion that disclosure will result in a loss of bargaining power is unsupported by actual evidence. Like Judge Coleman, we conclude defendant's claims fail to show the release of financial terms of the promoter/event contracts would give an advantage to defendant's competitors. Gannett, supra, 379 N.J. Super. at 215, 877 A.2d 330.

Newark Morning Ledger Co., 423 N.J. Super. at 167.

Caroff v. Rutgers, 2022 N.J. Super. Unpub. LEXIS 1441 (App. Div.) (Aug. 16, 2022) is the most recent case to discuss the proprietary information/competitive advantage exemption in detail. There, in a case involving production of specific game film from the Rutgers University football program, the Court held that:

N.J.S.A. 47:1A-1.1 also exempts from disclosure under OPRA “information which, if disclosed, would give an advantage to competitors or bidders.” “To justify nondisclosure under this provision, there must be ‘a clear showing’ that the exemption applies.” Scheeler v. Off. Of the Governor, 448 N.J. Super. 333, 347, 153 A.3d 293 (App. Div. 2017) (quoting Tractenberg v. Twp. of W. Orange, 416 N.J. Super. 354, 378-79, 4 A.3d 585 (App. Div. 2010)). “The

'mere potential' that disclosure of information in a government record might confer a competitive advantage upon some person or entity is not sufficient." Scheeler, 448 N.J. Super. at 347 (quoting Tractenberg, 416 N.J. Super. at 379). In Tractenberg, we held "the mere potential for future negotiations without a strong showing that negotiations are probable" was not sufficient to meet OPRA's competitive-advantage exemption. 416 N.J. Super. at 379.

Id. at *13 - *14.

With this backdrop, we proceed to an analysis of the proposed redactions.

ANALYSIS

I have reviewed both the redacted and unredacted Administrative Services Agreement between Horizon Healthcare Services and the Jersey City Board of Education. These consist of sixty-two-page documents with redactions on pages 18-19, 23-24, 42-43 and 60.

As noted above, per respondent's counsel, all of the redactions were based upon the "trade secret and proprietary commercial or financial information" exception to OPRA (N.J.S.A. 47:1A-1.1).

In reviewing the redactions and the explanations supporting them, I **CONCLUDE** that all of the redactions were proper **except** for the following:

Page 18

- a. The first sentence of the page.

Pages 23 – 24

- a. The two italicized, underlined words following Section 9.5
- b. Sections 9.5.1, 9.5.2, 9.5.4
- c. The four italicized, underlined words on the top of page 24
- d. Sections 9.5.6 and 9.5.7.

Page 43

- a. The three underlined words under the words "In-Network utilization only"
- b. The six-word phrase starting with "If" immediately beneath the three underlined words.

While simply marking a document "Confidential and Proprietary" does not exempt it from coverage under OPRA. I **FIND** there is at least an expectation that some of the plan would remain confidential. That being said, and having reviewed the remaining redactions, they concern the very specific machinations of Horizon's proprietary Blue Card program and of its Medical Claim Discount Guarantee. Given my interpretation of the case law cited above and the arguments of counsel, I **FIND** that the redactions concern the inner workings of two proprietary aspects of Horizon's plan.

If specific discount benchmarks, fees and performance guarantees, particularly for products that are exclusive to Horizon are disclosed, I **FIND** that there is no arguable question that competitors in the public health insurance (or self-insurance as is the case here) market will utilize that information to better their own negotiating position and/or tailor their products to become more competitive to Horizon's disadvantage.

Given the above, I **FIND** that respondent has demonstrated by a preponderance of the credible evidence that the limited, narrowly tailored remaining redactions meet the standards enunciated in Newark Morning Ledger Co. and reaffirmed in Caroff.

A copy of an amended redacted Administrative Services Agreement that reflects the above analysis is attached (under seal) for review by the GRC. (C-7.)

ORDER

I hereby **FILE** my initial decision with the **GOVERNMENT RECORDS COUNCIL** for consideration.

This recommended decision may be adopted, modified or rejected by the **GOVERNMENT RECORDS COUNCIL**, who by law is authorized to make a final decision in this matter. If the Government Records Council does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **EXECUTIVE DIRECTOR OF THE GOVERNMENT RECORDS COUNCIL, 101 South Broad Street, PO Box 819, Trenton, New Jersey 08625-0819**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.



November 27, 2024

DATE

MATTHEW G. MILLER, ALJ

Date Received at Agency:

November 27, 2024

Date Mailed to Parties:

November 27, 2024

MM/sej

SEAL

C-7
proposed



ADMINISTRATIVE SERVICES AGREEMENT

BY AND BETWEEN

**HORIZON HEALTHCARE SERVICES, INC. d.b.a.,
HORIZON BLUE CROSS BLUE SHIELD OF NEW JERSEY**

Three Penn Plaza East
Newark, New Jersey 07105

AND

JERSEY CITY BOARD OF EDUCATION

346 Claremont Avenue
Jersey City, New Jersey 07305

EFFECTIVE DATE: July 1, 2018

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EXHIBITS

EXHIBIT A: SCHEDULE A-FINANCIAL TERMS
EXHIBIT B: SUMMARY OF BENEFITS AND COVERAGE ADDENDUM
EXHIBIT C: SCHEDULE C - PERFORMANCE GUARANTEES
EXHIBIT D: STOP LOSS INTERFACE ADDENDUM
EXHIBIT E: BUSINESS ASSOCIATE ADDENDUM

SECTION 1: PURPOSE

- 1.1 **THIS AGREEMENT** entered into this July 1, 2018 ("Effective Date") is by and among the Jersey City Board of Education, having its principal place of business at 346 Claremont Avenue, Jersey City, New Jersey 07305 ("Contract Holder") and Horizon Healthcare Services, Inc., d.b.a. Horizon Blue Cross Blue Shield of New Jersey with its principal place of business at Three Penn Plaza East, Newark, NJ 07105 ("Horizon BCBSNJ").
- 1.2 Contract Holder is an employer or an entity that has established and operates a self-funded medical expense plan(s) (the "Plan") for the benefit of its eligible Participants and Beneficiaries (collectively "Plan Participants") and the Plan is: (a) an employee welfare benefit plan within the meaning of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), or (b) a benefit plan that is otherwise governed by applicable state or federal laws.
- 1.3 Horizon BCBSNJ possesses the administrative resources to assist Contract Holder in providing its Plan Participants with Plan benefits.
- 1.4 Contract Holder desires to enter into this Agreement with Horizon BCBSNJ and Horizon BCBSNJ is willing to provide specified administrative services in connection with Contract Holder's Plan benefit for good and valuable consideration.

SECTION 2: DEFINITIONS

In addition to terms defined elsewhere in this Agreement, the following definitions of words and terms shall apply wherever they appear in this Agreement:

- 2.1 **Capitation.** A system of payment used to reimburse certain providers and/or facilities. Reimbursement is made at a predetermined monthly rate based on the number of enrolled Plan Participants. The rate of Capitation is paid regardless of actual services rendered by a provider to a Plan Participant. Capitation payments shall be deemed to be a Claim(s).
- 2.2 **Claim(s).** Payments made in connection with services, supplies, and health care service provider's management of such services and supplies as it relates to benefits covered under Contract Holder's Plan. Such expenses may include, but are not limited to: 1) fee-for-service payments; 2) Capitation payments; 3) care coordination fees; 4) outcome based performance or shared savings and retrospective risk-based payments to providers of health care services that is based upon quality and/or cost effectiveness measures; and 5) costs associated with Horizon BCBSNJ's Network Provider Programs (as such term is defined in Section 6.3.1) that is designed to reduce overall medical expenses or the rate of growth in such expenses. Such expenses may be retrospectively billed after applicable reconciliation periods necessary to measure a Network Providers' success in meeting quality and/or cost effectiveness measures, whether quarterly, annually, or otherwise. Details on specific program features are available upon request.
- 2.3 **CMS.** The federal Centers for Medicare and Medicaid Services.
- 2.4 **HIPAA.** The Health Insurance Portability and Accountability Act of 1996, as amended.
- 2.5 **Incur(s)/Incurred.** When used with reference to health care services or supplies, this means the time when the services have been rendered, or the supplies provided, to or on behalf of a Plan Participant under Contract Holder's Plan. Additionally, any payments made by Horizon BCBSNJ to Network Providers under Network Provider Programs shall be deemed to have been Incurred in the time period

for which Horizon BCBSNJ based the payment (for example, a retrospective quality incentive or shared savings payment paid to a Network Provider based on meeting or exceeding quality metrics or cost effectiveness measures shall be deemed to have been Incurred in the attributable days and months as opposed to the date payment is made).

- 2.6 **Provider Network(s)**. The various Network Providers that Horizon BCBSNJ makes available to self-insured clients and that have entered into or are governed by contractual arrangements under which they agree to provide health care services to Plan Participants and to accept negotiated fees for those services.
- 2.7 **Material Environmental Change**. A Material Environmental Change can occur if:
- (a) a new federal or state law becomes effective;
 - (b) an existing law is changed; or
 - (c) there is a new interpretation of an existing law by a court or other governmental authority of competent jurisdiction.
- If the occurrence of subsections (a), (b)-or (c) could reasonably be expected to prohibit, restrict or in any way materially and adversely change: (i) the method or manner in which Horizon BCBSNJ conducts its business; (ii) its ability to carry out the transactions of this Agreement; (iii) its ability to receive the economic benefits contemplated by this Agreement; or (iv) if a court of competent jurisdiction holds that a material provision of this Agreement is invalid, void or unenforceable, it is a "Material Environmental Change".
- 2.8 **Network Access Fee**. The charge, if applicable, for the development and maintenance of Horizon BCBSNJ's Provider Network(s).
- 2.9 **Network Provider(s)**. Physicians, other medical professionals and healthcare facilities that participate in Horizon BCBSNJ's Provider Network(s).
- 2.11 **Paid**. The time at which Horizon BCBSNJ has paid for the health care services rendered, or health care supplies provided, to a Plan Participant.
- 2.11 **Party/Parties**. Party shall mean either Contract Holder or Horizon BCBSNJ. Parties shall mean, collectively, Contract Holder and Horizon BCBSNJ.
- 2.12 **Plan**. The medical benefits provided by Contract Holder for the benefit of Plan Participants and administered for Contract Holder by Horizon BCBSNJ pursuant to this Agreement.
- 2.13 **Plan Administrator**. The Contract Holder.
- 2.14 **Plan Participant(s)**. Participants and Beneficiaries of the Plan as defined in the Plan's Plan Document.
- 2.15 **Plan Document**. The written document detailing the benefits provided to Plan Participants through the Plan. Where applicable, the Plan Document shall conform to the minimum requirements of ERISA and Contract Holder shall be responsible for compliance with any applicable requirements.
- 2.15 **Projected Claims**. The dollar amount of Claims which Horizon BCBSNJ estimates Plan Participants will Incur during each year, month or week during the Term(s) of this Agreement.
- 2.16 **Proprietary Business Information**. Information about Horizon BCBSNJ's or Contract Holder's business that is confidential, proprietary, a trade secret or is not readily available to the general public,

including information that has been designated by Horizon BCBSNJ or Contract Holder as being confidential or proprietary.

- 2.17 Related Entities.** A corporation or other lawful entity that: (a) is Contract Holder's subsidiary or affiliate; (b) meets Horizon BCBSNJ's underwriting requirements for participation under the terms of this Agreement; and (c) has been specifically approved by Horizon BCBSNJ to participate in this Agreement.
- 2.18 Taxes and Assessments.** A charge that is imposed, anticipated, assessed or levied by any federal, state, local or other governmental entity and that is applicable to the Plan or any function undertaken by Horizon BCBSNJ under this Agreement. This shall include any interest, fines, or penalties relating to such charges, unless caused by Horizon BCBSNJ's unreasonable determination to dispute the charges. This shall not include any charges or taxes imposed on Horizon BCBSNJ's net income.
- 2.19 Utilization Review Services.** The following Utilization Review Services are available to the extent provided for in Contract Holder's Plan:
- (a) **Admission Review** - The review which occurs within 48 hours of an emergency admission or nonscheduled obstetrical inpatient admission (excluding caesarian sections) to help determine the medical necessity of a Plan Participant's inpatient admission.
 - (b) **Concurrent Review** - The review of medical necessity conducted during a Plan Participant's inpatient admission to help determine the necessity of his/her inpatient stay at a given level of care.
 - (c) **Estimated Length of Stay** - An estimated number of days of inpatient stay, assigned based upon admission information regarding the Plan Participant and his/her diagnosis that should not be exceeded without review and approval.
 - (d) **Outpatient Procedure Certification** - The prospective review of surgical, diagnostic, or therapeutic outpatient procedures recommended for the Plan Participant which occurs prior to the applicable procedure to help determine its medical necessity.
 - (e) **Pre-Admission Review** - The review which occurs prior to a Plan Participant's nonemergency, or scheduled, inpatient admission to help determine the admission's medical necessity.
 - (f) **Mental, Alcohol and Substance Abuse Services Review** - The review to help determine the medical necessity and medical appropriateness of mental, alcohol and substance abuse services recommended for a Plan Participant.

SECTION 3: RELATIONSHIP OF THE PARTIES

- 3.1 Nature of this Agreement.** The relationship of Contract Holder and Horizon BCBSNJ shall be governed solely by this Agreement. Contract Holder delegates to Horizon BCBSNJ certain powers and responsibilities as specifically provided for in this Agreement and the Parties further agree as follows:
- 3.1.1** This Agreement provides for administrative services only. Horizon BCBSNJ does not assume any financial risk or obligation with respect to Claims and shall not be obligated to disburse more in Claims than Contract Holder agrees to reimburse Horizon BCBSNJ. This Agreement shall not be deemed an agreement of insurance or prepaid benefit plan under the laws of New Jersey or any other jurisdiction;
 - 3.1.2** Any function not specifically delegated to and assumed by Horizon BCBSNJ in this Agreement shall remain the sole responsibility of Contract Holder;
 - 3.1.3** Horizon BCBSNJ shall not be responsible for any delay in the performance of this Agreement or for the non-performance of this Agreement, which delay or non-performance is caused by or contributed to by Contract Holder's failure to provide any information or Contract Holder's undertaking actions or activities or failing to undertake actions or activities so that Horizon

BCBSNJ is or would be prohibited from the due observance or performance of any material covenant, condition or agreement contained in this Agreement; and

- 3.1.4 Horizon BCBSNJ is not a provider of medical services, advice, or supplies, nor does it provide compliance or related legal services in connection with Contract Holder's Plan.
- 3.2 **Eligibility of Contract Holder.** Contract Holder agrees and understands that it is a legal entity which conducts current business or other lawful activities and has the legal capacity to enter into this Agreement. Determination of group eligibility is at the sole discretion of Horizon BCBSNJ based on its interpretation of the applicable laws, application of its underwriting or contracting criteria, and any other pertinent rules.
- 3.3 **Eligibility of Related Entities.** Contract Holder agrees that to the extent that Related Entities participate in this Agreement, Contract Holder shall act for them and shall be deemed the legally authorized entity to make contractual decisions. Contract Holder also represents that together Contract Holder and the Related Entities covered under the Plan make up a single "control group" as defined by ERISA.
- 3.4 **Parties to this Agreement.** Contract Holder agrees and understands that this Agreement is solely between Contract Holder and Horizon BCBSNJ.
- 3.5 **Liability for Benefits.** Contract Holder is liable for and shall underwrite all of the Plan benefits provided to its Plan Participants under the Plan. Horizon BCBSNJ does not insure, guarantee, or otherwise underwrite any Plan benefits.
- 3.6 **Subcontractors.** Horizon BCBSNJ's services under this Agreement may be performed wholly or in part by subcontractors of its choice. Horizon BCBSNJ shall remain responsible for any failure of a subcontractor to perform as required pursuant to this Agreement.
- 3.7 **Regulatory Compliance.** Contract Holder and Horizon BCBSNJ shall each comply with state and federal laws, rules, and regulations, now and hereafter, where applicable to the subject matter of this Agreement. The Parties shall agree to comply with any newly applicable state and federal laws, rules and regulations in accordance with *Section 4.6 – Compliance with Laws*.
- 3.8 **Independent Contractors.** The relationship between Contract Holder and Horizon BCBSNJ is that of independent contracting Parties. Contract Holder and Horizon BCBSNJ shall not be deemed to be partners, joint venturers, or otherwise considered to be the employee or agent of one another. Further, the Parties expressly acknowledge that each party is at all times acting and performing as an independent contractor with respect to the other party. It is further expressly agreed that no work, act, commission or omission of either party (or any of its agents or employees) pursuant to the terms and conditions of this Agreement, shall be construed to make or render such party (or any of its agents or employees) an agent, servant, representative, or employee of, such other party.

SECTION 4: CONTRACT HOLDER RESPONSIBILITIES

- 4.1 **Contract Holder as Plan Administrator.** Contract Holder acknowledges that it is the Plan Administrator of the Plan. In no event shall Horizon BCBSNJ be deemed the Plan Administrator of the Plan. Horizon BCBSNJ provides specified administrative services under this Agreement and any reference to Horizon BCBSNJ's administration of the Plan is descriptive only. The administration of the Plan shall not confer to Horizon BCBSNJ any Plan fiduciary responsibility except to the extent this Agreement specifically requires Horizon BCBSNJ to have the fiduciary responsibility for a Plan administrative function.

- 4.2 **Plan Description.** To enable Horizon BCBSNJ to provide its administrative services in connection with the Plan as of this Agreement's Effective Date, Contract Holder will prepare a description of the Plan's benefit design, including any exclusion, with the assistance of Horizon BCBSNJ. Such Plan description shall be agreed to and expressly endorsed by Contract Holder as consistent with the Plan Document(s) and shall be part of the Central Product Library. Horizon BCBSNJ will administer the Plan in accordance with the plan description as provided by the Contract Holder.
- 4.3 **Plan Consistent with this Agreement.** Contract Holder agrees that any Plan Document, "summary plan description" within the meaning of ERISA or any other benefit summary document describing the Plan's benefits, exclusions, and other pertinent information shall be consistent with the terms of this Agreement.
- 4.4 **Information about Plan Changes.** Contract Holder agrees to furnish Horizon BCBSNJ with prompt notification of any changes to the Plan or materials connected with it, so that Horizon BCBSNJ can determine the effect of such changes, if any, on the services provided. If such services are affected, any change in the services must be mutually agreed to in writing prior to its implementation. If Horizon BCBSNJ cannot implement the change, or if the change affects the Administrative Charges for the services, Horizon BCBSNJ will so notify Contract Holder within 30 days after being notified of the change.
- 4.5 **Notices to Plan Participants.** Contract Holder shall provide Plan Participants with the information and documents necessary to access Plan benefits and Horizon BCBSNJ shall provide reasonable assistance, subject to Horizon BCBSNJ's approval. Further, Contract Holder understands that it shall remain solely responsible for complying with the notice requirements of the Consolidated Omnibus Budget Reconciliation Act of 1985 ("COBRA"), HIPAA and other relevant laws. Horizon BCBSNJ assumes no responsibility for COBRA compliance under the Plan, except insofar as Horizon BCBSNJ continues to process and make payments for Claims with respect to former Plan Participants whose coverage under the Plan continues pursuant to COBRA.
- 4.6 **Compliance with Laws.** Except as otherwise provided in this Agreement, Contract Holder is solely responsible for complying with all applicable provisions of ERISA, the Affordable Care Act, or other governing state and/or federal laws and regulations. This includes the fiduciary responsibilities of structuring the Plan and maintaining adequate funding to support the Plan and any employer reporting obligations as may be promulgated under the Affordable Care Act or other applicable federal or state laws. Contract Holder is also responsible for providing Plan Participants with copies of the ERISA Plan Document describing the Plan and with copies of a Summary Plan Description, Summary of Benefits and Coverage, or other document describing the Plan's benefits, limitations, exclusions, and waiting periods, unless otherwise agreed to by the Parties. Such documents shall be shared with Horizon BCBSNJ upon reasonable request.
- 4.7 **Medicare Secondary Payer Mandatory Reporting.** As an administrator of Contract Holder's Plan, Horizon BCBSNJ is obligated to report certain information to CMS under the Medicare Secondary Payer Mandatory Reporting Provisions in Section 111 of the Medicare, Medicaid, and SCHIP Extension Act of 2007. This information includes, but is not limited to, Employer Tax Identification Numbers, employer size, employer address, and Social Security numbers for all Plan participants. Contract Holder agrees to provide this information to Horizon BCBSNJ, and to periodically verify said information as requested by Horizon BCBSNJ, to meet these reporting requirements.
- 4.8 **Liability for Claims by Governmental Programs and Agencies.** Contract Holder acknowledges and agrees that Contract Holder shall at all times remain liable for the payment and satisfaction of demands for repayment asserted by Medicare, Medicaid or other similar government or medical assistance programs, including those asserted by governmental agencies such as the United States Department of Veteran Affairs. Contract Holder agrees to indemnify and hold Horizon BCBSNJ harmless from any

such demands. Indemnification for said liabilities shall be inclusive of all demands which predate the Effective Date of this Agreement and shall survive the termination of this Agreement.

SECTION 5: ENROLLMENT AND ELIGIBILITY

- 5.1 Offer of Coverage.** Contract Holder agrees to offer coverage under the Plan administered by Horizon BCBSNJ under this Agreement to all eligible Plan Participants under terms and conditions no less favorable than the Plan administered by another administrator. Horizon BCBSNJ understands that Contract Holder's eligibility rules shall determine participation in the Plan.
- 5.2 Enrollment Periods.** Contract Holders shall conduct regular enrollment periods in accordance with the Plan's customary practices and in accordance with its Plan Document. Enrollment transactions with respect to Plan Participants shall include:
- 5.2.1** Additions of newly hired or otherwise becoming eligible for coverage;
 - 5.2.2** Changes in coverage type for purposes of adding or deleting a dependent(s) from coverage; and
 - 5.2.3** Coverage termination.
- 5.3 Eligibility Information.** Contract Holder agrees that Horizon BCBSNJ, in administering the Plan, will rely on the most current information provided to it by Contract Holder with respect to the persons who are Plan Participants, and that any changes in this information will be provided promptly. Contract Holder further agrees to process all enrollment transactions in a timely manner within seven (7) business days after receipt of the enrollment information, and that all enrollment information, including any copies of enrollment applications received from its Plan Participants, will be maintained for seven (7) years in auditable form accessible by Horizon BCBSNJ.
- Horizon BCBSNJ will make reasonable efforts to identify invalid eligibility information provided by Contract Holder, but Horizon BCBSNJ will not be responsible nor be held liable for eligibility errors related to any eligibility information provided by Contract Holder. Contract Holder agrees to hold harmless and indemnify Horizon BCBSNJ for all costs and expenses associated with its reliance on the enrollment information provided by Contract Holder, unless such costs and expenses resulted exclusively from Horizon BCBSNJ's error.
- 5.4 Enrollment Reports.** If Contract Holder requests, Horizon BCBSNJ will provide monthly enrollment reports indicating all of the enrollment transactions processed by Horizon BCBSNJ during the prior month. Contract Holder agrees to review the reports' accuracy and to process any additional transactions as needed to correct any errors within thirty (30) days from receipt.
- 5.5 Notice of Change of Status.** Contract Holder shall promptly notify Horizon BCBSNJ of any changes that occur that impact the coordination of benefits under the Medicare Secondary Payer laws (e.g., a Plan Participant's employment or Medicare status).
- 5.6 Plan Participant Termination and Retroactive Changes to Enrollment.** Horizon BCBSNJ's services to a Plan Participant will end as of the time specified by Contract Holder in writing or by other documented communication to Horizon BCBSNJ. Contract Holder shall remain responsible for all charges and Claims for which Horizon BCBSNJ has paid or otherwise Incurred for Plan Participant until the date Horizon BCBSNJ receives appropriate notice of the Plan Participant's termination date. Contract Holder shall also remain responsible for all charges and Claims when, under certain conditions detailed in the Plan Document or other summary information of the Plan, benefits continue beyond the Plan Participant termination date.

Subject to all of the requirements of this Agreement regarding Plan Participant enrollment and eligibility, Horizon BCBSNJ shall permit retroactive additions and terminations of the Plan Participants

for a period not to exceed sixty (60) days prior to the date on which Horizon BCBSNJ receives notice of such additions or terminations under the following conditions:

- 5.6.1 Contract Holder acknowledges that it shall assume responsibility for all Claims Incurred by the Plan Participant subsequent to the effective addition date and prior to the effective termination date, except where there is a conflict, the retroactive termination date may be adjusted to the date of last Paid Claim;
- 5.6.2 Contract Holder agrees to be solely responsible for notifying the affected Plan Participants of the effect of any retroactive addition or termination; and
- 5.6.3 Contract Holder shall indemnify and hold harmless Horizon BCBSNJ for any such retroactive additions or terminations in accordance with the terms of *Section 15.2 – Indemnification by Contract Holder*.

SECTION 6: ADMINISTRATIVE SERVICES

- 6.1 **Horizon BCBSNJ's Responsibility.** In the exercise of Horizon BCBSNJ's performance under this Agreement, Horizon BCBSNJ shall use the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in like capacity and familiar with such matters would use in the conduct of an enterprise of like character and with like aims.

Contract Holder also acknowledges and agrees that, except as this Agreement otherwise provides, no person, entity or organization other than Horizon BCBSNJ shall be held liable to Contract Holder for any of Horizon BCBSNJ's obligations under this Agreement to Contract Holder. This paragraph shall not create any additional obligations on the part of Horizon BCBSNJ other than those expressed under this Agreement.

- 6.2 **Authority to Make Claims Determination.** Contract Holder hereby delegates to Horizon BCBSNJ authority to make initial Claims determinations on Contract Holder's behalf with respect to Claims for benefits under the Plan. Except as otherwise specified in this Agreement and subject to the results of any independent external review process, it is the right of Contract Holder to make the final decision with respect to an adverse benefit determination and to that extent Horizon BCBSNJ shall not have discretionary responsibility to make final Claims decisions and Contract Holder shall be deemed the named ERISA fiduciary. Any such final decision shall be promptly communicated to Horizon BCBSNJ.
- 6.3 **Claims Administration.** As a standard administrative service, Horizon BCBSNJ will administer, and pay Claims for, the benefits described in the Plan description prepared by Horizon BCBSNJ, based on information provided by Contract Holder and confirmed in writing by Contract Holder. Additionally, Contract Holder shall be responsible for promptly providing to Horizon BCBSNJ any information reasonably requested for it to properly administer the Plan.

The charges on which benefits will be based must be Incurred after the Effective Date of this Agreement and prior to its termination. Any such Claim for benefits must be received within 18 months, or as otherwise specified in the applicable Central Product Library, after the date the charges were Incurred and while this Agreement is in effect, unless otherwise provided in this Agreement. Further, no action may be brought against Horizon BCBSNJ for a failure to provide benefits unless it is brought within two years from the time the cause of action arises.

In applying the Plan's provisions, Horizon BCBSNJ will use Claim procedures and standards that it has developed for Claims administration. If Horizon BCBSNJ determines that a benefit is payable, including any determination that the benefit is medically necessary or otherwise available for a Plan Participant's Claim, Horizon BCBSNJ will appropriately reimburse the Plan Participant or his/her

healthcare provider, as the case may be, less any applicable deductibles, copayments, and/or coinsurance. It is understood and agreed that Horizon BCBSNJ provides administrative Claims payment services only and does not assume any financial risk or obligation with respect to Claims.

- 6.3.1. Services of Network Providers.** Horizon BCBSNJ will administer Contract Holder's Plan in a manner consistent with its agreements with Network Providers that participate in Horizon BCBSNJ's Provider Network(s). This includes the application of Network Provider discounts and other negotiated arrangements. Such negotiated arrangements may include programs that allow for risk-based, quality, or cost effectiveness payments made to Network Providers (such programs shall be collectively referred to as "Network Provider Programs"). Network Provider Programs may include, but are not limited to, accountable care organizations, global payment/total cost of care arrangements, episodes of care, patient centered medical homes, and shared savings arrangements.

Contract Holder specifically agrees to fund Horizon BCBSNJ's Network Provider Programs to the same extent as Horizon BCBSNJ does for its actively marketed fully-insured health benefits plans. Network Provider Programs may be billed as part of, or separately from, the price of the Claim. Contract Holder also agrees to the payment of reasonable program costs associated with Horizon BCBSNJ's Network Provider Programs in addition to any Charges pursuant to *Section 2.2 - Claims*. Horizon BCBSNJ will inform Contract Holder, from time to time, of material changes to its Network Provider Programs.

Notwithstanding anything to the contrary, Contract Holder acknowledges and agrees that: (a) Horizon BCBSNJ has not been engaged to negotiate such discounts and arrangements with Network Providers on Contract Holder's behalf; (b) Contract Holder accepts them as they are; and (c) Horizon BCBSNJ is not a fiduciary for the purpose of negotiating them.

Horizon BCBSNJ's invoiced Claim payments will reflect applicable discounts, negotiated arrangements, and adjustments as they exist at the time the Claim is adjudicated, however, they will not include either positive or negative effects of any later settlements or negotiations with the Network Providers. Additionally, any applicable Plan Participant coinsurance or liabilities will be calculated at the time the Claim is adjudicated based on then in force and available Network Provider discounts or negotiated arrangements.

- 6.3.2. Services of Non-Network Providers.** If benefits are provided under Contract Holder's Plan for the services of providers with whom Horizon BCBSNJ does not have negotiated arrangements ("Non-Network Provider"), Horizon BCBSNJ will make its Claim payments directly to the Plan Participant unless otherwise required by applicable Horizon BCBSNJ policy(ies). If there is any difference between that payment and the Non-Network Provider's billed charge, it shall be the responsibility of the Plan Participant. Further, Horizon BCBSNJ will make payment for Non-Network Providers' services ("Out-of-Network Claims") at the payment level selected and endorsed by Contract Holder in the National Account Enrollment Group Summary(ies), Benefit Information Forms, or the Central Product Library, as applicable (such benefit summaries referred to as "Plan Benefit Descriptions"). Such Plan Benefit Descriptions shall serve as the sole source of the appropriate Out-Of-Network Claim payment amounts.

- 6.3.3. Claims Re-Pricing and Negotiation Services.** If benefits are provided under Contract Holder's Plan for which services were delivered or otherwise provided by a Non-Network Provider, Horizon BCBSNJ may negotiate and/or re-price Claims for such Non-Network Provider services through the use of internal or external resources of its choice to make available savings in Out-of-Network Claims (such savings realized to be referred to as "Out-of-Network Claims Savings"). The re-pricing and negotiation service provided in connection with such Out-of-

Network Claims Savings shall be at the applicable charge(s) set forth in *Exhibit A: Schedule A – Financial Terms (“Schedule A”)*.

- 6.4 Claim Appeals and External Appeals.** Horizon BCBSNJ will administer the appeals procedure described in Contract Holder’s Plan Document, summary plan description or other material that describes the Plan, subject to the right of Contract Holder to make final Claims determination. If a summary plan description or other descriptive material is not available, Horizon BCBSNJ will conduct the appeals procedure in accordance with its interpretation of applicable federal requirements. If, in accordance with those requirements, a Plan Participant is entitled to an independent external review of an adverse benefit determination, Horizon BCBSNJ will arrange for such a review upon Contract Holder’s request and subject to the payment of the applicable additional charge set forth in *Schedule A*.
- 6.5 Changes in Law Affecting Plan Administration.** In the event the Plan becomes subject to federal or state laws or regulations mandating changes in the benefits or in the eligibility of the Plan Participants, Horizon BCBSNJ will implement such mandatory change at the time the law becomes effective with respect to the Plan, unless the Plan notifies Horizon BCBSNJ that, in the opinion of Contract Holder’s legal counsel, which opinion shall be final, such laws or regulations are not applicable to the Plan, Plan Participants, or any benefits therein. Contract Holder agrees to indemnify, and hold harmless Horizon BCBSNJ against any losses which result from actions taken in reliance upon Contract Holder’s legal counsel’s opinion on such matter. In the event such mandatory changes are necessary, effective as of the date the modified Plan takes effect, Horizon BCBSNJ shall modify applicable charges, including Claims payable, Administrative Fees, and other costs, as are necessary to reflect the increased or decreased costs resulting from such changes in the benefits or in the eligibility of Plan Participants. The charges shall be subject to *Schedule A*.
- 6.6 Explanations of Adverse Benefit Determinations.** As a standard administrative service, Horizon BCBSNJ will furnish each claimant an explanation of an adverse benefit determination, describing the specific reason for the determination.
- 6.7 Claim Recoveries.** As part of Horizon BCBSNJ’s normal Claim adjudication processes, Horizon BCBSNJ will, where practicable, pursue Claim recoveries pursuant to the application of the coordination of benefits and workers’ compensation provisions of the Plan. Horizon BCBSNJ will also pursue the recovery of payments made on Claims that are or may be fraudulent. In the process of pursuing any such recoveries, Horizon BCBSNJ shall not be required to bring suit and shall be permitted to use both internal and external resources of its choice. But if Horizon BCBSNJ elects to sue, Contract Holder hereby consents to the suit.
- 6.7.1. Fraudulent Claims.** Contract Holder acknowledges and agrees that Horizon BCBSNJ will deduct twenty percent (20%) of any recovered amount in pursuing fraudulent Claim recoveries on Contract Holder’s behalf, regardless of how such recoveries were made.
- 6.7.2. Coordination of Benefits and Worker’s Compensation.** Contract Holder also acknowledges and agrees that Horizon BCBSNJ will deduct its reasonable internal and external administrative expenses incurred in pursuing Claim recoveries pursuant to the application of the coordination of benefits (“COB”) and the worker’s compensation (“WC”) provisions of the Plan. Where applicable, such charges shall be as set forth in *Schedule A*. The COB and WC recoveries herein is strictly limited to information made available by the Plan to Horizon BCBSNJ and does not include COB and WC recoveries based on data mining, member outreach, or other advanced analytics, which shall be governed by Section 6.7.3.
- 6.7.3. Recovery Activities.** Horizon BCBSNJ may, at its option and where practicable, elect to engage in Claims recoveries on Incurred Claims, either on a prospective or retrospective basis, through recovery activities such as negotiations with, including audits of, various third parties

and providers of health care services and benefits under the Plan as well as through data mining, analytics, and member outreach to obtain current benefit coordination information (collectively, such actions being referred to as "Recovery Activities"). Recovery Activities are separate and apart from routine recoveries based on Plan provided information as specified under Sections 6.7.1 and 6.7.2.

Contract Holder acknowledges and agrees that Horizon BCBSNJ will deduct 25% of amounts recovered from such Recovery Activities conducted on Contract Holder's behalf, regardless of how such recoveries were made. Horizon BCBSNJ has the right to engage in such Recovery Activities in the 12 months prior to the Incurred Claim. Any credited amount, less the applicable recovery fee or costs, is the full and final amount Contract Holder will receive from Horizon BCBSNJ related to each specific recovery amount. Deductions for Recovery Activities are made only if the recoveries are not attributable to an underlying Horizon BCBSNJ error. Horizon BCBSNJ's deductions represent contingency payments to external vendors, Horizon BCBSNJ's internal and external administrative expenses in pursuing such Claim recoveries, and is inclusive of attorney fees, court fees, and other expenses. Where Recovery Activities are initiated but does not result in a recovery, Horizon BCBSNJ will not charge Contract Holder for any costs associated with that recovery.

- 6.8 **Subrogation.** With respect to the application of the Plan's subrogation provision, Horizon BCBSNJ will use external vendor(s) for assistance in making these recoveries. Accordingly, Contract Holder agrees that the applicable vendor, for its services to the Plan in making these recoveries, may retain a percentage of any recovered amount, but not more than 21%. This percentage may be changed from time to time. Contract Holder also agrees to share in any reasonable internal administrative expenses that Horizon BCBSNJ incurs in pursuing Claim recoveries pursuant to the application of the Plan's subrogation provision. In the process of pursuing any such recoveries, Horizon BCBSNJ shall not be required to bring suit. But if Horizon BCBSNJ elects to sue, Contract Holder hereby consents to the suit.
- 6.9 **Identification Cards.** As a standard administrative service, Horizon BCBSNJ will provide Plan Participants with appropriate identification (ID) cards that will enable them to access the Plan's benefits.
- 6.10 **Additional Administrative Services.** If Contract Holder requests, and subject to the payment by Contract Holder of the appropriate fees as may be listed in *Schedule A* or other document(s), Horizon BCBSNJ will perform any one or more of the following additional administrative services in connection with the Plan:
- 6.10.1 **Summary Plan Descriptions:** If requested by Contract Holder, Horizon BCBSNJ will, for an additional fee, print and if requested, distribute to Plan Participants, summary plan descriptions. Notwithstanding the above, Contract Holder acknowledges that Horizon BCBSNJ does not produce or prepare summary plan descriptions on behalf of Contract Holder per Section 4.6. Any draft provided by Horizon BCBSNJ is solely for informational purposes.
- 6.10.2 **Certificates of Creditable Coverage:** To the extent that HIPAA, if applicable, requires the issuance of certificates of creditable coverage, Horizon BCBSNJ will produce them for Contract Holder's former Plan Participants. Such certificates will reflect only the period that the former Plan Participant had creditable coverage under the terms of this Agreement. Horizon BCBSNJ will issue such a certificate to a person requesting it within the time frame established pursuant to federal guidelines. Horizon BCBSNJ reserves the right to discontinue this service with 30 days notice to Contract Holder.

6.10.3 Utilization Review Services: Horizon BCBSNJ will provide Utilization Review Services, as defined in "Section 2: Definitions".

6.10.4 Ancillary Services: (a) chronic care management services; and other ancillary services as may be described in any applicable *Schedule A* for the corresponding terms.

Subject to the mutual agreement of the Parties, Horizon BCBSNJ may perform additional administrative services in connection with the Plan.

SECTION 7: CLAIMS FIDUCIARY AND PLAN BENEFITS LITIGATION

7.1 Final Claims Determination. Contract Holder delegates to Horizon BCBSNJ the authority to make final claims determinations and decide initial and final claims appeal on Contract Holder's behalf with respect to Claims payable under the Plan to Plan Participants.

In the course of making final Claims determinations and initial and final Claims appeal, Horizon BCBSNJ shall have the authority to make all interpretive and factual determinations as to all questions arising in connection with the administration and application of the Plan. Any construction of the terms of the Plan and any determination of fact adopted by Horizon BCBSNJ herein shall be final and legally binding on all Parties.

7.2 Claims Fiduciary. Horizon BCBSNJ in its capacity as the Claims administrator making final claims determination and initial and final Claims appeal, shall be a Named ERISA Fiduciary ("Claims Fiduciary") within the meaning of Section 3(21)(A) of ERISA, but not beyond the minimum extent required by ERISA. Horizon BCBSNJ's responsibilities as a Claims Fiduciary under this Agreement is hereby defined as Claims administration, including case management and Claims processing services to the extent delegated with respect to Claims submitted to Horizon BCBSNJ by or on behalf of Plan Participants.

Contract Holder understands that Horizon BCBSNJ's responsibility as a Claims Fiduciary is strictly limited to Claims administration functions defined in this Agreement and Horizon BCBSNJ expects the Plan and Plan Administrator to continue as is until such time it notifies Horizon BCBSNJ in writing. Further, Horizon BCBSNJ is not responsible for matters not specifically delegated under this Agreement, for the actions or inaction's of any other fiduciary.

Horizon BCBSNJ shall not be deemed a party to the Plan and Horizon BCBSNJ shall not have any obligations to independently determine that any person is a Plan Participant, or is, in fact, eligible for benefits or participation under the Plan in exercising its obligation as the Claims Fiduciary. Horizon BCBSNJ relies solely on the Plan's eligibility information provided under *Section 5.3 – Eligibility Information*.

Notwithstanding Horizon BCBSNJ's appointment as Claims Fiduciary, in the event Contract Holder reviews a Claim or makes a benefit determination, Contract Holder shall be deemed to be the Named ERISA Fiduciary, where applicable, for purposes of that particular Claim review. In such instance, Contract Holder shall forward its determination in writing to Horizon BCBSNJ.

7.3 Claims Fiduciary Standard of Care. Horizon BCBSNJ shall act with the care, prudence and diligence that a prudent person acting in like capacity and familiar with such matters would use under similar circumstances and in such manner as to comply with ERISA and other applicable laws. Horizon BCBSNJ shall be fully protected in acting upon any advice, representation or instrument executed by the Plan Sponsor or by the Plan Administrator, provided Horizon BCBSNJ has acted in accordance with the standard of care described herein. In no event shall Horizon BCBSNJ be responsible for any lack or failure of proper authority in the establishment or maintenance of the Plan.

- 7.4 Plan Benefits Litigation.** If Horizon BCBSNJ determines that a Claim should be rejected, rejects such Claim, in whole or in part, and, following exhaustion of all appeals under the Plan, a suit is brought with respect to such Claim against either Horizon BCBSNJ, Contract Holder, or both, the Parties shall agree to do the following:
- 7.4.1.** If the suit is brought against Horizon BCBSNJ, and Contract Holder or the Plan, each party shall be solely responsible to arrange for its own defense at its own cost and expense;
 - 7.4.2.** If the suit is brought against Contract Holder or the Plan and Horizon BCBSNJ is not a party, Horizon BCBSNJ shall be available to review the complaint with Contract Holder, but Contract Holder shall be solely responsible to arrange for its own defense at its own cost and expense;
 - 7.4.3.** In any event, Horizon BCBSNJ shall not be responsible for the cost and expense, or for any judgment, arising out of a Material Environmental Change, which has been applied retroactively to a Claim Incurred prior to the effective date of such Material Environmental Change.
 - 7.4.4.** In all situations, Contract Holder or the Plan shall be responsible for funding any and all Claims that are to be paid. No judgment, settlement, or award shall reduce the Claims payment obligation of the Plan.

SECTION 8: BLUECARD® PROGRAM

The below provisions within Section 8 apply solely with respect to the BlueCard® Program.

8.1 BlueCard® Program Definitions.

For the purposes of any BlueCard® Program provisions, the following definitions shall apply:

Accountable Care Organization (ACO): A group of healthcare providers who agree to deliver coordinated care and meet performance benchmarks for quality and affordability in order to manage the total cost of care for their member populations.

Care Coordination: Organized, information-driven care activities intended to facilitate the appropriate responses to a Plan Participant's healthcare needs across the continuum of care.

Care Coordinator: An individual within a provider organization who facilitates Care Coordination for patients.

Care Coordinator Fee: A fixed amount paid by a Blue Cross and/or Blue Shield Plan to providers periodically for Care Coordination under a Value-Based Program.

Global Payment/ Total Cost of Care: A payment methodology that is defined at the patient level and accounts for either all patient care or for a specific group of services delivered to the patient such as outpatient, physician, ancillary, hospital services, and prescription drugs.

Negotiation Arrangement a.k.a., Negotiated National Account Arrangement: An agreement negotiated between a Control/Home Licensee and one or more Par/Host Licensees for any National Account that is not delivered through the BlueCard Program.

Patient-Centered Medical Home (PCMH): A model of care in which each patient has an ongoing relationship with a primary care physician who coordinates a team to take collective responsibility for patient care and, when appropriate, arranged for care with other qualified physicians.

Provider Incentive: An additional amount of compensation paid to a healthcare provider by a Blue Cross and/or Blue Shield Plan, based on the provider's compliance with agreed-upon procedural and/or outcome measures for a particular group of covered persons.

Shared Savings: A payment mechanism in which the provider and payer share cost savings achieved against a target cost budget based upon agreed terms and may include downside risk.

Value-Based Program (VBP): An outcomes-based payment arrangement and/or a coordinated care model facilitated with one or more local providers that is evaluated against cost and quality metrics/factors and is reflected in provider payment.

8.2 Out-of-Area Services.

Overview

Horizon BCBSNJ has a variety of relationships with other Blue Cross and/or Blue Shield Licensees referred to generally as "Inter-Plan Arrangements." These Inter-Plan Arrangements operate under rules and procedures issued by the Blue Cross Blue Shield Association ("Association"). Whenever Plan Participants access healthcare services outside the geographic area we serve, the claim for those services may be processed through one of these Inter-Plan Arrangements. The Inter-Plan Arrangements are described generally below.

Typically, when accessing care outside the geographic area we serve, Plan Participants obtain care from healthcare providers that have a contractual agreement ("participating providers") with the local Blue Cross and/or Blue Shield Licensee in that other geographic area ("Host Blue"). In some instances, Plan Participants may obtain care from healthcare providers in the Host Blue geographic area that do not have a contractual agreement ("nonparticipating providers") with the Host Blue. Horizon BCBSNJ remains responsible for fulfilling our contractual obligations the Contract holder. Horizon BCBSNJ's payment practices in both instances are described below.

This disclosure describes how claims are administered for Inter-Plan Arrangements and the fees that are charged in connection with Inter-Plan Arrangements. Note that Dental Care Benefits except when not paid as medical claims/benefits, and those Prescription Drug Benefits or Vision Care Benefits that may be administered by a third party contracted by Horizon BCBSNJ to provide the specific service or services are not processed through Inter-Plan Arrangements.

8.2 **BlueCard® Program.** The BlueCard® Program is an Inter-Plan Arrangement. Under this Arrangement, when Plan Participants access covered healthcare services within the geographic area served by a Host Blue, the Host Blue will be responsible for contracting and handling all interactions with its participating healthcare providers. The financial terms of the BlueCard Program are described generally below.

8.2.1 Liability Calculation Method Per Claim- In General.

a. Plan Participant Liability Calculation

Unless subject to a fixed dollar copayment, the calculation of the Plan Participant liability on claims for covered healthcare services will be based on the lower of the participating provider's billed covered charges or the negotiated price made available to Horizon BCBSNJ by the Host Blue.

b. Contract Holder's Liability Calculation

The calculation of Contract Holder's liability on claims for covered healthcare services processed through the BlueCard Program will be based on the negotiated price made available to Horizon BCBSNJ by the Host Blue under the contract between the Host Blue and the provider. Sometimes, this negotiated price may be greater for a given service or services than the billed charge in accordance with how the Host Blue has negotiated with its participating healthcare provider(s) for specific healthcare services. In cases where the negotiated price exceeds the billed charge, the Contract Holder may be liable for the excess amount even when the Plan Participant's deductible has not been satisfied. This excess amount reflects an amount that may be necessary to secure (a) the provider's participation in the network and/or (b) the overall discount negotiated

by the Host Blue. In such a case, the entire contracted price is paid to the provider, even when the contracted price is greater than the billed charge.

8.2.2 Claims Pricing. Host Blues determine a negotiated price, which is reflected in the terms of each Host Blue's provider contracts. The negotiated price made available to us by the Host Blue may be represented by one of the following:

- (i) **An actual price.** An actual price is a negotiated rate of payment in effect at the time a claim is processed without any other increases or decreases; or
- (ii) **An estimated price.** An estimated price is a negotiated rate of payment in effect at the time a claim is processed, reduced or increased by a percentage to take into account certain payments negotiated with the provider and other claim- and non-claim-related transactions. Such transactions may include, but are not limited to, anti-fraud and abuse recoveries, provider refunds not applied on a claim-specific basis, retrospective settlements and performance-related bonuses or incentives; or
- (iii) **An average price.** An average price is a percentage of billed covered charges in effect at the time a claim is processed representing the aggregate payments negotiated by the Host Blue with all of its healthcare providers or a similar classification of its providers and other claim- and non-claim-related transactions. Such transactions may include the same ones as noted above for an estimated price.

The Host Blue determines whether it will use an actual, estimated or average price. The use of estimated or average pricing may result in a difference (positive or negative) between the price the Contract Holder pays on a specific claim and the actual amount the Host Blue pays to the provider. However, the BlueCard Program requires that the amount paid by the Plan Participant and the Contract Holder is a final price; no future price adjustment will result in increases or decreases to the pricing of past claims.

Any positive or negative differences in estimated or average pricing are accounted for through variance accounts maintained by the Host Blue and are incorporated into future claim prices. As a result, the amounts charged to the Contract Holder will be adjusted in a following year, as necessary, to account for over- or underestimation of the past years' prices. The Host Blue will not receive compensation from how the estimated price or average price methods, described above, are calculated. Because all amounts paid are final, neither positive variance account amounts (funds available to be paid in the following year), nor negative variance amounts (the funds needed to be received in the following year), are due to or from the Contract Holder. If the Contract Holder terminates, the Contract Holder will not receive a refund or charge from the variance account.

Variance account balances are small amounts relative to the overall paid claims amounts and will be liquidated over time. The timeframe for their liquidation depends on variables, including, but not limited to, overall volume/number of claims processed and variance account balance. Variance account balances may earn interest at the federal funds or similar rate. Host Blues may retain interest earned on funds held in variance accounts.

8.2.3. BlueCard Program Fees and Compensation

The Contract Holder understands and agrees to reimburse Horizon BCBSNJ for certain fees and compensation which Horizon BCBSNJ is obligated under the BlueCard Program to pay to the Host Blues, to the Association and/or to vendors of BlueCard Program-related services. BlueCard Program Fees and compensation may be revised from time to time as described in section 8.10 below.

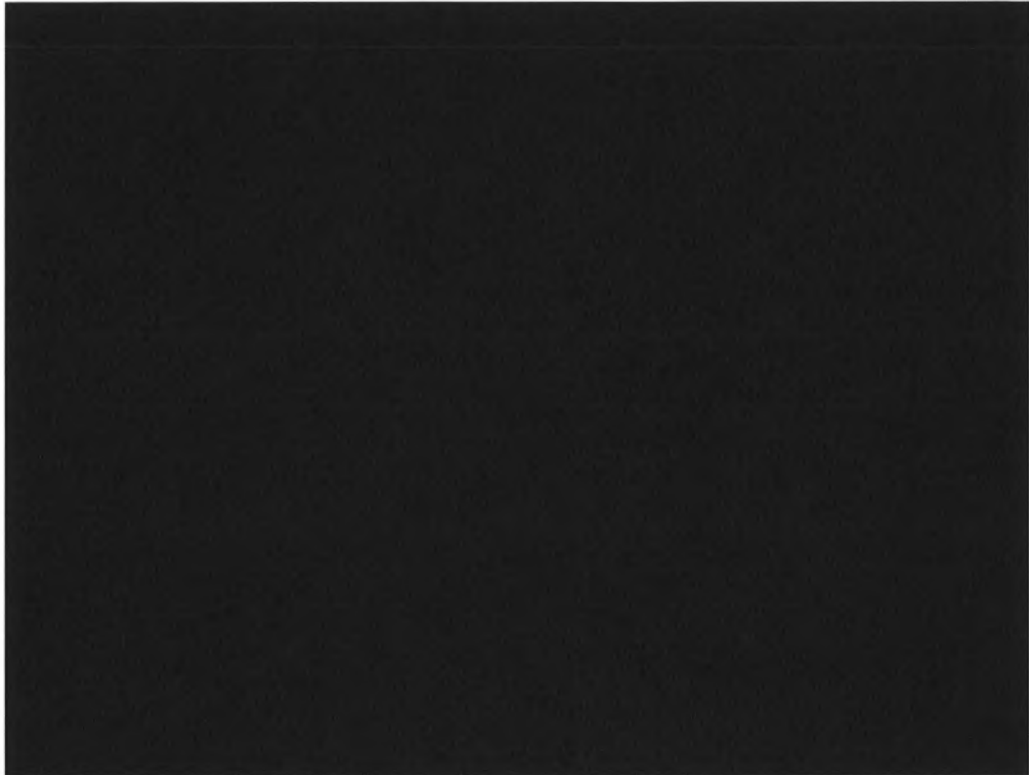
8.3 Special Cases: Value- Based Programs.

Value-Based Programs Overview

The Contract Holder's Plan Participants may access covered healthcare services from providers that participate in a Host Blue's Value-Based Program.

Value-Based Programs under the BlueCard Program

Value-Based Programs Administration



Care Coordinator Fees



Value-Based Programs under Negotiated Arrangements



- 8.4 Return of Overpayments.** Recoveries of overpayments from a Host Blue or its participating and nonparticipating providers can arise in several ways, including, but not limited to, anti-fraud and abuse recoveries, audits, utilization review refunds and unsolicited refunds. Recoveries will be applied so that corrections will be made, in general, on either a claim-by-claim or prospective basis. If recovery amounts are passed on a claim-by-claim basis from a Host Blue to Horizon BCBSNJ they will be credited to the Contract Holder's account. In some cases, the Host Blue will engage a third party to assist in identification or collection of overpayments. The fees of such a third party may be charged to the Contract Holder as a percentage of the recovery.

Unless otherwise agreed to by the Host Blue, for retroactive cancellations of membership, Horizon BCBSNJ will request the Host Blue to provide full refunds from participating healthcare providers for a period of only one year after the date of the Inter-Plan financial settlement process for the original claim. For Care Coordinator Fees associated with Value-Based Programs, Horizon BCBSNJ will request such refunds for a period of only up to ninety (90) days from the termination notice transaction on the payment innovations delivery platform. In some cases, recovery of claim payments associated with a retroactive cancellation may not be possible if, as an example, the recovery (a) conflicts with the Host Blue's state law or healthcare provider contracts, (b) would result from Shared Savings and/or Provider Incentive arrangements or (c) would jeopardize the Host Blue's relationship with its participating healthcare providers, notwithstanding to the contrary any other provision of this Agreement.

- 8.5 Inter-Plan Programs: Federal/State Taxes/ Surcharges/ Fees.** In some instances federal or state laws or regulations may impose a surcharge, tax or other fee that applies to self-funded accounts. If applicable, Horizon BCBSNJ will disclose any such surcharge, tax or other fee to the Contract Holder, which will be the Contract Holder's liability.

8.6 Nonparticipating Providers Outside Our Service Area.

8.6.1 Plan Participant Liability Calculation.

a. In General

When covered healthcare services are provided outside of Horizon BCBSNJ's service area by nonparticipating providers, the amount(s) a Plan Participant pays for such services will be based on either the Host Blue's nonparticipating healthcare provider local payment or the pricing arrangements required by applicable state law. In these situations, the Plan Participant may be responsible for the difference between the amount that the nonparticipating provider bills and the payment Horizon BCBSNJ will make for the covered services as set forth in this paragraph. Payments for out-of-network emergency services will be governed by applicable federal and state law.

b. Exceptions

In some exception cases, at the Contract Holder's direction Horizon BCBSNJ may pay claims from nonparticipating healthcare providers outside of Horizon BCBSNJ's service area based on the provider's billed charge. This may occur in situations where a Plan Participant did not have reasonable access to a participating provider, as determined by Horizon BCBSNJ in Horizon BCBSNJ's sole and absolute discretion or by applicable state law. In other exception cases, at the Contract Holder's direction Horizon BCBSNJ may pay such claims based on the payment Horizon BCBSNJ would make if Horizon BCBSNJ were paying a nonparticipating provider inside of Horizon BCBSNJ's service area, as described elsewhere in this Agreement. This may occur where the Host Blue's corresponding payment would be more than Horizon BCBSNJ's in-service area nonparticipating provider payment. Horizon BCBSNJ may choose to negotiate a payment with such a provider on an exception basis.

Unless otherwise stated, in any of these exception situations, the Plan Participant may be responsible for the difference between the amount that the nonparticipating healthcare provider bills and the payment Horizon BCBSNJ will make for the covered services as set forth in this paragraph.

8.7 Fees and Compensation. The Contract Holder understands and agrees to reimburse Horizon BCBSNJ for certain fees and compensation which Horizon BCBSNJ is obligated under applicable Inter-Plan Arrangement requirements to pay to the Host Blues, to the Association and/or to vendors of Inter-Plan Arrangement-related services. The specific fees and compensation that are charged to the Contract Holder are set forth Schedule A, if applicable. Fees and compensation under applicable Inter-Plan Arrangements may be revised from time to time as provided for in section 8.10 below.

8.8 BlueCard Worldwide® Program

8.8.1 General Information. If Plan Participants are outside the United States, the Commonwealth of Puerto Rico and the U.S. Virgin Islands (hereinafter: "BlueCard service area"), they may be able to take advantage of the BlueCard Worldwide Program when accessing covered healthcare services. The BlueCard Worldwide Program is unlike the BlueCard Program available in the BlueCard service area in certain ways. For instance, although the BlueCard Worldwide Program assists Plan Participants with accessing a network of inpatient, outpatient and professional providers, the network is not served by a Host Blue. As such, when Plan Participants receive care from providers outside the BlueCard service area, the Plan Participants will typically have to pay the providers and submit the claims themselves to obtain reimbursement for these services.

- Inpatient Services

In most cases, if Plan Participants contact the BlueCard Worldwide Service Center for assistance, hospitals will not require Plan Participants to pay for covered inpatient services, except for their cost-share amounts. In such cases, the hospital will submit Plan Participant claims to the BlueCard Worldwide Service Center to initiate claims processing. However, if the Plan Participant paid in full at the time of service, the Plan Participant must submit a claim to obtain reimbursement for covered healthcare services. Plan Participants must contact Horizon BCBSNJ to obtain precertification for non-emergency inpatient services.

- Outpatient Services

Physicians, urgent care centers and other outpatient providers located outside the BlueCard service area will typically require Plan Participants to pay in full at the time of service. Plan Participants must submit a claim to obtain reimbursement for covered healthcare services.

- **Submitting a BlueCard Worldwide Claim**

When Plan Participants pay for covered healthcare services outside the BlueCard service area, they must submit a claim to obtain reimbursement. For institutional and professional claims, Plan Participants should complete a BlueCard Worldwide International claim form and send the claim form with the provider's itemized bill(s) to the BlueCard Worldwide Service Center address on the form to initiate claims processing. The claim form is available from Horizon BCBSNJ, the BlueCard Worldwide Service Center, or online at www.bluecardworldwide.com. If Plan Participants need assistance with their claim submissions, they should call the BlueCard Worldwide Service Center at 1.800.810.BLUE (2583) or call collect at 1.804.673.1177, 24 hours a day, seven days a week.

8.8.2 BlueCard Worldwide Program-Related Fees. The Contract Holder understands and agrees to reimburse Horizon BCBSNJ for certain fees and compensation which Horizon BCBSNJ is obligated under applicable Inter-Plan Arrangement requirements to pay to the Host Blues, to the Association and/or to vendors of Inter-Plan Arrangement-related services. The specific fees and compensation that are charged to the Contract Holder under the BlueCard Worldwide Program are set forth in *Schedule A*, where applicable. Fees and compensation under applicable Inter-Plan Arrangements may be revised from time to time as provided for in section 8.10 below.

8.9 Modifications or Changes to Inter-Plan Arrangement Fees or Compensation. Modifications or changes to Inter-Plan Arrangement fees are generally made effective Jan. 1 of the calendar year, but they may occur at any time during the year. In the case of any such modifications or changes, Horizon BCBSNJ shall provide the Contract Holder with at least thirty (30) days' advance written notice of any modification or change to such Inter-Plan Arrangement fees or compensation, but only to the extent where such fees and compensation are specifically set forth in *Schedule A*, describing the change and the effective date thereof. If the Contract Holder fails to respond to the notice during the notice period, the Contract Holder will be deemed to have approved the proposed changes, and Horizon BCBSNJ will then allow such modifications to become part of this Agreement.

8.10 BlueCard® Program Amendments. Notwithstanding anything within this Agreement to the contrary, Horizon BCBSNJ may amend the terms of any BlueCard Program provisions of this Agreement by providing written notice to the Contract Holder. Any such amendment as it pertains to the BlueCard Program shall become effective upon the date of such written notice provided by Horizon BCBSNJ.

SECTION 9: FEES AND PAYMENT

9.1 Administrative Fee and Other Fees. Contract Holder agrees to pay to Horizon BCBSNJ the "Administrative Fee", which shall represent the standard benefit Claims administrative charge, set forth in *Schedule A*.

In addition to the Administrative Fee, Contract Holder agrees to pay to Horizon BCBSNJ "Other Fees", which shall represent the appropriate fee for some of Horizon BCBSNJ's additional administrative services that Contract Holder has requested. Any such additional administrative services and their respective fees shall be as set forth in *Schedule A*, unless otherwise stated as part of a duly executed amendment, document or an Exhibit to this Agreement.

9.2 **Working Capital Amount.** Contract Holder also agrees to provide Horizon BCBSNJ with a "Working Capital Amount", an amount necessary for, and held by, Horizon BCBSNJ to cover costs for services Horizon BCBSNJ provides, such as Claims payment to Network Providers and other health care service providers for the benefit of Plan Participants, prior to billing or invoicing Contract Holder for such Claims or costs. The Working Capital Amount for the Initial Term and any subsequent Term(s) of this Agreement is as set forth in *Schedule A* and shall be remunerated to Horizon BCBSNJ with the entire amount on or before the due date stated on the invoice as presented by Horizon BCBSNJ.

If this Agreement terminates, Horizon BCBSNJ will retain the Working Capital Amount for a period of three months after the end of the post termination administration period (i.e. run-out period) set forth in Section 15.6. During this period, Horizon BCBSNJ will invoice Contract Holder for continuing Claims that are Contract Holder's liability. Contract Holder must remunerate the total amount of the invoice in accordance with the billing terms of this Agreement. Thereafter, the Working Capital Amount will be applied to adjudicate any continuing Claims that are Contract Holder's liability. If there is a balance at the end of the reasonable period after the termination date for which Horizon BCBSNJ retains part or all of the remaining Working Capital Amount, it will be returned to Contract Holder. If there is a balance due from Contract Holder at the end of such reasonable period after the termination date, Contract Holder must pay it to Horizon BCBSNJ.

9.3 **Network Access Fee.** Contract Holder agrees to pay a monthly "Network Access Fee", if applicable, for the development and maintenance of Horizon BCBSNJ's Provider Network(s). This shall be calculated as a flat charge per Plan Participant per month. The Network Access Fee applicable during the Initial Term and any subsequent Term(s) of this Agreement is set forth in *Schedule A*.

9.4 **Plan Participant Contributions.** Contract Holder shall be solely responsible, unless otherwise agreed to in writing signed by an authorized representative of Horizon BCBSNJ, for collecting any charges that it may assess from Plan Participants as mandatory contributions for coverage under the Plan.

9.5 **Adjustments to Fees.** Horizon BCBSNJ will communicate any changes in Administrative Fees, Network Access Fee, and Other Fees (such fees collectively known as "Charges"), whether positive or negative, at each renewal of Term(s) or at the end of any period for which such Charges have been guaranteed by mutual agreement of the Parties, which such period shall be so stated on *Schedule A*. Horizon BCBSNJ shall adjust the Working Capital amount annually and changes to the Working Capital Amount will be communicated on an annual basis. Applicable changes shall be issued by Horizon BCBSNJ via an amended *Schedule A* at least thirty (30) days prior to the applicable renewal date.

Additionally, Horizon BCBSNJ shall have the automatic right to immediately adjust the Charges and the Working Capital Amount at its sole discretion, with such adjustment taking effect on the same date as the incident(s) giving rise to the changes, upon the following circumstances:

For Charges:

- 9.5.1. A change in the Plan's benefits or type of product administered by Horizon BCBSNJ;
- 9.5.2. A change in Contract Holder's Plan eligibility rules;
- 9.5.3. [REDACTED]
- 9.5.4. A change in a federal or state law or regulation that materially impacts the benefits or terms of Plan administration;
- 9.5.5. [REDACTED]

For Working Capital Amount

9.5.6. A change in the Plan's benefits or type of product administered by Horizon BCBSNJ;

9.5.7. A change in Contract Holder's Plan eligibility rules;

- [REDACTED]
- 9.6 **Billing Practices.** Horizon BCBSNJ will invoice Contract Holder for all the Claims paid by Horizon BCBSNJ during a particular period on behalf of Contract Holder's Plan Participants, and the applicable Charges as may be specified in *Schedule A*. Horizon BCBSNJ's invoice will also consist of positive or negative effects of later settlements, Claims, and Charges provided for in this Agreement. Contract Holder must remunerate the total amount of the invoice in accordance with the billing terms specified in *Schedule A*.
- 9.7 **Billing Disputes.** If Contract Holder disputes a Claim payment or any Charges, including any changes in the Working Capital Amount that is included on an invoice, Contract Holder must still pay the amount invoiced and notify Horizon BCBSNJ of the disputed amounts. If Horizon BCBSNJ verifies that the disputed amount, or any part thereof, is not Contract Holder's responsibility, Horizon BCBSNJ will credit Contract Holder's subsequent invoices with the disputed amount, or, if after the termination of this Agreement, Horizon BCBSNJ will pay the amount in cash at a mutually agreed upon schedule. All Claims payment disputes shall be brought within twenty-four (24) months of the original date of invoice and all disputes pertaining to Charges shall be made within sixty (60) days of the Administrative Fee Payment Due Date as specified in *Schedule A*. This provision shall survive the termination of this Agreement and shall not be construed to reduce the Claims payment obligation of the Plan.
- 9.8 **Limitation on Reconciliation.** In no event shall Horizon BCBSNJ be responsible to adjust or reconcile the invoiced Claims payment or any Charges beyond 24 months after the date of invoice. This provision shall survive the termination of this Agreement and shall not be construed to reduce the Claims payment obligation of the Plan.
- 9.9 **Late or Overdue Claim Payments.** If Horizon BCBSNJ does not receive Contract Holder's payments for all Claims, Administrative Fees, and other charges by the due date indicated on the invoices, Horizon BCBSNJ may charge a late fee. On the amount overdue, Horizon BCBSNJ will assess an interest charge of 1.5 points above the Prime Rate taken from the Federal Reserve Statistical Release Form H.15(519). This charge shall be assessed each month until Horizon BCBSNJ receives the amount due. Alternatively, Horizon BCBSNJ may terminate this Agreement as provided in *Section 15: Term, Renewal, and Termination*.
- 9.10 **Broker Payment Administration.** Where applicable, Horizon BCBSNJ administers payment of broker commissions ("Broker Payments") on Contract Holder's behalf to Contract Holder's commissioned broker ("Broker of Record"). Broker Payments are specifically directed, approved, and authorized by Contract Holder. Horizon BCBSNJ provides administrative services only in making Broker Payments and does not independently make commission payments to Contract Holder's Broker of Record.
- 9.10.1. In the event Contract Holder identifies the Broker of Record, Horizon BCBSNJ shall make payment to the Broker of Record in accordance with Contract Holder's written request. Contract Holder shall remain solely responsible for the proper and lawful identification of the Broker of Record and any subsequent modification of such information.
- 9.10.2 Contract Holder acknowledges that Horizon BCBSNJ's administration of Broker Payments shall be in accordance with Horizon BCBSNJ's applicable broker payment policy/ies, which is available upon request. Horizon BCBSNJ's payment to, and acceptance of any change in

Broker of Record identified by Contract Holder is subject to such applicable broker payment policy/ies.

9.10.3. Any applicable Broker Payments for which Contract Holder is responsible for shall be as stated in *Schedule A*. Broker Payments may be subject to disclosure on Schedule C of the ERISA Form 5500 for customers governed by ERISA and Horizon BCBSNJ shall provide reasonable cooperation to Contract Holder for the production of such report(s).

9.10.4. Contract Holder acknowledges that it shall be solely responsible for contracting with and maintaining its relationship with the Broker of Record. Horizon BCBSNJ is not a party to such relationship, nor does it have any implicit or explicit relationship with such Broker of Record for purposes of this Agreement.

SECTION 10: TAXES AND ASSESSMENTS

10.1 **Payment of Taxes and Assessments.** Contract Holder agrees to remain responsible for any Taxes and Assessments imposed, anticipated, assessed, or levied by any federal, state, local, or other governmental entity that is applicable to the Plan or any function undertaken by Horizon BCBSNJ under this Agreement. This shall include interest, fines, or penalties relating to such Taxes and Assessments, unless caused by Horizon BCBSNJ's unreasonable determination to dispute the Taxes and Assessments. Contract Holder shall reimburse Horizon BCBSNJ, either retrospectively, concurrently, or prospectively, in a manner Horizon BCBSNJ specifies, for any Taxes and Assessments. Horizon BCBSNJ shall annually, or at other practical periods, reconcile the amount collected for payment of such Taxes and Assessments. Horizon BCBSNJ shall have the authority and discretion to reasonably decide whether such Taxes and Assessments are legally levied and determine whether they shall be paid or disputed. Contract Holder's payment for such Taxes and Assessments shall occur in accordance with *Section 9.6 – Billing Practice* or in a manner specified by Horizon BCBSNJ.

10.2 **Contract Holder's Dispute of Taxes and Assessments.** Horizon BCBSNJ's discretion to reasonably decide the legality of any Taxes and Assessments shall not apply if Contract Holder notifies Horizon BCBSNJ that, in the opinion of Contract Holder's legal counsel, which opinion shall be final, such Taxes and Assessments have not been legally levied against the Plan. Contract Holder further agrees to hold harmless from, and indemnify Horizon BCBSNJ for, any losses which result from Horizon BCBSNJ's action taken in reliance upon Contract Holder's legal counsel's opinion on such matter.

This provision applies to any amounts imposed, now or later, including any penalties, interest, and fines under the authority of any federal, state, or local taxing jurisdiction. Notwithstanding the above, this indemnification shall not apply to any Taxes and Assessments, including penalties and interest, or any other amounts, which would not be payable had Contract Holder and Horizon BCBSNJ not entered into this Agreement. This provision shall continue in effect after termination of this Agreement for any reason.

SECTION 11: RECORDS AND REPORTS

11.1 **Monthly Claims Listings.** Upon request, Horizon BCBSNJ will provide Contract Holder with a copy of monthly Claims listings. Such listings will show the Claims paid during the specified month and year, itemized by identification numbers, patient name, and the dates of service, the Claim numbers and the amounts paid. Horizon BCBSNJ retains the right to mask or otherwise remove information that discloses or reveals Horizon BCBSNJ Proprietary Business Information, including trade secrets such as proprietary Network Provider discount data (i.e. the allowed amount).

11.2 **Other Information.** Other information available under this Agreement may include copies of rate quotations and membership lists. If Contract Holder requests and Horizon BCBSNJ agrees, Horizon BCBSNJ may provide additional information (e.g. cost utilization reports for benefit management).

Subject to *Section 12 – Confidentiality of Information*, this Agreement does not provide for disclosure of other medical, Claims processing or Claims payment data to Contract Holder or to any third party beyond that contained in the monthly Claims listing.

SECTION 12: CONFIDENTIALITY OF INFORMATION

- 12.1 Confidentiality of Medical Information.** Any examination of individual benefit payment records will be carried out in a manner agreed to between the Parties, designed to protect the confidentiality of medical information. Contract Holder and Horizon BCBSNJ shall disclose only the minimum necessary information to carry out such examination and shall design their examination protocols to comply with applicable federal and state laws and regulations
- 12.2 Right to Documents.** Unless otherwise provided, all documents relating to the payment of Claims shall be Contract Holder's property except to the extent it includes Horizon BCBSNJ's Proprietary Business Information. To that end, Horizon BCBSNJ retains the right to refuse the disclosure of, and transmittal of, any of its Proprietary Business Information. In the event such documents include Horizon BCBSNJ Proprietary Business Information, and Horizon BCBSNJ agrees to the release or disclosure of same, Contract Holder shall safeguard such information in accordance with *Sections 12.5 and 12.6* and shall cause its subcontractors, consultants and agents to do the same.
- 12.2 Sharing of Information with Government Programs and for Health Care Quality and Cost Containment.** Contract Holder acknowledges and agrees that Horizon BCBSNJ shall have the right to share relevant information with the authorized administrators (or their agents) of state or federal government programs for the purpose of lawful reporting activities or in connection with third party liability recoveries. Further, notwithstanding any other provision in this Agreement, Contract Holder acknowledges and agrees that Horizon BCBSNJ shall have the right to share relevant Plan information, including Claims and eligibility information consisting of protected health information, with health care service providers for the purpose of administering health care quality or cost containment programs such as an organized health care arrangement.
- 12.4 Sharing of Information with Plan's Other Administrators.** Contract Holder acknowledges and agrees that Horizon BCBSNJ shall share necessary information, including protected health information, with authorized administrators, agents, or vendors (collectively the "Receiving Party") of the Plan upon Contract Holder's written or recorded direction ("Order to Disclose"). Contract Holder shall be solely responsible for ensuring the lawfulness of such disclosure, including compliance with HIPAA and other applicable laws and regulations, and indemnify, defend, and hold harmless Horizon BCBSNJ from any liability, claim, judgment, or threat of same proximately resulting from Horizon BCBSNJ's reliance on Contract Holder's Order to Disclose. Further, Contract Holder shall ensure that the Receiving Party use the disclosed information only for lawful purposes and safeguard Horizon BCBSNJ's Proprietary Business Information to the same extent required under this Agreement.
- 12.5 Confidentiality of Other Information.** Contract Holder agrees to use any information that Horizon BCBSNJ makes available solely for the purpose of administering Contract Holder's Plan. Contract Holder agrees to defend at Contract Holder's sole expense, indemnify and hold Horizon BCBSNJ harmless for any claim, action, or loss that may arise at any time in the future due to Contract Holder's unauthorized use or release of this information. Furthermore, Contract Holder's use of the information for another purpose will be deemed a material breach of this Agreement. This Agreement will then be subject to immediate termination. This provision will continue in effect after termination of this Agreement for any reason.
- 12.6 Proprietary Business Information.** Each Party will limit the use of the other's Proprietary Business Information to only the information required to administer the Plan, to perform under this Agreement, or

as otherwise allowed under this Agreement. Each Party agrees to take reasonable measures to protect the secrecy of, and avoid disclosure and unauthorized use of, the other Party's Proprietary Business Information, and agrees to protect the confidentiality of the other Party's Proprietary Business Information in the same manner that it protects the confidentiality of its own Proprietary Business Information of like kind, but in no event shall either Party exercise less than reasonable care in protecting the other Party's Proprietary Business Information. Each Party agrees that it will not disclose the other's Proprietary Business Information to any person or entity other than to the disclosing Party's employees, subcontractors or representatives needing access to such information to administer the Plan, to perform under this Agreement or as otherwise allowed under this Agreement or any of its amendments or addendums. This provision shall survive termination of this Agreement.

- 12.7 Agreement Terms.** The terms and conditions of this Agreement shall be kept confidential by the Parties except to the extent required to be disclosed in connection with any audits or as requested by a governmental authority.
- 12.8 Subpoenas or Required Disclosures.** If the Party receiving Proprietary Business Information ("Recipient") receives a subpoena or other validly issues administrative or judicial process demanding the Proprietary Business Information of the disclosing Party ("Discloser"), Recipient shall promptly notify the Discloser of such receipt and reasonably cooperate with the Discloser in seeking a protective order or otherwise protecting the confidentiality of such Proprietary Business Information, at the expense of the Discloser. Recipient shall thereafter, or sooner if so legally required, be entitled to comply with such subpoena or other process to the extent required by law.
- 12.9 Injunctive Relief.** Since the violation by either Party of the provisions of this Section 12 would cause irreparable injury to the other Party and there is no adequate remedy at law for such violation, Horizon BCBSNJ an Contract Holder will have the right, in addition to any other remedies available to it at law or in equity, to seek injunctive or other equitable relief, including temporary injunctive relief until such time as a court of competent jurisdiction can hear an application of notice to the Party sought to be enjoined, for any failure of a Party to comply with express obligations under this Agreement or as otherwise provided in this Agreement.

SECTION 13: AUDITS

- 13.1 Audits of Claim Records.** During the term of this Agreement, Contract Holder or an authorized agent of Contract Holder, subject to Horizon BCBSNJ's reasonable approval, has the right to request a comprehensive audit of Horizon BCBSNJ's Claim payment records to assure that Horizon BCBSNJ's administration of the Plan is performed according to the terms of this Agreement. The information that was provided by and agreed to by Contract Holder, and that is included in the Central Product Library, shall serve as the sole source of benefit validation for the audit. Any such audit by an external auditor shall be by an auditor that the Parties mutually agree. Contract Holder shall be solely responsible for all costs associated with the audit. Contract Holder and its authorized agent or auditor shall treat all records disclosed by Horizon BCBSNJ in the course of an audit as Proprietary Business Information.
- 13.1.1. Scope of Audit.** The audit will be limited to no more than two hundred and fifty (250) randomly selected Claims and must be free of bias, influence or conflict of interest. Contingency fee based audits are deemed to have an inherent conflict of interest and will not be agreed to, nor supported, by Horizon BCBSNJ.

- 13.1.2. Audit Period and Frequency of Audit.** Contract Holder has the right to request a comprehensive audit of Horizon BCBSNJ's Claim payment records under this section once every twenty-four (24) month period, except as required by state or federal government agency or regulation. The audit period will be limited to Claims filed and processed within the twenty-four (24) month period prior to the date of the audit request, and according to the audit procedures mutually agreed upon prior to the start of the audit.
- 13.1.3. Audit Plan, Coordination of Audit, and Audit Report.** Contract Holder or its authorized agent shall submit to Horizon BCBSNJ a written audit plan together with a request for audit. The audit plan shall include the purpose, scope, timetable, location and records requested for review. The audit plan is subject to Horizon BCBSNJ's reasonable approval. Horizon BCBSNJ will provide reasonable audit assistance but will not provide access to any of its program source codes, including real-time or historical access to its computer or claims adjudication system, unless otherwise agreed to by Horizon BCBSNJ. Contract Holder shall provide Horizon BCBSNJ with a copy of any audit reports within thirty (30) days after receipt of the audit reports.
- 13.2. Financial Audits.** Contract Holder may request and perform an annual financial audit to validate funding. The conditions for such an audit are the same as described above Section 13.2, except that the randomly selected Claims shall be limited to those filed and processed within the eighteen (18) month period before the date of request and to no more than one hundred (100) Claims.
- 13.3. Correction of Errors.** Horizon BCBSNJ is responsible only for the correction of actual Horizon BCBSNJ errors identified in specific Claims payment. Errors calculated or identified on the basis of sampling techniques will not be corrected. Extrapolation methodologies under which errors are imputed to a population of Claim payments based on a sample drawn from that population will not be used as the basis for correcting Claims. Extrapolation methodologies are appropriate only to calculate Claim measures, such as financial accuracy. Horizon BCBSNJ shall have the right to control its administrative practices in correcting any errors identified pursuant to this Section. Notwithstanding the foregoing, Contract Holder acknowledges that not all underlying Claims error will be corrected where administratively infeasible or where Horizon BCBSNJ is unable to reprocess or recoup the payment of such Claims. Further, Horizon has the right to implement reasonable administrative practices in the administration of this Agreement.
- 13.4. Advance Notice.** Contract Holder must provide ninety (90) days prior written notice of an intention to have an audit conducted. Any audit which was requested prior to the effective date of termination of this Agreement shall nevertheless be performed.

SECTION 14: AMENDMENTS AND MATERIAL ENVIRONMENTAL CHANGES

- 14.1. Amendment.** Except as otherwise specified in this Agreement, this Agreement may be amended only by the written agreement of both Parties executed by duly authorized person(s). However, Horizon BCBSNJ may adjust any existing financial terms pursuant to *Section 9.5 - Adjustment to Fees*. If Contract Holder does not agree to the amendment or the change in charges, if any, Horizon BCBSNJ can terminate this Agreement in accordance with *Section 15.2 Termination without Cause*.

- 14.2 **Material Environmental Change.** In the event of a Material Environmental Change, the Parties shall negotiate in good faith for not less than thirty (30) days to amend the provisions of this Agreement and specifically, without limitation, *Schedule A*, to the extent necessary to accommodate such Material Environmental Change in a manner which substantially preserves for Horizon BCBSNJ the economic benefits of this Agreement, as they existed immediately prior to the occurrence of such Material Environmental Change. Any such mutually agreed upon change in the terms of this Agreement shall take effect as of the effective date of the Material Environmental Change. If such mutual agreement cannot be reached, Horizon BCBSNJ reserves the right to terminate this Agreement pursuant to the aforementioned "Termination without Cause" provision.

SECTION 15: TERM, RENEWAL, AND TERMINATION

- 15.1 **Term and Renewal.** The initial term of this Agreement shall be the thirty-six (36) months commencing on the Effective Date, from July 1, 2018 through June 30, 2021 (the "Initial Term"). Thereafter, subject to the mutual agreement of the Parties, this Agreement may be renewed for a further period of twelve (12) consecutive months, or for a mutually agreed duration (collectively any such duration, including the Initial Term referred to as "Term(s)"), subject to negotiation of financial terms.
- 15.2 **Termination without Cause.** Except as provided in the following subsections, either party to this Agreement can end it by giving 60 days prior written notice to the other party.
- 15.3 **Termination for Non-Payment.** If any payment(s) required by Horizon BCBSNJ pursuant to the terms of this Agreement are not made by Contract Holder by the due date indicated on Horizon BCBSNJ's invoice, Horizon BCBSNJ will suspend all Claim payments. If full payment is not received within thirty (30) days after the due date, Contract Holder shall be deemed in breach of this Agreement, and Horizon BCBSNJ may immediately terminate this Agreement at its sole discretion.
- 15.4 **Termination for Material Breach.** If either party is in material breach of the terms of this Agreement (other than in connection with non-payments), and does not correct the breach within thirty (30) days of being so notified by the other party, the other party can terminate this Agreement immediately after the expiration of such thirty (30) day period.
- 15.5 **Contract Holder Liability after Termination.** If this Agreement terminates, Contract Holder remains liable for all Claims Incurred prior to the date of termination, including for any retrospectively calculated payments arising out of Network Provider Programs, plus administrative fees and charges, late interest fees and all other unpaid expenses and charges. Any such payments must be paid by Contract Holder as billed by Horizon BCBSNJ.
- 15.6 **Post-termination Administration.** If this Agreement terminates in whole or in part for any reason, Horizon BCBSNJ shall continue to provide its services, in accordance with the terms of this Agreement, with respect to those Claims that were Incurred prior to the termination of this Agreement for a period of 24 months, or such shorter period as Contract Holder shall determine in its sole discretion. Such services shall include Horizon BCBSNJ's help to develop and implement a transition plan to move the business to a successor.

During this period of continued services, Horizon BCBSNJ will not charge Contract Holder for adjudicating such Claims. However, Contract Holder must maintain an appropriate Working Capital Amount, as determined by Horizon BCBSNJ, during such period of continued services.

- 15.7 Transition Assistance.** If this Agreement terminates in whole or in part, Horizon BCBSNJ shall, subject to the terms of this Agreement and if Contract Holder requests, cooperate with any successor administrator by producing and transferring data files or other mutually agreed upon material that contains information and enrollment data requested by Contract Holder. In this event, Horizon BCBSNJ reserves the right to charge an appropriate additional fee, to be negotiated with Contract Holder.

SECTION 16: INDEMNIFICATIONS

- 16.1 Indemnifications in General.** In addition to any other indemnifications set forth in this Agreement, the following indemnifications shall apply with respect to this Agreement.
- 16.2 Indemnification by Contract Holder.** Contract Holder agrees to defend, at Contract Holder's sole expense, indemnify and hold Horizon BCBSNJ harmless against all claims, including legal fees, judgments, administrative expenses, and benefit payment requirements, that may result at any time arising from or due to Contract Holder's failure to comply with the terms of Contract Holder's Plan, or any applicable laws or regulations. This includes, but is not limited to, any non-compliance with COBRA, HIPAA, mandated benefits provisions and the Medicare secondary payer provisions, except where Contract Holder has informed Horizon BCBSNJ, in writing prior to Horizon BCBSNJ's payment, that Contract Holder's Plan should have been the primary payer with respect to a Plan Participant entitled to Medicare benefits.

In the event Horizon BCBSNJ is assessed any fines or penalties under the Medicare Secondary Payer Mandatory Reporting Provisions in Section 111 of the Medicare, Medicaid, and SCHIP Extension Act of 2007, due to:

- 16.2.1** Horizon BCBSNJ's reporting of erroneous information and it is determined that the failure to report or the erroneous reporting was due to:
- (a) Contract Holder's failure to provide the information to Horizon BCBSNJ; or
 - (b) Contract Holder's reporting to Horizon BCBSNJ of incorrect information,

then Contract Holder agrees to reimburse, indemnify and hold Horizon BCBSNJ harmless for any such fines or penalties.

This indemnification provision will continue in effect after termination of this Agreement for any reason.

- 16.3 Indemnification by Horizon BCBSNJ.** Horizon BCBSNJ agrees to indemnify and hold harmless Contract Holder, Contract Holder's directors, officers and employees, and the Plan against any loss, costs, liabilities and expenses (including, but not limited to, attorneys' fees and court costs) resulting from or in connection with any function Horizon BCBSNJ has undertaken, or which is required of Horizon BCBSNJ, pursuant to this Agreement, where it has been determined by a court, after all appeals have been exhausted, that the liability therefor was the direct result of Horizon BCBSNJ's: imprudence; willful misconduct; malfeasance; fraudulent acts; or breach of this Agreement or applicable law. However, Contract holder agrees that Contract Holder shall remain liable for the payment of all Claims under the Plan. No termination of this Agreement shall reduce Horizon BCBSNJ's obligations under this provision.

SECTION 17: MISCELLANEOUS PROVISIONS

- 17.1 **Assignments.** This Agreement, including the rights and obligations hereunder, shall not be assignable by either party without the prior written consent of the other party, and any attempted non-permitted assignment shall be void.
- 17.2 **Waiver and Estoppel.** Nothing in this Agreement shall be deemed waived by any party unless such waiver is received in writing and signed by an authorized representative of both Parties. The Parties also acknowledge the following:
- 17.2.1 A waiver of one portion of the Agreement shall not constitute a waiver of any other;
- 17.2.2 A waiver of any breach of this Agreement shall not be construed to be a continuing waiver for similar breach(es); and
- 17.2.3 Failure of either party to enforce at any time any of the provisions of this Agreement shall not in any way be construed to be a waiver of such provisions of this Agreement.
- 17.2 **Governing Law.** This Agreement is made in the State of New Jersey and any litigation or arbitration shall be brought exclusively in the State of New Jersey. Except to the extent ERISA shall control the interpretation of this Agreement, the laws of New Jersey shall control its interpretation without regards to the conflicts of laws principles.
- 17.2 **Severability.** In the event any provision of this Agreement is finally adjudged to be invalid or unenforceable, all other provisions shall remain in full force and effect.
- 17.3 **Survival of Rights and Obligations.** The rights and obligations of the Parties hereto shall survive the termination of this Agreement to the extent necessary to effectuate the intent of the Parties as expressed herein.
- 17.4 **Use of Name and Logo.** Any provision of this Agreement to the contrary notwithstanding, neither Contract Holder nor Contract Holder's delegate or a delegate of Horizon BCBSNJ may use Horizon BCBSNJ's name or logo without Horizon BCBSNJ's permission.
- 17.5 **Independent Licensee of the Blue Cross and Blue Shield Association.** This Agreement is between Contract Holder and Horizon BCBSNJ only. Horizon BCBSNJ is an independent corporation operating under a license from the Blue Cross and Blue Shield Association, an association of independent Blue Cross and Blue Shield Plans, (the "Association"). This license permits Horizon BCBSNJ to use the Blue Cross and Blue Shield Service Marks in New Jersey ("Service Area"). Horizon BCBSNJ is not an agent of the Association and neither the Association nor any other independent Blue Cross and/or Blue Shield Plan are a party to this Agreement. Contract Holder further acknowledges that this Agreement has not been entered into based upon representations by any person other than Horizon BCBSNJ, and no other person shall be held liable to Contract Holder for any of the obligations undertaken by Horizon BCBSNJ in this Agreement. This section does not add any obligations to this Agreement.
- 17.6 **Entire Agreement.** This Agreement, together with its exhibits, constitutes the entire agreement between Contract Holder and Horizon BCBSNJ governing the subject matter of this Agreement. This Agreement replaces and supersedes all prior representations and understandings, whether oral or written. The headings and titles within this Agreement are for convenience only and are not part of the Agreement. The Parties also acknowledge and agree that it has each been represented by counsel; neither Contract Holder nor Horizon BCBSNJ shall be deemed the drafter of this Agreement.
- 17.7 **Lack of Governing Document.** The Parties acknowledge that where a governing agreement memorializing prior representations or understandings on the subject matter of this Agreement is

lacking, this Agreement's terms and conditions control with respect to any disputes arising out of a Claim, Charge, or from each Party's performance or conduct prior to the Effective Date of this Agreement.

- 17.8 **Counterparts and Conflicts.** This Agreement may be executed in any number of counterparts by the authorized representatives of the Parties. Each such counterpart shall be deemed an original and shall constitute one and the same instrument. In the event of a conflict between the terms of this Agreement and a later executed counterpart, the terms of such Exhibit, Amendment, or counterpart shall govern.
- 17.9 **Force Majeure.** Neither party to this Agreement shall be held responsible for any delay or failure in performance of any part of this Agreement to the extent such delay or failure is caused by fire, flood, strike, civil, governmental or military authority, act of God, or other similar causes beyond its control and without the fault or negligence of the delayed or nonperforming party or its subcontractors.
- 17.10 **Notices.** Any notices, demands, or other communications required under this Agreement shall be in writing and be mailed by first class mail (postage paid) or delivered by hand as follows:

To: Horizon Blue Cross Blue Shield of New Jersey
3 Penn Plaza East, PP-04N
Newark, New Jersey 07115-2200
Attention: Vice President, Commercial and Major Account Markets

To: Jersey City Board of Education
346 Claremont Avenue
Jersey City, New Jersey 07305

Notice made herein shall be deemed received by the close of business on the third (3rd) business day after the date it is mailed.

NOW, THEREFORE, in consideration of the mutual promise stated herein and intending to be legally bound, Contract Holder and Horizon BCBSNJ enter into this Agreement.

Jersey City Board of Education

By: 

Printed: REGINA ROBINSON

Title: BUSINESS ADMINISTRATOR

Date: 3/21/19

Horizon Blue Cross Blue Shield of New Jersey

By: 

Printed: Christopher M. Lepre

Title: Executive Vice President Commercial

Date: 3/26/2019

EXHIBIT A

EXHIBIT A: SCHEDULE A – FINANCIAL TERMS

Group Name: Jersey City Board of Education
Term: 7/1/2018- 6/30/2021
Group Number: 8511L & 8511P
Current Enrollment: 4,277

SECTION A-1: FEES

A-1.1 Administrative Fees and Other Fees. The following charges shall be in effect for the Terms specified hereunder based on Contract Holder's Current Enrollment:

Administrative Fees:

Year 1 (effective 7/1/2018 -6/30/2019)

Health \$21.10 per contract per month

Year 2 (effective 7/1/2019 - 6/30/2020)

Health \$21.10 per contract per month

Year 3 (effective 7/1/2020 - 6/30/2021)

Health \$21.10 per contract per month

The Health Administrative Fee shall increase should any of the products described herein be terminated.

Other Fees:

Mental Health Administration Charge: \$2.85 per contract per month

*** Fee for utilization management of mental health claims that are no longer capitated.*

Claims Fiduciary Charge: \$1.00 per contract per month

A-4 BOE Surcharge:

2.00% of paid claims

*** A surcharge on insurance companies, third party administrators, HMOs, and other insurance funds (based on Chapter 8 of the Public Laws of 1993) applicable to local school boards that do not participate in the State Health Benefits Plan. The surcharge amount may be subject to a retroactive change pending the final decision of the State of NJ.*

Stop Loss Interface Fee:

Standard Reporting \$1.25 per contract per month

MyWay HSA Banking Fee: \$3.50 per contract per month
The above banking fee is charged only on the contracts enrolled in the CDH plan.

Ancillary Services Fees:

1. Chronic Care Management Charge \$3.50 per contract per month
**** Chronic Care Management (formerly Disease Management) services include:**
Asthma, Diabetes, Chronic Obstructive Pulmonary Disease (COPD), Coronary Artery Disease (CAD), Chronic Heart Failure (CHF) and End Stage Renal Disease (ESRD).
2. Medical Injectables Program Included in above Administrative Fee
3. 24 Hour Nurse Line \$0.50 per contract per month
**** Provides members with access to a registered nurse who can answer health related questions twenty four hours a day seven days a week via telephonic and online resources.**
4. Precious Additions \$0.50 per contract per month
**** An educational program designed to provide information and resources about pregnancy, childbirth, the postpartum period, and the child's first years of life.**
5. Telemedicine \$0.50 per contract per month
(Does not apply to Over 65 Retirees)
**** Allows members to have a PCP visit, behavioral health therapy & counseling and psychiatry services via Horizon BCBSNJ's designated telemedicine platform with designated providers.**
6. Autism Management \$0.50 per contract per month
**** Intensive Case Management: Includes a screening and evaluation of individual and family health needs and risks, the development of a health care plan, and monthly check-ins to monitor progress.**
**** Applied Behavior Analysis: A customized step-by-step approach that increases useful behaviors and reduces those that may cause harm or interfere with learning.**

BlueCard® Program Access Fees: Included as part of Contract Holder's Incurred Claims.

1. For In-Network BlueCard® Claims: Following percentage scale of network savings, capped at \$2,000.00 per Claim.

4.30% in 2018 for fewer than 1,000 PPO or traditional enrolled Blue contracts
2.40% in 2018 for 1,000–9,999 Blue PPO or traditional enrolled Blue contracts
2.22% in 2018 for 10,000–49,999 Blue PPO or traditional enrolled Blue contracts

****Please note that the applicable scale and percentages are only current and accurate as of the day of the issuance of this Schedule A. Modifications or changes to BlueCard® Program Access Fees, as with other Inter-Plan Arrangement fees, are generally made effective January 1 of the calendar year but may occur at any time during the year. Pursuant to Contract Holder's Administrative Services Agreement with Horizon BCBSNJ, Horizon BCBSNJ will provide thirty (30) days' advance written notice of any modification or change to the BlueCard® Program Access Fees.**

2. For Out-of-Network BlueCard® Claims: \$0.00 per Claim.

Pursuant to Contract Holder's Administrative Services Agreement with Horizon BCBSNJ, Horizon BCBSNJ will provide thirty (30) days' advance written notice of any modification or change to the per Claim charge for Out-of-Network BlueCard® Claims.

Additional Information regarding BlueCard® Program Access Fee: 



Summary Plan Description: If applicable, reasonable printing and postage cost incurred by Horizon BCBSNJ.

Administrative Credits: Credits cannot be carried over from year to year. All requests for use of the Administrative Credits must be submitted via an invoice. The invoice must be received by horizon within 60 days after the end of the period to which the Administrative Credit applies.

Implementation Credit:	Year 1	\$33,333 – To be used from 7/1/18 to 6/30/19
	Year 2	\$33,333 – To be used from 7/1/19 to 6/30/20
	Year 3	\$33,334 – To be used from 7/1/20 to 6/30/21
Communications Credit:	Year 1	\$10,000 – To be used from 7/1/18 to 6/30/19
	Year 2	\$10,000 – To be used from 7/1/19 to 6/30/20
	Year 3	\$10,000 – To be used from 7/1/20 to 6/30/21
Wellness Credit:	Year 1	\$20,000 – To be used from 7/1/18 to 6/30/19
	Year 2	\$20,000 – To be used from 7/1/19 to 6/30/20
	Year 3	\$20,000 – To be used from 7/1/20 to 6/30/21

Wellness credits are to be used for health and wellness services provided through Horizon BCBSNJ only. Credits cannot be carried over from year to year. The use of this credit is subject to Horizon policies and procedures that may be available to you upon request.

A-1.2 Working Capital Amount. The following Working Capital Amount shall be in effect for the stated period:

Working Capital Amount: 

Contract Holder shall remunerate to Horizon BCBSNJ the stated Working Capital Amount in accordance with the Agreement. Horizon BCBSNJ has the right to adjust the Working Capital if there is a change in the method used to remit payment for the Claim invoices or annually in accordance with the terms of this Schedule A.

A-1.3 External Appeals. To the extent that Contract Holder's Plan is grandfathered, as that term is defined in the Patient Protection and Affordable Care Act ("Affordable Care Act"), Horizon BCBSNJ understands

that the Plan is not subject to that Affordable Care Act's provisions with respect to required external appeals for as long as the Plan's grandfathered status is maintained.

If Contract Holder's Plan is not grandfathered, Contract Holder may elect to have Horizon BCBSNJ, for the fee of, up to, \$450 per external appeal, administer such external appeals in cooperation with Horizon BCBSNJ's designated Independent Review Organizations (IROs). If Contract Holder elects not to do so, Contract Holder shall be solely responsible for the administration of such external appeals, in which event there shall be no charge for the Claims data and supporting documentation Horizon BCBSNJ provides to Contract Holder's selected IROs.

- A-1.4 Claims Re-Pricing and Negotiation Services.** If benefits are provided under Contract Holder's Plan for which services were delivered or otherwise provided by a Non-Network Provider, Horizon BCBSNJ may negotiate and/or re-price Claims for such Non-Network Provider services through the use of internal or external resources of its choice to make available savings in Out-of-Network Claims (such savings realized to be referred to as "Out-of-Network Claims Savings").

Claims Re-Pricing and Negotiation Fee(s): At reasonable Horizon BCBSNJ internal and external administrative cost not to exceed the Out-of-Network Claims Savings.

- A-1.5 Broker Payment Administration.** Where applicable, Horizon BCBSNJ administers payment of broker commissions ("Broker Payments") as specifically directed by Contract Holder as follows:

Producer Compensation: \$0.00 per contract per month

SECTION A-2: BILLING TERMS

- A-2.1 Billing of Claims.** The following billing terms shall apply to with respect to the Plan's Claims:

OPTION 3 (Weekly)

Horizon BCBSNJ will provide Contract Holder with weekly invoices of Paid Claims for the prior week's Monday through Sunday. Contract Holder shall remit payment of the amount due ("Claims Due") within one banking day of the invoice date via bank wire or ACH electronic funds transfer to a Horizon BCBSNJ designated bank account.

- A-2.2 Reconciliation of Billed Claims.** Horizon BCBSNJ agrees to conduct a monthly reconciliation of Contract Holder's Claims payment for the preceding calendar month, subject to the Agreement. Any additional amounts due to Horizon BCBSNJ shall be included in Contract Holder's first next payment made in accordance with *Section A-2.1*. Any amount due by Horizon BCBSNJ shall be deducted from Contract Holder's first next payment.

- A-2.3 Billing of Administrative Fees and Other Fees.** Horizon BCBSNJ will invoice Contract Holder monthly for the applicable Administrative Fees based on the Plan's enrollment as of the fifteenth (15th) calendar day of the corresponding month together with all other charges, including Network Access Fees and Other Fees as applicable under this Agreement. Horizon BCBSNJ will use its best efforts to reconcile any such invoice on a monthly basis, subject to the Agreement.

Contract Holder shall remunerate to Horizon BCBSNJ the amount due no later than thirty-one (31) calendar days following the first calendar day of the following month in which the services are provided (the "Administrative Fee Payment Due Date") by check, bank wire or ACH electronic funds to Horizon BCBSNJ's designated bank account. For example, fees originating from services provided by Horizon BCBSNJ in the month of June shall be due by July 31.

Notwithstanding the above, if Contract Holder elects to self-bill, or otherwise invoice itself the applicable Administrative Fees, Contract Holder shall be solely responsible for verifying the enrollment report for its Plan Participants and remunerate such applicable Administrative Fees to Horizon BCBSNJ on the payment schedule specified in this Schedule, and such amount shall be deemed final unless disputed by either Contract Holder or Horizon BCBSNJ within 24 months.

A-2.4 Conflicts. This Schedule incorporates the terms and conditions of the Agreement entered into between the parties. In the event of a conflict between the terms of the Agreement and the terms of this Schedule A, this Schedule A shall govern if it is a later executed counterpart to the Agreement.

NOW, THEREFORE, Contract Holder represents to Horizon BCBSNJ that it accepts this Schedule, including the above fees, terms and conditions and acknowledges that this Schedule incorporates the terms and conditions of any prior Schedule A. In the event of a conflict between this Schedule and any prior schedules the provisions of this Schedule shall govern and supersede any conflicting provisions. Contract Holder further represents that the person signing this Schedule is an authorized representative of Contract Holder with sufficient legal authority.

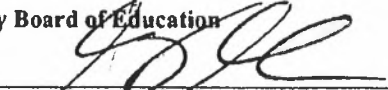
Jersey City Board of Education

By:

Printed:

Title:

Date:



REGINA ROBINSON

BUSINESS ADMINISTRATOR

3/21/19

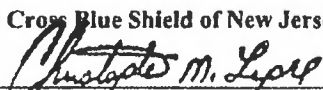
Horizon Blue Cross Blue Shield of New Jersey

By:

Printed:

Title:

Date:



Christopher M. Lepre

Executive Vice President, Commercial

3/26/2019

EXHIBIT B

SUMMARY OF BENEFITS AND COVERAGE ADDENDUM

by and between

Horizon Healthcare Services, Inc., d/b/a Horizon Blue Cross Blue Shield of New Jersey

and

Jersey City Board of Education (the "Group")

This Addendum, together with any exhibits attached hereto, (collectively the "Addendum"), dated July 1, 2018 (the "Effective Date"), is entered into by and between Jersey City Board of Education on behalf of itself, the Plan Sponsor, and the Plan Administrator (collectively the "Group"), and Horizon Healthcare Services, Inc., d/b/a Horizon Blue Cross Blue Shield of New Jersey ("Horizon BCBSNJ"), on behalf of itself and its subsidiaries and affiliates, including Horizon Healthcare of New Jersey, Inc.

Capitalized terms used herein but not otherwise defined in the Agreement shall have the meaning given to them in 29 CFR Part 2590, 26 CFR Parts 54 and 602, and 45 CFR Part 147 (collectively the "Final Rule").

WHEREAS, the Group has established a group health plan within the meaning of the Employee Retirement Income and Security Act or a health benefits plan for its Participants and Beneficiaries;

WHEREAS, Horizon BCBSNJ and the Group are parties to the Agreement under which Horizon BCBSNJ provides certain administrative services in connection with the Group's benefit plan(s); and

WHEREAS, Horizon BCBSNJ and the Group wish to amend the Agreement as provided for in this Addendum.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein and other good and valuable consideration, Group and Horizon hereby agree as follows:

SECTION 1: Production and Delivery of Summary of Benefits and Coverage by Horizon BCBSNJ

- 1.1 Horizon BCBSNJ shall produce a complete and accurate Summary of Benefits and Coverage ("SBCs") for the health insurance coverage(s) that it administers on behalf of the Group pursuant to the Agreement. The production of SBC on behalf of the Group, and the delegation of such obligation to produce the SBC, shall be subject to the applicable charges in Attachment A ("Summary of Benefits and Coverage Financial Terms").
- 1.2 Horizon BCBSNJ shall deliver to the Group representative applicable SBC(s) within thirty (30) calendar days from the date all required paperwork has been completed. Required paperwork includes the written request from the group for the SBC to be created, the finalized benefits for the applicable design and all other necessary documentation as prescribed by Horizon BCBSNJ. Delivery of SBC(s) to the Group representative pursuant to this clause shall be in physical form only, unless otherwise agreed to by Horizon BCBSNJ or where electronic delivery is made available. Pursuant to Attachment A, Group shall be responsible for any reasonable administrative cost Horizon BCBSNJ may incur in producing and delivering any requested physical copies of the SBC. Such reasonable charges incurred may include printing, postage, and other administrative costs reasonably incurred by Horizon BCBSNJ.
- 1.3 Horizon BCBSNJ shall prepare and deliver to the Group representative a culturally and linguistically appropriate SBC, which such culturally and linguistically appropriate manner shall be in conformance with the Final Rule, upon request of the Group representative. Group shall be responsible for any reasonable administrative expense Horizon BCBSNJ incurs in producing the non-English, culturally and linguistically appropriate, SBC.

SECTION 2: Responsibility of Group

- 2.1 The Group shall deliver to its Participants and Beneficiaries, including its employees and other persons eligible for coverage under the group health plan, (all such persons collectively known as "Eligible Persons") all enrollment and coverage information, including SBCs, as required by federal law and regulations in a timely manner. Group shall distribute applicable SBCs to all Eligible Persons with any written application materials for enrollment, including open enrollment and for special enrollees, and upon renewal of coverage.
- 2.2 The Group shall distribute applicable SBCs upon request and as required by law to its Eligible Persons.
- 2.3 Solely for the purpose of enrollment and delivery of SBC, Group shall allow Horizon BCBSNJ reasonable access to the Group's Eligible Persons.

SECTION 3: Non Horizon BCBSNJ Coverage

- 3.1 If the Group purchases coverage, or contracts for administrative services, from a vendor other than Horizon BCBSNJ for the provision of benefits to its Participants and Beneficiaries and such coverage information is requested to be incorporated into the Group's SBC produced in accordance with Section 1.1, Horizon BCBSNJ agrees to incorporate such information, subject to additional charge(s). Services hereunder shall be subject to the applicable charges as described in Attachment A ("Summary of Benefits and Coverage Financial Terms"). Horizon BCBSNJ reserves the right to modify the applicable charges under Attachment A upon thirty (30) days prior written notice to the Group.
- 3.2 Horizon BCBSNJ does not assume any responsibility for the accurateness or the completeness of the information provided by the Group regarding coverage not administered by Horizon BCBSNJ. Horizon BCBSNJ expressly disclaims all liabilities in connection with such non-Horizon BCBSNJ administered coverage and Group shall hold harmless Horizon BCBSNJ from any claim, judgments, threats, and penalties relating to same.
- 3.3 Group shall provide Horizon BCBSNJ with minimum of thirty (30) days advance written notice, together with any coverage details required for incorporation.

SECTION 4: Indemnification

- 4.1 Group shall agree to defend at its sole expense, indemnify, and hold Horizon BCBSNJ harmless against all claims, including legal fees, judgments, administrative expenses, and civil penalties that may result at any time arising from or due to the Group's failure to comply with the terms of the applicable laws or regulations regarding the subject matter of this Addendum. This includes, but is not limited to, the Group's non-compliance with applicable laws and regulation regarding Summary of Benefits and Coverage. This indemnification provision shall continue in effect after termination of this Addendum and the Agreement between the parties for any reason.

SECTION 5: Term and Termination

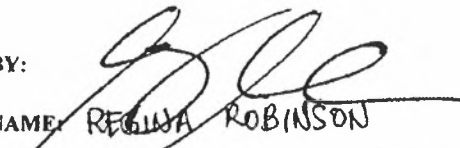
5.1 The term and termination of this Addendum, including Attachment A, shall be in accordance with, and shall be coterminous with, the Agreement.

IN WITNESS WHEREOF, the parties have caused this Addendum to be executed by their duly authorized representative as of the Effective Date.

Jersey City Board of Education

Horizon Healthcare Services, Inc.,
d/b/a Horizon Blue Cross Blue Shield of New Jersey

BY:


NAME: REGINA ROBINSON

TITLE: BUSINESS ADMINISTRATOR

BY:


NAME: Christopher M. Lepre

TITLE: Executive Vice President,
Commercial Business

Attachment "A"

SUMMARY OF BENEFITS AND COVERAGE FINANCIAL TERMS

Group Name: Jersey City Board of Education

This Attachment shall supplement and be made a part of Schedule A ("Financial Terms") of the Administrative Service Agreement between the Group and Horizon BCBSNJ.

Summary of Benefits and Coverage Administrative Fees:

SBC for Horizon BCBSNJ only coverage(s):	Included
Translation Services:	At Reasonable Translation Cost Incurred by Horizon BCBSNJ
Bulk Delivery of SBC:	At Reasonable Printing and Postage Cost Incurred by Horizon BCBSNJ

Carve-Out Arrangement Fee:

Incorporation of Non-Horizon BCBSNJ coverage(s): \$1000 per "Plan Design"*

**Subsequent modification to the non-Horizon BCBSNJ coverage(s) requiring new SBCs shall trigger additional Carve-Out Arrangement Fee(s). Plan Design for this purpose shall mean each distinct benefit design requiring a distinct Summary of Benefits and Coverage to be produced.*

EXHIBIT C

EXHIBIT C: SCHEDULE C- PERFORMANCE GUARANTEES

Group Name: Jersey City Board of Education

Term: 7/1/2018 – 6/30/2019

Group Number: 8511L & 8511P

Category	Definition	Target	% of ASC Fee at Risk

A minimum of [REDACTED] contracts must be actively enrolled with Horizon BCBSNJ on the effective date of the agreement. Group enrollment will be reviewed quarterly, if the average group enrollment drops below [REDACTED] for the quarter, no Performance Guarantees will apply for that quarter.

All of the preceding performance guarantees are subject to re-evaluation and change at each renewal, or in the event that there is a change in enrollment by more than ten percent in total or by contract type or if there is a change in the benefits or eligibility provided under the plan(s). In the event that Horizon BCBSNJ cannot operate at normal capacity due to a pandemic outbreak, natural disaster or any other event outside of the control of Horizon BCBSNJ, Horizon BCBSNJ retains the right to omit the results for the affected time period from annual PG calculations.

Account Management

On an annual basis Horizon BCBSNJ will release an account management evaluation form to the group administrator. The purpose of the form is to evaluate the group's overall satisfaction with account management performance. The annual evaluation form will be released within 30 days following close of contract year and is due back from the group within 30 days. If no response is received from the group within 30 days, no penalty will be applied.

Medical Claims Discount Guarantee

July 1, 2018 to June 30, 2019 only
In-Network utilization only

Discount Level

Penalty

If Horizon BCBSNJ delivers discounts between:

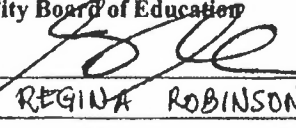


Qualifications:

- 1) There must be at least 4,277 contracts enrolled to qualify for the discount guarantee.
- 2) The determination of discounts as a percentage of charges will be developed based upon paid claims from July 1, 2018 through June 30, 2019.
- 3) The discount calculations will exclude Medicare eligible retirees.
- 4) The discount calculations will exclude high level claims in excess of \$200,000.
- 5) The discount percentages guaranteed for each subsequent year will be determined at the time of the renewals.
- 6) Horizon BCBSNJ reserves the right to reevaluate the discount guarantee in the event of reimbursement changes, changes in the size of our participating network, shifts in reimbursement methodology and/or changes in the regulatory or legislative environment not reasonably foreseeable that affect our ability to deliver discounts of this magnitude.
- 7) The discount guarantee is subject to re-evaluation and change at each renewal, or in the event that there is a change in enrollment by more than ten percent in total or by contract type or if there is a change in the benefits or eligibility provided under the plan(s).

NOW, THEREFORE, Contract Holder represents to Horizon BCBSNJ that it accepts the above fees, terms, and conditions for the stated Term and that the person signing this Schedule is an authorized representative of Contract Holder with sufficient legal authority.

Jersey City Board of Education

By: 
Printed: REGINA ROBINSON
Title: BUSINESS ADMINISTRATOR
Date: 3/21/19

Horizon Blue Cross Blue Shield of New Jersey


By: 
Printed: Christopher M. Lepre
Title: Senior Vice President, Market Business Units
Date: 3/26/2019

EXHIBIT D

STOP LOSS INTERFACE ADDENDUM

by and between

Horizon Healthcare Services, Inc., d/b/a Horizon Blue Cross Blue Shield of New Jersey

And

Jersey City Board of Education (the "Group")

This Addendum, together with any exhibits attached hereto, (collectively the "Addendum"), dated July 1, 2018 (the "Effective Date"), is entered into by and between Jersey City Board of Education, on behalf of itself, the Plan Sponsor, and the Plan Administrator (collectively the "Group"), and Horizon Healthcare Services, Inc., d/b/a Horizon Blue Cross Blue Shield of New Jersey ("Horizon BCBSNJ"), on behalf of itself and its subsidiaries and affiliates, including Horizon Healthcare of New Jersey, Inc.

WHEREAS, the Group has established a group health plan within the meaning of the Employee Retirement Income and Security Act or a health benefits plan for its Participants and Beneficiaries;

WHEREAS, Horizon BCBSNJ and the Group are parties to the Agreement under which Horizon BCBSNJ provides certain administrative services in connection with the Group's benefit plan(s); and

WHEREAS, Horizon BCBSNJ and the Group wish to amend the Agreement as provided for in this Addendum.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein and other good and valuable consideration, Group and Horizon hereby agree as follows:

SECTION 1: Responsibilities of Horizon BCBSNJ

1.1 Subject to the terms and conditions of this Addendum and upon Group's request as specifically provided for in the Schedule A of the Agreement, Horizon BCBSNJ shall produce and provide to Group certain stop loss reports in the manner described below ("Stop Loss Reports");

i. Horizon BCBSNJ shall produce and provide:

a. **Standard Reports:** Comprised of monthly, flat data files that provide paid claim details for members who have reached fifty percent (50%) of their specific stop loss deductible;

1.2 Horizon BCBSNJ shall deliver to the Group Stop Loss Reports within a reasonable amount of time upon receiving Groups written request for reports. Delivery of stop loss reports to the Group representative pursuant to this clause shall be by electronic delivery, unless otherwise agreed to by Horizon BCBSNJ. Pursuant to Attachment A, Group shall be responsible for any reasonable administrative cost Horizon BCBSNJ may incur in producing and delivering any requested physical copies of the stop loss report. Such reasonable charges incurred may

include printing, postage, and other administrative costs reasonably incurred by Horizon BCBSNJ.

SECTION 2: Responsibilities of Group

- 2.1 Group shall provide to Horizon BCBSNJ a complete copy of the most current executed stop loss agreement, including any amendments and exhibits, between Group and their stop loss vendor.
- 2.2 Group shall provide to Horizon BCBSNJ the name and contact information for Group's designated stop loss vendor ("Stop Loss Vendor") to whom Horizon BCBSNJ may directly deliver Stop Loss Reports.
- 2.3 Group and its Stop Loss Vendor shall be responsible for validation of the information provided by Horizon BCBSNJ in the Stop Loss Reports.
- 2.4 Group shall be solely responsible for filing any and all claims with its Stop Loss Vendor.

SECTION 3: Stop Loss Interface Fees

- 3.1 Horizon BCBSNJ will invoice the Group for the applicable fees in accordance with the applicable charges described in Exhibit A: Schedule A - Financial Terms. Group agrees to make payment in accordance with the terms of the invoice.

3.2 Stop Loss Interface Fee Computation – Change Of Stop Loss Interface Fee

The Stop Loss Interface Fee due on each Stop Loss Interface Fee Due Date is determined at the periodic intervals established by Horizon. Horizon shall have the right to change Stop Loss Interface Fees as of: (1) any anniversary date; (2) any date the enrollment deviates from enrollment on the Effective Date or last anniversary date by more than 10%; (3) any date the enrollment deviates by enrollment type from enrollment on the Effective Date or last anniversary date by more than 10%; and (4) any date the extent or nature of the risk under this Contract is changed: (i) by amendment of this Contract or of the Contract Holder's Plan of Benefits; or (ii) by reason of any provision of law or any governmental program or regulation. Horizon BCBSNJ will give the Contract Holder at least 60 days advance notice whenever a change in the Stop Loss Interface Fee is to be made.

- 3.3 **Stop Loss Interface Fee Due Dates:** The Stop Loss Interface Fee shall be due in accordance with the terms and conditions set forth in the Agreement and Schedule A.

SECTION 4: No Representation or Warranty

- 4.1 Horizon BCBSNJ does not guarantee or make any representation with respect to the accuracy of Stop Loss Reports. Group acknowledges that the information provided in the report is provided on an "as is" basis without any warranty of satisfactory quality or fitness for a particular purpose or use or any other warranty, express or implied.

SECTION 5: Confidentiality

- 5.1 Group acknowledges and agrees that Horizon BCBSNJ shall share necessary information, including protected health information, with authorized administrators, agents, or vendors, including Stop Loss Vendor (collectively the "Receiving Party") of the Plan upon Group's written or recorded direction ("Order to Disclose"). Group shall be solely responsible for ensuring the lawfulness of such disclosure, including compliance with HIPAA and other applicable laws and regulations, and indemnify, defend, and hold harmless Horizon BCBSNJ from any liability, claim, judgment, or threat of same proximately resulting from Horizon BCBSNJ's reliance on Group's Order to Disclose. Further, Group shall ensure that the Receiving Party use the disclosed information only for lawful purposes and safeguard Horizon BCBSNJ's Proprietary Business Information to the same extent required under the Agreement as well as the Confidentiality and Non-Disclosure Agreement between Group, Horizon BCBSNJ and any Receiving Party.

SECTION 6: Indemnification

- 6.1 Each party agrees to defend at its sole expense, indemnify, and hold the other party harmless against all claims, including legal fees, judgments, administrative expenses, and civil penalties that may result at any time arising from or due to the negligence or willful misconduct of the indemnifying party. This indemnification provision shall continue in effect after termination of this Addendum and the Agreement between the parties for any reason.

SECTION 7: Fiduciary Responsibility

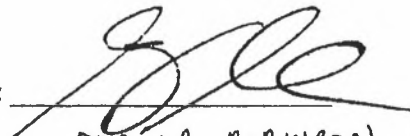
- 7.1 Horizon BCBSNJ shall not assume any plan fiduciary responsibility by providing to Group certain stop loss reports under this Addendum.

SECTION 8: Termination

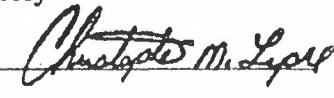
- 8.1 The term and termination of this Addendum, shall be in accordance with, and shall be coterminous with, the Agreement.
- 8.2 Group may terminate this Addendum with thirty (30) days written notice to Horizon BCBSNJ, upon Group's intent to change its Stop Loss Vendor.
- 8.3 Upon termination of the Administrative Services Agreement, Horizon BCBSNJ may continue to provide certain Stop Loss Reports to Group for a fee mutually agreed to by the parties.

IN WITNESS WHEREOF, the parties have caused this Addendum to be executed by their duly authorized representative as of the Effective Date.

Jersey City Board of Education

BY: 
NAME: REGINA ROBINSON
TITLE: BUSINESS ADMINISTRATOR

**Horizon Healthcare Services, Inc.,
d/b/a Horizon Blue Cross Blue Shield of
New Jersey**

BY: 
NAME: Christopher M. Lepre
TITLE: Executive Vice President,
Commercial

Disclosure reporting

EXHIBIT D

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement ("Agreement") is entered into by and between Horizon Healthcare Services, Inc. and its Affiliates¹ (collectively, "Business Associate" or "BA") and Jersey City Board of Education ("Covered Entity"), effective on the last date written below or, if later, the date upon which the parties entered into a business relationship ("Effective Date").

RECITALS

A. The purpose of this Agreement is to comply with the "business associate" requirements of the privacy regulations and the "business associate" requirements of the security regulations promulgated by the United States Department of Health and Human Services ("DHHS") pursuant to the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") ("Privacy Regulations" and "Security Regulations," respectively).

B. BA renders administrative services for or on behalf of Covered Entity that involve the use, disclosure and/or creation of certain Protected Health Information ("PHI") (collectively, the "Services").

C. The parties desire to enter into this Agreement to prescribe the manner in which PHI shall be handled by BA.

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants and agreements hereinafter addressed, the parties agree as follows:

1. **Definitions.** Capitalized terms used in this Agreement shall have the meaning ascribed to them in this Agreement or as set forth in HIPAA, the Privacy Regulations, or Security Regulations.

2. **Permitted Uses and Disclosures of PHI.** Except as otherwise limited in this Agreement, BA may use and disclose PHI to perform the Services for, or on behalf of, Covered Entity as specified in this Agreement, provided that such use or disclosure would not constitute a violation of HIPAA, the Privacy Regulations, or Security Regulations if so used or disclosed by Covered Entity. Unless otherwise limited herein, BA may:

a. Use PHI for the proper management and administration of BA or to carry out the legal responsibilities of BA;

b. Disclose PHI to third parties not employed by BA for the proper management and administration of BA or to carry out the legal responsibilities of BA if (i) the disclosure is Required by Law, or (ii) BA obtains reasonable assurances from the recipient of PHI that: (A) PHI shall be held confidential and shall be used or further disclosed only as Required by Law or for the purpose for which it was disclosed to the recipient, and (B) the recipient shall notify BA of any instances of which it is aware of a breach of confidentiality of PHI;

¹ "Affiliates" means any corporation, company or other entity that directly or indirectly controls, is controlled by, or is under common control with, a party. For purposes of this definition, the word "control" shall mean the direct or indirect ownership of more than fifty percent (50%) of the outstanding voting stock of the corporation, company, or other entity.

c. Use PHI to provide data aggregation services related to the health care operations of Covered Entity; and

d. Use PHI for de-identification by BA in accordance with the requirements of 45 CFR § 164.514(b).

3. ***Obligations of Business Associate.*** With regard to the use and disclosure of PHI, BA hereby agrees as follows:

a. **Use and Disclosure.** BA shall not use or disclose PHI other than as permitted or required by this Agreement or as Required by Law.

b. **Safeguards.** BA shall implement and use appropriate safeguards to protect the privacy of PHI and to prevent any use or disclosure of PHI other than as permitted by the terms of this Agreement.

c. **Agents and Subcontractors.** BA shall enter into written agreements with all agents and subcontractors to whom BA provides PHI requiring the agents or subcontractors to agree to restrictions and conditions that are substantially similar or more protective than the restrictions and conditions that apply to BA under this Agreement with respect to PHI.

d. **Access to PHI.** If BA receives a request directly from any participant or beneficiary of Covered Entity for access to portions or all of his/her PHI in a Designated Record Set, BA shall, to the extent of PHI in its control, respond to the participant or beneficiary in a manner that would be in compliance with 45 CFR § 164.524 if done by Covered Entity. In the event that Covered Entity receives a request for access by a participant or beneficiary, the Covered Entity shall, within ten (10) days of receiving such a request, notify BA in writing if the request involves PHI in BA's control. Within forty-five (45) days of receiving such written notification from Covered Entity, BA shall respond directly to the participant or beneficiary with the PHI in BA's possession in accordance with 45 CFR § 164.524.

e. **Amendment of PHI.** If BA receives a request for amendment of PHI directly from a participant or beneficiary of Covered Entity, BA shall, with respect to relevant portions of the PHI which it holds, process the request in a manner that would be in compliance with 45 CFR § 164.526 if done by Covered Entity, except that BA shall not undertake to identify and notify other business associates of Covered Entity of that amendment. In the event the Covered Entity receives a request by a participant or beneficiary of an amendment for PHI within the control of BA, Covered Entity shall either make the determination on such request, in which event BA agrees to, upon receipt of written notification from Covered Entity, make any such amendment to PHI that Covered Entity determines to make or, within ten (10) days of receiving such a request, Covered Entity shall notify BA in writing in order that BA will make the determination upon the request. Within forty-five (45) days of receiving a written request from the Covered Entity for an amendment of PHI, BA, for relevant portions of the PHI which it holds, shall respond in accordance with 45 CFR § 164.526.

f. Accounting of Disclosures. If BA receives a request for an accounting of disclosures directly from a participant or beneficiary of Covered Entity, BA will respond directly to the participant or beneficiary with respect to information related to BA's disclosures. In accordance with 45 CFR § 164.528, BA shall provide to an individual in response to his/her proper request the following information with respect to each disclosure: (A) the date of disclosure, (B) the name of the recipient and, if known, the recipient's address, (C) a brief description of PHI disclosed, and (D) a brief statement of the purpose of the disclosure. In the event the Covered Entity receives a request by a participant or beneficiary for an accounting of disclosures, the Covered Entity shall, within ten (10) days of receiving such a request, notify BA of such request. After receiving such written request from Covered Entity, BA will respond directly to the participant or beneficiary in accordance with 45 CFR § 164.528. BA shall maintain the necessary records such that it can furnish relevant information with respect to a disclosure for six (6) years subsequent to a disclosure. If, during such period, the Services or this Agreement terminates, BA may, in its discretion, provide Covered Entity with all of the information necessary such that Covered Entity could respond to an accounting request in the future relative to the periods of time during which BA provided Services. In addition, in the event that BA provides Covered Entity with notification of disclosures in accordance with this paragraph, after such disclosure BA shall not be obligated to maintain such information or provide such information again upon termination of the Services or this Agreement.

g. Personal Representatives. In the event that a participant or beneficiary makes use of a personal representative in the care or payment of his/her care or contacts BA directly with such a designation, or to terminate same, BA will exercise its own discretion in determining whether to treat such person as a personal representative (or terminate his/her representation) and shall, if appropriate and necessary, notify Covered Entity of BA's decision. In the event that an individual contacts Covered Entity to make such a designation (or terminate same), BA shall also treat as a personal representative (or terminated personal representative) any person so designated by the participant or beneficiary and accepted by Covered Entity, upon the written notification from Covered Entity of such designation, provided that such implementation is feasible for BA and provided that BA can implement such a designation without additional cost. The parties will negotiate as to the accommodation of any such request that increases BA's costs.

h. Confidential Communications. In the event that a participant or beneficiary contacts BA directly to request confidential communications (for alternative means or location of communication), BA will exercise its own discretion in determining whether to agree to such designation and shall, if appropriate and necessary, notify Covered Entity of BA's decision. In the event that an individual contacts Covered Entity directly for such a request, BA also agrees to communicate with a participant or beneficiary by alternative means or at alternative locations if such request is received by and approved by Covered Entity in accordance with 45 CFR § 164.522(b), upon the written notification from Covered Entity of such approval, provided that such implementation is feasible for BA and provided that BA can implement such a request without additional cost. The parties will negotiate as to the accommodation of any such request that increases BA's costs.

i. Restrictions. In the event that a participant or beneficiary contacts BA directly requesting a restriction of the Use and/or Disclosure of PHI for Treatment, Payment or Health Care Operations, BA will exercise its own discretion in determining whether to agree to such designation and shall, if appropriate and necessary, notify Covered Entity of BA's decision. In the event that an individual contacts Covered Entity directly for such a request, BA also agrees to any such restriction request that is received and approved by Covered Entity in accordance with 45 CFR § 164.522, upon the written notification from Covered Entity of such approval, provided that such implementation is feasible for BA and provided that BA can implement such a request without additional cost. The parties will negotiate as to the accommodation of any such request that increases BA's costs.

j. Authorizations. BA shall, in its discretion, obtain any necessary consents or authorizations required by the Privacy Rules that are necessary for BA to provide its Services to Covered Entity's participants and beneficiaries and to otherwise meet the covenants to provide privacy administrative services under this Agreement.

k. Complaints. In the event BA receives a complaint directly from a participant or individual relating to BA's treatment of that individual's PHI, BA shall investigate the complaint and respond in accordance with BA's privacy policies and procedures and shall, if appropriate and necessary, notify Covered Entity of BA's decision or any action taken with respect to such complaint. In the event Covered Entity receives a complaint directly from a participant or beneficiary relating to BA's privacy administrative services or its policies or procedures, BA shall, upon receipt of written notification of Covered Entity, investigate the complaint and respond in accordance with the above.

l. Disclosures to Secretary of DHHS. BA shall make all internal practices, books and records relating to the use and disclosure of PHI received or created by BA on behalf of Covered Entity available to the Secretary of DHHS.

m. Compliance with Security Regulations. If BA creates, receives, maintains or transmits Electronic Protected Health Information for or on behalf of Covered Entity ("E PHI"), BA shall (i) implement and utilize administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of E PHI that BA receives, creates, maintains or transmits for or on behalf of Covered Entity, (ii) report to Covered Entity's Privacy Official in writing any material and successful Security Incident, as defined in 45 CFR § 164.304, as soon as reasonably possible after discovery of the Security Incident, but in no event later than sixty (60) days from the date of discovery of such Security Incident; provided, however, unsuccessful attempts shall be reported only upon written request by Covered Entity, and (iii) ensure that any agents, including subcontractors, to whom BA provides PHI implement the safeguards required by subsection (i) above. BA shall comply with the policies and procedures and documentation requirements of the Security Regulations including, but not limited to, 45 CFR § 164.316.

n. Minimum Necessary. BA shall request, use and disclose only the minimum amount of PHI necessary to accomplish the purpose of the request, use or disclosure.

o. Breach of Unsecured Protected Health Information. BA shall provide written notice of any Breach of Unsecured Protected Health Information ("BA Notice") to Covered Entity as soon as reasonably possible after discovery of a Breach, but in no event later than sixty (60) days from the date of discovery. The BA Notice shall include, to the extent known by BA, the following information: (i) the identification of each member whose Unsecured Protected Health Information has been, or is reasonably believed by BA to have been, accessed, acquired, used or disclosed during the Breach, (ii) a brief description of what happened, including the date of the discovery of the Breach, (iii) a description of the types of Unsecured Protected Health Information involved in the Breach, and (iv) any other relevant information. The parties understand that the initial reporting by BA to Covered Entity may not be complete, and that if it is not, it will be supplemented by BA, as needed, until all required information has been provided in writing to Covered Entity.

4. Responsibilities of Covered Entity. With regard to the Use and/or Disclosure of PHI by BA, Covered Entity hereby agrees and in addition to any responsibilities aforementioned:

a. that the notice of privacy practices (the "Notice") that Covered Entity provides to participants and beneficiaries pursuant to 45 CFR § 164.520 includes and shall, throughout the term of this Agreement, give notice of all of the Uses and Disclosures which BA shall carry out pursuant to this Agreement, or are reflected in BA's notice of privacy practices which Covered Entity has received; and Covered Entity shall not adopt privacy practices that are inconsistent with BA's policies and procedures with respect to its Uses and Disclosures of PHI in the control of BA;

b. that it will designate in writing to BA persons to be regarded as participating in plan administration activities (including brokers) and the plan administration purposes for which such persons are acting so that, upon such designation, BA is authorized to make Disclosures to such persons of the PHI that is not in summary form, and such that BA can determine that those persons are receiving only the minimum necessary PHI for the proper and identified purposes;

c. that BA may treat requests for Disclosures by persons designated through the procedure described in Section 4.b as made consistent with Covered Entity's duty, pursuant to 45 CFR § 164.514(d), to request only the minimum necessary information for the plan's administrative purposes;

d. that, where any of the persons designated as described in Section 4.b are employees of the plan sponsor and are requesting any of the PHI other than summary PHI for the purposes set forth in 45 CFR § 164.504(f)(1)(ii), Covered Entity has taken such steps as are required by 45 CFR § 164.504(f)(2) prior to such request, and that it shall provide BA with a copy of the certification required by the Privacy Rules prior to any Disclosure of PHI to those persons by BA;

e. not to agree to restrictions on Use and/or Disclosure as provided for in 45 CFR § 164.522 for the PHI received or created by BA, unless agreed to by BA, or unless Covered Entity agrees to hold BA harmless from the financial impact of any such agreement by Covered Entity;

f. to notify BA in writing and in a timely manner of any confidential communications (alternative means or locations or communications) requested by a participant or beneficiary and agreed to by Covered Entity, but to hold BA harmless from the financial impact of any such agreement by Covered Entity;

g. that in implementing the provisions herein, and with respect to any determinations that BA makes in providing Services to Covered Entity or actions it takes under the Privacy Rules on behalf of Covered Entity, BA may and shall use BA's privacy policies and Third Party Privacy and Security Policy and Standards.

5. ***Term and Termination.***

a. **Term.** This Agreement shall become effective on the Effective Date and, unless earlier terminated pursuant to Section 4(b) below, shall continue in effect until the discontinuation of BA's provision of services to Covered Entity involving the use, disclosure or creation of PHI.

b. **Termination.** This Agreement may be terminated as follows:

i. Upon mutual written agreement of the parties; or

ii. If Covered Entity determines that BA materially breached any provision of this Agreement, Covered Entity shall either (A) provide BA with a written notice of breach and terminate the Agreement if BA does not cure the breach within thirty (30) calendar days of receiving such notice, or (B) immediately terminate this Agreement if cure is not possible; or

iii. If BA determines that Covered Entity materially breached any provision of this Agreement, BA shall either (A) provide Covered Entity with a written notice of breach and terminate the Agreement if Covered Entity does not cure the breach within thirty (30) calendar days of receiving such notice, or (B) immediately terminate this Agreement if cure is not possible.

c. **Effect of Termination.** Upon termination of this Agreement, BA shall return to Covered Entity or destroy all PHI in whatever form or medium (including in any electronic medium under BA's custody or control). If such return or destruction is infeasible, the obligations set forth in this Agreement with respect to PHI shall survive termination and BA shall limit any further use and disclosure of PHI to the purposes that make the return or destruction of PHI infeasible.

6. ***Indemnification.*** Each party shall indemnify and hold harmless the other party and its Affiliates, directors, officers, employees and agents against any and all claims, causes of action, losses, liabilities, judgments, penalties, damages, costs or expenses, including attorneys' fees and court or proceeding costs, arising out of or in connection with the indemnifying party's breach of this Agreement.

7. ***Amendment.*** This Agreement may be modified or amended only upon mutual written consent of the parties. If any changes or modifications of applicable state or federal law would require modification to this Agreement, the parties shall mutually agree to make such modification provided that, if such change has an adverse financial effect on BA, appropriate fees will be agreed to by the parties.

8. ***Entire Agreement; Assignment.*** This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all other agreements, communications or understandings either oral or in writing, between the parties to this Agreement with respect to the subject matter hereof. Neither party may not assign its rights and obligations under this Agreement without the prior written consent of the other party.

9. ***Notices.*** Any notices to be given hereunder shall be deemed effectively given when personally delivered one (1) business day after being sent to the recipient by electronic means (including facsimile) or overnight courier, or four (4) business days after being deposited in the United States mail, with postage prepaid thereon, certified or registered mail, return receipt requested, addressed as follows:

If to Business Associate:

Horizon Blue Cross Blue Shield of New
Jersey
Three Penn Plaza East, PP-16
Newark, NJ 07105-2200
Attn: Privacy Official
Telephone: 973-466-8715

With a copy to:

Horizon Blue Cross Blue Shield of New
Jersey
Three Penn Plaza East, PP-16
Newark, NJ 07105-2200
Attn: General Counsel

If to Covered Entity:

With a copy to:

ADMINISTRATIVE SERVICES AGREEMENT

10. **No Third Party Beneficiaries.** Nothing expressed or implied in this Agreement is intended to confer, nor anything herein shall confer, upon any person other than the parties hereto any rights, remedies, obligations or liabilities whatsoever.

11. **Waiver.** A waiver by either party of a breach or failure to perform hereunder shall not constitute a waiver of any subsequent breach or failure.

12. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original but all of which together shall be deemed one and the same instrument. This Agreement may be executed by facsimile or PDF signature and any such signature shall be deemed an original.

13. **Governing Law; Venue.** This Agreement shall be governed by, construed, interpreted and enforced under the laws of the State of New Jersey, without regard to its choice of law provisions. The parties hereby consent to the jurisdiction and venue of the state and federal courts located in Essex County, New Jersey.

14. **Conflicts and Severability.** The terms and conditions of this Agreement shall override and control any conflicting terms or conditions of any other agreement between the parties to the extent such conflict involves an issue related to HIPAA, the Privacy Regulations, and/or the Security Regulations. If any provision(s) of this Agreement shall be held to be invalid, illegal or unenforceable, the same shall be deemed to be severable and deleted from this Agreement, and the remaining provisions construed so as to most nearly effectuate the original intention of the parties and HIPAA, the Privacy Regulations, and the Security Regulations.

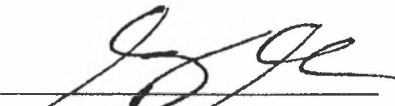
SIGNATURE PAGE FOLLOWS

ADMINISTRATIVE SERVICES AGREEMENT

IN WITNESS WHEREOF, each of the undersigned has caused this Agreement to be duly executed in its name and on its behalf as of the Effective Date.

JERSEY CITY BOARD OF EDUCATION

**HORIZON HEALTHCARE SERVICES, INC. d/b/a
HORIZON BLUE CROSS BLUE SHIELD OF NEW
JERSEY**

By: 
Name: REGINA ROBINSON
Title: BUSINESS ADMINISTRATOR
Date: 3/21/19

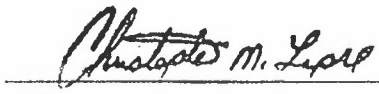
By: 
Name: Christopher M. Lepre
Title: Executive Vice President,
Commerical
Date: 3/26/2019

EXHIBIT A: SCHEDULE A – FINANCIAL TERMS

Group Name: Jersey City Board of Education
Term: July 1, 2021 through June 30, 2024
Group Number: 8511L & 8511P
Current Enrollment: 3,693 Contracts

SECTION A-1: FEES

A-1.1 Administrative Fees and Other Fees. The following charges shall be in effect for the Terms specified hereunder based on Contract Holder's Current Enrollment:

Administrative Fees:

Year 1 (effective 7/1/2021 – 6/30/2022)

Health \$22.16 per contract per month

Year 2 (effective 7/1/2022 - 6/30/2023)

Health \$23.27 per contract per month

Year 3 (effective 7/1/2023 – 6/30/2024)

Health \$24.43 per contract per month

Other Fees:

Mental Health Administration Charge: Year 1: \$ 2.99 per contract per month
Year 2: \$ 3.14 per contract per month
Year 3: \$ 3.30 per contract per month

*** Fee for utilization management of mental health claims that are not capitated.*

Claims Fiduciary Charge: Year 1: \$1.05 per contract per month
Year 2: \$1.10 per contract per month
Year 3: \$1.16 per contract per month

A-4 BOE Surcharge: 1.7% of paid claims

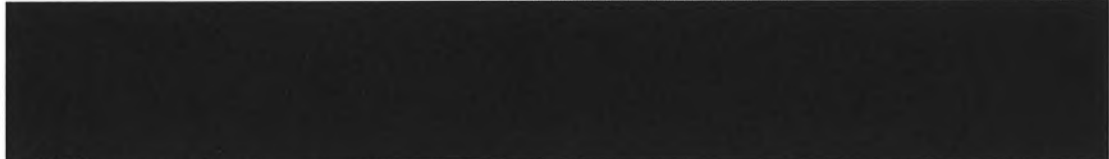
*** A surcharge on insurance companies, third party administrators, HMOs, and other insurance funds (based on Chapter 8 of the Public Laws of 1993) applicable to local school boards that do not participate in the State Health Benefits Plan. The surcharge amount may be subject to a retroactive change pending the final decision of the State of NJ.*

Stop Loss Interface Fee:

Standard Reporting Year 1: \$1.31 per contract per month
Year 2: \$1.38 per contract per month
Year 3: \$1.45 per contract per month

Administrative Service Agreement Exhibit A

1. For In-Network BlueCard® Claims: Following percentage scale of network savings, capped at \$2,000.00 per Claim.



***Please note that the applicable scale and percentages are only current and accurate as of the day of the issuance of this Schedule A. Modifications or changes to BlueCard® Program Access Fees, as with other Inter-Plan Arrangement fees, are generally made effective January 1 of the calendar year but may occur at any time during the year. Pursuant to Contract Holder's Administrative Services Agreement with Horizon BCBSNJ, Horizon BCBSNJ will provide thirty (30) days' advance written notice of any modification or change to the BlueCard® Program Access Fees.*

2. For Out-of-Network BlueCard® Claims: \$0.00 per Claim.
Pursuant to Contract Holder's Administrative Services Agreement with Horizon BCBSNJ, Horizon BCBSNJ will provide thirty (30) days' advance written notice of any modification or change to the per Claim charge for Out-of-Network BlueCard® Claims.

Additional Information regarding BlueCard® Program Access Fee:



Summary Plan Description: If applicable, reasonable printing and postage cost incurred by Horizon BCBSNJ.

A-1.2 Working Capital Amount. The following Working Capital Amount shall be in effect for the stated period:

Year 1:	
<i>Working Capital Amount- Medical:</i>	 (10 Days estimated claims)
Year 2:	To Be Determined
Year 3:	To Be Determined

Contract Holder shall remunerate to Horizon BCBSNJ the stated Working Capital Amount in accordance with the Agreement. Horizon BCBSNJ has the right to adjust the Working Capital if there is a change in

the method used to remit payment for the Claim invoices or annually in accordance with the terms of this Schedule A.

- A-1.3 External Appeals.** To the extent that Contract Holder's Plan is grandfathered, as that term is defined in the Patient Protection and Affordable Care Act ("Affordable Care Act"), Horizon BCBSNJ understands that the Plan is not subject to that Affordable Care Act's provisions with respect to required external appeals for as long as the Plan's grandfathered status is maintained.

If Contract Holder's Plan is not grandfathered, Contract Holder may elect to have Horizon BCBSNJ, for the fee of, up to, \$450 per external appeal, administer such external appeals in cooperation with Horizon BCBSNJ's designated Independent Review Organizations (IROs). If Contract Holder elects not to do so, Contract Holder shall be solely responsible for the administration of such external appeals, in which event there shall be no charge for the Claims data and supporting documentation Horizon BCBSNJ provides to Contract Holder's selected IROs.

A-1.4 Claims Re-Pricing and Negotiation Services. If benefits are provided under Contract Holder's Plan for which services were delivered or otherwise provided by a Non-Network Provider, Horizon BCBSNJ may negotiate and/or re-price Claims for such Non-Network Provider services through the use of internal or external resources of its choice to make available savings in Out-of-Network Claims (such savings realized to be referred to as "Out-of-Network Claims Savings").

Claims Re-Pricing and Negotiation Fee(s): 25% of the Out-of-Network Claims Savings.

- A-1.5 Out-of-Network Mandated Arbitration.** Pursuant to P.L. 2018, C. 32, if the Contract Holder elects the Out-of-Network Mandate Horizon BCBSNJ may be responsible for arbitration associated with Claims for inadvertent and/or involuntary out-of-network services provided in New Jersey by an eligible provider.

Arbitration Fee: At a reasonable Horizon BCBSNJ internal and external administrative cost, and subject to costs associated with the Department of Banking and Insurance's elected Independent Claims Payment Arbitration vendor requirements per P.L. 2018, C. 32.

- A-1.6 Broker Payment Administration.** Where applicable, Horizon BCBSNJ administers payment of broker commissions ("Broker Payments") as specifically directed by Contract Holder as follows:

Producer Compensation: \$0.00 per contract per month

SECTION A-2: BILLING TERMS

- A-2.1 Billing of Claims.** The following billing terms shall apply to with respect to the Plan's Claims:

Weekly

Horizon BCBSNJ will provide Contract Holder with weekly invoices of Paid Claims for the prior week's Monday through Sunday. Contract Holder shall remit payment of the amount due ("Claims Due") within one banking day of the invoice date via bank wire or ACH electronic funds transfer to a Horizon BCBSNJ designated bank account.

- A-2.2 Billing of Administrative Fees and Other Fees.** Horizon BCBSNJ will invoice Contract Holder monthly for the applicable Administrative Fees based on the Plan's enrollment as of the fifteenth (15th)

Administrative Service Agreement Exhibit A

calendar day of the corresponding month together with all other charges, including Network Access Fees and Other Fees as applicable under this Agreement. Horizon BCBSNJ will use its best efforts to reconcile any such invoice on a monthly basis, subject to the Agreement.

Contract Holder shall remunerate to Horizon BCBSNJ the amount due no later than thirty-one (31) calendar days following the first calendar day of the following month in which the services are provided (the "Administrative Fee Payment Due Date") by check, bank wire or ACH electronic funds to Horizon BCBSNJ's designated bank account. For example, fees originating from services provided by Horizon BCBSNJ in the month of June shall be due by July 31.

Notwithstanding the above, if Contract Holder elects to self-bill, or otherwise invoice itself the applicable Administrative Fees, Contract Holder shall be solely responsible for verifying the enrollment report for its Plan Participants and remunerate such applicable Administrative Fees to Horizon BCBSNJ on the payment schedule specified in this Schedule, and such amount shall be deemed final unless disputed by either Contract Holder or Horizon BCBSNJ within [24] months.

A-2.3 Reconciliation of Billed Claims. Horizon BCBSNJ agrees to conduct a monthly reconciliation of Contract Holder's Claims payment for the preceding calendar month, subject to the Agreement. Any additional amounts due to Horizon BCBSNJ shall be included in Contract Holder's first next payment made in accordance with Section A-2.1. Any amount due by Horizon BCBSNJ shall be deducted from Contract Holder's first next payment.

A-2.4 Conflicts. This Schedule incorporates the terms and conditions of the Agreement including any prior Schedule A entered into between the parties. In the event of a conflict between the terms of the Agreement including any prior Schedule A and the terms of this Schedule A, this Schedule A shall govern if it is a later executed counterpart to the Agreement.

NOW, THEREFORE, Contract Holder represents to Horizon BCBSNJ that it accepts this Schedule, including the above fees, terms and conditions and acknowledges that this Schedule incorporates the terms and conditions of any prior Schedule A. In the event of a conflict between this Schedule and any prior schedules the provisions of this Schedule shall govern and supersede any conflicting provisions. Contract Holder further represents that the person signing this Schedule is an authorized representative of Contract Holder with sufficient legal authority.

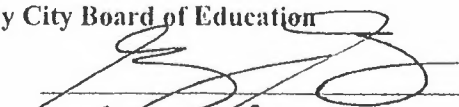
Jersey City Board of Education

By:

Printed:

Title:

Date:



Regina Robinson

School Business Admin

8.8.21

Horizon Blue Cross Blue Shield of New Jersey

By:

Printed:

Title:

Date:

Joseph Albano

Vice President, Commercial and
Specialty Markets



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
101 SOUTH BROAD STREET
PO Box 819
TRENTON, NJ 08625-0819

PHILIP D. MURPHY
Governor

LT. GOVERNOR SHEILA Y. OLIVER
Commissioner

INTERIM ORDER

January 31, 2023 Government Records Council Meeting

Enza Cannarozzi
Complainant

Complaint No. 2021-74

v.

Jersey City Board of Education (Hudson)
Custodian of Record

At the January 31, 2023 public meeting, the Government Records Council (“Council”) considered the January 24, 2023 Supplemental Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council voted unanimously to adopt the entirety of said findings and recommendations. The Council, therefore, finds that:

1. The Custodian failed to comply with the Council’s September 29, 2022 Interim Order because she failed to provide nine (9) copies of the requested record for *in camera* review. The Custodian also failed to simultaneously provide certified confirmation of compliance to the Executive Director. The Council therefore finds the Custodian in violation of the Council’s Order.
2. Due to the lack of information in the record, the GRC is unable to determine whether the Custodian unlawfully denied access to the requested contract. The Administrative Procedures Act provides that the Office of Administrative Law (“OAL”) “shall acquire jurisdiction over a matter only after it has been [determined] to be a contested case by an agency head and has been filed with the [OAL]” N.J.A.C. 1:1-3.2(a). Accordingly, it is necessary to refer this matter to the OAL for a hearing to resolve the facts and determine whether the Custodian lawfully denied access to the requested contract. Further, for the reasons set forth below, the OAL should determine whether the Custodian knowingly and willfully violated OPRA under the totality of the circumstances.
3. The Custodian violated OPRA by failing to timely respond to the Complainant. Furthermore, the Custodian failed to provide an SOI to the Council. The Custodian also failed to comply with the Council’s July 26, 2022 Interim Order by failing to provide a timely response. The Custodian also failed to comply with the Council’s September 29, 2022 Interim Order by not providing nine (9) copies of the requested record for *in camera* review. The Custodian also failed to deliver certified confirmation of compliance to the Executive Director. The Council therefore finds the Custodian in violation of the Council’s Order and concludes that the Custodian’s actions may be intentional and deliberate, with knowledge of their wrongfulness, and not merely negligent, heedless or unintentional. As such, this complaint should be referred to the

OAL for a proof hearing to determine whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances.

Interim Order Rendered by the
Government Records Council
On The 31st Day of January 2023

Robin Berg Tabakin, Esq., Chair
Government Records Council

I attest the foregoing is a true and accurate record of the Government Records Council.

Steven Ritardi, Esq., Secretary
Government Records Council

Decision Distribution Date: February 2, 2023

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Supplemental Findings and Recommendations of the Executive Director
January 31, 2023 Council Meeting**

**Enza Cannarozzi¹
Complainant**

GRC Complaint No. 2021-74

v.

**Jersey City Board of Education (Hudson)²
Custodial Agency**

Records Relevant to Complaint: Electronic copies via e-mail of: “[t]he entire health benefits contract between the Jersey City Board of Education [“Board”] and Horizon Blue Cross Blue Shield of NJ. To clarify and be more specific, I want the full copy of the employee health benefits contract (signed from [the Board] and HBCBS) that covers the members of the [Jersey City Education Association (“JCEA”)] for the contract term of July 1, 2019 through June 30, 2023.”

Custodian of Record: Regina Robinson

Request Received by Custodian: March 3, 2021

Response Made by Custodian: N/A

GRC Complaint Received: April 1, 2021

Background

September 29, 2022 Council Meeting:

At its September 29, 2022 public meeting, the Council considered the September 22, 2022 Supplemental Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council voted unanimously to adopt the entirety of said findings and recommendations. The Council, therefore, found that:

1. The Custodian failed to comply with the Council’s July 26, 2022 Interim Order. Specifically, the Custodian failed to timely provide a response to the Complainant and simultaneously provide certified confirmation of compliance to the Executive Director.
2. The GRC must conduct an *in camera* review of the contract responsive to the Complainant’s OPRA request to validate the Custodian’s assertion that the contract was properly exempt from disclosure under OPRA’s competitive advantage exemption. See Paff v. N.J. Dep’t of Labor, Bd. of Review, 379 N.J. Super. 345, 355 (App. Div. 2005); N.J.S.A. 47:1A-1.1.

¹ No legal representation listed on record.

² No legal representation listed on record.

3. **The Custodian shall deliver³ to the Council in a sealed envelope nine (9) copies of the requested unredacted record (see conclusion No. 2 above), a document or redaction index⁴, as well as a legal certification from the Custodian, in accordance with N.J. Court Rules, R. 1:4-4,⁵ that the record provided is the record requested by the Council for the *in camera* inspection. Such delivery must be received by the GRC within five (5) business days from receipt of the Council's Interim Order.**
4. The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order.

Procedural History:

On October 4, 2022, the Council distributed its Interim Order to all parties. On December 14, 2022, the Complainant requested a status update on the matter. The GRC responded on December 22, 2022, stating that as of that date the GRC has not received a response from the Custodian. To date, the Custodian has failed to respond to the Council's Interim Order.

Analysis

Compliance

At its September 29, 2022 meeting, the Council ordered the Custodian to provide nine (9) unredacted copies of the requested contract for *in camera* review. The Council also ordered the Custodian to submit certified confirmation of compliance, in accordance with R. 1:4-4, to the Executive Director. On October 4, 2022, the Council distributed its Interim Order to all parties, providing the Custodian five (5) business days to comply with the terms of said Order. Thus, the Custodian's response was due by close of business on October 12, 2022.

On December 15, 2022, the Complainant e-mailed the GRC, requesting a status update on the matter. The GRC responded to the Complainant on December 22, 2022, copying the Custodian. The GRC stated that as of that date, the Custodian has failed to provide nine (9) copies of the requested record for *in camera* review. As of January 10, 2023, the Custodian has not provided a response to the Interim Order despite having approximately sixty-four (64) business days to respond.

Therefore, the Custodian failed to comply with the Council's September 29, 2022 Interim Order because she failed to provide nine (9) copies of the requested record for *in camera* review. The Custodian also failed to simultaneously provide certified confirmation of compliance to the Executive Director. The Council therefore finds the Custodian in violation of the Council's Order.

³ The *in camera* records may be sent overnight mail, regular mail, or be hand-delivered, at the discretion of the Custodian, as long as the GRC physically receives them by the deadline.

⁴ The document or redaction index should identify the record and/or each redaction asserted and the lawful basis for the denial.

⁵ "I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment."

Contested Facts

The Administrative Procedures Act (“APA”) provides that the Office of Administrative Law (“OAL”) “shall acquire jurisdiction over a matter only after it has been determined to be a contested case by an agency head and has been filed with the [OAL] . . .” N.J.A.C. 1:1-3.2(a). In the past, when the issue of contested facts have arisen from a custodian’s compliance with an order, the Council has opted to send said complaint to the OAL for a fact-finding hearing. See Hyman v. City of Jersey City (Hudson), GRC Complaint No. 2007-118 (Interim Order dated September 25, 2012); Mayer v. Borough of Tinton Falls (Monmouth), GRC Complaint No. 2008-245 (Interim Order dated July 27, 2010); Latz v. Twp. of Barnegat (Ocean), GRC Complaint No. 2012-241 *et seq.* (Interim Order dated January 28, 2014).

In the instant matter, the Custodian asserted that the requested contract was withheld from disclosure under OPRA’s competitive advantage exemption. On September 29, 2022, the Council ordered the Custodian to provide nine (9) copies of the requested contract for *in camera* review. As of January 10, 2023, the Custodian has failed to respond to the Council’s Order. Thus, the Council is unable to determine whether the contract was properly withheld from disclosure.

Therefore, due to the lack of information in the record, the GRC is unable to determine whether the Custodian unlawfully denied access to the requested contract. The APA provides that the OAL “shall acquire jurisdiction over a matter only after it has been [determined] to be a contested case by an agency head and has been filed with the [OAL] . . .” N.J.A.C. 1:1-3.2(a). Accordingly, it is necessary to refer this matter to the OAL for a hearing to resolve the facts and determine whether the Custodian lawfully denied access to the requested contract. Further, for the reasons set forth below, the OAL should determine whether the Custodian knowingly and willfully violated OPRA under the totality of the circumstances.

Knowing & Willful

OPRA states that “[a] public official, officer, employee or custodian who knowingly and willfully violates [OPRA], and is found to have unreasonably denied access under the totality of the circumstances, shall be subject to a civil penalty . . .” N.J.S.A. 47:1A-11(a). OPRA allows the Council to determine a knowing and willful violation of the law and unreasonable denial of access under the totality of the circumstances. Specifically OPRA states “. . . [i]f the council determines, by a majority vote of its members, that a custodian has knowingly and willfully violated [OPRA], and is found to have unreasonably denied access under the totality of the circumstances, the council may impose the penalties provided for in [OPRA] . . .” N.J.S.A. 47:1A-7(e).

Certain legal standards must be considered when making the determination of whether the Custodian’s actions rise to the level of a “knowing and willful” violation of OPRA. The following statements must be true for a determination that the Custodian “knowingly and willfully” violated OPRA: the Custodian’s actions must have been much more than negligent conduct (Alston v. City of Camden, 168 N.J. 170, 185 (2001)); the Custodian must have had some knowledge that his actions were wrongful (Fielder v. Stonack, 141 N.J. 101, 124 (1995)); the Custodian’s actions must have had a positive element of conscious wrongdoing (Berg v. Reaction Motors Div., 37 N.J. 396, 414 (1962)); the Custodian’s actions must have been forbidden with actual, not imputed,

knowledge that the actions were forbidden (*id.*; Marley v. Borough of Palmyra, 193 N.J. Super. 271, 294-95 (Law Div. 1983)); the Custodian’s actions must have been intentional and deliberate, with knowledge of their wrongfulness, and not merely negligent, heedless or unintentional (ECES v. Salmon, 295 N.J. Super. 86, 107 (App. Div. 1996)).

Here, the Custodian violated OPRA by failing to timely respond to the Complainant. Furthermore, the Custodian failed to provide an SOI to the Council. The Custodian also failed to comply with the Council’s July 26, 2022 Interim Order by failing to provide a timely response. The Custodian also failed to comply with the Council’s September 29, 2022 Interim Order by not providing nine (9) copies of the requested record for *in camera* review. The Custodian also failed to deliver certified confirmation of compliance to the Executive Director. The Council therefore finds the Custodian in violation of the Council’s Order and concludes that the Custodian’s actions may be intentional and deliberate, with knowledge of their wrongfulness, and not merely negligent, heedless or unintentional. As such, this complaint should be referred to the OAL for a proof hearing to determine whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. The Custodian failed to comply with the Council’s September 29, 2022 Interim Order because she failed to provide nine (9) copies of the requested record for *in camera* review. The Custodian also failed to simultaneously provide certified confirmation of compliance to the Executive Director. The Council therefore finds the Custodian in violation of the Council’s Order.
2. Due to the lack of information in the record, the GRC is unable to determine whether the Custodian unlawfully denied access to the requested contract. The Administrative Procedures Act provides that the Office of Administrative Law (“OAL”) “shall acquire jurisdiction over a matter only after it has been [determined] to be a contested case by an agency head and has been filed with the [OAL]” N.J.A.C. 1:1-3.2(a). Accordingly, it is necessary to refer this matter to the OAL for a hearing to resolve the facts and determine whether the Custodian lawfully denied access to the requested contract. Further, for the reasons set forth below, the OAL should determine whether the Custodian knowingly and willfully violated OPRA under the totality of the circumstances.
3. The Custodian violated OPRA by failing to timely respond to the Complainant. Furthermore, the Custodian failed to provide an SOI to the Council. The Custodian also failed to comply with the Council’s July 26, 2022 Interim Order by failing to provide a timely response. The Custodian also failed to comply with the Council’s September 29, 2022 Interim Order by not providing nine (9) copies of the requested record for *in camera* review. The Custodian also failed to deliver certified confirmation of compliance to the Executive Director. The Council therefore finds the Custodian in violation of the Council’s Order and concludes that the Custodian’s actions may be

intentional and deliberate, with knowledge of their wrongfulness, and not merely negligent, heedless or unintentional. As such, this complaint should be referred to the OAL for a proof hearing to determine whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances.

Prepared By: Samuel A. Rosado
Staff Attorney

January 24, 2023



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
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TRENTON, NJ 08625-0819

PHILIP D. MURPHY
Governor

LT. GOVERNOR SHEILA Y. OLIVER
Commissioner

INTERIM ORDER

September 29, 2022 Government Records Council Meeting

Enza Cannarozzi
Complainant

Complaint No. 2021-74

v.

Jersey City Board of Education (Hudson)
Custodian of Record

At the September 29, 2022 public meeting, the Government Records Council (“Council”) considered the September 22, 2022 Supplemental Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council voted unanimously to adopt the entirety of said findings and recommendations. The Council, therefore, finds that:

1. The Custodian failed to comply with the Council’s July 26, 2022 Interim Order. Specifically, the Custodian failed to timely provide a response to the Complainant and simultaneously provide certified confirmation of compliance to the Executive Director.
2. The GRC must conduct an *in camera* review of the contract responsive to the Complainant’s OPRA request to validate the Custodian’s assertion that the contract was properly exempt from disclosure under OPRA’s competitive advantage exemption. See Paff v. N.J. Dep’t of Labor, Bd. of Review, 379 N.J. Super. 345, 355 (App. Div. 2005); N.J.S.A. 47:1A-1.1.
3. **The Custodian shall deliver¹ to the Council in a sealed envelope nine (9) copies of the requested unredacted record (see conclusion No. 2 above), a document or redaction index², as well as a legal certification from the Custodian, in accordance with N.J. Court Rules, R. 1:4-4,³ that the record provided is the record requested by the Council for the *in camera* inspection. Such delivery must be received by the GRC within five (5) business days from receipt of the Council’s Interim Order.**
4. The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian’s compliance with the Council’s Interim Order.

¹ The *in camera* records may be sent overnight mail, regular mail, or be hand-delivered, at the discretion of the Custodian, as long as the GRC physically receives them by the deadline.

² The document or redaction index should identify the record and/or each redaction asserted and the lawful basis for the denial.

³ "I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment."

Interim Order Rendered by the
Government Records Council
On The 29th Day of September 2022

Robin Berg Tabakin, Esq., Chair
Government Records Council

I attest the foregoing is a true and accurate record of the Government Records Council.

Steven Ritardi, Esq., Secretary
Government Records Council

Decision Distribution Date: October 4, 2022

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Supplemental Findings and Recommendations of the Executive Director
September 29, 2022 Council Meeting**

**Enza Cannarozzi¹
Complainant**

GRC Complaint No. 2021-74

v.

**Jersey City Board of Education (Hudson)²
Custodial Agency**

Records Relevant to Complaint: Electronic copies via e-mail of: “[t]he entire health benefits contract between the Jersey City Board of Education [(“Board”)] and Horizon Blue Cross Blue Shield of NJ. To clarify and be more specific, I want the full copy of the employee health benefits contract (signed from [the Board] and HBCBS) that covers the members of the [Jersey City Education Association (“JCEA”)] for the contract term of July 1, 2019 through June 30, 2023.”

Custodian of Record: Regina Robinson
Request Received by Custodian: March 3, 2021
Response Made by Custodian: N/A
GRC Complaint Received: April 1, 2021

Background

July 26, 2022 Council Meeting:

At its July 26, 2022 public meeting, the Council considered the July 19, 2022 Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council voted unanimously to adopt the entirety of said findings and recommendations. The Council, therefore, found that:

1. The Custodian’s failure to provide a completed Statement of Information to the GRC, despite more than one request, results in a violation of N.J.A.C. 5:105-2.4(a). Moreover, the Custodian’s failure to respond additionally obstructed the GRC in its efforts to “receive, hear, review and adjudicate a complaint filed by any person concerning a denial of access to a government record by a records custodian . . .” N.J.S.A. 47:1A-7(b).
2. The Custodian did not bear her burden of proof that she timely responded to the Complainant’s OPRA request. N.J.S.A. 47:1A-6. As such, the Custodian’s failure to respond in writing immediately to the Complainant’s OPRA request either granting

¹ No legal representation listed on record.

² No legal representation listed on record.

access, denying access, seeking clarification or requesting an extension of time immediately resulted in a violation of OPRA. N.J.S.A. 47:1A-5(e); Cody v. Middletown Twp. Pub. Sch., GRC Complaint No. 2005-98 (December 2005); Herron v. Twp. of Montclair, GRC Complaint No. 2006-178 (February 2007).

3. The Custodian may have unlawfully denied access to the Complainant's March 3, 2021 OPRA request. N.J.S.A. 47:1A-6. Thus, the Custodian must locate and disclose those records requested by the Complainant. If the Custodian already disclosed responsive records during the pendency of this complaint, she must certify to that fact. Further, should the Custodian determine that no records exist, she must also certify to this fact.
4. **The Custodian shall comply with conclusion No. 3 above within five (5) business days from receipt of the Council's Interim Order with appropriate redactions, including a detailed document index explaining the lawful basis for each redaction, if applicable. Further, the Custodian shall simultaneously deliver³ certified confirmation of compliance, in accordance with N.J. Court Rules, R. 1:4-4,⁴ to the Executive Director.⁵**
5. The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order.

Procedural History:

On July 27, 2022, the Council distributed its Interim Order to all parties. On August 18, 2022, the Custodian responded to the Council's Interim Order certifying that on August 15, 2022, the Custodian e-mailed the Complainant denying access to the requested contract under OPRA's competitive advantage exemption. The Custodian also certified that the contract stipulated that the Board would keep the contract "confidential." On September 9, 2022, the Complainant sent an e-mail to the Government Records Council ("GRC") objecting to the Custodian's denial of access to her OPRA request.

Analysis

Compliance

At its July 26, 2022 meeting, the Council ordered the Custodian to locate and disclose responsive records to the Complainant's OPRA request, certify that records were already

³ The certified confirmation of compliance, including supporting documentation, may be sent overnight mail, regular mail, e-mail, facsimile, or be hand-delivered, at the discretion of the Custodian, as long as the GRC physically receives it by the deadline.

⁴ "I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment."

⁵ Satisfactory compliance requires that the Custodian deliver the record(s) to the Complainant in the requested medium. If a copying or special service charge was incurred by the Complainant, the Custodian must certify that the record has been *made available* to the Complainant but the Custodian may withhold delivery of the record until the financial obligation is satisfied. Any such charge must adhere to the provisions of N.J.S.A. 47:1A-5.

disclosed, or certify that no responsive records exist. The Council also ordered the Custodian to submit certified confirmation of compliance, in accordance with R. 1:4-4, to the Executive Director. On July 27, 2022, the Council distributed its Interim Order to all parties, providing the Custodian five (5) business days to comply with the terms of said Order. Thus, the Custodian's response was due by close of business on August 3, 2022.

On August 18, 2022, the sixteenth (16th) business day after receipt of the Council's Order, the Custodian e-mailed the GRC with a certification. The Custodian certified that on August 15, 2022, she e-mailed the Complainant noticing the Board's denial of access to her request under OPRA's competitive advantage exemption. Thus, the Custodian failed to comply with the Council's Interim Order due to a timeliness issue.

Therefore, the Custodian failed to comply with the Council's July 26, 2022 Interim Order. Specifically, the Custodian failed to timely provide a response to the Complainant and simultaneously provide certified confirmation of compliance to the Executive Director.

Unlawful Denial of Access

OPRA provides that government records made, maintained, kept on file, or received by a public agency in the course of its official business are subject to public access unless otherwise exempt. N.J.S.A. 47:1A-1.1. A custodian must release all records responsive to an OPRA request "with certain exceptions." N.J.S.A. 47:1A-1. Additionally, OPRA places the burden on a custodian to prove that a denial of access to records is lawful pursuant to N.J.S.A. 47:1A-6.

In Paff v. N.J. Dep't of Labor, Bd. of Review, 379 N.J. Super. 345, 355 (App. Div. 2005), the complainant appealed a final decision of the Council⁶ that accepted the custodian's legal conclusion for the denial of access without further review. The Appellate Division noted that "OPRA contemplates the GRC's meaningful review of the basis for an agency's decision to withhold government records . . . When the GRC decides to proceed with an investigation and hearing, the custodian may present evidence and argument, but the GRC is not required to accept as adequate whatever the agency offers." Id. The court stated that:

[OPRA] also contemplates the GRC's *in camera* review of the records that an agency asserts are protected when such review is necessary to a determination of the validity of a claimed exemption. Although OPRA subjects the GRC to the provisions of the 'Open Public Meetings Act,' N.J.S.A. 10:4-6 to -21, it also provides that the GRC 'may go into closed session during that portion of any proceeding during which the contents of a contested record would be disclosed.' N.J.S.A. 47:1A-7(f). This provision would be unnecessary if the Legislature did not intend to permit *in camera* review.

[Id. at 355.]

Further, the court found that:

⁶ Paff v. N.J. Dep't of Labor, Bd. of Review, GRC Complaint No. 2003-128 (October 2005).

We hold only that the GRC has and should exercise its discretion to conduct *in camera* review when necessary to resolution of the appeal . . . There is no reason for concern about unauthorized disclosure of exempt documents or privileged information as a result of *in camera* review by the GRC. The GRC’s obligation to maintain confidentiality and avoid disclosure of exempt material is implicit in N.J.S.A. 47:1A-7(f), which provides for closed meeting when necessary to avoid disclosure before resolution of a contested claim of exemption.

[Id.]

In the instant matter, the Custodian denied access to the requested contract under OPRA’s competitive advantage exemption, and that the contract stipulated that the Board would keep the contract “confidential”. However, a “meaningful review” is necessary to determine whether the contract fell within the asserted exemption. Further, the GRC has routinely reviewed contracts *in camera* in complaints with facts similar to the present complaint. See e.g. McCormack v. State of N.J. Dep’t of Treasury, GRC Complaint No. 2013-357 (Interim Order dated September 30, 2014). Thus, the GRC must review same to determine the full applicability of the cited exemption.

Therefore, the GRC must conduct an *in camera* review of the contract responsive to the Complainant’s OPRA request to validate the Custodian’s assertion that the contract was properly exempt from disclosure under OPRA’s competitive advantage exemption. See Paff, 379 N.J. Super. at 346; N.J.S.A. 47:1A-1.1.

Knowing & Willful

The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian’s compliance with the Council’s Interim Order.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. The Custodian failed to comply with the Council’s July 26, 2022 Interim Order. Specifically, the Custodian failed to timely provide a response to the Complainant and simultaneously provide certified confirmation of compliance to the Executive Director.
2. The GRC must conduct an *in camera* review of the contract responsive to the Complainant’s OPRA request to validate the Custodian’s assertion that the contract was properly exempt from disclosure under OPRA’s competitive advantage exemption. See Paff v. N.J. Dep’t of Labor, Bd. of Review, 379 N.J. Super. 345, 355 (App. Div. 2005); N.J.S.A. 47:1A-1.1.

3. **The Custodian shall deliver⁷ to the Council in a sealed envelope nine (9) copies of the requested unredacted record (see conclusion No. 2 above), a document or redaction index⁸, as well as a legal certification from the Custodian, in accordance with N.J. Court Rules, R. 1:4-4,⁹ that the record provided is the record requested by the Council for the *in camera* inspection. Such delivery must be received by the GRC within five (5) business days from receipt of the Council's Interim Order.**
4. The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order.

Prepared By: Samuel A. Rosado
Staff Attorney

September 22, 2022

⁷ The *in camera* records may be sent overnight mail, regular mail, or be hand-delivered, at the discretion of the Custodian, as long as the GRC physically receives them by the deadline.

⁸ The document or redaction index should identify the record and/or each redaction asserted and the lawful basis for the denial.

⁹ "I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment."



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PHILIP D. MURPHY
Governor

LT. GOVERNOR SHEILA Y. OLIVER
Commissioner

INTERIM ORDER

July 26, 2022 Government Records Council Meeting

Enza Cannarozzi
Complainant

Complaint No. 2021-74

v.

Jersey City Board of Education (Hudson)
Custodian of Record

At the July 26, 2022 public meeting, the Government Records Council (“Council”) considered the July 19, 2022 Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council voted unanimously to adopt the entirety of said findings and recommendations. The Council, therefore, finds that:

1. The Custodian’s failure to provide a completed Statement of Information to the GRC, despite more than one request, results in a violation of N.J.A.C. 5:105-2.4(a). Moreover, the Custodian’s failure to respond additionally obstructed the GRC in its efforts to “receive, hear, review and adjudicate a complaint filed by any person concerning a denial of access to a government record by a records custodian . . .” N.J.S.A. 47:1A-7(b).
2. The Custodian did not bear her burden of proof that she timely responded to the Complainant’s OPRA request. N.J.S.A. 47:1A-6. As such, the Custodian’s failure to respond in writing immediately to the Complainant’s OPRA request either granting access, denying access, seeking clarification or requesting an extension of time immediately resulted in a violation of OPRA. N.J.S.A. 47:1A-5(e); Cody v. Middletown Twp. Pub. Sch., GRC Complaint No. 2005-98 (December 2005); Herron v. Twp. of Montclair, GRC Complaint No. 2006-178 (February 2007).
3. The Custodian may have unlawfully denied access to the Complainant’s March 3, 2021 OPRA request. N.J.S.A. 47:1A-6. Thus, the Custodian must locate and disclose those records requested by the Complainant. If the Custodian already disclosed responsive records during the pendency of this complaint, she must certify to that fact. Further, should the Custodian determine that no records exist, she must also certify to this fact.
4. **The Custodian shall comply with conclusion No. 3 above within five (5) business days from receipt of the Council’s Interim Order with appropriate redactions, including a detailed document index explaining the lawful basis for each**

redaction, if applicable. Further, the Custodian shall simultaneously deliver¹ certified confirmation of compliance, in accordance with N.J. Court Rules, R. 1:4-4,² to the Executive Director.³

5. The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order.

Interim Order Rendered by the
Government Records Council
On The 26th Day of July 2022

Robin Berg Tabakin, Esq., Chair
Government Records Council

I attest the foregoing is a true and accurate record of the Government Records Council.

Steven Ritardi, Esq., Secretary
Government Records Council

Decision Distribution Date: July 27, 2022

¹ The certified confirmation of compliance, including supporting documentation, may be sent overnight mail, regular mail, e-mail, facsimile, or be hand-delivered, at the discretion of the Custodian, as long as the GRC physically receives it by the deadline.

² "I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment."

³ Satisfactory compliance requires that the Custodian deliver the record(s) to the Complainant in the requested medium. If a copying or special service charge was incurred by the Complainant, the Custodian must certify that the record has been *made available* to the Complainant but the Custodian may withhold delivery of the record until the financial obligation is satisfied. Any such charge must adhere to the provisions of N.J.S.A. 47:1A-5.

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
July 26, 2022 Council Meeting**

**Enza Cannarozzi¹
Complainant**

GRC Complaint No. 2021-74

v.

**Jersey City Board of Education (Hudson)²
Custodial Agency**

Records Relevant to Complaint: Electronic copies via e-mail of: “[t]he entire health benefits contract between the Jersey City Board of Education [(“Board”)] and Horizon Blue Cross Blue Shield of NJ. To clarify and be more specific, I want the full copy of the employee health benefits contract (signed from [the Board] and HBCBS) that covers the members of the [Jersey City Education Association (“JCEA”)] for the contract term of July 1, 2019 through June 30, 2023.”

Custodian of Record: Regina Robinson
Request Received by Custodian: March 3, 2021
Response Made by Custodian: N/A
GRC Complaint Received: April 1, 2021

Background³

Request:

On March 3, 2021, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records.

Denial of Access Complaint:

On April 1, 2021, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that he received an automated e-mail response from the Board on March 3, 2021, acknowledging receipt of the request. The Complainant contended that he never received a response from the Custodian.

¹ No legal representation listed on record.

² No legal representation listed on record.

³ The parties may have submitted additional correspondence or made additional statements/assertions in the submissions identified herein. However, the Council includes in the Findings and Recommendations of the Executive Director the submissions necessary and relevant for the adjudication of this complaint.

Statement of Information:

On April 27, 2021, the GRC requested a Statement of Information (“SOI”) from the Custodian. On May 6, 2021, the GRC sent a “No Defense” letter to the Custodian, requesting a completed SOI within three (3) business days of receipt. The GRC noted that the Custodian’s failure to submit an SOI could lead to an adjudication based solely on the Complainant’s submission. N.J.A.C. 5:105-2.4(f). To date, the Custodian has not responded.

Analysis

Failure to Submit SOI

OPRA also provides that “Custodians shall submit a completed and signed statement of information (SOI) form to the Council and the complainant simultaneously that details the custodians' position for each complaint filed with the Council[.]” N.J.A.C. 5:105-2.4(a).

OPRA further provides that:

Custodians shall submit a completed and signed SOI for each complaint to the Council's staff and the complainant not later than five business days from the date of receipt of the SOI form from the Council's staff . . . Failure to comply with this time period may result in the complaint being adjudicated based solely on the submissions of the complainant.

[N.J.A.C. 5:105-2.4(f).]

Finally, OPRA provides that “[a] custodian’s failure to submit a completed and signed SOI . . . may result in the Council’s issuing a decision in favor of the complainant.” N.J.A.C. 5:105-2.4(g). In Alterman, Esq. v. Sussex Cnty. Sheriff’s Office, GRC Complaint No. 2013-353 (September 2014), the custodian failed to provide a completed SOI to the GRC within the allotted deadline. Thus, the Council noted the custodian’s failure to adhere to N.J.A.C. 5:105-2.4(a). See also Kovacs v. Irvington Police Dep’t (Essex), GRC Complaint No. 2014-196 (January 2015); Howell v. Twp. of Greenwich (Warren), GRC Complaint No. 2015-249 (November 2016).

In the instant matter, the Custodian did not comply with the GRC’s initial request for an SOI dated April 27, 2021. After the expiration of the five (5) business day deadline, the GRC again attempted to obtain a completed SOI from the Custodian with a “No Defense” letter and requesting the completed SOI within three (3) business days of receipt. However, the GRC never received a completed SOI or any communication from the Custodian.

Accordingly, the Custodian’s failure to provide a completed SOI to the GRC, despite more than one request, results in a violation of N.J.A.C. 5:105-2.4(a). Moreover, the Custodian’s failure to respond additionally obstructed the GRC in its efforts to “receive, hear, review and adjudicate a complaint filed by any person concerning a denial of access to a government record by a records custodian . . .” N.J.S.A. 47:1A-7(b).

Timeliness

Barring extenuating circumstances, a custodian's failure to respond immediately in writing to a complainant's OPRA request for immediate access records, either granting access, denying access, seeking clarification, or requesting an extension of time, also results in a "deemed" denial of the request pursuant to N.J.S.A. 47:1A-5(e), N.J.S.A. 47:1A-5(g), and N.J.S.A. 47:1A-5(i).⁴ See Cody v. Middletown Twp. Pub. Sch., GRC Complaint No. 2005-98 (December 2005) and Harris v. N.J. Dep't of Corr., GRC Complaint No. 2011-65 (August 2012). See also Herron v. Twp. of Montclair, GRC Complaint No. 2006-178 (February 2007) (holding that the custodian was obligated to notify the complainant immediately as to the status of "immediate access" records).

In the matter before the Council, the Complainant submitted his OPRA request seeking a contract to the Custodian via e-mail on March 3, 2021, and received an automated response that same day, acknowledging receipt. However, the Custodian provided no immediate response, or any response, prior to the filing of the instant complaint on April 1, 2021, or twenty-one (21) business days later. Thus, the evidence of record supports that a "deemed" denial of access occurred here.

Therefore, the Custodian did not bear her burden of proof that she timely responded to the Complainant's OPRA request. N.J.S.A. 47:1A-6. As such, the Custodian's failure to respond in writing immediately to the Complainant's OPRA request either granting access, denying access, seeking clarification or requesting an extension of time immediately resulted in a violation of OPRA. N.J.S.A. 47:1A-5(e); Cody, GRC 2005-98; Herron, GRC 2007-11.

Unlawful Denial of Access

OPRA provides that government records made, maintained, kept on file, or received by a public agency in the course of its official business are subject to public access unless otherwise exempt. N.J.S.A. 47:1A-1.1. A custodian must release all records responsive to an OPRA request "with certain exceptions." N.J.S.A. 47:1A-1. Additionally, OPRA places the burden on a custodian to prove that a denial of access to records is lawful pursuant to N.J.S.A. 47:1A-6.

In the instant matter, the Complainant requested a contract between the Board and HBCBS which outlined health benefits offered to members of the JCEA, for a term lasting from July 1, 2019 through June 30, 2023. On its face, the request for an employee benefits contract is not exempt from disclosure. Since the Custodian failed to provide any response to the Complainant or submit a completed SOI, the GRC must find in favor of the Complainant and hold that the Custodian may have unlawfully denied access to responsive records that existed at the time of the OPRA request. N.J.S.A. 47:1A-6.

Accordingly, the Custodian may have unlawfully denied access to the Complainant's March 3, 2021 OPRA request. N.J.S.A. 47:1A-6. Thus, the Custodian must locate and disclose

⁴ OPRA lists immediate access records as "budgets, bills, vouchers, contracts, including collective negotiations agreements and individual employment contracts, and public employee salary and overtime information." N.J.S.A. 47:1A-5(e). The Council has also determined that purchase orders and invoices are immediate access records. See Kohn v. Twp. of Livingston (Essex), GRC Complaint No. 2012-03 (April 2013).

those records requested by the Complainant. If the Custodian already disclosed responsive records during the pendency of this complaint, she must certify to that fact. Further, should the Custodian determine that no records exist, she must also certify to this fact.

Knowing & Willful

The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. The Custodian's failure to provide a completed Statement of Information to the GRC, despite more than one request, results in a violation of N.J.A.C. 5:105-2.4(a). Moreover, the Custodian's failure to respond additionally obstructed the GRC in its efforts to "receive, hear, review and adjudicate a complaint filed by any person concerning a denial of access to a government record by a records custodian . . ." N.J.S.A. 47:1A-7(b).
2. The Custodian did not bear her burden of proof that she timely responded to the Complainant's OPRA request. N.J.S.A. 47:1A-6. As such, the Custodian's failure to respond in writing immediately to the Complainant's OPRA request either granting access, denying access, seeking clarification or requesting an extension of time immediately resulted in a violation of OPRA. N.J.S.A. 47:1A-5(e); Cody v. Middletown Twp. Pub. Sch., GRC Complaint No. 2005-98 (December 2005); Herron v. Twp. of Montclair, GRC Complaint No. 2006-178 (February 2007).
3. The Custodian may have unlawfully denied access to the Complainant's March 3, 2021 OPRA request. N.J.S.A. 47:1A-6. Thus, the Custodian must locate and disclose those records requested by the Complainant. If the Custodian already disclosed responsive records during the pendency of this complaint, she must certify to that fact. Further, should the Custodian determine that no records exist, she must also certify to this fact.
4. **The Custodian shall comply with conclusion No. 3 above within five (5) business days from receipt of the Council's Interim Order with appropriate redactions, including a detailed document index explaining the lawful basis for each redaction, if applicable. Further, the Custodian shall simultaneously deliver⁵**

⁵ The certified confirmation of compliance, including supporting documentation, may be sent overnight mail, regular mail, e-mail, facsimile, or be hand-delivered, at the discretion of the Custodian, as long as the GRC physically receives it by the deadline.

certified confirmation of compliance, in accordance with N.J. Court Rules, R. 1:4-4,⁶ to the Executive Director.⁷

5. The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order.

Prepared By: Samuel A. Rosado
Staff Attorney

July 19, 2022

⁶ "I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment."

⁷ Satisfactory compliance requires that the Custodian deliver the record(s) to the Complainant in the requested medium. If a copying or special service charge was incurred by the Complainant, the Custodian must certify that the record has been *made available* to the Complainant but the Custodian may withhold delivery of the record until the financial obligation is satisfied. Any such charge must adhere to the provisions of N.J.S.A. 47:1A-5.