

**WEST HEALTH ADVOCATE SOLUTIONS, INC.**

Principal Executive Offices:  
3043 Walton Road  
Plymouth Meeting, PA 19462

**PLAN SPONSOR AGREEMENT**

This Plan Sponsor Agreement ("this Agreement") is made and entered into by and between West Health Advocate Solutions, Inc., ("Health Advocate"), and **Indian River County** ("Client"), and is intended to describe their business relationship in which Health Advocate will provide administrative and informational services to all eligible employees ("Employees") of **Indian River County**, as well as the Employee's spouse, dependents, parents and mothers and fathers in-law (collectively, "Members"). Health Advocate and Client will hereinafter collectively be referred to as "the Parties" and referred to individually each as a "Party."

**1. Description of Services:**

Health Advocate will provide its **Core Advocacy** Service as more fully described on Exhibit "**A**" (collectively, "the Services").

**2. Term / Termination:**

- a. This Agreement shall be effective as of **August 01, 2019** (the "Effective Date").
- b. The initial term of this Agreement shall be thirty-six (36) months from the Effective Date ("the Initial Term"). Thereafter, this Agreement shall automatically renew for consecutive one (1) year terms (each a "Renewal Term") unless either Party provides written notice to the other, at least sixty (60) days before the end of the Initial Term or any Renewal Term, of its intention not to renew this Agreement. The terms and conditions of this Agreement shall apply to the Initial Term and any Renewal Term unless modified in writing by the Parties.
- c. In the event that either Party shall default in the performance of any of its material covenants, or undertakings under this Agreement, and such default shall continue and not be corrected within thirty (30) days after the receipt of written notice thereof from the non-breaching Party specifying the default and requesting correction of such default, the non-breaching Party may terminate this Agreement by delivering written notice to such effect to the other Party, which notice shall be immediately effective upon receipt.

- d. This Agreement shall automatically terminate upon the occurrence of any of the following events: (i) the making of a general assignment for the benefit of creditors by a Party; (ii) the filing of a voluntary petition or the commencement of any proceeding by either Party for any relief under any bankruptcy or insolvency laws, or any laws relating to the relief of debtors, readjustment of indebtedness, reorganization, composition or extension; (iii) any involuntary petition or the commencement of any proceeding by or against either Party for any relief under any bankruptcy or insolvency laws, or any laws relating to the relief of debtors, readjustment of indebtedness, reorganization, composition or extension that is not dismissed within ninety (90) days of the date that it was filed or commenced; or (iv) suspension of the transaction of the usual business of either Party for a period in excess of thirty (30) days.
- e. Upon the termination or non-renewal of this Agreement and upon Client's written request, Health Advocate will destroy, unless otherwise prohibited by law, without cost to Client, any Confidential Information that was received from Client pursuant to this Agreement in tangible, electronic, or other form, other than signed copies of this Agreement. Notwithstanding the foregoing, Health Advocate may retain one copy for its legal archives of any Confidential Information in its possession subject to any consent provided by or with such Member; if such Member consent does not exist such Member Confidential Information shall be subject to the confidentiality provisions of this Agreement.

### 3. Fees:

- a. Client shall pay Health Advocate **\$1.15** per Employee per month ("PEPM") for the Services as described herein ("Service Fees").
- b. This Service Fee applies to the first contract year, only. However, Service Fees will increase by no more than 10% in both year two (2) and year three (3) of the Initial Term. Notice of any Service Fee increase will be provided to Client, in writing, at least ninety (90) days prior to the annual anniversary date of this Agreement.
- c. Such Service Fee shall be paid to Health Advocate on a **monthly** basis and shall be received by Health Advocate, on or before the first (1<sup>st</sup>) day of the month for which Services are to be provided.
- d. This Service Fee is based on approximately **1,900** Employee lives.
- e. This Service Fee includes Health Advocate's standard marketing materials including employee brochures and telephone number wallet cards shipped to a single location for distribution by Client. Other marketing materials will be provided to Client as electronic files in camera-ready format. Additional charges may apply for special requests including, but not limited to the costs associated with travel for employee meetings and/or health fairs; customized or additional educational, promotional, or marketing materials; and/or postage and shipping costs for such additional materials.
- f. All Fees paid hereunder shall be sent with an electronic file compiled by Client containing information reasonably sufficient to permit Health Advocate to reconcile compensation payments in a timely manner.

- g. Upon termination of this Agreement, payments under this section shall cease; however, Health Advocate shall be entitled to any payments due for periods or partial periods that accrued prior to the date of termination for which Health Advocate has not yet been paid.

#### **4. Confidentiality:**

- a. The Parties agree to protect the privacy and confidentiality of any and all Member personal and medical information in their possession (“Confidential Information”), abiding by all applicable laws and regulations.
- b. The Parties agree to abide by the Business Associate Agreement, attached hereto as Exhibit “B” and incorporated herein by reference, which contains such terms as are required by the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) and the Final Rule for Standards for Privacy of Individually Identifiable Health Information adopted by the United States Department of Health and Human Services and codified at 45 C.F.R. part 160 and part 164, subparts A & E (the “Privacy Rule”), the HIPAA Security Rule, codified at 45 C.F.R. Part 164 Subpart C and Subtitle D of the Health Information Technology for Economic and Clinical Health Act (“HITECH”) including C.F.R. Sections 164.308, 164.310, 164.312 and 164.316 in effect, or as amended.
- c. Health Advocate will not use any Confidential Information for any purpose other than that for which it is provided nor will Health Advocate sell, transfer or disclose this Confidential Information for its own benefit or the benefit of others.
- d. Health Advocate agrees that it shall notify Client, as soon as practicable, but at least within ten (10) business days, following discovery of any unauthorized use or disclosure of Confidential Information, and will cooperate with Client, as necessary, to remedy such unauthorized use or disclosure by Health Advocate or any third-party and to prevent further unauthorized use.
- e. Neither Party to this Agreement shall use any confidential information, (i.e., information that by its very nature is deemed to be confidential, including confidential business information), of the other Party: (a) for its own benefit or that of any third party; (b) to the Disclosing Party’s detriment; or (c) in any manner other than to perform its obligations under this Agreement.
- f. It is essential for Confidential Information, including Protected Health Information, to be maintained after the expiration of this Agreement for regulatory and other business reasons. Accordingly, Health Advocate’s obligations of confidentiality with respect to Client’s Confidential Information, exchanged during the Term of this Agreement, shall survive any termination or non-renewal of this Agreement.

## 5. Reports:

Upon request, Health Advocate will provide Client with its standard utilization reports, on an annual basis.

## 6. Indemnification:

- a. Each Party shall indemnify, defend and hold harmless the other Party, its officers, employees, directors, affiliated companies and agents from and against any and all third party claims, actions demands and lawsuits (together "Claims") against the indemnified Party, and all resulting costs, liabilities, damages and expenses, including reasonable attorneys' fees and costs of suit arising out of:
  - i. the indemnifying Party's breach or violation of any representation, warranty or covenant in this Agreement;
  - ii. the violation by a Party, in the performance of its obligations hereunder of any law, statute, rule, regulation or order of a governmental authority; or
  - iii. the indemnifying Party's negligence or willful misconduct.
- b. Client will indemnify Health Advocate for any Claim brought against Health Advocate arising out of, related to or as a result of Health Advocate's compliance with a specific Client direction. Further, Health Advocate shall have no obligation to indemnify Client for any Claim brought against Client as a direct result of Health Advocate's compliance with a specific Client direction.
- c. The obligations of indemnity hereunder are conditioned on the Party seeking indemnification (i) giving the indemnifying Party prompt written notice of any Claim for which indemnification will be sought, (ii) permitting the indemnifying party to assume exclusively the control of the defense and settlement of such Claim, and (iii) providing reasonable assistance and cooperation (at the indemnified Party's expense) in the defense and settlement of such Claim. The indemnified Party may take part in its defense at its own expense after the indemnifying Party assumes the control thereof. The indemnifying Party shall not settle or compromise any indemnified Claim hereunder in a manner that admits fault or liability on the part of the indemnified Party, or requires the indemnified Party to take or forbear from taking any action, unless with the prior written consent of the indemnified Party (such consent not to be unreasonably withheld).
- d. Client's liability under this Agreement shall be limited to the extent set forth in Section 768.28, Florida Statutes, and shall not be deemed a waiver of Client's sovereign immunity

## 7. General:

- a. Binding Agreement. This Agreement shall be fully binding upon and inure to the benefit of the legal representatives, successors in interest and permitted assigns of the Parties hereto.
- b. Entire Understanding. This Agreement, along with its attachments, constitutes the entire Agreement between the Parties hereto pertaining to the subject matter hereof and supersedes all prior and contemporaneous arrangements, understandings,

negotiations, and discussions of the Parties with respect to the subject matter hereof, whether written or oral; and there are no warranties, representations, or other agreements between the Parties in connection with the subject matter hereof, except as specifically set forth herein.

- c. Amendments to this Agreement. This Agreement may be amended only by the mutual written consent and agreement of the Parties. In addition, upon the enactment of any law or final regulation affecting the use or disclosure of Protected Health Information, or the publication of any definitive decision of a court of the United States or any state relating to any such law or the publication of any definitive interpretive policy or definitive opinion of any governmental agency charged with the enforcement of any such law or regulation, the Parties shall agree to amend this Agreement in such manner as necessary to comply with such law or regulation.
- d. No Third Party Beneficiary. Nothing in this Agreement shall be construed to give any person or entity other than the Parties any legal or equitable claim, right, or remedy; rather this Agreement is intended to be for the sole and exclusive benefit of the Parties.
- e. Assignability. Neither Party may assign its rights or obligations under this Agreement without the prior written consent of the other Party, which consent may be withheld in the other Party's sole discretion, except that this Agreement may be assigned by either Party without such prior written consent:
  - i. to an affiliate of the assigning Party; or
  - ii. to an entity that merges with or acquires the business or stock of such Party to which this Agreement relates. Subject to the foregoing, this Agreement shall be fully binding upon, inure to the benefit of, and be enforceable by the Parties hereto and their respective successors and assigns.
- f. Relationship of the Parties. This Agreement does not, nor is it intended to, create a relationship of joint venture, principal and agent or partnership between the Parties. The relationship between the Parties is and shall be that of an independent contractor. Nothing in this Agreement shall create or be construed to create the relationship of employer and employee. Each Party acknowledges that it shall have no authority to obligate or bind the other Party in any way.
- g. Governing Law. This Agreement shall be governed by the laws of the State of Florida, without regard to the choice of law doctrine or the conflicts of law principles of any other jurisdiction to the contrary. However, the Parties agree that, at least 45 days prior to initiating any litigation or complaint under this Agreement, they shall hold good faith informal dispute resolution meetings at a mutually agreed upon location.
- h. Dispute Resolution. The Parties agree that in the event of a dispute or alleged breach they will work together in good faith to resolve the matter internally by escalating it to higher levels of management and, if necessary, to use a mutually agreed upon alternative dispute resolution mechanism prior to resorting to litigation.

i. Limitation of Liability.

- i. Limitation: NEITHER PARTY WILL BE LIABLE TO THE OTHER FOR ANY INDIRECT, EXEMPLARY, SPECIAL, PUNITIVE, CONSEQUENTIAL, OR INCIDENTAL DAMAGES OR LOSS OF GOODWILL, DATA OR PROFITS, OR COST OF COVER. THE TOTAL LIABILITY FOR EITHER PARTY IS LIMITED TO THREE TIMES THE AMOUNT PAID TO HEALTH ADVOCATE BY CLIENT FOR SERVICES DURING THE TWELVE MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM.
- ii. Application: THE FOREGOING LIMITS ON LIABILITY WILL APPLY WHETHER THE APPLICABLE CLAIM ARISES OUT OF BREACH OF EXPRESS OR IMPLIED WARRANTY AND CONTRACT, EVEN IF THE PARTY HAS BEEN ADVISED THAT SUCH DAMAGES ARE POSSIBLE OR FORESEEABLE.
- iii. Time Limit: No cause of action which accrued more than two (2) years prior to the filing of a suit may be asserted by either Party.

- j. The Health Advocate Trademark. Client recognizes that the "Health Advocate" trademark is the sole and exclusive property of Health Advocate and will take all reasonable and appropriate measures to avoid any actions that would harm such mark. Client is not authorized to prepare or distribute any promotional or descriptive material relating to this Agreement or the Services, other than for identification and/or distribution of promotional and descriptive materials or unless required by law, without the prior written approval of Health Advocate. However, once consent for particular language is granted, as to Client, it need not be requested for the same language, again.

- k. Notices. All notices, demands, solicitations of consent or approval and other communications hereunder required or permitted shall be in writing and shall be deemed to have been given when: (i.) personally delivered; (ii.) upon the date documented as being received when sent by facsimile or other electronic transmission; (iii.) five (5) business days after the date when deposited in the United States mail, sent postage prepaid or by registered or certified mail, return receipt requested; or (iv.) upon the date documented as being received when sent by private courier addressed as follows:

For Client:

Suzanne M. Boyll, Human Resources Director  
Indian River County Board of County Commissioners  
1800 27<sup>th</sup> Street Building B  
Vero Beach, FL 32960  
Tel. No.: (772-226-1402 Fax No.: (772)-770-5004  
E-mail: [sboyll@ircgov.com](mailto:sboyll@ircgov.com)

For Health Advocate:

Katharine N. Begley, Senior Vice President, Head of Sales  
West Health Advocate Solutions, Inc.  
3043 Walton Road  
Plymouth Meeting, PA 19462

Tel. No.: (610) 397-7398  
Fax No.: (610) 825-7776  
E-mail: [kbegley@healthadvocate.com](mailto:kbegley@healthadvocate.com)

Either Party may change its address for the receipt of notices hereunder by giving the other Party notice, as prescribed herein, of that new address.

- l. Member Awareness. Client shall engage in ongoing and frequent communication with its employees to promote the Health Advocate Service.
- m. Non-Solicitation. During the Initial and any renewal Term of this Agreement and for a period of one (1) year following the date of termination or non-renewal hereof, Client shall not knowingly hire, solicit, or attempt to solicit the services of any current employee of Health Advocate without the prior written consent of Health Advocate. Violation of this provision shall entitle Health Advocate to receive from Client, as liquidated damages, an amount equal to two hundred percent (200%) of the solicited person's annual compensation. This covenant against solicitation shall not be construed to prevent "blind" advertisements or mailings that are directed to the public through the use of newspaper, television, radio or the internet.
- n. Limitation of Authority. Neither Party shall obligate the other Party, nor make, alter or waive any of the terms or conditions of any of the other Party's forms, policies, contracts or advertising materials, except to the extent authorized in writing by the

other Party. Neither Party shall hold itself out as an employee, partner or officer of the other Party, nor as an agent of the other Party or in any other manner, or for any other purpose than is set forth in this Agreement.

- o. Survival of Certain Obligations. Any obligations set forth in this Agreement that by their nature should be continuous and survive any termination or non-renewal of this Agreement including, but not limited to, the obligations regarding confidentiality and indemnification shall be continuous and shall survive any termination or non-renewal of this Agreement.
- p. Separability. Each provision of this Agreement shall be considered separable and if any provision or provisions of this Agreement shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of this Agreement is invalid or unenforceable, but that by limiting such provision, it would become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.
- q. No Waiver of Rights, Powers and/or Remedies. The failure or delay of either Party hereto in exercising or enforcing any right, power or remedy under this Agreement, and no course of dealing between the Parties hereto, shall be construed as a waiver or limitation of that Party's right to subsequently enforce and compel strict compliance with every provision of this Agreement.
- r. Reserved Rights. Health Advocate explicitly reserves the right to discontinue or withdraw from sale, modify, change, or amend any product, program or Service described in this Agreement, if it is determined by Health Advocate, in its sole discretion, to be necessary to do so based, for example, on a change in the legislative or regulatory environment in which Health Advocate operates.
- s. Titles. All section titles or captions contained in this Agreement are for convenience only and will in no way modify or affect the meaning or construction of any of the terms or provisions hereof and shall not be deemed part of the text of this Agreement.
- t. Interpretation. The Parties hereto acknowledge and agree that (i) the rule of construction providing that any ambiguities are resolved against the drafting Party will not apply in interpreting the terms and provisions of this Agreement; and (ii) the terms and provisions of this Agreement will be construed fairly as to all Parties hereto and not in favor of or against a Party, regardless of which Party was generally responsible for the preparation of this Agreement.
- u. Force Majeure. Neither Party hereto shall have any liability for delay or non-fulfillment of any terms of this Agreement caused by any cause not within such Party's reasonable control (but excluding financial inability) such as an act of God, war, riots or civil disturbance, strikes, accident, fire, transportation conditions, labor and/or material shortages, governmental controls, regulations and permits and/or embargoes.



- v. Counterparts. This Agreement may be signed in counterparts, which together will constitute one Agreement.

## 8. Public Records Compliance:

A. Indian River County is a public agency subject to Chapter 119, Florida Statutes. The Contractor shall comply with Florida's Public Records Law. Specifically, the Contractor shall:

(1) Keep and maintain public records required by the County to perform the service.

(2) Upon request from the County's Custodian of Public Records, provide the County with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119 or as otherwise provided by law.

(3) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the contractor does not transfer the records to the County.

(4) Upon completion of the contract, transfer, at no cost, to the County all public records in possession of the Contractor or keep and maintain public records required by the County to perform the service. If the Contractor transfers all public records to the County upon completion of the contract, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the contractor keeps and maintains public records upon completion of the contract, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the County, upon request from the Custodian of Public Records, in a format that is compatible with the information technology systems of the County.

**B. IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:**

**(772) 226-1424**

**[publicrecords@ircgov.com](mailto:publicrecords@ircgov.com)**

**Indian River County Office of the County  
Attorney  
1801 27<sup>th</sup> Street  
Vero Beach, FL 32960**

C. Failure of the Contractor to comply with these requirements shall be a material breach of this Agreement.

**9. Termination in Regards to 287.135:**

A. CONTRACTOR certifies that it and those related entities of CONTRACTOR as defined by Florida law are not on the Scrutinized Companies that Boycott Israel List, created pursuant to s. 215.4725 of the Florida Statutes, and are not engaged in a boycott of Israel. In addition, if this agreement is for goods or services of one million dollars or more, CONTRACTOR certifies that it and those related entities of CONTRACTOR as defined by Florida law are not on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, created pursuant to Section 215.473 of the Florida Statutes and are not engaged in business operations in Cuba or Syria.

B. OWNER may terminate this Contract if CONTRACTOR is found to have submitted a false certification as provided under section 287.135(5), Florida Statutes, been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or been engaged in business operations in Cuba or Syria, as defined by section 287.135, Florida Statutes.

C. OWNER may terminate this Contract if CONTRACTOR, including all wholly owned subsidiaries, majority-owned subsidiaries, and parent companies that exist for the purpose of making profit, is found to have been placed on the Scrutinized Companies that Boycott Israel List or is engaged in a boycott of Israel as set forth in section 215.4725, Florida Statutes.

**10. Disclaimer:**

Client acknowledges its understanding that Health Advocate provides administrative, informational and referral type services, through its employees. Health Advocate does not provide health insurance or medical services, nor does it recommend treatment. Consequently, all medical services are provided by independent healthcare practitioners, who are not employees or agents of Health Advocate.

IN WITNESS WHEREOF, and intending to be legally bound, the Parties have caused this Agreement to be signed by their duly authorized representatives.

**For Indian River County:**

Signed: \_\_\_\_\_

Name: Jason E. Brown

Title: County Administrator

Dated: \_\_\_\_\_

**For West Health Advocate Solutions, Inc.:**

Signed: \_\_\_\_\_

Name: Katharine N. Begley

Title: Senior Vice President, Head of Sales

Dated: \_\_\_\_\_

## EXHIBIT “A”

### HEALTH ADVOCATE SERVICES

**The Personal Health Advocate** is typically a Registered Nurse or a person experienced in benefits and administrative issues assigned to serve the Member as soon as he/she calls to access the Services. Personal Health Advocates handle a range of issues as Members seek healthcare services and interact with providers and insurers.

- **Care Coordination:** The Personal Health Advocate helps Members coordinate care among physicians and medical institutions.
- **Medical Director and Administrative Support:** Physicians and administrative staff support the Personal Health Advocates.

#### **Benefits Advantage™**

- **Claims Assistance:** Personal Health Advocates help sort out and solve claims and related paperwork problems and assist Members with coverage and benefits issues.
- **Fee Negotiation:** When necessary, Health Advocate can attempt to negotiate fees with healthcare providers and review questionable bills to catch duplicative and/or erroneous charges.
- **Grievance Advice:** As appropriate, Health Advocate will provide advice and/or assistance to Members when filing a complaint or grievance with their health insurer.
- **Coverage Advantage™:** The Personal Health Advocate can help Members through the coverage review process and, when necessary, can also assist in identifying alternative coverage options.
- **RxAdvocate™:** The Personal Health Advocate can assist Members with prescription drug issues including formulary and benefit questions.

**Physician Locator:** Personal Health Advocates can help Members identify physicians, hospitals, dentists and other healthcare providers for needed services.

**Advocates of Excellence:** Personal Health Advocates can help identify leading medical institutions, Centers of Excellence and medical providers to assist Members in need of complex medical care. Our Personal Health Advocates can also help Members schedule appointments with these providers, as required.

**Health Advocate CareQuest:** This Service locates resources and makes arrangements for Members in need of special services that typically fall outside the realm of traditional healthcare benefits. The Member is responsible for payment for any services that they use beyond those covered by their health insurance plan.

## EXHIBIT "B"

### BUSINESS ASSOCIATE AGREEMENT

The Parties hereby agree as follows:

#### 1. Definitions:

- a. *General Definitions.* Terms used but not otherwise defined in this Agreement, shall have the same meaning as those terms as set forth in the HIPAA Regulations, as defined below.
- b. *Specific Definitions.*
  - (i) "Business Associate" shall mean Health Advocate, Inc. or any of its affiliated entities.
  - (ii) "Breach" shall have the same meaning given to such term in 45 C.F.R. § 164.402.
  - (iii) "Covered Entity" shall mean all group health plans of Client and its Affiliates for which Business Associate provides services to or on behalf of, individually and/or collectively.
  - (iv) "HIPAA" shall mean the Health Insurance Portability and Accountability Act of 1996, as amended from time to time and its implementing regulations (45 C.F.R. Parts 160-64) and the requirements of the Health Information Technology for Economic and Clinical Health Act, as incorporated in the American Recovery and Reinvestment Act of 2009 (the "HITECH Act"), that are applicable to business associates, along with any guidance and/or regulations issued by DHHS, in effect or as amended.
  - (v) "HIPAA Regulations" shall mean the regulations issued by the U.S. Department of Health and Human Services Office for Civil Rights with respect to HIPAA privacy, security, and enforcement, as set forth in 45 CFR Parts 160 and 164, in effect or as amended.
  - (vi) "Individual" shall have the same meaning as the term "individual" in 45 CFR § 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR § 164.502(g).
  - (vii) "Protected Health Information" and electronic Protected Health Information (together "PHI") shall have the same meaning as the term "protected health information" in 45 CFR § 160.103, limited to the information created or received by Business Associate from or on behalf of Client, in connection with the performance of the Services provided pursuant to the Plan Sponsor or Services Agreement entered into by and between Business Associate and Client, to which this BAA relates. PHI does not include health information that has been de-identified in accordance with the standards for de-identification provided for in the Privacy Rule.

- (viii) "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR part 160 and part 164, subparts A and E.
- (ix) "Security Incident" shall have the same meaning given to such term in 45 C.F. R. § 164.304, but shall not include (i) unsuccessful attempts to penetrate computer networks or servers maintained by Business Associate; and (ii) immaterial incidents that occur on a routine basis, such as general "pinging" or "denials of service."
- (x) "Security Rule" shall mean the Standards for Securing PHI and ePHI as required by 45 CFR §164.302-164.318.
- (xi) "Unsecured protected health information" refers to PHI that is not rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of Encryption or destruction.
- (xii) "Required by Law" shall have the same meaning as the term "required by law" in 45 CFR § 164.103.

## **2. Obligations and Activities of Business Associate:**

- a. Business Associate shall not use or further disclose PHI other than as permitted or required pursuant to the underlying Health Advocate Services Agreement and any Addendum thereto, by this BAA, as Required or permitted by Law, or as directed by the Client.
- b. Unless otherwise limited, in addition to any other uses and/or disclosures permitted or authorized by this Agreement or required by law, Business Associate may, use the PHI in its possession for the proper management and administration and to fulfill any legal responsibilities of the Business associate, de-identify any and all PHI created or received by it under this Agreement: provided that the de-identification conforms to the requirements of the Privacy Rule, and may aggregate the PHI with that of other covered entities for the purpose of providing Client with data analyses relating to the Health Care Operations of Client ; however, notwithstanding the foregoing Business Associate may not disclose the PHI of one client or covered entity to another of the clients or covered entities involved.
- c. Business Associate shall use appropriate safeguards to prevent use or disclosure of PHI as provided for by this BAA.
- d. Business Associate shall mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of the requirements of this BAA.
- e. Business Associate shall report to the Client any Breach or Security Incident of Unsecured PHI of which it becomes aware within ten (10) business days. Business Associate's report shall include all information indicated in 45 CFR § 164.410(c).

- f. Business Associate shall ensure that any agent, including a subcontractor, to whom it provides PHI agrees in writing to the same restrictions and conditions that apply to Business Associate with respect to such information. To the extent that Company provides Electronic Protected Health Information to any agent or subcontractor, it will require the agent or subcontractor to implement reasonable safeguards to protect the Electronic Protected Health Information consistent with the terms of this Agreement.
- g. Business Associate shall document disclosures of PHI and information related to such disclosures as would be required for Client to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR § 164.528.
- h. Business Associate shall make its internal practices, books, and records, including policies and procedures and PHI, relating to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of, Client available to the Client, or at the request of the Client, to the Secretary in the time and manner designated by the Client or the Secretary, for purposes of the Secretary determining Client's compliance with the HIPAA Regulations.
- i. Business Associate shall provide to Client or an Individual an accounting of disclosures of PHI in accordance with 45 CFR § 164.528, in the time and manner designated by Client.
- j. Business Associate shall retain all documentation indicated in 45 CFR § 164.530(j)(1) for the retention period in accordance with 45 CFR § 164.530(j)(2).
- k. Business Associate shall determine the Minimum Necessary type and amount of PHI required to perform its services and will comply with 45 CFR §§ 164.502(b) and 164.514(d).
- l. To ensure compliance with the Security Standards for the Protection of Electronic Protected Health Information at 45 CFR Parts 160 and 164 Subpart C, Business Associate shall:
  - (i) implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of electronic PHI that it creates, receives, maintains, or transmits on behalf of the Client;
  - (ii) ensure that any agent, including a subcontractor, to whom Business Associate provides such electronic PHI agrees to enter into an Agreement with terms consistent with or substantially similar to those enumerated herein;
  - (iii) ensure that any agent, including a subcontractor, to whom Business Associate provides PHI shall implement reasonable and appropriate safeguards to protect it;
  - (iv) report immediately to the Client any successful unauthorized access, use, disclosure, modification, or destruction of electronic PHI or interference with system operations in an information system of which Business Associate becomes aware; and

- (v) report to the Client the aggregate number of unauthorized access, use, disclosure, modification, or destruction of electronic PHI, or interference with system operations in an information system of which Business Associate becomes aware, no later than thirty (30) calendar days after discovery of the attempt(s).
- m. Business Associate shall comply with all security and privacy provisions of 45 CFR Part 164, and the requirements of 45 CFR § 164.504(e)(1)(ii), and shall further comply with §13401 of the American Recovery and Reinvestment Act of 2009.

### **3. Permitted or Required Uses and Disclosures by Business Associate:**

- a. *General Use and Disclosure.* Except as otherwise limited in the Agreement, Business Associate may use or disclose PHI to perform functions, activities, or services for, or on behalf of, Client as specified in the underlying Agreement, provided that such use or disclosure of PHI would not violate the Privacy Rule, including the Minimum Necessary requirement.
- b. *Additional Use and Disclosure.*
  - (i) Except as otherwise limited in this Agreement, Business Associate may use or disclose PHI for the proper management and administration of the Business Associate's business or to carry out the legal responsibilities of the Business Associate consistent with the provisions of 45 CFR § 164.504(e)(4)(i) and (ii). Business Associate may only disclose PHI for such purposes if:
    - 1) such disclosures are Required by Law; or
    - 2) Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and be used or further disclosed only as Required by Law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.
  - (ii) Except as otherwise limited in this BAA, Business Associate may use PHI to provide Data Aggregation services to Client as permitted by 45 CFR § 164.504(e)(2)(i)(B).
  - (iii) Business Associate may use or disclose PHI to the extent and for purposes authorized by an Individual.
  - (iv) Business Associate may use PHI to report violations of law to appropriate Federal and state authorities, consistent with 45 CFR § 164.502(j)(1).
  - (v) Business Associate must share PHI with Client for permitted purposes, such as for audits performed by or on behalf of Client.



**4. Obligations of Client:**

- a. Client shall provide Business Associate with any changes in, or revocation of, Authorization by Individual or his or her personal representative to use or disclose PHI, if such changes affect Business Associate's uses or disclosures of PHI.
- b. Client shall notify Business Associate of any restriction to the use or disclosure of PHI that Client has agreed to in accordance with 45 CFR § 164.522, if such changes affect Business Associate's uses or disclosures of PHI.
- c. In the event that Client requires Business Associate to share, receive or disclose PHI to another vendor for purposes of fulfilling its obligations pursuant to the Health Advocate Services Agreement, Client agrees to assist Business Associate in obtaining a confidentiality agreement with such vendor.

**5. Permissible Requests by Client:** Client shall not request, Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by Client, except as provided in Sections 3 (b)(i) and (ii) of this BAA.

**6. Term and Termination:**

- a. *Term.* The Terms and Conditions set forth in this Business Associate Agreement shall commence as of the Effective Date of the Plan Sponsor Agreement or Services Agreement, as the case may be, to which this Business Associate Agreement relates and shall terminate when all of the PHI provided by or on behalf of Client to Business Associate, or created or received by Business Associate on behalf of Client, is destroyed or returned to Client, or, if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with paragraph c of this Section 6.
- b. *Termination for Cause.* Upon Client's knowledge of a material breach by Business Associate of a provision of this BAA, Client shall provide an opportunity for Business Associate to cure the breach or end the violation. If Business Associate does not cure the breach or end the violation within the time specified by Client, or if Business Associate has breached a material term of this Agreement and cure is not possible, Client may terminate Business Associate's services upon written notice to Business Associate.
- c. *Effect of Termination.*
  - (i) Except as provided in paragraph (c)(ii) of this Section 6, upon cancellation of Business Associate's services or termination of the Agreement for any reason, Business Associate shall return or destroy all PHI received from Client, or created or received by Business Associate on behalf of Client. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate.

- (ii) In the event that Business Associate determines that returning or destroying the PHI is infeasible, Business Associate shall extend the protections of the Agreement to such PHI and shall limit further use or disclosure of the PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI.
- (iii) Notwithstanding the expiration, cancellation or termination of Business Associate's services or this BAA, Business Associate shall retain all required documentation for the retention period as set forth in Section 2(j) of this Agreement.

**7. Miscellaneous:**

- a. *Regulatory References.* A reference in this BAA to a section in the HIPAA Regulations means the section as in effect or as amended, and for which compliance is required.
- b. *No Third Party Beneficiary.* This BAA is intended for the sole benefit of Business Associate and Client. Nothing expressed or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than the parties and the respective successors or assignees of the parties, any rights, remedies, obligations, or liabilities whatsoever, except to the extent that the HIPAA Regulations validly requires the Secretary or any other person to be a third party beneficiary to this Agreement.
- c. *Interpretation.*
  - (i) Any ambiguity in the Agreement shall be resolved in favor of a meaning that permits Client to comply with the HIPAA Regulations.
  - (ii) In the event of an inconsistency between the provisions of this Agreement and the HIPAA Regulations, as may be amended from time to time, as a result of interpretation by HHS, a court of competent jurisdiction, or another regulatory agency with authority to enforce HIPAA, the interpretation of HHS, or such court or other regulatory agency shall prevail.
  - (iii) In the event provisions of this Agreement differ from those mandated by the HIPAA Regulations but are nonetheless permitted by the HIPAA Regulations, the provisions of this Agreement shall control.