

36678

HEALTH ADVOCATE SOLUTIONS, INC.
Principal Executive Offices:
3043 Walton Road
Plymouth Meeting, PA 19462

EMPLOYEE ASSISTANCE PROGRAM PLAN SPONSOR AGREEMENT

This Plan Sponsor Agreement ("this Agreement") is made and entered into by and between Health Advocate Solutions, Inc., ("Health Advocate"), and **City of Long Beach** ("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 Client, 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 **In-Person Employee Assistance Program ("EAP")** service as more fully described on Exhibit "A" (collectively, "the Services").

2. Term / Termination:

- a. This Agreement shall be effective as of **May 1, 2023** (the "Effective Date").
- b. The initial term of this Agreement shall be twelve (12) months from the Effective Date ("the Initial Term") with the option to renew for four (4) additional one (1) year terms (each a "Renewal Term"). 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, 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 **\$1.39** per Employee per month ("PEPM") for the Services as described herein ("Service Fee"). If the current broker is no longer the broker of record, Service Fees are subject to change, dependent upon standard fees and/or new broker of record.
- b. EAP includes **five (5)** hours of On Site Critical Incident Stress Debriefing (CISD) or On Site Training Services annually at no additional cost. Additional Training and CISD hours available per the pricing noted in Exhibit "A", Paragraph 6.
- c. The Service Fee applies through April 30, 2025. Service Fee may increase by no more than 10% in any subsequent contract year. 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.
- d. 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 (1st) day of the month for which Services are to be provided.
- e. In addition to the Services provided under the Agreement, Health Advocate will provide assistance with Client's SAP Evaluation Service ("SAP Evaluation") provided by ASAP 2 GO (the "Provider").
 - i. Provider will invoice Health Advocate for each completed SAP Evaluation.
 - ii. Health Advocate will then invoice Client for each completed SAP Evaluation at actual cost, with no mark-up.
 - iii. Client will pay Health Advocate on each invoice within thirty (30) days of receipt thereof.
 - iv. Payments due are for Services rendered and shall not be conditional upon any additional Client procurement process.
 - v. Client acknowledges that the SAP Evaluation Services are provided by ASAP 2 GO and not by Health Advocate; that ASAP 2 GO is an independent company and is not part of Health Advocate; and that all SAP Evaluation Services are provided by independent parties who are not Health Advocate's employees, contractors or agents.
- f. This Service Fee is based on a minimum of **4,200** Employee lives during any Term.

- g. 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.**
- h. 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.**
- i. 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. It is the intent of the Parties that Health Advocate shall not function as, or be characterized as, a business associate, within the meaning of 45 C.F.R. section 160.103. However, in the event that following the execution of this Agreement an agency of the federal government determines, or the Parties themselves agree, that Health Advocate is functioning as, or can be characterized as, a business associate, then the Parties agree to promptly enter into a Business Associate Agreement, containing such terms as are required by the Health Insurance Portability and Accountability Act of 1996 (the "HIPAA Privacy Rule") in effect, or as amended, and any other terms as may be mutually agreed upon by the Parties.**
- 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 a quarterly 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 arising out of, related to or as a 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).

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 Commonwealth of Pennsylvania, 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, 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:

Omar Ramos
City of Long Beach
411 W. Ocean Blvd. 10th Floor
Long Beach, CA 90802

Tel. No.: (562) 570-6060
Fax No.: (562) 570-6107
E-mail: Omar.Ramos@LongBeach.Gov

For Health Advocate:

John Wolfrum, Executive Vice President, Sales
Health Advocate Solutions, Inc.
3043 Walton Road
Plymouth Meeting, PA 19462

Tel. No.: (610) 397-7398
Fax No.: (610) 825-7776
E-mail: JWolfrum@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. **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 City of Long Beach:

For Health Advocate Solutions, Inc.:

Signed: Linda F. Tatum

Signed: John Wolfrum
DocuSigned by:
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Name: LINDA F. TATUM

Name: John Wolfrum

Title: ASST CITY MANAGER

Title: Executive Vice President, Sales

Dated: 9/29/2023

Dated: 9/21/2023

EXECUTED PURSUANT
TO SECTION 301 OF
THE CITY CHARTER.

APPROVED AS TO FORM
Sept. 26, 2023
DAWN MCINTOSH, City Attorney
By: Gary J. Anderson
GARY J. ANDERSON
ASSISTANT CITY ATTORNEY

EXHIBIT "A"

IN-PERSON EMPLOYEE ASSISTANCE PROGRAM ("EAP")

Health Advocate will provide its In-Person, Telephonic and Virtual EAP Behavioral Health Services Program to Client's eligible employees and their dependents (collectively "EAP Members"). The Health Advocate EAP Service includes the following features:

1. **The Health Advocate In-Person, Telephonic and Virtual EAP Behavioral Health Service.**
 - a. A 24-hour Emergency Hot Line;
 - b. Unlimited Telephonic Critical Incident Stress Debriefing Support;
 - c. Professional telephone evaluation and in the Moment Support for the nature and scope of employee personal problems, and referral, if needed, to appropriate professional counseling or other necessary care; this referral, which is offered by Health Advocate, may or may not be utilized by the EAP Member;
 - d. Access to a virtual support EAP Behavioral telehealth platform or face to face sessions. Allows user to have access to up to six (6) virtual or in-person sessions per issue. Access to confidential chat, telephonic, text or video counseling with a mental health counselor over their computer, laptop, tablet or smartphone with available tech support. My Help platform services are in lieu of an in-person face to face session.
 - e. Case management for in-patient and out-patient treatment;
 - f. Unlimited Telephonic Manager Consultations.
 - g. Digital Cognitive Behavior Therapy (dCBT): users address stress, depression, anxiety, and other concerns through a Web and mobile dCBT portal.
2. **Access to Health Advocate Telephonic and Web Based Support for Work/Life Services.**
 - a. Childcare: Child Care Centers, Family Child Care Homes, Nanny Agencies, Summer Camps, Babysitter Tips, Community Resources;
 - b. Eldercare: Nursing Homes, Assisted-Living Facilities, Independent Living Facilities, Home Healthcare, Hospice, Respite Care, Geriatric Care Managers, Senior Centers, Adult Day Care Centers, Community Services and Resources;
 - c. Legal: Family Law Issues, Real Estate, Criminal Matters, Estate Planning, Motor Vehicle, Elder Law;
 - d. Financial Wellness: Debt Management, Budgeting, College Funding, Retirement Strategies, Life Insurance Needs;
 - e. Unlimited Telephonic and Web Based Consultation.
3. **Additional Features.**
 - a. Personal Concierge Service: As part of the EAP Work/Life program, employees have access to a team of luxury lifestyle experts, for individual help with a wide range of personal tasks including, but not limited to: travel research and bookings, restaurant reservations, party/event planning, ticketing, sporting events, and more.
4. **Reporting.** Upon request, annual statistical management reports will be provided to Client showing aggregate EAP activity.

5. **Employee Awareness.** Client agrees to take reasonable steps to encourage and promote employee awareness and utilization of the EAP Services, including providing periodic program reminders and other related communications and reinforcement of the availability of these Services.

6. **On Site Services.** On Site Services are available for managers and employees at a rate of \$300 per direct service hour for Workshops, Seminars, and Critical Incident Stress Debriefing (CISD). Additional fees will apply for sites located outside of the continental United States. Travel and expenses are not included.