

THE INFORMATION IN THIS BOX IS NOT A PART OF THE CONTRACT AND IS FOR COUNTY USE ONLY



Contract Number

**24-155**

SAP Number

## Arrowhead Regional Medical Center

Department Contract Representative  
Telephone Number

William L. Gilbert  
(909) 580-6150

Contractor  
Contractor Representative  
Telephone Number  
Contract Term  
Original Contract Amount  
Amendment Amount  
Total Contract Amount  
Cost Center

WellSky Corporation  
Chris Sojka  
(913) 378-8610  
July 1, 2024 – June 30, 2029  
Non-financial  
Non-financial

**Briefly describe the general nature of the contract:** Non-financial Agreement, including non-standard terms, with WellSky Corporation for a patient placement referral system, for the contract period of July 1, 2024 through June 30, 2029

### FOR COUNTY USE ONLY

Approved as to Legal Form

► *Bonnie Uphold*  
Bonnie Uphold, Supervising Deputy County Counsel

Date

*3/1/2024*

Reviewed for Contract Compliance

►

Date

Reviewed/Approved by Department

► *William L. Gilbert*  
William L. Gilbert, Director

Date

*3/5/24*

## WELLSKY CORPORATION MASTER LICENSE AND SERVICES AGREEMENT

This Master License and Services Agreement ("Master Agreement") is entered into as of February 27, 2024 (the "Effective Date") and includes any Order Form which is governed by the terms and conditions herein (collectively, the Master Agreement and any Order Forms governed thereby the "Agreement"), by and between **WellSky Corporation** and its Affiliates, with offices at 11300 Switzer Road, Overland Park, KS 66210 ("WellSky"), and San Bernardino County, a political subdivision organized and existing under the laws and the constitution of the State of California, ("Client") on behalf of Arrowhead Regional Medical Center with offices at 400 North Pepper Avenue, Colton, California 92324. Each of WellSky and Client may be referred to herein individually as a "Party" and together as the "Parties." The Parties agree as follows:

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| <p>1. <b>DEFINITIONS.</b> Capitalized terms used herein or in any Order Form, but not defined, have the meaning set forth in <u>Exhibit A</u>.</p>   | <p>3. <b>THIRD-PARTY SOLUTIONS AND HARDWARE.</b> WellSky shall provide the Third-Party Solutions and/or Hardware set forth in an Order Form.</p>  |
| <p>2. <b>SERVICES.</b></p> <p>2.1. <u>Cloud Services.</u> During the Cloud Services term set forth in an Order Form, WellSky shall provide Client (a) a non-exclusive, non-assignable, limited right to access, display and use the Cloud Services during the term, solely for Client's internal business operations and subject to the terms of the Agreement; and (b) Cloud Services support as set forth in the Cloud Services Support Exhibit (<a href="https://wellsky.com/cloud-services-support-exhibit/">https://wellsky.com/cloud-services-support-exhibit/</a>) or as otherwise set forth in the applicable Order Form.</p> <p>2.2. <u>Professional Services.</u> Professional Services fees shall be as set forth in the applicable Order Form. In the event not set forth in an Order Form, Professional Services shall be performed on a time and materials basis at WellSky's standard rates.</p> <p>2.3. <u>Client Responsibilities.</u> Client shall (a) provide Cloud Services access only to Permitted Users, and (b) provide secure infrastructure, hardware devices, and network connectivity necessary for Client to operate and connect to the Cloud Services.</p> <p>2.4. <u>Limitations.</u> Client shall not, and shall ensure that its Permitted Users do not: (i) sell, resell, lease, lend or otherwise make available the Cloud Services to a third party; (ii) modify, adapt, translate, or make derivative works of the Cloud Services; (iii) sublicense or operate the Cloud Services for timesharing, outsourcing, or service bureau operations; or (iv) use the Cloud Services in a manner inconsistent with Client's security obligations and policies.</p> | <p>4. <b>PROPRIETARY RIGHTS.</b></p> <p>4.1. <u>Ownership.</u> WellSky or its licensor retains all right, title, and interest, in the Services, Documentation, Work Product, and Third-Party Solutions.</p> <p>4.2. <u>Restricted Rights.</u> The Cloud Services are commercial computer software programs developed exclusively at private expense. Use, duplication, and disclosure by civilian agencies of the U.S. Government shall be in accordance with FAR 52.227-19 (b). Use, duplication, and disclosure by DOD agencies are subject solely to the terms of the Agreement, a standard software license agreement as stated in DFARS 227.7202. This provision is intended to include similar limitations on state and local government entities.</p> <p>5. <b>PAYMENTS BY CLIENT.</b></p> <p>5.1. The maximum amount of payment under this Agreement shall not exceed \$500,000, and shall be subject to availability of other funds to Client. The consideration to be paid to WellSky, as provided herein, shall be in full payment for all WellSky services and expenses incurred in the performance hereof, including travel and per diem.</p> <p>5.2. <u>Payment.</u> Client shall pay all fees owed to WellSky pursuant to the Agreement. All invoices shall be paid net 45 days following the date of the invoice. WellSky shall accept all payments from Client via electronic funds transfer (EFT) directly deposited into WellSky's designated checking or other bank account. WellSky shall promptly comply with reasonable directions and accurately complete</p> |

forms provided by Client required to process EFT payments.

- 5.3. Scope of Use. The Cloud Services and Third-Party Solutions are priced based on certain metrics (e.g., sites, deliverables, patient/client census, Permitted Users, etc.) set forth in an Order Form. Client may expand its use of the Cloud Services and Third-Party Solutions upon payment of the applicable additional fees at WellSky's then-current rates or as otherwise set forth in an Order Form. Any such fees for additional scope of use will be due and payable pursuant to the terms of Section 5.2.
- 5.4. [intentionally omitted]
- 5.5. Travel Expenses. WellSky shall adhere to Client's Travel Management Policy (8-02 and 08-02SP1; attached hereto as Exhibit E) when travel is pursuant to this Agreement and for which reimbursement is sought from Client. In addition, WellSky is encouraged to utilize local transportation services, including but not limited to, the Ontario International Airport.
- 5.6. Taxes. Client is exempt from Federal excise taxes and no payment shall be made for any personal property taxes levied on WellSky or on any taxes levied on employee wages. Client shall only pay for any State or local sales or use taxes on the services rendered or equipment and/or parts supplied to Client pursuant to the Agreement. Client shall provide WellSky a copy of their tax-exempt certificate within 30 days of the Effective Date, and if applicable for any future Order Form or as otherwise necessary if a new or updated certificate is reasonably required by WellSky.
- 5.7. Review. WellSky reserves the right to review Client's use of the Cloud Services and Third-Party Solutions. If any increase in fees is required as a result of Client's expanded use of the Cloud Services or Third-Party Solutions, Client shall pay the applicable fees and expenses associated with the review.

## 6. **LIMITED WARRANTIES AND COVENANTS.**

- 6.1. WellSky Warranty. WellSky warrants that it has the power and authority to enter into the Agreement, and WellSky shall be responsible for all acts and omissions of its respective

employees, agents, subcontractors, and independent contractors.

- 6.2. Services Warranty. WellSky warrants that (a) when operated in accordance with the Agreement and Documentation the Cloud Services shall, without material error, perform the functions as set forth in the Documentation, and/or (b) it shall perform the Professional Services in a professional manner in accordance with the applicable Documentation.
- 6.3. Remedy. Client's sole and exclusive remedy for any breach of the warranties set forth in the Agreement shall be to notify WellSky of the applicable non-conformity, in which case WellSky shall use commercially reasonable efforts to correct such non-conformity by repairing the Cloud Services, and/or reperforming the Professional Services within 60 days. If unable to correct such non-conformity within such time, Client may terminate all or part of the Agreement or any Order Form by providing notice to WellSky within 30 days thereafter, and receive a refund of all fees paid but unearned. Notwithstanding the foregoing, WellSky shall not be responsible for any non-conformity which arises as a result of (a) any act or omission of Client, including a failure to use the Cloud Services in conformance with the Documentation or Applicable Law, or (b) any failure of any component of Hardware, Third-Party Solutions, or any Client-supplied software, equipment, or other third-party materials.
- 6.4. Disclaimer. EXCEPT AS EXPRESSLY PROVIDED IN THE AGREEMENT, WELLSKY DISCLAIMS ALL WARRANTIES AND INDEMNITIES, ORAL, WRITTEN, EXPRESS, IMPLIED, OR STATUTORY; INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE AND MERCHANTABILITY, ANY WARRANTY OF NON-INFRINGEMENT, OR ANY WARRANTIES ARISING FROM TRADE PRACTICE, COURSE OF PERFORMANCE, OR COURSE OF DEALING. WELLSKY DOES NOT WARRANT THAT THE SERVICES SHALL BE ERROR-FREE OR UNINTERRUPTED, THAT ALL DEFECTS SHALL BE CORRECTED, OR THAT THE

SERVICES SHALL MEET CLIENT'S REQUIREMENTS.

- 6.5. Client Warranty. Client warrants that Client has the power and authority to enter into the Agreement, and Client shall be responsible for all acts and omissions of all Client affiliates and Permitted Users.
7. **LIMITATION OF LIABILITY.** EXCEPT FOR WELLSKY'S INDEMNIFICATION OBLIGATIONS UNDER SECTION 8.1 (WellSky Indemnity), OR CLAIMS ARISING FROM WELLSKY'S WILLFUL MISCONDUCT, WELLSKY'S MAXIMUM LIABILITY FOR DAMAGES TO CLIENT SHALL BE SUBJECT TO THE FOLLOWING LIMITATIONS OF LIABILITY: (A) FOR ANY UNAUTHORIZED ACCESS, USE, OR DISCLOSURE OF PROTECTED HEALTH INFORMATION WHICH WELLSKY CREATES, RECEIVES, MAINTAINS, OR TRANSMITS ON BEHALF OF CLIENT RESULTANT FROM A BREACH OF THE BUSINESS ASSOCIATE AGREEMENT LIABILITY SHALL BE LIMITED TO \$1,000,000, OR (B) FOR ANY OTHER CAUSE WHATSOEVER ARISING UNDER OR RELATED TO THE AGREEMENT IS LIMITED TO ACTUAL FEES PAID UNDER THIS AGREEMENT, UP TO A MAXIMUM OF \$500,000. NEITHER PARTY SHALL BE LIABLE FOR ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, PUNITIVE DAMAGES, OR LOST PROFITS BASED UPON BREACH OF WARRANTY, BREACH OF CONTRACT, NEGLIGENCE, STRICT LIABILITY, OR ANY OTHER LEGAL THEORY, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, OR FOR ANY CLAIM BY A THIRD-PARTY AGAINST THE OTHER PARTY. THE PRECEDING THIRD PARTY DISCLAIMER IS NOT INTENDED TO (a) LIMIT THE PARTIES' INDEMNIFICATION OBLIGATIONS HEREUNDER, (b) DISCLAIM A PARTY'S LIABILITY FOR THIRD PARTY CLAIMS WHICH WOULD BE DIRECT DAMAGES AS BETWEEN THE PARTIES HERETO, NOR (c) TO PREVENT A THIRD PARTY FROM BRINGING A CLAIM DIRECTLY AGAINST A PARTY. WELLSKY DISCLAIMS LIABILITY ARISING OUT OF

OR RELATED TO DATA PROCESSED BY CLIENT'S USE OF ANY VIDEO, EMAIL, TEXTING AND/OR RELATED TELEPHONY SERVICES. WELLSKY SHALL NOT BE DEEMED TO BE ENGAGED, DIRECTLY OR INDIRECTLY, IN THE PRACTICE OF MEDICINE OR THE DISPENSING OF MEDICAL SERVICES AND DISCLAIMS ANY RESPONSIBILITY FOR ACTIONS OF CLIENT OR THEIR CARE PROVIDERS WHICH MAY RESULT IN ANY LIABILITY OR DAMAGES DUE TO MALPRACTICE, FAILURE TO WARN, NEGLIGENCE, OR ANY OTHER BASIS. SERVICES ARE NOT A SUBSTITUTE FOR CLIENT'S PROFESSIONAL JUDGMENT.

## 8. INDEMNIFICATION AND INSURANCE.

- 8.1. WellSky Indemnity. WellSky shall defend, indemnify, and hold Client and its officers, directors, and employees harmless from and against any third-party claims, suits, liabilities, obligations, judgments, and causes of action ("Third-Party Claims") and associated costs and expenses (including reasonable attorneys' fees) to the extent arising out of any claim that the Cloud Services infringe any currently existing United States patent or copyright, or misappropriates any trade secret, of any third party. If Client's use of the Cloud Services is finally enjoined, WellSky shall, at its sole option and expense, and as Client's sole and exclusive remedy, either: (a) secure for Client the right to continue to use the Cloud Services; (b) replace, modify or correct such Cloud Services to avoid such infringement; or (c) terminate the Order Form and refund to Client any prepaid amounts for Cloud Services not yet performed. WellSky's indemnification obligations shall not apply if the Third-Party Claim results from: (i) modifications of the Cloud Services by Client or third parties; (ii) use of the Cloud Services with non-WellSky software or equipment; or (iii) use of the Cloud Services in violation of the Agreement, Applicable Law, or not in conformance with the Documentation.
- 8.2. [intentionally omitted].
- 8.3. Indemnification Procedures. To be indemnified, the party seeking indemnification must: (a) give the other party timely written notice of such Third-Party Claim (unless the other party already has notice); provided,

however, that failure to give such notice will not waive any rights of the indemnified party except to the extent that the rights of the indemnifying party are prejudiced thereby, and; (b) give the indemnifying party authority, information, and assistance for the Third-Party Claim's defense and settlement. The indemnifying party has the right, at its option, to defend the Third-Party Claim at its own expense and with its own counsel. The indemnified party has the right, at its option, to join in the defense and settlement of such Third-Party Claim and to employ counsel at its own expense, but the indemnifying party shall retain control of the defense. The indemnifying party has the right to settle the claim so long as the settlement does not require the indemnified party to pay any money or admit any fault without the indemnified party's prior written consent, which will not be unreasonably withheld, conditioned, or delayed.

- 8.4. Insurance. Without in any way affecting the indemnity herein provided and in addition thereto, WellSky shall secure and maintain throughout the Agreement term the types of insurance with limits as shown and under the requirements set forth in Exhibit B, as attached hereto and incorporated herein.

9. **TERM AND TERMINATION OF SERVICES AND AGREEMENT.**

- 9.1. Term. If applicable, the term of the right to access the Cloud Services is set forth in an Order Form. The Master Agreement remains in effect from July 1, 2024 through June 30, 2029, but may be terminated earlier in accordance with provisions of this Agreement. Upon expiration of termination of this Master Agreement all Order Forms subject thereto shall also terminate.

- 9.2. Termination. Either Party may terminate the Agreement if: (a) the other Party materially breaches the Agreement and fails to cure such breach within 60 days after receipt of written notice of the same, except in the case of failure to pay fees when due, which must be cured within 10 days after receipt of written notice from WellSky; or (b) the other Party becomes the subject of a voluntary proceeding relating to insolvency, receivership, liquidation, bankruptcy, or composition for the benefit of creditors and such petition or proceeding is not dismissed within 60 days of filing. Failure to

use the Cloud Services and Upgrades thereto in accordance with Applicable Law is a material breach of the Agreement. This Agreement may be terminated by Client upon thirty (30) days' prior written notice if Client does not approve or otherwise receive funds sufficient to continue payments set forth in this Agreement. In the event of termination due to a lack of appropriations, Client will pay WellSky for all undisputed fees and expenses related to the software and/or services received prior to the effective date of termination.

- 9.3. Effect of Termination. Upon termination of the Agreement, Client shall immediately cease all use of the Cloud Services and Third-Party Solutions, and the licenses granted and all other rights of Client under the Agreement shall terminate. Client shall, within 10 days following such termination, destroy or return to WellSky all magnetic media or tangible items and material containing the Cloud Services and its Documentation, and all WellSky Confidential Information, and certify such return or destruction in writing to WellSky. Payment will be made to WellSky for services rendered and expenses reasonably incurred prior to the effective date of termination. Upon receipt of termination notice WellSky shall promptly discontinue services unless the notice directs otherwise.

- 9.4. Survival. The following sections shall survive termination or expiration of the Agreement: Sections 6.3 through 6.5, 7, 8, 9, 10, 11, and 12, as well as any obligation to pay fees arising prior to termination or expiration.

10. **CONFIDENTIAL INFORMATION**. Each Party shall (a) protect the Confidential Information using the same degree of care that it uses to protect such Party's own confidential information, but no less than a reasonable degree of care; (b) use the Confidential Information of the other Party solely to perform its obligations or exercise its rights under the Agreement; (c) require their respective employees, agents, attorneys, subcontractors, and independent contractors who have a need to access such Confidential Information to be bound by confidentiality obligations sufficient to protect the Confidential Information; and (d) except as otherwise permitted herein, not transfer, display, convey, or otherwise disclose or make available all or any part of such Confidential

Information to any third party. Either Party may disclose the other Party's Confidential Information to the extent required by applicable law or regulation, including without limitation any applicable Freedom of Information or sunshine law, or by order of a court or other governmental entity, in which case the disclosing Party shall notify the other Party as soon as practicable prior to such disclosure and provide an opportunity to respond or object to the disclosure.

## 11. REGULATORY COMPLIANCE.

- 11.1. General. WellSky shall make available to the Secretary of Health & Human Services or Comptroller General of the United States its books, documents, and records necessary to verify the nature and extent of the costs of those Services.
- 11.2. Discounts. Client is reminded that if the purchase includes a discount or loan, Client may be required to fully and accurately report such discount or loan on cost reports or other applicable claims for payment submitted under any federal health care program, including but not limited to Medicare and Medicaid, as required by federal law – see 42 CFR 1001.952 (h).
- 11.3. State Privacy Laws. The Parties agree that certain state privacy laws, including the California Consumer Privacy Act under Cal. Civ. Code § 1798 *et seq.* ("CCPA") may be applicable to the Agreement. If applicable, WellSky shall be deemed a "service provider" under the CCPA or other similar law if WellSky receives the "personal information" of any "consumer" for "processing" on Client's behalf (or similar terms as defined under such other state privacy laws).
- 11.4. HIPAA. The parties agree to the terms of the Business Associate Exhibit as attached hereto as Exhibit C.
- 11.5. Campaign Contributions Disclosure. WellSky has disclosed to Client using Exhibit D - Campaign Contribution Disclosure Senate Bill 1439, whether it has made any campaign contributions of more than \$250 to any member of the San Bernardino County ("County") Board of Supervisors or other County elected officer [Sheriff, Assessor-Recorder-Clerk, Auditor-Controller/Treasurer/

Tax Collector and the District Attorney] within the earlier of: (1) the date of the submission of WellSky's proposal to Client, or (2) 12 months before the date this Agreement was approved by the County Board of Supervisors. WellSky acknowledges that under Government Code section 84308, WellSky is prohibited from making campaign contributions of more than \$250 to any member of the County Board of Supervisors or other County elected officer for 12 months after the County's consideration of the Agreement. In the event of a proposed amendment to this Agreement, WellSky will provide Client a written statement disclosing any campaign contribution(s) of more than \$250 to any member of the County Board of Supervisors or other County elected officer within the preceding 12 months of the date of the proposed amendment. Campaign contributions include those made by any agent/person/entity on behalf of WellSky or by a parent, subsidiary or otherwise related business entity of WellSky.

## 12. GENERAL PROVISIONS.

- 12.1. Force Majeure. Neither Party shall be liable for any loss, damages, or penalty (other than the obligation to pay money) resulting from any failure to perform due to causes beyond the reasonable control of such Party ("Force Majeure"). The delayed party shall perform its obligations within a reasonable time after the cause for the failure has been remedied, and the other party shall accept the delayed performance.
- 12.2. Injunctive Relief. Client acknowledges that any breach by Client of Section 2.4 or 11 of this Agreement shall cause WellSky irreparable harm not compensable with money damages, and that in the event of such breach, WellSky shall be entitled to seek injunctive relief, without bond, from any court of competent jurisdiction.
- 12.3. Professional Responsibility. Services may be intended to provide recommendations to healthcare professionals to support the diagnosis or treatment of a disease or condition. Client agrees that any Permitted User shall not rely primarily on the recommendation of the Services to make a clinical decision regarding a patient or individual and has been provided information to enable the Permitted User to independently

review the basis of the recommendation of the Services. Permitted Users must use their independent judgment, their expertise, and patient-specific information as the basis of any decisions.

- 12.4. Assignment. Neither party shall assign its rights, duties, or obligations under the Agreement without the prior written consent of the other party and such consent shall not be unreasonably withheld. Notwithstanding the foregoing, WellSky may assign this Agreement in whole to an Affiliate or as part of a corporate reorganization, consolidation, merger, or sale of substantially all of its assets, provided that WellSky provides Client with ten (10) days' prior written notice of such assignment, or if legally prohibited from providing prior notice, within 10 days after the effective date of the assignment, and Client has the right to terminate this Agreement without penalty, if required by applicable law, provided notice of such termination is provided within 30 days of Client's receipt of notice or actual knowledge of such circumstances that would require such termination. Such termination shall be Client's sole and exclusive remedy. Upon receipt of notification of termination from Client, WellSky shall confirm the circumstances requiring such termination, and upon such confirmation WellSky shall immediately terminate all Services hereunder with no further liability to Client.
- 12.5. Relationship of the Parties. WellSky is an independent contractor, and none of WellSky's employees or agents shall be deemed employees or agents of Client. Nothing in the Agreement is intended or shall be construed to create or establish any agency, partnership, or joint venture relationship between the Parties.
- 12.6. Notices. All notices, requests, demands or other communication required or permitted to be given by one Party to the other under the Agreement shall be sufficient if sent by certified mail, return receipt requested, nationally recognized overnight courier, or email. The sender shall address all notices, requests, demands, or other communication to the recipient's address as set forth on the first page of this Agreement, and in the case of WellSky to the attention of President and General Counsel, and in the case of Client to

the attention of the Hospital Director. Any email notices to WellSky must be sent to .

- 12.7. Severability. If any provision of the Agreement is held invalid or otherwise unenforceable, the enforceability of the remaining provisions shall not be impaired thereby, and the illegal provision shall be replaced with a legal provision that encapsulates the original intent of the Parties.
- 12.8. Entire Agreement; Amendment; Waiver. The Agreement constitutes the entire agreement between the Parties and supersedes any prior or contemporaneous agreement or understandings with respect to the subject matter of the Agreement. In the event of a conflict between this Master Agreement and an Order Form, the Master Agreement shall control. The Agreement shall be construed as if both Parties had equal say in its drafting, and thus shall not be construed against the drafter. The Agreement may be modified only by a written agreement signed by authorized representatives of all of the Parties hereto. No waiver or consent granted for one matter or incident will be a waiver or consent for any different or subsequent matter or incident. Waivers and consents must be in writing and signed by an officer of the other Party to be effective.
- 12.9. Limitation on Actions. Neither party may bring any action arising out of or otherwise associated with this Agreement or the rights granted hereunder (other than failures to pay) more than 4 years after the cause of action accrues.
- 12.10. Publicity. No news releases, advertisements, public announcements or photographs arising out of the Agreement or WellSky's relationship with Client may be made or used without prior written approval of the Client.
- 12.11. Purchase Orders; Acceptance of Quotes; Access. If Client submits its own terms which add to, vary from, or conflict with the terms herein in Client's acceptance of a price quotation or in a purchase order, or to WellSky's employees, agents, and/or contractors in the course of WellSky providing the Services, any such terms are of no force and effect and are superseded by the Agreement.
- 12.12. [intentionally omitted].



12.13. Governing Law; Venue; Attorneys' Fees. This Agreement shall be governed by and construed according to the laws of the State of California, excluding its rules of conflicts of law, and any action arising under this Agreement shall be brought exclusively in the Jurisdictional State. If Client institutes the applicable legal action, then the "Jurisdictional State" for such action and all WellSky counterclaims to such action shall be the State of Kansas. If WellSky institutes the applicable legal action, then the "Jurisdictional State" for such action and all Client counterclaims to such action shall be the state of California. Client and WellSky consent to the personal jurisdiction of the state and federal courts located in such states, provided

the actions are instituted in accordance with this Section.

12.14. Counterparts. This Master Agreement may be executed in any number of counterparts, each of which shall be an original, and such counterparts together shall constitute one and the same instrument. The parties shall be entitled to sign and transmit an electronic signature of this Agreement (whether by facsimile, PDF or other mail transmission), which signature shall be binding on the party whose name is contained therein. Each party providing an electronic signature agrees to promptly execute and deliver to the other party an original signed Agreement upon request.

IN WITNESS WHEREOF, the Parties have executed this Master Agreement as of the Effective Date.

**SAN BERNARDINO COUNTY:**

*Dawn Rowe*

(SIGNATURE)

Dawn Rowe

(PRINT NAME)

Chair, Board of Supervisors

(TITLE)

FEB 27 2024

(DATE)

**WELLSKY CORPORATION:**

*Marc Camm*

(SIGNATURE)

Marc Camm

(PRINT NAME)

SVP Connected Networks

(TITLE)

2/15/2024

(DATE)

SIGNED AND CERTIFIED THAT A COPY OF  
THIS DOCUMENT HAS BEEN DELIVERED  
TO THE CHAIRMAN OF THE BOARD  
LYNNA MONELL  
Clerk of the Board of Supervisors  
of the County of San Bernardino

By





**EXHIBIT A**  
**DEFINITIONS**

- a. **"Affiliate"** means with respect to WellSky, any other entity directly or indirectly, through one or more intermediaries, Controlling, Controlled by, or under common Control with such entity.
- b. **"Applicable Law"** means any law or regulation, or related administrative agency requirement affecting or governing the features, functionality, use, testing, or validation of any of the Cloud Services, including validation requirements affecting Cloud Services.
- c. **"Cloud Services"** means the WellSky software as a service offering listed in an Order Form and defined in the Documentation, including (i) access and use of the WellSky hosted software and any Upgrades thereto, and (ii) support for Client in the operation of the Cloud Services as set forth in the Cloud Services Support Exhibit. "Cloud Services" do not include Professional Services.
- d. **"Confidential Information"** means all nonpublic information, whether disclosed by a party or its Affiliates or their respective employees or contractors, that is designated in writing as confidential and falls within a recognized exemption to the San Bernardino County Sunshine Ordinance, County Code of Ordinances Section 19.0101, California Government Code 54950, and California Public Records Act (Government Code Section 7920.005). Confidential Information may include, without limitation: any information relating to product functionality, source code, object code, Documentation, product plans, operations, or trade secrets. Confidential Information shall also include all information that is marked as "confidential" or identified as "confidential" when disclosed by disclosing Party to receiving Party in tangible or intangible form. "Confidential Information" shall not include information (a) publicly available through no breach of the Agreement, (b) independently developed or previously known to it, without restriction, prior to disclosure by the disclosing Party, (c) rightfully acquired from a third-party not under an obligation of confidentiality.
- e. **"Control"** over an Affiliate means ownership of at least 50% of such Affiliate or the right to determine management direction of such Affiliate.
- f. **"Documentation"** means the most recent documentation describing the interoperability and the functional operation of the Cloud Services.
- g. **"First Productive Use"** means the day Client begins using any part of the Cloud Services in a live production environment.
- h. **"Hardware"** means any computer hardware (including, as applicable, embedded or bundled third-party software provided as a component of such hardware) identified in an Order Form to be purchased by Client from WellSky.
- i. **"Order Form"** means a document executed by the Parties setting forth the Services, Hardware, and/or Third-Party Solutions being purchased by the Client, which may include the scope of use, pricing, payment terms, scope of services, and any other relevant terms, which will be a part of and be governed by the terms and conditions of the Agreement.
- j. **"Permitted User"** means an authorized user of Cloud Services or Third-Party Solutions as described in the applicable Order Form.
- k. **"Professional Services"** means, collectively, the implementation, installation, data conversion (including extraction), validation, training, or other services provided by WellSky under or in connection with the Agreement.
- l. **"Services"** means the Cloud Services and Professional Services set forth in an Order Form.
- m. **"Third-Party Solutions"** shall mean those third-party licensed software programs or software-as-a-service offerings identified in an Order Form.
- n. **"Upgrade"** means the provision of any error corrections, bug fixes, enhancements, and/or new features to the Cloud Services that WellSky makes generally commercially available to its clients who have current Cloud Services

**EXHIBIT A**  
**DEFINITIONS**

subscriptions. Upgrades do not include modules, features, or any necessary Professional Services, that WellSky prices and markets separately.

- o. **“Work Product”** means (i) any technology, documentation, software, procedures, designs, inventions, methodologies, techniques, discoveries, know-how, show-how, and works of authorship that are developed, conceived, or introduced by WellSky in the course of WellSky performing Services, whether acting alone or in conjunction with Client or its employees, Permitted Users, affiliates, or others, (ii) for all items set forth in (i), all United States and foreign patents issued or issuable, all copyrights and other rights in works of authorship, collections and arrangements of data, mask work rights, trade secrets on a world-wide basis, trademarks, trade names, and other forms of corporate or product identification, and (iii) any division, continuation, modification, enhancement, derivative work, or license of any of the foregoing set forth in (i) and (ii).

**EXHIBIT B**  
**INSURANCE REQUIREMENTS**

WellSky agrees to provide insurance set forth in accordance with the requirements herein. If WellSky uses existing coverage to comply with these requirements and that coverage does not meet the specified requirements, WellSky agrees to amend, supplement or endorse the existing coverage to do so.

1. Without in anyway affecting the indemnity herein provided and in addition thereto, WellSky shall secure and maintain throughout the contract term the following types of insurance with limits as shown:

- a. Workers' Compensation/Employer's Liability – A program of Workers' Compensation insurance or a state-approved, self-insurance program in an amount and form to meet all applicable requirements of the Labor Code of the State of California, including Employer's Liability with \$250,000 limits covering all persons including volunteers providing services on behalf of WellSky and all risks to such persons under this contract. If WellSky has no employees, it may certify or warrant to the Client that it does not currently have any employees or individuals who are defined as "employees" under the Labor Code and the requirement for Workers' Compensation coverage will be waived by the Client's Director of Risk Management. With respect to contractors that are non-profit corporations organized under California or Federal law, volunteers for such entities are required to be covered by Workers' Compensation insurance.
- b. Commercial/General Liability Insurance – WellSky shall carry General Liability Insurance covering all operations performed by or on behalf of WellSky providing coverage for bodily injury and property damage with a combined single limit of one million dollars (\$1,000,000), per occurrence. The policy coverage shall include:
  - i. Premises operations and mobile equipment.
  - ii. Products and completed operations.
  - iii. Broad form property damage (including completed operations).
  - iv. Explosion, collapse and underground hazards.
  - v. Personal injury.
  - vi. Contractual liability.
  - vii. \$2,000,000 general aggregate limit.
- c. Automobile Liability Insurance – Primary insurance coverage shall be written on ISO Business Auto coverage form for all owned, hired and non-owned automobiles or symbol 1 (any auto). The policy shall have a combined single limit of one million dollars (\$1,000,000) for bodily injury and property damage, per occurrence. If WellSky is transporting one or more non-employee passengers in performance of contract services, the automobile liability policy shall have a combined single limit of two million dollars (\$2,000,000) for bodily injury and property damage per occurrence. If WellSky owns no autos, a non-owned auto endorsement to the General Liability policy described above is acceptable.
- d. Umbrella Liability Insurance – An umbrella (over primary) or excess policy may be used to comply with limits or other primary coverage requirements. When used, the umbrella policy shall apply to bodily injury/property damage, personal injury/advertising injury and shall include a "dropdown" provision providing primary coverage for any liability not covered by the primary policy. The coverage shall also apply to automobile liability.
- e. Professional Liability – Professional Liability Insurance with limits of one million (\$1,000,000) per claim and two million (\$2,000,000) aggregate limits

or

Errors and Omissions Liability Insurance – Errors and Omissions Liability Insurance with limits of one million (\$1,000,000) and two million (\$2,000,000) aggregate limits

If insurance coverage is provided on a "claims made" policy, the "retroactive date" shall be shown and must be before the date of the start of the Agreement work. The claims made insurance shall be maintained or "tail" coverage provided for a minimum of five (5) years after Agreement completion.

- f. **Cyber Liability Insurance** - Cyber Liability Insurance with limits of \$1,000,000 for each occurrence or event with an annual aggregate of \$2,000,000 covering privacy violations, information theft, damage to or destruction of electronic information, intentional and/or unintentional release of private information, alteration of electronic information, extortion and network security. The policy shall protect the involved Client entities and cover breach response cost as well as regulatory fines and penalties.
2. [intentionally omitted]
3. **Waiver of Subrogation Rights.** WellSky shall require the carriers of required coverages to waive all rights of subrogation against the Client, its officers, employees, agents, volunteers, contractors and subcontractors. All general or auto liability insurance coverage provided shall not prohibit WellSky and WellSky's employees or agents from waiving the right of subrogation prior to a loss or claim. WellSky hereby waives all rights of subrogation against the Client.
4. **Policies Primary and Non-Contributory.** All policies required herein are to be primary and non-contributory with any insurance or self-insurance programs carried or administered by the Client.
5. **Severability of Interests.** WellSky agrees to ensure that coverage provided to meet these requirements is applicable separately to each insured and there will be no cross liability exclusions that preclude coverage for suits between WellSky and the Client or between the Client and any other insured or additional insured under the policy.
6. **Proof of Coverage.** WellSky shall furnish Certificates of Insurance upon request to the Client Department administering the Contract evidencing the insurance coverage at the time the Contract is executed, additional endorsements, as required shall be provided prior to the commencement of performance of services hereunder, which certificates shall provide that such insurance shall not be terminated or expire without thirty (30) days written notice to the Department, and WellSky shall maintain such insurance from the time WellSky commences performance of services hereunder until the completion of such services.
7. **Acceptability of Insurance Carrier.** Unless otherwise approved by Risk Management, insurance shall be written by insurers authorized to do business in the State of California (provided that WellSky's E&O and Cyber policies are placed on a non-admitted basis) and with a minimum "Best" Insurance Guide rating of "A- VII".
8. **Deductibles and Self-Insured Retention.** Any and all deductibles or self-insured retentions in excess of \$10,000 shall be declared to and approved by Risk Management.
9. **Failure to Procure Coverage.** In the event that any policy of insurance required under this contract does not comply with the requirements, is not procured, or is canceled and not replaced, the Client has the right but not the obligation or duty to cancel the contract or obtain insurance if it deems necessary and any premiums paid by the Client will be promptly reimbursed by WellSky or Client payments to WellSky will be reduced to pay for Client purchased insurance.
10. **Insurance Review.** Insurance requirements are subject to periodic review by the Client. The Director of Risk Management or designee is authorized, but not required, to reduce, waive or suspend any insurance requirements whenever Risk Management determines that any of the required insurance is not available, is unreasonably priced, or is not needed to protect the interests of the Client. Any failure, actual or alleged, on the part of the Client to monitor or enforce compliance with any of the insurance and indemnification requirements will not be deemed as a waiver of any rights on the part of the Client.

## EXHIBIT C BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (Agreement) supplements and is made a part of the contract (Contract) by and between the San Bernardino County Arrowhead Regional Medical Center (hereinafter Covered Entity) and WellSky Corporation (hereinafter Business Associate). This Agreement is effective as of the effective date of the Contract.

### RECITALS

**WHEREAS**, Covered Entity (CE) wishes to disclose certain information to Business Associate (BA) pursuant to the terms of the Contract, which may include Protected Health Information (PHI); and

**WHEREAS**, CE and BA intend to protect the privacy and provide for the security of the PHI disclosed to BA pursuant to the Contract in compliance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (HIPAA), the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 (HITECH Act), their implementing regulations, and other applicable laws; and

**WHEREAS**, The Privacy Rule and the Security Rule require CE to enter into a contract containing specific requirements with BA prior to the disclosure of PHI, as set forth in, but not limited to, Title 45, sections 164.314, subdivision (a), 164.502, subdivision (e), and 164.504, subdivision (e) of the Code of Federal Regulations (C.F.R.) and contained in this Agreement; and

**WHEREAS**, Pursuant to HIPAA and the HITECH Act, BA shall fulfill the responsibilities of this Agreement by being in compliance with the applicable provisions of the HIPAA Standards for Privacy of PHI set forth at 45 C.F.R. sections 164.308 (Administrative Safeguards), 164.310 (Physical Safeguards), 164.312 (Technical Safeguards), 164.316 (Policies and Procedures and Documentation Requirements), and, 164.400, et seq. and 42 United States Code (U.S.C.) section 17932 (Breach Notification Rule), in the same manner as they apply to a CE under HIPAA;

**NOW THEREFORE**, in consideration of the mutual promises below and the exchange of information pursuant to this Agreement, the parties agree as follows:

### A. Definitions

Unless otherwise specified herein, capitalized terms used in this Agreement shall have the same meanings as given in the Privacy Rule, the Security Rule, the Breach Notification Rule, and HITECH Act, as and when amended from time to time.

1. Breach shall have the same meaning given to such term under the HIPAA Regulations [45 C.F.R. §164.402] and the HITECH Act [42 U.S.C. §§17921 et seq.], and as further described in California Civil Code section 1798.82.
2. Business Associate (BA) shall have the same meaning given to such term under the Privacy Rule, the Security Rule, and the HITECH Act, including but not limited to 42 U.S.C. section 17921 and 45 C.F.R. section 160.103.
3. Covered Entity (CE) shall have the same meaning given to such term as under the Privacy Rule and Security Rule, including, but not limited to 45 C.F.R. section 160.103.
4. Designated Record Set shall have the same meaning given to such term under 45 C.F.R. section 164.501.
5. Electronic Protected Health Information (ePHI) means PHI that is maintained in or transmitted by electronic media as defined in the Security Rule, 45 C.F.R. section 164.103.
6. Individual shall have the same meaning given to such term under 45 C.F.R. section 160.103.
7. Privacy Rule means the regulations promulgated under HIPAA by the United States Department of Health and Human Services (HHS) to protect the privacy of Protected Health Information, including, but not limited to, 45 C.F.R. Parts 160 and 164, subparts A and E.
8. Protected Health Information (PHI) shall have the same meaning given to such term under 45 C.F.R. section 160.103, limited to the information received from, or created or received by Business Associate from or on behalf of, CE.
9. Security Rule means the regulations promulgated under HIPAA by HHS to protect the security of ePHI, including, but not limited to, 45 C.F.R. Part 160 and 45 C.F.R. Part 164, subparts A and C.

10. Unsecured PHI shall have the same meaning given to such term under the HITECH Act and any guidance issued pursuant to such Act, including, but not limited to 42 U.S.C. section 17932, subdivision (h).

## **B. Obligations and Activities of BA**

### **1. Permitted Uses and Disclosures**

BA may disclose PHI: (i) for the proper management and administration of BA; (ii) to carry out the legal responsibilities of BA; (iii) for purposes of Treatment, Payment and Operations (TPO); (iv) as required by law; or (v) for Data Aggregation purposes for the Health Care Operations of CE. Prior to making any other disclosures, BA must obtain a written authorization from the Individual. Business Associate may also de-identify any PHI, provided such de-identification conforms to the requirements of 45 CFR § 164.514(b).

If BA discloses PHI to a third party, BA must obtain, prior to making any such disclosure, (i) reasonable written assurances from such third party that such PHI will be held confidential as provided pursuant to this Agreement and only disclosed as required by law or for the purposes for which it was disclosed to such third party, and (ii) a written agreement from such third party to immediately notify BA of any breaches of confidentiality of the PHI, to the extent it has obtained knowledge of such breach. [42 U.S.C. section 17932; 45 C.F.R. sections 164.504(e)(2)(i), 164.504(e)(2)(ii)(A) and 164.504(e)(4)(ii)]

### **2. Prohibited Uses and Disclosures**

- i. BA shall not use, access or further disclose PHI other than as permitted or required by this Agreement and as specified in the attached Contract or as required by law. Further, BA shall not use PHI in any manner that would constitute a violation of the Privacy Rule or the HITECH Act. BA shall disclose to its employees, subcontractors, agents, or other third parties, and request from CE, only the minimum PHI necessary to perform or fulfill a specific function required or permitted hereunder.
- ii. BA shall not use or disclose PHI for fundraising or marketing purposes.
- iii. BA shall not disclose PHI to a health plan for payment or health care operations purposes if the patient has requested this special restriction, and has paid out of pocket in full for the health care item or service to which the PHI solely relates. (42 U.S.C. section 17935(a) and 45 C.F.R. section 164.522(a)(1)(i)(A).)
- iv. BA shall not directly or indirectly receive remuneration in exchange for PHI, except with the prior written consent of CE and as permitted by the HITECH Act (42 U.S.C. section 17935(d)(2); and 45 C.F.R. section 164.508); however, this prohibition shall not affect payment by CE to BA for services provided pursuant to this Agreement.

### **3. Appropriate Safeguards**

- i. BA shall implement reasonable and appropriate safeguards to prevent the unauthorized use or disclosure of PHI, including, but not limited to, administrative, physical and technical safeguards that reasonably protect the confidentiality, integrity and availability of the PHI BA creates, receives, maintains, or transmits on behalf of the CE, in accordance with 45 C.F.R. sections 164.308, 164.310, 164.312 and 164.316. [45 C.F.R. sections 164.504(e)(2)(ii)(b) and 164.308(b).]
- ii. In accordance with 45 C.F.R. section 164.316, BA shall maintain reasonable and appropriate written policies and procedures for its privacy and security program in order to comply with the standards, implementation specifications, or any other requirements of the Privacy Rule and applicable provisions of the Security Rule.
- iii. BA shall provide appropriate training for its workforce on the requirements of the Privacy Rule and Security Rule as those regulations affect the proper handling, use confidentiality and disclosure of the CE's PHI.

Such training will include specific guidance relating to sanctions against workforce members who fail to comply with privacy and security policies and procedures and the obligations of the BA under this Agreement.

### **4. Subcontractors**

BA shall enter into written agreements with agents and subcontractors to whom BA provides CE's PHI that impose the same or substantially similar (but in any event no less protective of PHI) restrictions and conditions on such

agents and subcontractors that apply to BA with respect to such PHI, and that require compliance with all appropriate safeguards as found in this Agreement.

5. Reporting of Improper Access, Use or Disclosure or Breach

Every actual Breach shall be reported promptly, but no later than five (5) calendar days upon discovery, to CE's Office of Compliance, consistent with the regulations under HITECH Act. Upon discovery of a Breach or suspected Breach, BA shall complete the following actions:

- i. Provide CE's Office of Compliance with the following information to include but not limited to:
  - a) Date the Breach or suspected Breach occurred;
  - b) Date the Breach or suspected Breach was discovered;
  - c) Number of staff, employees, subcontractors, agents or other third parties and the names and titles of each person allegedly involved;
  - d) Number of potentially affected Individual(s) with contact information; and
  - e) Description of how the Breach or suspected Breach allegedly occurred.
- ii. Conduct and document a risk assessment by investigating without unreasonable delay and in no case later than ten (10) calendar days of discovery of the Breach or suspected Breach to determine the following:
  - a) The nature and extent of the PHI involved, including the types of identifiers and likelihood of re-identification;
  - b) The unauthorized person who had access to the PHI;
  - c) Whether the PHI was actually acquired or viewed; and
  - d) The extent to which the risk to PHI has been mitigated.
- iii. Provide a completed risk assessment and investigation documentation to CE's Office of Compliance within ten (10) calendar days of discovery of the Breach or suspected Breach with a determination as to whether a Breach has occurred. At the discretion of CE, additional information may be requested.
  - a) If BA and CE agree that a Breach has not occurred, notification to Individual(s) is not required.
  - b) If a Breach has occurred, notification to the Individual(s) is required and BA must provide CE with affected Individual(s) name and contact information so that CE can provide notification.

6. Access to PHI

To the extent BA maintains a Designated Record Set on behalf of CE, BA shall make PHI maintained by BA or its agents or subcontractors in Designated Record Sets available to CE for inspection and copying within ten (10) days of a request by CE to enable CE to fulfill its obligations under the Privacy Rule. If BA maintains ePHI, BA shall provide such information in electronic format to enable CE to fulfill its obligations under the HITECH Act. If BA receives a request from an Individual for access to PHI, BA shall immediately forward such request to CE.

7. Amendment of PHI

If BA maintains a Designated Record Set on behalf of the CE, BA shall make any amendment(s) to PHI in a Designated Record Set that the CE directs or agrees to, pursuant to 45 C.F.R. section 164.526, or take other measures as necessary to satisfy CE's obligations under 45 C.F.R. section 164.526, in the time and manner designated by the CE.

8. Access to Records

BA shall make internal practices, books, and records, including policies and procedures, relating to the use, access and disclosure of PHI received from, or created or received by BA on behalf of, CE available to the Secretary of HHS, in a time and manner designated by the Secretary, for purposes of the Secretary determining CE's compliance with the Privacy Rule and Security Rule and patient confidentiality regulations. To the extent permitted by law, any documentation provided to the Secretary shall also be provided to the CE upon request.

9. Accounting for Disclosures



BA, its agents and subcontractors shall document disclosures of PHI and information related to such disclosures as required by HIPAA. This requirement does not apply to disclosures made for purposes of TPO. BA shall provide an accounting of disclosures to CE or an Individual, in the time and manner designated by the CE. BA agrees to implement a process that allows for an accounting to be collected and maintained by BA and its agents or subcontractors for at least six (6) years prior to the request. At a minimum, the information collected and maintained shall include: (i) the date of disclosure; (ii) the name of the entity or person who received PHI and, if known, the address of the entity or person; (iii) a brief description of PHI disclosed; and (iv) a brief statement of purpose of the disclosure that reasonably informs the individual of the basis for the disclosure, or a copy of the Individual's authorization, or a copy of the written request for disclosure.

10. Termination

CE may immediately terminate this agreement, and any related agreements, if CE determines that BA has breached a material term of this agreement and cure is not possible. For any other breach, CE shall provide BA the opportunity to cure the breach or end the violation within thirty (30) days of BA's receipt of notice of the alleged breach.

11. Return of PHI

Upon termination of this Agreement, BA shall return all PHI required to be retained by the BA or its subcontractors, employees or agents on behalf of the CE. In the event the BA determines that returning the PHI is not feasible, the BA shall provide the CE with written notification of the conditions that make return not feasible. Additionally, the BA must follow established policies and procedures to ensure PHI is safeguarded and disposed of adequately in accordance with 45 C.F.R. section 164.310, and must submit to the CE a certification of destruction of PHI. For destruction of ePHI, the National Institute of Standards and Technology (NIST) guidelines must be followed. BA further agrees to extend any and all protections, limitations, and restrictions contained in this Agreement, to any PHI retained by BA or its subcontractors, employees or agents after the termination of this Agreement, and to limit any further use, access or disclosures.

12. Breach by the CE

Pursuant to 42 U.S.C. section 17934, subdivision (b), if the BA is aware of any activity or practice by the CE that constitutes a material Breach or violation of the CE's obligations under this Agreement, the BA must take reasonable steps to address the Breach and/or end eliminate the continued violation, if the BA has the capability of mitigating said violation. If the BA is unsuccessful in eliminating the violation and the CE continues with non-compliant activity, the BA must terminate the Agreement (if feasible) and report the violation to the Secretary of HHS.

13. Mitigation

BA shall have procedures in place to mitigate, to the extent practicable, any harmful effect that is known to BA of a use, access or disclosure of PHI by BA, its agents or subcontractors in violation of the requirements of this Agreement.

14. Costs Associated to Breach

BA shall be responsible for reasonable actual costs associated with a Breach, to the extent resulting from BA's breach of this Agreement. Costs shall be based upon the required notification type and shall not be reimbursable under the Agreement at any time. CE shall determine the method to invoice the BA for said costs. Costs shall incur at the current rates and include the following:

- Postage;
- Reasonable Alternative means of notice;
- Media notification; and
- Legally required Credit monitoring services.

15. Direct Liability

BA may be held directly liable under HIPAA for impermissible uses and disclosures of PHI; failure to provide breach notification to CE; failure to provide access to a copy of ePHI to CE or individual; failure to disclose PHI to the Secretary of HHS when investigating BA's compliance with HIPAA; failure to provide an accounting of disclosures; and, failure to enter into a business associate agreement with subcontractors.

16. Indemnification

BA agrees to indemnify, defend and hold harmless CE and its authorized officers, employees, agents and volunteers from any and all claims, actions, losses, damages, penalties, injuries, costs and expenses (including costs for reasonable attorney fees) resulting from corresponding third party claims and lawsuits that are caused by or result solely from the acts or omissions of BA, its officers, employees, agents and subcontractors, to the extent arising from the unauthorized use or disclosure of CE's PHI, including without limitation, any Breach of PHI or any expenses incurred by CE in providing required Breach notifications.

17. Judicial or Administrative Proceedings

CE may terminate the Contract, effective immediately, if (i) BA is convicted in a criminal proceeding for a violation of HIPAA, the HITECH Act, the Privacy Rule, Security Rule or other security or privacy laws or (ii) a finding or stipulation is made in any administrative or civil proceeding in which the BA has been joined that the BA has violated any standard or requirement of HIPAA, the HITECH Act, the Privacy Rule, Security Rule or other security or privacy laws.

18. Insurance

In addition to any general and/or professional liability insurance coverage required of BA under the Contract for services, BA shall provide appropriate liability insurance coverage during the term of this Agreement to cover any and all claims, causes of action, and demands whatsoever made for loss, damage, or injury to any person arising from the breach of the security, privacy, or confidentiality obligations of BA, its agents or employees, under this Agreement and under HIPAA 45 C.F.R. Parts 160 and 164, Subparts A and E.

19. Assistance in Litigation or Administrative Proceedings

BA shall make itself, and any subcontractors, employees, or agents assisting BA in the performance of its obligations under the Agreement, reasonably available to CE, at no cost to CE, to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against CE, its directors, officers, or employees based upon a claimed violation of HIPAA, the HITECH Act, the Privacy Rule, the Security Rule, or other laws relating to security and privacy, except where BA or its subcontractor, employee or agent is a named adverse party.

**C. Obligations of CE**

1. CE shall notify BA of any of the following, to the extent that such may affect BA's use, access, maintenance or disclosure of PHI:
  - i. Any limitation(s) in CE's notice of privacy practices in accordance with 45 C.F.R. section 164.520.
  - ii. Any changes in, or revocation of, permission by an individual to use, access or disclose PHI.
  - iii. Any restriction to the use, access or disclosure of PHI that CE has agreed to in accordance with 45 C.F.R. section 164.522.
2. CE shall not request BA to use or disclose PHI in any manner that would not be permissible under Subpart E of 45 CFR Part 164 if done by CE.
3. CE shall only provide a minimum amount of PHI necessary for the BA to satisfy its obligations under the Contract.

**D. General Provisions**

1. Remedies

BA agrees that CE shall be entitled to seek immediate injunctive relief as well as to exercise all other rights and remedies which CE may have at law or in equity in the event of an unauthorized use, access or disclosure of PHI by BA or any agent or subcontractor of BA that received PHI from BA.

2. Ownership

The PHI shall be and remain the property of the CE. BA agrees that it acquires no title or rights to the PHI.

3. Regulatory References

A reference in this Agreement to a section in the Privacy Rule and Security Rule and patient confidentiality regulations means the section as in effect or as amended.

4. No Third-Party Beneficiaries

Nothing express or implied in the Contract or this Agreement is intended to confer, nor shall anything herein confer, upon any person other than CE, BA and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.

5. Amendment

The parties acknowledge that state and federal laws related to privacy and security of PHI are rapidly evolving and that amendment of the Contract or this Agreement may be required to ensure compliance with such developments. The parties shall negotiate in good faith to amend this Agreement when and as necessary to comply with applicable laws. If either party does not agree to so amend this Agreement within 30 days after receiving a request for amendment from the other, either party may terminate the Agreement upon written notice. To the extent an amendment to this Agreement is required by law and this Agreement has not been so amended to comply with the applicable law in a timely manner, the amendment required by law shall be deemed to be incorporated into this Agreement automatically and without further action required by either of the parties. Subject to the foregoing, this Agreement may not be modified, nor shall any provision hereof be waived or amended, except in a writing duly signed and agreed to by BA and CE.

6. Interpretation/Incorporation

Any ambiguity in this Agreement shall be resolved to permit CE to comply with the Privacy and Security Rules, the HITECH Act, and all applicable patient confidentiality regulations. The terms of this Agreement supersede any prior or contemporaneous agreement or understandings with respect to the subject matter of the Agreement and are fully incorporated into and subject to the terms of the Contract.

7. Compliance with State Law

In addition to HIPAA and all applicable HIPAA Regulations, BA acknowledges that CE may have confidentiality and privacy obligations under State law, including, but not limited to, the California Confidentiality of Medical Information Act (Cal. Civil Code §56, et seq. ("CMIA")). BA shall protect and maintain the confidentiality, security, and integrity of PHI in the manner provided for under, and otherwise comply with HIPAA, the HIPAA Standards, and NIST 800-53, which the parties acknowledge shall meet BA's obligation to ensure compliance by CE with any confidentiality and privacy obligations under state law.

8. Survival

The respective rights and obligations and rights of CE and BA relating to protecting the confidentiality or a patient's PHI shall survive the termination of the Contract or this Agreement.

**ATTACHMENT E-1**  
**Business Associate Addendum for Cloud Services**  
**Software as a Service (SaaS)**

This Business Associate Addendum for Cloud Services is entered into by and between the Covered Entity (CE) and Business Associate (BA) for the purposes of establishing terms and conditions applicable to the provision of services by BA to CE involving the use of hosted cloud computing services. CE and BA agree that the following terms and conditions will apply to the services provided under this addendum and the associated Business Associate Agreement as applicable.

**1. DEFINITIONS:**

Any capitalized term used but not defined in this Addendum shall have the meaning given to it in the Business Associate Agreement to which it is attached.

- a) **“Software as a Service (SaaS)”** - The capability provided to the consumer is to use applications made available by the provider running on a cloud infrastructure. The applications are accessible from various client devices through a thin client interface such as a web browser or application. The consumer does not manage or control the underlying cloud infrastructure including network, servers, operating systems, storage, or even individual application capabilities, with the possible exception of limited user-specific application configuration settings.
- b) **“Data”** - means any information, formulae, algorithms, or other content that the CE, the CE’s employees, agents and end users upload, create or modify using the SaaS pursuant to this Contract. Data also includes user identification information, Protected Health Information (as defined by the Health Insurance Portability and Accountability Act (HIPAA)) and metadata which may contain Data or from which the Data may be ascertainable.
- c) **“Data Breach”** - means any access, destruction, loss, theft, use, modification or disclosure of Data by an unauthorized party or that is in violation of Contract terms and/or applicable state or federal law.
- d) [intentionally omitted]

**2. [intentionally omitted]**

**3. DATA SECURITY:**

- a) In addition to the provisions set forth in the Business Associate Agreement, BA shall Undergo an annual Statement on Standards for Attestation Engagements (SSAE) 16 Service Organization Control (SOC) 2 Type II audit. Audit results and BA’s plan to correct any negative findings shall be made available to the CE within thirty (30) business days of BA’s receipt of such results.
- b) BA shall implement and maintain all appropriate administrative, physical, technical and procedural safeguards in accordance with section a) above at all times during the term of this Addendum to secure such Data from Data Breach, protect the Data and the SaaS from hacks, introduction of viruses, disabling devices, malware and other forms of malicious or inadvertent acts that can disrupt the CE’s access to its Data.
- c) BA shall allow the CE reasonable access to SaaS security logs, latency statistics, and other related SaaS security data that affect this Addendum and the CE’s Data, at no cost to the CE.
- d) BA assumes responsibility for the security and confidentiality of the Data under its control.
- e) No Data shall be copied, modified, destroyed or deleted by BA other than for normal operation or maintenance of SaaS during the Addendum period without prior written notice to and written approval by the CE.
- f) BA shall provide access to Data only to those employees, contractors and subcontractors who need to access the Data to fulfill BA’s obligations under this Agreement. BA will ensure that, prior to being granted access to Data, staff who perform work under this agreement have all undergone and passed criminal background

screenings; have successfully completed annual instruction of a nature sufficient to enable them to effectively comply with all data protection provisions of this Addendum and the associated Business Associate Agreement; and possess all qualifications appropriate to the nature of the employees' duties and the sensitivity of the Data they will be handling.

4. **ENCRYPTION:** All Data will be encrypted in transmission (including via web interface) using Transport Layer Security (TLS) version 1.2 or equivalent and in storage at a level equivalent to or stronger than Advanced Encryption Standard (AES) 128-bit level encryption.
5. **DATA LOCATION:** All Data will be stored on servers located solely within the Continental United States.
6. **RIGHTS TO DATA:** The parties agree that as between them, all rights, including all intellectual property rights, in and to Data shall remain the exclusive property of the CE, and BA has a limited, non-exclusive license to access and use the Data as provided to BA solely for performing its obligations under the Contract. Nothing herein shall be construed to confer any license or right to the Data, including user tracking and exception Data within the system, by implication, or otherwise, under copyright or other intellectual property rights, to any third party. Unauthorized use of Data by BA or third parties is prohibited. For the purposes of this requirement, the phrase "unauthorized use" means the data mining or processing of data, stored or transmitted by the service, for unrelated commercial purposes, advertising or advertising-related purposes, or for any other purpose other than security or service delivery analysis that is not explicitly authorized.
7. **TRANSITION PERIOD:**
  - a) For ninety (90) days prior to the expiration date of this Contract, or upon notice of termination of this Contract, BA shall reasonably assist the CE in extracting and/or transitioning all Data in BA's standard format ("Transition Period").
  - b) The Transition Period may be modified in the SOW or as agreed upon in writing by the parties in a contract amendment.
  - c) During the Transition Period, SaaS and Data access shall continue to be made available to the CE without alteration.
  - d) Unless otherwise stated in the SOW, the BA shall permanently destroy or render inaccessible any portion of the Data in BA's and/or subcontractor's possession or control following the expiration of all obligations in this section. Within thirty (30) days of CE's request, BA shall issue a written statement to the CE confirming the destruction or inaccessibility of the CE's Data.
  - e) The CE at its option, may purchase additional transition services as agreed upon in the SOW.
8. **DISASTER RECOVERY/BUSINESS CONTINUITY:** Unless otherwise stated in the Statement of Work:
  - a) In the event of disaster or catastrophic failure that results in significant Data loss or extended loss of access to Data, BA shall notify the CE by the fastest means available and also in writing. BA shall provide such notification within forty-eight (48) hours after BA reasonably believes there has been such a disaster or catastrophic failure. In the notification, Contactor shall inform the CE of:
    - 1) The scale and quantity of the Data loss;
    - 2) What BA has done or will do to recover the Data and mitigate any deleterious effect of the Data loss; and
    - 3) What corrective action BA has taken or will take to prevent future Data loss.
  - b) If BA fails to respond promptly and remedy the failure, the CE may exercise its options for assessing damages or other remedies.

- c) BA shall restore continuity of SaaS, restore Data, restore accessibility of Data, and repair SaaS as needed to meet the Data and SaaS Availability requirements under this Addendum. Failure to do so may result in the CE exercising its options for assessing damages or other remedies.
- d) BA shall conduct an investigation of the disaster or catastrophic failure and shall share the report of the investigation with the CE upon request. The CE and/or its authorized agents shall have the right to lead (if required by law) or participate in the investigation. BA shall reasonably cooperate with the CE, its agents and law enforcement.

**9. EXAMINATION AND AUDIT:** Unless otherwise stated in the Statement of Work:

- a) Upon advance written request, BA agrees that the CE or its designated representative shall have access to BA's SaaS operational documentation and records, including online inspections that relate to the security of the SaaS product purchased by the CE.
- b) After any significant Data loss or Data Breach or as a result of any disaster or catastrophic failure, BA will at its expense have an independent, industry-recognized third party perform an information security audit. The audit results shall be shared with the CE within seven (7) days of BA's receipt of such results. Upon BA receiving the results of the audit, BA will provide the CE with written evidence of planned remediation within thirty (30) days and promptly modify its security measures in order to meet its obligations under this Contract.

**10. DISCOVERY:** BA shall promptly notify the CE upon receipt of any requests which in any way might reasonably require access to the Data of the CE or the CE's use of the SaaS. BA shall notify the CE by the fastest means available and also in writing, unless prohibited by law from providing such notification. BA shall provide such notification within forty-eight (48) hours after BA receives the request. BA shall not respond to subpoenas, service of process, Public Records Act requests, and other legal requests directed at BA regarding this Contract without first notifying the CE unless prohibited by law from providing such notification. BA agrees to provide its intended responses to the CE with adequate time for the CE to review, revise and, if necessary, seek a protective order in a court of competent jurisdiction. BA shall not respond to legal requests directed at the CE unless authorized in writing to do so by the CE.

**11. DATA SEPARATION:** Data must be partitioned from other data in such a manner that access to it will not be impacted or forfeited due to e-discovery, search and seizure or other actions by third parties obtaining or attempting to obtain Service Provider's records, information or data for reasons or activities that are not directly related to Customer's business.



**EXHIBIT D**  
**Campaign Contribution Disclosure**  
**(SB 1439)**

**DEFINITIONS**

Actively supporting the matter: (a) Communicate directly, either in person or in writing, with a member of the Board of Supervisors or other County elected officer [Sheriff, Assessor-Recorder-Clerk, District Attorney, Auditor-Controller/Treasurer/Tax Collector] with the purpose of influencing the decision on the matter; or (b) testifies or makes an oral statement before the County in a proceeding on the matter; or (c) communicates with County employees, for the purpose of influencing the County's decision on the matter; or (d) when the person/company's agent lobbies in person, testifies in person or otherwise communicates with the Board or County employees for purposes of influencing the County's decision in a matter.

Agent: A third-party individual or firm who is representing a party or a participant in the matter submitted to the Board of Supervisors. If an agent is an employee or member of a third-party law, architectural, engineering or consulting firm, or a similar entity, both the entity and the individual are considered agents.

Otherwise related entity: An otherwise related entity is any for-profit organization/company which does not have a parent-subsidary relationship but meets one of the following criteria:

- (1) One business entity has a controlling ownership interest in the other business entity;
- (2) there is shared management and control between the entities; or
- (3) a controlling owner (50% or greater interest as a shareholder or as a general partner) in one entity also is a controlling owner in the other entity.

For purposes of (2), "shared management and control" can be found when the same person or substantially the same persons own and manage the two entities; there are common or commingled funds or assets; the business entities share the use of the same offices or employees, or otherwise share activities, resources or personnel on a regular basis; or there is otherwise a regular and close working relationship between the entities.

Parent-Subsidiary Relationship: A parent-subsidiary relationship exists when one corporation has more than 50 percent of the voting power of another corporation.

**Contractors must respond to the questions on the following page. If a question does not apply respond N/A or Not Applicable.**



1. Name of Contractor: WellSky Corporation

2. Name of Principal (i.e., CEO/President) of Contractor, if the individual actively supports the matter and has a financial interest in the decision:

Bill Miller, CEO

3. Name of agent of Contractor:

Company Name	Agent(s)
N/A	N/A

4. Name of any known lobbyist(s) who actively supports or opposes this matter:

Company Name	Contact
N/A	N/A

5. Name of Subcontractor(s) (including Principal and Agent(s)) that will be providing services/work under the awarded contract if the subcontractor (1) actively supports the matter and (2) has a financial interest in the decision and (3) will be possibly identified in the contract with the County or board governed special district.

Company Name	Subcontractor(s):	Principal and/or Agent(s):
N/A	N/A	N/A

6. Is the entity listed in Question No.1 a nonprofit organization under Internal Revenue Code section 501(c)(3)?

Yes ☐

No ☒

7. Name of any known individuals/companies who are not listed in Questions 1-5, but who may (1) actively support or oppose the matter submitted to the Board and (2) have a financial interest in the outcome of the decision:

Company Name	Individual(s) Name
N/A	N/A

8. Was a campaign contribution, of more than \$250, made to any member of the San Bernardino County Board of Supervisors or other County elected officer on or after January 1, 2023, by any of the individuals or entities listed in Question Nos. 1-7?

No ☒ If **no**, please skip Question No. 9 and sign and date this form.

Yes ☐ If **yes**, please continue to complete this form.

9. Name of Board of Supervisor Member or other County elected officer: \_\_\_\_\_  
 Name of Contributor: \_\_\_\_\_

Date(s) of Contribution(s): \_\_\_\_\_

Amount(s): \_\_\_\_\_

Please add an additional sheet(s) to identify additional Board Members/County elected officer to whom anyone listed made campaign contributions.

By signing the Contract, Contractor certifies that the statements made herein are true and correct. Contractor understands that the individuals and entities listed in Question Nos. 1-7 are prohibited from making campaign contributions of more than \$250 to any member of the Board of Supervisors or other County elected officer while award of this Contract is being considered and for 12 months after a final decision by the County.

*Marc Camm*

Marc Camm

SVP Connected Networks

2/15/2024