

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



Contract Number

11.540

SAP Number

Department of Aging and Adult Services

Department Contract Representative	Sharon Nevins
Telephone Number	909.891.3917
Contractor	WellSky Corporation
Contractor Representative	Michele Cioffi
Telephone Number	802.316.4811
Contract Term	Effective August 1, 2020 until all licensed software/services expire
Original Contract Amount	N/A
Amendment Amount	N/A
Total Contract Amount	N/A
Cost Center	

Master License and Services Agreement with WellSky Corporation for software, cloud services, professional services, and maintenance and support services for the contract period from August 1, 2020 until all licensed software and services expire or are terminated.

FOR COUNTY USE ONLY

Approved as to Legal Form

► *Bonnie Uphold*
 Bonnie Uphold, Deputy County Counsel

Date *4-27-2021*

Reviewed for Contract Compliance

DocuSigned by:

► *Jennifer Mulhall-Daudel*
 Jennifer Mulhall-Daudel, Contracts Manager

Date April 27, 2021

Reviewed/Approved by Department

DocuSigned by:

► *Sharon Nevins*
 Sharon Nevins, Director

Date April 27, 2021

WELLSKY CORPORATION MASTER LICENSE AND SERVICES AGREEMENT

This Master License and Services Agreement (the "Agreement") is entered into as of August 1, 2020, (the "Effective Date"), by and between **WellSky Corporation** and its Affiliates, with offices at 11300 Switzer Road, Overland Park, KS 66210 ("WellSky"), and the **County of San Bernardino Department of Aging and Adult Services**, a political subdivision organized and existing under the constitution and the laws of the State of California with offices at 784 East Hospitality Lane, San Bernardino, CA 92408 ("Client"). Each of WellSky and Client may be referred to herein individually as a "Party" and together as the "Parties." The Parties agree as follows:

1. **DEFINITIONS.** Capitalized terms used herein or in any Order Form, but not defined, have the meaning set forth in Exhibit A.
2. **LICENSED SOFTWARE.**
 - 2.1. Licensed Software. WellSky grants to Client (a) a perpetual, non-exclusive, non-transferable, license to use the Licensed Software; or (b) a limited term, non-exclusive, non-transferable, license to use the Licensed Software during the term designated in the Order Form, on the Designated Platform solely for internal business purposes and subject to the terms of this Agreement and the applicable Order Form. Client represents that it has authority to bind each Client affiliate and Permitted User to the terms of this Agreement. Client shall be responsible for all acts and omissions of all Client affiliates and Permitted Users.
 - 2.2. Limitations. No right to use, copy, modify, create derivative works of, adapt, distribute, disclose, decompile, or reverse engineer the Licensed Software is granted, except as expressly set forth in this Agreement. WellSky reserves title to the Licensed Software and all rights not expressly granted hereunder. Client may make copies of Licensed Software as necessary for back-up, testing, and archival purposes only. Client shall approve access for all Permitted Users of the Licensed Software and Sublicensed Software and shall prevent unauthorized access and use of the Licensed Software and Sublicensed Software. Client may not use any component of the System to provide services to third parties as a service bureau or data processor.
 - 2.3. Installation of Designated Platform. Client shall install all components of the Designated Platform required for operation of the Licensed Software, and shall complete all necessary diagnostic tests to ensure such installation of the Designated Platform is complete and successful.
3. **SERVICES.**
 - 3.1. Cloud Services. 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 and use the Cloud Services during the Term, solely for Client's internal business operations and subject to the terms of this Agreement and Order Form; and (b) Cloud Services support as set forth in Exhibit B or in the applicable Order Form. Exhibit B does not apply to Licensed Software. Client shall not have any physical access to the Cloud Services hardware.
 - 3.2. Support Services. For Licensed Software, WellSky shall provide the Support Services as set forth in Exhibit C or in the applicable Order Form. Exhibit C does not apply to the Cloud Services. WellSky is not obligated to provide Support services for Licensed Software that is not the most current or next to most current release.
 - 3.3. Professional Services. Unless otherwise set forth in an Order Form, Professional Services shall be performed on a time and materials basis at WellSky's standard rates.
 - 3.4. Client Responsibilities. Client shall: (a) approve access for all Permitted Users to the Cloud Services and shall prevent unauthorized access and use of the Cloud Services. 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; or (iii) sublicense or operate the Cloud Services for timesharing, outsourcing, or service bureau operations; (b) provide network connectivity between Client's local

environment and the Cloud Services for the implementation and execution of the Cloud Services as provided in the Documentation; (c) maintain bandwidth of sufficient capacity for the operation of the Cloud Services; (d) have sole responsibility for installation, testing, and operations of Client facilities, telecommunications and internet services, equipment, and software upon Client's premises necessary for Client's use of the Cloud Services; and (e) pay all third-party access fees incurred by Client to access and use the Cloud Services.

- 3.5. Suspension of Services. If (a) there is a threat to the security of WellSky's systems or the Services, or (b) Client's undisputed invoices are sixty (60) days or more overdue, in addition to any other rights and remedies (including termination), WellSky may suspend the Services without liability until all issues are resolved.

4. **SUBLICENSSED SOFTWARE AND HARDWARE.** Subject to the terms and conditions of this Agreement and any Order Form, WellSky shall grant the licenses to Sublicensed Software as set forth in an Order Form. Client agrees to purchase any Hardware set forth in an Order Form.

5. **PROPRIETARY RIGHTS.**

- 5.1. Ownership. WellSky or its licensor retains all right, title, and interest, in the Licensed Software, Sublicensed Software, Test Scripts, Documentation, Services, and Work Product. WellSky shall grant to Client a non-exclusive, non-transferable license to use Work Product only for Client's own internal purposes in connection with the Licensed Software and Services.

- 5.2. Restricted Rights. The Licensed Software is 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 this Agreement, a standard software license agreement as stated in DFARS 227.7202.

6. **PAYMENTS BY CLIENT.**

- 6.1. Payment. Client shall pay all fees for the Licensed Software, System, Services, and Hardware. All invoices shall be paid net thirty (30) days following the date of the invoice. Invoices that are more than ten (10) days past due shall be subject to a finance charge at a rate of interest the lesser of one-and-a-half percent (1.5%) per month or the maximum permissible legal rate. Client shall also be liable for any attorney and collection fees arising from WellSky's efforts to collect any unpaid balance of Client.

- 6.2. Scope of Use. The Licensed Software, Sublicensed Software, and Cloud Services are priced based on certain metrics (e.g. Sites, Deliverables, Patient/Client Census, and/or Permitted Users) as set forth in an Order Form. Client may only expand its use of the Licensed Software, Sublicensed Software, and/or Cloud Services upon payment of the applicable additional license, support, and service fees at WellSky's then-current rates. Any such fees for additional scope of use will be immediately due and payable.

- 6.3. Increases. All recurring fees may be increased by WellSky once annually commencing one (1) year following the Effective Date of the applicable Order Form at a rate not to exceed five percent (5%). Subscription Software and Services fees may further be increased upon prior written notice to Client in the event WellSky's third-party suppliers increase such fees. The preceding limitation shall not apply to any increase in fees attributable to Client's acquisition of additional Licensed Software or Services.

- 6.4. Expenses. Client shall reimburse WellSky for all reasonable Client-related travel, lodging, and out-of-pocket expenses.

- 6.5. Shipping Fees, Taxes. Client shall pay all shipping charges, as well as any taxes, fees or costs imposed by any governmental body arising as a result of this Agreement. WellSky shall be responsible for taxes on its net income.

- 6.6. Audit. WellSky reserves the right to audit Client's use of the System and Cloud Services (remotely or on site) at a mutually agreeable time. If Client's use is greater than contracted, Client shall be invoiced for any unlicensed use

(and related support), and the unpaid license and support fees shall be payable in accordance with this Agreement. If any increase in fees is required, Client shall also pay the expenses associated with the audit, which shall not exceed \$500.

6.7. LIMITED WARRANTIES AND COVENANTS.

6.8. Licensed Software Warranty. WellSky warrants that the Licensed Software shall, without material error, perform the functions set forth in the Documentation when operated on the Designated Platform in accordance with this Agreement and the Order Form during the Warranty Period.

6.9. Services Warranty. WellSky warrants that (a) when operated in accordance with the 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 and Support Services in a professional manner in accordance with the applicable Documentation.

6.10. Remedy. Client's sole and exclusive remedy for any breach of the warranties set forth herein or in an Order Form 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 redelivering the Licensed Software, repairing the Cloud Services, and/or reperforming the Professional/Support Services. 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 System or Cloud Services in conformance with the Documentation or Applicable Law; (b) any person (other than WellSky) making modifications to the Designated Platform in any way without WellSky's prior written consent; or (c) any failure of any component of Hardware, Sublicensed Software, or any Client-supplied software, equipment, or other third-party materials.

6.11. Disclaimer. EXCEPT AS EXPRESSLY PROVIDED HEREIN OR IN AN ORDER FORM, WELLSKY DISCLAIMS ALL WARRANTIES, ORAL, WRITTEN,

EXPRESS, IMPLIED, OR STATUTORY; INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE AND MERCHANTABILITY, AND 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, OR THAT ALL DEFECTS SHALL BE CORRECTED, OR THAT THE LICENSED SOFTWARE OR SERVICES SHALL MEET CLIENT'S REQUIREMENTS. CLIENT AGREES THAT THE MANUFACTURERS OR LICENSORS OF HARDWARE AND SUBLICENSED SOFTWARE MAY PROVIDE CERTAIN WARRANTIES AND OTHER TERMS AND CONDITIONS WITH RESPECT TO THE HARDWARE AND SUBLICENSED SOFTWARE SUPPLIED TO CLIENT UNDER THIS AGREEMENT. WELLSKY MAKES NO REPRESENTATIONS OR WARRANTIES CONCERNING THE HARDWARE OR SUBLICENSED SOFTWARE.

6.12. Client Warranty. Client warrants that Client (a) has the power and authority to enter into this Agreement and bind each Permitted User to the confidentiality and use restrictions set forth herein; and (b) shall use its best efforts to protect the security of the Licensed Software and Cloud Services.

7. **LIMITATION OF LIABILITY.** EXCEPT FOR CLAIMS ARISING FROM WELLSKY'S INDEMNIFICATION OBLIGATIONS WELLSKY'S MAXIMUM LIABILITY FOR DAMAGES TO CLIENT FOR ANY CAUSE WHATSOEVER ARISING UNDER OR RELATED TO THIS AGREEMENT, IS LIMITED TO TWO (2) TIMES THE FEES PAID UNDER THE ORDER FORM FOR THE AFFECTED SOFTWARE OR SERVICES DURING THE TWELVE (12) MONTHS PRECEDING THE EVENT GIVING RISE TO A CLAIM.. NEITHER WELLSKY NOR ITS LICENSORS 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 CLIENT. WellSky shall not be deemed to be engaged, directly or indirectly, in the practice of medicine or the dispensing of medical services, nor shall it be responsible or liable for the use, application, or interpretation of any information, results, or product generated by or resulting from the Licensed Software or Services, or arising from the Client's use of the Licensed Software or Services.

8. INDEMNIFICATION.

- 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 Licensed Software or Cloud Services infringes any currently existing United States patent or copyright, or misappropriates any trade secret, of any third-party. If Client's use of the Licensed Software or 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 Licensed Software or Cloud Services; (b) replace, modify or correct such Licensed Software or Cloud Services to avoid such infringement, or (c) terminate the Agreement and refund to Client, as applicable, a pro rata portion of the perpetual Licensed Software license fees amortized over a five (5) year straight line depreciated basis and/or any prepaid amounts for subscription Licensed Software and/or Cloud Services not yet performed. WellSky's indemnification obligations shall not apply if the Third-Party Claim results from: (i) modifications of the Licensed Software or Cloud Services by Client or third parties; (ii) use of the Licensed Software or Cloud Services with non-WellSky software or equipment; (iii) use of the Licensed Software or Cloud Services in violation of this Agreement, Applicable Law, or not in conformance with the Documentation; or (iv) use of anything other than the most current release of the Licensed

Software, if the infringement could be avoided by use of the current release.

- 8.2. Client Indemnity. To the extent permitted by law, Client shall defend, indemnify, and hold WellSky and its officers, directors, and employees harmless from and against any Third-Party Claim and associated costs and expenses (including reasonable attorneys' fees) to the extent arising out of or resulting from Client's use of the Licensed Software, Test Scripts, and Cloud Services, or any claim by any party receiving services from Client in connection with the Licensed Software or Cloud Services.

- 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.

9. TERM AND TERMINATION OF LICENSE AND AGREEMENT.

- 9.1. Term. If applicable, the term of the license to the Licensed Software and/or the right to access the Cloud Services is set forth in an Order Form. This Agreement remains in effect until all Licensed Software and Services expire or are terminated in accordance with this Agreement.
- 9.2. Termination. This Agreement shall terminate when the license to all Licensed Software

licensed under this Agreement terminates, all Services expire or are terminated, or sooner as provided in this Section 10. Either Party may terminate this Agreement and the licenses and/or right to access granted herein if: (a) the other Party materially breaches this Agreement and fails to cure such breach within sixty (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 ten (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 sixty (60) days of filing. Failure to use the Licensed Software and Updates thereto in accordance with Applicable Law is a material breach of this Agreement.

- 9.3. Effect of Termination. Upon termination of this Agreement, Client shall immediately cease all use of the Licensed Software, Sublicensed Software, and/or Cloud Services, and the licenses granted and all other rights of Client under this Agreement shall terminate and revert to WellSky. Client shall, within ten (10) days following such termination, destroy or return to WellSky all magnetic media or tangible items and material containing the Licensed Software and its Documentation, and to the extent permitted by law, all WellSky Confidential Information, and certify such return or destruction in writing to WellSky.

- 9.4. Survival. The following sections shall survive termination or expiration of this Agreement: Sections 8, 9, 10, 11, 12, and 13; Sections 7.3 through 7.5, as well as any obligation to pay fees arising prior to termination or expiration. In addition, restrictions on use of the Licensed Software and related obligations regarding use in conformance with laws and applicable accreditation standards shall survive as long as the license survives.

10. **CONFIDENTIAL INFORMATION.** Each Party shall (a) secure and protect the Confidential Information using the same degree or greater level 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 this Agreement; (c) require their respective employees, agents, attorneys, 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) 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 practical prior to such disclosure and 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. Said access shall be limited to a period of four (4) years after the provision of the applicable services hereunder.
- 11.2. HIPAA. The parties agree to the terms of the Business Associate Exhibit that is attached hereto as Exhibit D.

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, including, but not limited to: supplier delay, acts of God, labor disputes, acts of terrorism, war, epidemic, unavailability of components, acts of governmental authorities or judicial action, compliance with laws, or material interruption in telecommunications or utility service. 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. Data Use. Notwithstanding any other terms to the contrary in a prior or contemporaneous agreement, Client grants WellSky permission

to use data from Client to help WellSky to provide the Licensed Software and/or Services to Client and to enhance the Licensed Software and/or Services it provides. Client grants WellSky permission to combine Client's data, and more specifically, a Limited Data Set as defined in 45 CFR § 164.514(e)(1), if any, with other data in a way that does not identify (a) Client or (b) any individual. Client also grants WellSky permission to use this combined Limited Data Set information to create new predictive algorithms and other similar products and services.

- 12.3. Injunctive Relief. Client acknowledges that any breach by Client of Section 2, 3.4, 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.
- 12.4. Assignment. Neither Party shall assign its rights, duties or obligations under this 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 to an affiliate or in connection with any merger, reorganization or sale of substantially all of WellSky's assets or other change of control transaction without any consent from 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 this Agreement is intended or shall be construed to create or establish any agency, partnership, or joint venture relationship between the Parties.
- 12.6. Export. Client agrees to comply with all export and re-export restrictions and regulations of the Department of Commerce or other United States agency or authority, and not to transfer, or authorize the transfer of, the Licensed Software or the Sublicensed Software to a prohibited country or otherwise in violation of any such restrictions or regulations.
- 12.7. Notices. All notices, requests, demands or other communication required or permitted to be given by one Party to the other under this Agreement shall be sufficient if sent by

certified mail, return receipt requested. 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 Cesar Bernal, AS II.

- 12.8. Severability. If any provision of this Agreement or any Order Form adopted in connection herewith 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.
- 12.9. Entire Agreement; Amendment; Waiver. This Agreement constitutes the entire agreement between the Parties and supersedes any prior or contemporaneous agreement or understandings with respect to the subject matter of this Agreement. In the event of a conflict between this Agreement and an Order Form, the Agreement shall control. This Agreement shall be construed as if both Parties had equal say in its drafting, and thus shall not be construed against the drafter. This Agreement may be modified only by a written agreement signed by 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.
- 12.10. 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 three years after the cause of action accrues.
- 12.11. 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).

- 12.12. 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 Licensed Software and/or Services, any such terms are of no force and effect and are superseded by this Agreement.
- 12.13. Governing Law. This Agreement will be governed by, construed, and interpreted in accordance with the laws of the State of California, excluding its rules of conflicts of law, and any action (whether by arbitration or in court) 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 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 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. Non-Solicitation. During the term of this Agreement and for a period of one (1) year thereafter, Client agrees not to hire, directly or indirectly, any employee or former employee of WellSky, without obtaining WellSky's prior written consent.
- 12.15. California Consumer Privacy Act. The Parties agree that 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 if WellSky receives the "personal information" of any "consumer" for "processing" on Client's behalf.
- 12.16. Counterparts. This Contract may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute one and the same Contract. The parties shall be entitled to sign and transmit an electronic signature of this Contract (whether by facsimile, PDF or other email 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 Contract upon request.

- 12.17. Debarment and Suspension. WellSky certifies that neither it nor its principals is presently disbarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency. (See the following United States General Services Administration's System for Award Management website <https://www.sam.gov>). WellSky further certifies that if it is a business entities that must be registered with the California Secretary of State, they are registered and in good standing with the Secretary of State.
- 12.18. Insurance. Without in any way affecting any indemnity obligations provided and in addition thereto, WellSky shall secure and maintain throughout the term of this Agreement, appropriate liability insurance coverage during the term of this Agreement based on its obligations under this Agreement.
13. **CLIENT DATA**
- 13.1. Client Data. Client acknowledges and understands that use of the Services or Platform will permit or require Client to provide certain Client data to WellSky for purposes of processing or storage.
- 13.2. Data Ownership. All Client data shall be considered proprietary to Client. WellSky will only use Client data for performing the Services, Professional Services, and as authorized under this Agreement.
- 13.3. Data Safeguards. WellSky shall maintain commercially reasonable and appropriate data safeguards and procedures designed to prevent the unauthorized use or disclosure of Client data as required under applicable laws ("**Data Safeguards**"). WellSky will periodically maintain archives and back-ups of Client data in accordance with WellSky's generally applicable disaster recovery and business continuity procedures and industry standards. Client data may be stored on media or hardware containing other client data both during and after the term, provided such media

and hardware are subject to the Data Safeguards.

- 13.4. Termination of Agreement; Data Transfer. Upon request by Client following termination or expiration of the Agreement and subject to payment of all amounts then due and owing (other than good faith disputes), WellSky at no additional cost will transfer a copy of Client data in WellSky's possession or control to Client in WellSky's then-standard format unless otherwise requested by Client and at WellSky's then-current rates within thirty (30) days following any such request following termination or expiration (or otherwise upon

Client's reasonable request). WellSky is not obligated to store any Client data for more than 60 days following the termination or expiration of the Subscription Term but will do so for a mutually agreed storage fee. WellSky will delete any Client data in its control or possession thereafter unless otherwise required by law but may retain archival copy for archival purposes only and subject to the Data Safeguards.

[remainder of page intentionally left blank]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year first above written.

COUNTY OF SAN BERNARDINO:

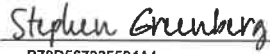

(SIGNATURE)

Curt Hagman
(PRINT NAME)

Chairman, Board of Supervisors
(TITLE)

MAY 18 2021
(DATE)

WELLSKY CORPORATION:

DocuSigned by:

B78D567335594A4...

Stephen Greenberg

SVP Human and Social Services
(TITLE)

May 10, 2021
(DATE)

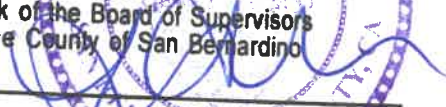

SIGNED AND CERTIFIED THAT A COPY OF
THIS DOCUMENT HAS BEEN DELIVERED
TO THE CHAIRMAN OF THE BOARD
LYNNA MONELL
Clerk of the Board of Supervisors
of the County of San Bernardino
By 
Deputy
SAN BERNARDINO COUNTY

EXHIBIT A

- 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 Licensed Software, including validation requirements affecting Regulated Licensed Software.
- c. **"Cloud Services"** means, collectively, the WellSky software as a service offering listed in an Order Form and defined in the Documentation, including (i) the WellSky hosted software and any upgrades, enhancements, or new releases thereto, (ii) hardware and other equipment at WellSky's hosting site, and (iii) use of the telephone support for Client in the operation of the Cloud Services. The term "Cloud Services" does not include Professional Services.
- d. **"Concurrent User"** means each Client workstation able to simultaneously access the System at any given moment, for purposes of updating the System.
- e. **"Confidential Information"** means (i) the source and object code of all components of the System, (ii) the Documentation, (iii) the Test Scripts, (iv) the design and architecture of the database, (v) the terms and conditions of this Agreement, and (vi) all other information of a confidential or proprietary nature disclosed by one Party to the other Party in connection with this Agreement which is either (x) disclosed in writing and clearly marked as confidential at the time of disclosure or (y) disclosed orally and clearly designated as confidential in a written communication to the receiving Party within 7 days following the disclosure. "Confidential Information" shall not include information (a) publicly available through no breach of this 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.
- f. **"Control"** over an Affiliate means (a) ownership of at least fifty percent (50%) of such Affiliate, or (b) the right to determine management direction of such Affiliate.
- g. **"Designated Platform"** means the required operating environment for the Licensed Software, including all necessary hardware and software components, specified in an applicable Order Form or Documentation.
- h. **"Documentation"** means the most recent documentation of the functional operation of the Licensed Software and Cloud Services; provided that if the Licensed Software is a product that is cleared by the FDA, Documentation means the documentation provided to the FDA in connection with the FDA Clearance.
- i. **"FDA Clearance"** means the 510(k) clearance received by WellSky from the Food and Drug Administration that authorizes the commercialization of the Regulated Licensed Software and sets forth the specific parameters of use for the Regulated Licensed Software on the Designated Platform.
- j. **"First Productive Use"** means the day Client begins using any part of the System or Cloud Services in a live production environment.
- k. **"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.
- l. **"Licensed Software"** means the object code version of computer programs developed by WellSky listed in Section I of an Order Form, including Updates furnished to Client by WellSky pursuant to this Agreement or any Order Form, but excluding all Sublicensed Software or third-party software.

- m. **“Order Form”** means a work authorization executed by the Parties from time to time, including the Order Forms(s) attached hereto setting forth the items being purchased by the Client, scope of use, pricing, payment terms and any other relevant terms, which will be a part of and be governed by the terms and conditions of this Agreement.
- n. **“Patient/Client Census”** means the number of patients or clients that Client is treating, calculated as described in the applicable Order Form.
- o. **“Permitted User”** means an authorized user of the Licensed Software, Sublicensed Software, and/or Cloud Services as described in the applicable Order Form.
- p. **“Professional Services”** means, collectively, the implementation, installation, data conversion, validation, or training services provided by WellSky under or in connection with this Agreement.
- q. **“Program Error”** means an error or bug preventing the Licensed Software from operating in accordance with the Documentation in all material respects.
- r. **“Regulated Licensed Software”** means Licensed Software that is subject to the 510(k) clearance requirements as promulgated by the United States Food and Drug Administration.
- s. **“Services”** means the Cloud Services, Professional Services and the Support Services set forth in an Order Form.
- t. **“Site”** means each of the Client facility or facilities specified in an Order Form and for whom Client (a) owns at least 50%, or (b) has the right to determine management direction.
- u. **“Support Services”** shall mean the services to keep the Licensed Software in working order and to sustain useful life of the Licensed Software, including Updates and specified in an Order Form.
- v. **“Sublicensed Software”** shall mean those programs provided to WellSky by a third-party, which WellSky sublicenses to Client hereunder, for use with the Licensed Software or Cloud Services, and any Updates thereto, provided to Client by WellSky under the terms of this Agreement or as identified in any Order Form.
- w. **“System”** shall mean the Licensed Software (all or less than all of the Licensed Software) and Sublicensed Software, if any, and any Updates thereto.
- x. **“Test Scripts”** means WellSky’s test scripts designed by WellSky to assist in Client’s Validation of certain Regulated Licensed Software.
- y. **“Update”** means any error corrections, bug fixes, enhancements, and/or new features to the Licensed Software or Test Scripts that WellSky makes generally commercially available to its clients who have a current Maintenance and Support Agreement. Updates do not include modules, scripts, or software that WellSky prices or markets separately.
- z. **“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 subscriptions. Upgrades do not include modules or features that WellSky prices and markets separately.
- aa. **“Validation”** means the procedure performed by Client to validate the Licensed Software pursuant to certain rules and regulations promulgated by the Food and Drug Administration.
- bb. **“Warranty Period”** means either the period set forth in an Order Form, or if not specified, twelve months from the execution of the applicable Order Form.

- cc. **“Work Product”** means any technology, documentation, software, procedures 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, designs, inventions, methodologies, techniques, discoveries, know-how, show-how and works of authorship, and all United States and foreign patents issued or issuable thereon, 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 any division, continuation, modification, enhancement, derivative work or license of any of the foregoing.

EXHIBIT B
WELLSKY CLOUD SERVICES SUPPORT TERMS

This Exhibit B sets forth certain WellSky Cloud Services support requirements. From time-to-time, these obligations may change upon notice by WellSky to Client. This Exhibit B only applies to Cloud Services. This Exhibit does not apply to Licensed Software.

1. DEFINITIONS.

- 1.1. **“Access Protocols”** means industry standard internet access protocols through which WellSky makes the Cloud Services accessible to the Client which includes, unless otherwise specified by the product or service contract for, HTTPS and FTPS.
- 1.2. **“Core System Functionality”** means functionality that does require real time availability for effective use of Cloud Services. Core system functionality includes all features required to commence a user session and performs end user operations, including create, read, update and delete operations “Scheduled Downtime” means the total amount of time.
- 1.3. **“Non-Core System Functionality”** means functionality that does *not* require real time availability for effective use of the Cloud Services. This explicitly includes, but is not limited to, reporting and background batch processing.
- 1.4. **“Scheduled Downtime”** means the time which the Core System Functionality is unavailable for access to Client’s active Permitted Users according to the Access Protocols, due to scheduled system maintenance performed by or on behalf of WellSky.
- 1.5. **“Unscheduled Downtime”** means the time during which the Core System Functionality is unavailable for access by Client’s Permitted Users according to the Access Protocols, other than for Scheduled Downtime and the exceptions otherwise stated in the Agreement. Unscheduled Downtime will not include, without limitation, any downtime arising from: (i) Client’s breach of any provision of the Agreement; (ii) non-compliance by Client with any provision of the Agreement; (iii) incompatibility of Client’s equipment or software with the Cloud Services; (iv) poor or inadequate performance of Client’s systems; (v) Client’s equipment failures; (vi) acts or omissions of Client or its Permitted Users, contractors or suppliers; (vii) telecommunication or transportation difficulties; (viii) Client’s network and internet service provider, (ix) public internet, (x) security exposure, or (xi) force majeure (as described in the Agreement).

2. TERM.

UNLESS OTHERWISE SET FORTH IN AN ORDER FORM, SUPPORT FOR THE CLOUD SERVICES ARE AVAILABLE AS OF THE EFFECTIVE DATE OF THE APPLICABLE ORDER FORM(S) AND SHALL CONTINUE UNTIL TERMINATION OF THE APPLICABLE CLOUD SERVICES AS PERMITTED IN THE AGREEMENT AND/OR THE APPLICABLE ORDER FORM.

3. TELEPHONE SUPPORT.

WellSky shall provide telephone and portal issue support to assist Client with the use of the Cloud Services and to assist with issue resolution during the term of this Agreement. The portal support will be available 24 hours a day and telephone support will be available during the hours posted by WellSky.

4. AVAILABILITY.

After First Productive Use and during the Term, WellSky shall use commercially reasonable efforts to provide the Cloud Services via the Internet twenty-four (24) hours a day, seven (7) days a week, in accordance with the terms of the Agreement.

Periodically, WellSky will require Scheduled Downtime. Scheduled Downtime will normally be scheduled outside of normal business hours, with twenty-four (24) hours' notice, or in the event of a more urgent need WellSky may give less notice to resolve an immediate security need. It is anticipated that there will be weekly scheduled downtime for system maintenance, WellSky will post the standard downtime publicly for all WellSky clients.

Client acknowledges and agrees that, from time to time, the Cloud Services may be inaccessible or inoperable for the following reasons: (i) equipment malfunctions; (ii) periodic maintenance; or (iii) catastrophic events beyond the control of WellSky or that are not reasonably foreseeable by WellSky, including interruption or failure of telecommunication or digital communication links or hostile network attacks. Client shall report any Unscheduled Downtime by calling WellSky client support with the provided support number within one (1) day of its occurrence.

5. UPGRADES.

During the Term of the Cloud Services, WellSky may make Upgrades available to Client pursuant to WellSky's standard release cycle. WellSky reserves the right to determine the content and availability of all Cloud Services, including without limitation, Upgrades. Any enhancements or additions made to an interface as requested by Client are not part of this Exhibit B and may increase the monthly charge by an amount which reflects the extent of the change. Documentation updates shall generally be distributed to Client with each Upgrade.

6. INTERNET CONNECTION DEPENDENCE.

The performance and availability of the Cloud Services are directly dependent upon the quality of Client's Internet connection. WellSky will aid the Client in determining the quality of their Internet connection via the use of tools designed to measure throughput. This information may then be used to make an informed decision by Client regarding Internet Service Provider ("ISP") selection. Failure of the Client's Internet connection to maintain satisfactory throughput and latency is outside the scope of WellSky's responsibility, and should be addressed by Client directly with the ISP. WellSky cannot be held responsible for Internet infrastructure failures.

EXHIBIT C
LICENSED SOFTWARE SUPPORT TERMS

This Exhibit C sets forth certain WellSky Licensed Software support terms. From time-to-time, these obligations may change upon notice by WellSky to Client. This Exhibit C only applies to Licensed Software. This Exhibit does not apply to Cloud Services.

1. TERM.

UNLESS OTHERWISE SET FORTH IN AN ORDER FORM, SUPPORT SERVICES ARE EFFECTIVE FOR AN INITIAL TERM OF ONE (1) YEAR BEGINNING ON THE EFFECTIVE DATE OF THE ORDER FORM (THE "SUPPORT EFFECTIVE DATE"). This Exhibit C only applies to the Licensed Software.

2. SERVICE REINSTATEMENT.

In the event Support is allowed to lapse (other than for breach by WellSky) and is later reinstated, Client shall be required to pay a reinstatement charge of Ten Thousand Dollars (\$10,000), plus back charges for all months that Support lapsed, including appropriate late charges. Client may be responsible for expenses incurred to inspect Hardware or reload Licensed Software to the current release version after any lapse in Support.

3. SERVICES PROVIDED.

WellSky shall provide standard support services for supporting Client's live productive use of the Licensed Software set forth on an applicable Order Form on the Designated Platform. For purposes of Support, "standard support services" shall include using commercially reasonable efforts to repair or provide a work around for all reproducible Program Errors. Standard support services shall also include providing Updates. So long as Client is current in Support fees and Client complies with the terms and conditions of the Agreement, the Licensed Software shall operate in accordance with the Documentation, in all material respects.

4. TELEPHONE SUPPORT.

- a. Priority Levels. Client may request, and WellSky shall provide, reasonable technical consultation by telephone 24 hours a day, 365 days of a year. WellSky shall maintain a log of technical consultation requests in a tracking system and a unique number shall be assigned to Client's request. That unique number shall be provided to Client for reference and communication. WellSky shall assign to technical consultation requests one of three levels of priority:
 - i. Level 1 is the most severe Program Error and represents a situation where all features and functions of the Licensed Software are unavailable and no practical alternate mode of operation is available. WellSky shall use commercially reasonable efforts to answer or return Level 1 calls within four (4) hours.
 - ii. Level 2 indicates a problem in which certain features and functionality are not available and no practical alternate mode of operation is available. Priority 2 requests will be assigned to the next available programmer.
 - iii. Level 3 is the normal next-in-line priority assignment. Priority 3 requests will be worked on in the order in which they are received.
- b. Problem Resolution. WellSky shall provide technical consultation solutions to Level 1, Level 2 and Level 3 issues as quickly as reasonably possible, in light of the problem. If a Level 1 or Level 2 issue requires a change to the Licensed Software, the change will be sent to Client as soon as available. If a Level 3 issue requires a change to the software, the change will be provided in a regularly scheduled Update.

- c. Service Location. WellSky shall provide technical consultation from its business premises, except that WellSky, at its own discretion, may dispatch a technical services representative to Client's facility for all Program Errors that WellSky is unable to correct by providing technical consultation from WellSky's premises.

5. UPDATE.

During the Term of this Exhibit C, WellSky may make Updates available to Client. WellSky reserves the right to determine the content and availability of all software, including without limitation, Updates. Any enhancements or additions made to an interface as requested by Client are not part of this Exhibit C and may increase the monthly charge by an amount which reflects the extent of the change. Documentation updates shall generally be distributed to Client with each Update. All Updates may be loaded only based upon instructions provided by WellSky's client service personnel. WellSky must be notified, in writing, before the loading of operating system software updates, third-party software updates or installing new hardware to the System. WellSky shall provide assistance by telephone during normal business hours.

6. CLIENT PARTICIPATION.

WellSky's obligations are conditioned on Client fulfilling its obligations hereunder, including, without limitation:

- a. Providing WellSky with all information and assistance necessary to detect, simulate or reproduce and correct any Program Errors.
- b. Providing WellSky access to the System and its related operating environment for the purpose of providing WellSky services;
- c. Causing all equipment and facilities which are used in connection with the operation or security of System and Hardware to be maintained properly and in good operating condition as specified by the applicable manufacturer. All charges for such media and services shall be the sole responsibility of Client.
- d. Maintaining regular back-ups of data files, application source code (if applicable) and operating system software.
- e. Strict compliance with the terms and conditions of the Agreement, including without limitation, the terms and restrictions on the license grant.

EXHIBIT D
BUSINESS ASSOCIATE/DATA USE AGREEMENT

BACKGROUND

- A. Covered Entity and WellSky have entered into a certain License Agreement dated August 1, 2020, (such agreement is the "Agreement"), pursuant to which Covered Entity has licensed software from Business Associate and Business Associate provides implementation, maintenance, support and other services to Covered Entity.
- B. The Agreement permits and provides for Covered Entity to submit data to the Business Associate to conduct data analyses that relate to the Business Associate's Health Services Research, including but not limited to Data Aggregation, quality assessment and improvement activities, including outcomes evaluation and development of clinical guidelines.
- C. Covered Entity possesses Protected Health Information that is protected under the Health Insurance Portability and Accountability Act of 1996 (Public Law 104-191) and the regulations promulgated thereunder by the United States Department of Health and Human Services (collectively, "HIPAA"), and is permitted to use or disclose such Protected Health Information only in accordance with HIPAA and the Regulations.
- D. Business Associate may have access to and may receive Protected Health Information from Covered Entity in connection with its performance of services under the Agreement. The Agreement may from time to time require the Business Associate's receipt, Use, and/or Disclosure of Protected Health Information (PHI) from Covered Entity.
- E. The provisions of this BAA are intended in their totality to implement the HIPAA regulations as they concern Business Associate Agreements and 45 CFR § 164.514(e) as it concerns Data Use Agreements. The provisions of the Agreement will remain in full force and effect and are amended by this BAA only to the extent necessary to effectuate the provisions set forth herein.

TERMS

- 1. **Definitions.** All capitalized terms used but not otherwise defined in this BAA shall have the same meaning as those terms in the Regulations.
 - a. Activities shall mean those Research activities that may be conducted by Business Associate as a Recipient using a Limited Data Set pursuant to Section 6.
 - b. Business Associate shall mean WellSky Corporation.
 - c. Covered Entity shall mean Client.
 - d. Individual shall have the same meaning as the term "individual" in 45 CFR § 160.103 of the Regulations and shall include a person who qualifies as a personal representative in accordance with 45 CFR § 164.502(g) of the Regulations.
 - e. Limited Data Set shall have the same meaning as the term "limited data set" in 45 CFR § 164.514(e).
 - f. Regulations shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, Subparts A and E, Security Standards for the Protection of Electronic Protected Health Information at 45 CFR Part 160 and Part 164, Subparts A and C; 45 CFR § 164.314, and the Health Information Technology for Economic and Clinical Health Act (HITECH), as it directly applies, as in effect on the date of this BAA.
 - g. Protected Health Information shall have the same meaning as the term "protected health information" in 45 CFR § 160.103, limited to the information created or received by Business Associate from or on behalf of Covered Entity.
 - h. Recipient shall mean the recipient of a Limited Data Set created pursuant to Section 3(e) of this BAA.
 - i. Required by Law shall have the same meaning as the term "required by law" in 45 CFR § 164.103 of the Regulations.
 - j. Research shall have the same meaning as the term "research" in 45 CFR § 164.501.
 - k. Secretary shall mean the Secretary of the Department of Health and Human Services or his/her designee.

1. Security Incident shall have the same meaning given to such term in 45 CFR § 164.304, but shall not include (i) unsuccessful attempts to penetrate computer networks or servers maintained by Business Associate; and (ii) immaterial incidents that occur on a routine basis, such as general “pinging” or “denial of service” attacks, that do not result in the system being taken offline.

2. Obligations and Activities of Business Associate.

- a. Business Associate agrees to comply with the requirements of the Privacy and Security Rules directly applicable to Business Associates through the HITECH Act.
- b. Business Associate agrees to not use or disclose Protected Health Information other than as permitted or required by this BAA, the Privacy and Security Rules, the Agreement, or as required by law. Such disclosures shall be consistent with the “minimum necessary” requirements of the Regulations.
- c. Business Associate agrees to use reasonable and appropriate safeguards to protect against the use or disclosure of the Protected Health Information other than as provided for by this BAA or the Agreement, including, but not limited to, administrative, physical and technical safeguards that reasonably protect the confidentiality, integrity and availability of the PHI Business Associate creates, receives, maintains, or transmits on behalf of the Covered Entity, 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).]
- d. In accordance with 45 C.F.R. section 164.316, Business Associate 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.
- e. Business Associate agrees to mitigate, to the extent reasonably practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this BAA.
- f. Business Associate agrees to report to Covered Entity any use or disclosure of the Protected Health Information not provided for by the BAA of which it becomes aware.
- g. Business Associate shall notify Covered Entity of a breach of the Privacy Rule relating to the impermissible use or disclosure of Protected Health Information provided to the Business Associate for purposes of carrying out its obligations under the Agreement. Unless otherwise required by law or agreed to by the parties, it shall be the responsibility of Covered Entity to communicate with affected individual(s), the Secretary and the media information regarding the unintended use or disclosure.
- h. Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides Protected Health Information received from, or created or received by Business Associate on behalf of Covered Entity agrees to the same or similar restrictions and conditions that apply through this BAA to Business Associate with respect to such information.
- i. If Business Associate maintains Protected Health Information in a Designated Record Set for Covered Entity, Business Associate agrees to provide access, at the request of Covered Entity, and in the time and manner mutually agreed upon by the parties, to Protected Health Information in a Designated Record Set, to Covered Entity or, as directed by Covered Entity, to an Individual in order to meet the requirements under 45 CFR § 164.524 of the Regulations. In the event a request for access is delivered directly to Business Associate by an Individual, Business Associate shall as soon as possible, forward the request to Covered Entity.
- j. If Business Associate maintains Protected Health Information in a Designated Record Set for Covered Entity, Business Associate agrees to make any amendment(s) to Protected Health Information in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 CFR § 164.526 of the Regulations at the request of Covered Entity or an Individual, and in the time and manner mutually agreed upon by the parties. In the event a request for amendment is delivered directly to Business Associate by an Individual, Business Associate shall as soon as possible, forward the request to Covered Entity.
- k. Business Associate agrees to make internal practices, books, and records, including policies and procedures and Protected Health Information, relating to the use and disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of Covered Entity available to the Secretary, in a time and manner reasonably designated by Secretary, for purposes of the Secretary determining Covered Entity's compliance with the Regulations.
- l. Business Associate agrees to document such disclosures of Protected Health Information and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR § 164.528 of the Regulations.

- m. Business Associate agrees to provide to Covered Entity or an Individual, in time and manner mutually agreed, information collected in accordance with Section 2(k) of this BAA, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR § 164.528 of the Regulations. In the event a request for accounting is delivered directly to Business Associate by an Individual, Business Associate shall as soon as possible, forward the request to Covered Entity.
- n. Notwithstanding anything to the contrary in the Agreement, any reporting or notification obligations of Business Associate pursuant to this BAA shall be provided to Cesar.Bernal@hss.sbcounty.gov and shall satisfy any such reporting or notification requirements under this BAA.

3. Permitted Uses and Disclosures by Business Associate.

- a. Except as otherwise limited in this BAA, Business Associate may use or disclose Protected Health Information to perform functions, activities or services for, or on behalf of, Covered Entity in connection with the BAA and any other agreements in effect between Covered Entity and Business Associate, including without limitation the provision of software implementation and support services, provided that such use or disclosure would not violate the Regulations if done by Covered Entity.
- b. Except as otherwise expressly limited in this BAA, Business Associate may use Protected Health Information for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate.
- c. Except as otherwise expressly limited in this BAA, Business Associate may disclose Protected Health Information for disclosures that are Required By Law, or if Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.
- d. Except as otherwise expressly limited in this BAA, Business Associate may use Protected Health Information to provide Data Aggregation services to Covered Entity as permitted by 45 CFR § 164.504(e)(2)(i)(B).
- e. Business Associate may (i) de-identify any PHI, provided such de-identification conforms to the requirements of 45 CFR § 164.514(b), including without limitation any documentation requirements. Business Associate may Use or Disclose such de-identified information as its discretion, as such de-identified information does not constitute PHI and is not subject to the terms of this BAA; provided that such Use or Disclosure is consistent with the underlying Agreement and applicable law, and/or (ii) use PHI to create a Limited Data Set that meets the Limited Data Set requirements of 45 CFR § 164.514(e)(2), and may Use or Disclose such Limited Data Set for the purposes, and subject to the restrictions, set forth in Section 6; provided, however, that Business Associate shall, as soon as reasonably practical, destroy any direct identifiers not otherwise used for permitted purposes under this BAA.
- f. Business Associate may use Protected Health Information to report violations of law to appropriate Federal and State authorities, consistent with 45 CFR § 164.502(j)(1).
- g. Business Associate may access, use and disclose PHI for any purposes set forth herein, including patient matching and claims data sharing, to facilitate billing, payments or claims related activities by any insurance provider, payer or similar third party to Covered Entity. Business Associate may aggregate PHI with other covered entity data for the creation and maintenance of consumer or patient health records.

4. Obligations of Covered Entity.

- a. Covered Entity shall notify Business Associate of any limitation(s) in the notice of privacy practices of Covered Entity under 45 CFR § 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of protected health information.
- b. Covered Entity shall notify Business Associate of any changes in or revocation of, the permission by an individual to use or disclose his or her protected health information, to the extent that such changes may affect the Business Associate's use or disclosure of protected health information.
- c. Covered Entity shall notify Business Associate of any restriction on the use or disclosure of protected health information that Covered Entity has agreed to or is required to abide by under 45 CFR § 164.522, to the extent that such restriction may affect Business Associate's user or disclosure of protected health information.
- d. Covered Entity shall not request Business Associate to use or disclose protected health information in any manner that would not be permissible under Subpart E of 45 CFR Part 164 if done by Covered Entity.

- e. Covered Entity represents and warrants it has obtained all necessary patient consents and authorizations for Business Associate's access, use, and disclosure of PHI as set forth herein. Covered Entity shall be solely liable for and shall hold Covered Entity harmless against any third-party claims, suits, liabilities, obligations, judgments, and causes of action and associated costs and expenses (including reasonable attorneys' fees) arising out of or resulting from Covered Entity's failure to obtain such consents or authorizations.

5. Electronic Data Security. Business Associate agrees to implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of any electronic Protected Health Information that it creates, receives, maintains or transmits to or on behalf of Covered Entity as required by the Regulations. Business Associate further agrees to ensure that any agent, including a subcontractor, to whom it provides such information, agrees to implement reasonable and appropriate safeguards to protect it. Business Associate agrees to promptly report to Covered Entity any security incident of which it becomes aware.

6. Data Use Agreement. From time to time, Business Associate may be a Recipient of a Limited Data Set created pursuant to Section 3(e). As a Recipient, Business Associate's Use and Disclosure of the Limited Data Set will be governed by the following terms and condition of this Section 6, and not the terms and conditions of Sections 2 and 3 of this BAA:

- a. Performance of Activities. As a Recipient, Business Associate may Use or Disclose Limited Data Set Information only in connection with the performance of Research, and only in accordance with this Section 6 and applicable regulations concerning Limited Data Sets. In connection with the Research, Business Associate may combine Covered Entity's Limited Data Set Information with Limited Data Set Information received by Business Associate as a recipient from other covered entities. In performing the Research, Business Associate shall limit the use or receipt of the Limited Data Set to those individuals or classes of individuals who need the Limited Data Set for the performance of the Research.
- b. Limited Data Set Data Use Obligations. The obligations set out in this Subsection apply only with respect to Business Associate's Use or Disclosure of Limited Data Set Information as a Recipient.
 - 1. Business Associate may not use or disclose the Limited Data Set in any manner that would violate the requirements of HIPAA or the HIPAA Regulations if Data User were a Covered Entity.
 - 2. Business Associate agrees to not Use or further Disclose Limited Data Set Information other than as permitted by this Section 6, or as otherwise required by law;
 - 3. Business Associate agrees to use reasonable and appropriate safeguards to prevent Use or Disclosure of the Limited Data Set Information other than as permitted by this Section 6;
 - 4. Business Associate must report to Covered Entity any Use or Disclosure of Limited Data Set Information not provided for in this Section 6 of which Business Associate becomes aware;
 - 5. Business Associate will not attempt to identify the Individuals to whom the Limited Data Set Information pertains, or attempt to contact such Individuals, provided that this restriction will not be interpreted to prevent Business Associate from conducting such activities as are permitted as a Business Associate under the Business Associate provisions of this BAA; and
 - 6. Business Associate agrees to require any agent or subcontractor to whom it, directly or indirectly, provides Limited Data Set Information, to agree in writing to comply with the same or substantially similar restrictions (but in any event no less protective of the Limited Data Set) and conditions that apply to Business Associate with respect to the Limited Data Set.
 - 7. Upon completion of the Research, Business Associate will destroy the Limited Data Set in accordance with guidance promulgated by the National Institute of Standards and Technology.

7. Termination.

- a. Except as otherwise provided herein, this BAA shall terminate upon termination of the Agreement.
- b. Termination for Cause. Upon Covered Entity's knowledge of a material breach by Business Associate of this BAA, Covered Entity may:
 1. Provide a reasonable opportunity for Business Associate to cure the material breach or end the material violation and if Business Associate does not cure the material breach or end the material violation within a reasonable time, Covered Entity may terminate this BAA and the provisions of the Agreement that require or permit Business Associate to access Protected Health Information;
 2. If Business Associate has breached a material term of this BAA and cure is not possible, immediately terminate this BAA and the provisions of the Agreement that require or permit Business Associate to access Protected Health Information; or
 3. If neither termination nor cure is feasible, report the violation to the Secretary.

If Covered Entity breaches, Business Associate may terminate this BAA and any Underlying Agreement 30 days after written notice.

c. Effect of Termination.

1. Except as provided in paragraph (2) of this section, upon termination of this BAA, for any reason, Business Associate shall return or destroy all Protected Health Information received from Covered Entity or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the Protected Health Information.
2. In the event that Business Associate determines that returning or destroying the Protected Health Information is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. In such event, Business Associate shall extend the protections of this BAA to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such Protected Health Information. Except as provided herein, any termination of the maintenance program or provisions of the Agreement that permit Business Associate to access Protected Health Information shall not affect the parties' other obligations or rights under the Agreement. For the avoidance of doubt, the parties agree that return of Limited Data Sets shall be deemed infeasible, and no further notice pursuant to this Section shall be required.

8. Judicial or Administrative Proceedings

Covered Entity may terminate this Agreement, effective immediately, if (i) Business Associate is named as a defendant 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 Business Associate has been joined that the Business Associate has violated any standard or requirement of HIPAA, the HITECH Act, the Privacy Rule, Security Rule or other security or privacy laws.

9. Insurance

Business Associate shall provide appropriate liability insurance coverage during the term of this Agreement to cover its obligations under this BAA.

10. Assistance in Litigation or Administrative Proceedings

Business Associate will use good faith efforts to make itself, and any subcontractors, employees, or agents assisting Business Associate in the performance of its obligations under the Agreement, available to Covered Entity, at no cost to Covered Entity, to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against Covered Entity, 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 Business Associate or its subcontractor, employee or agent is a named adverse party.

11. Miscellaneous.

- a. Changes to Regulations. If the Regulations are amended in a manner that would alter the obligations of WellSky as set forth in this BAA, then the parties agree in good faith to negotiate mutually acceptable changes to the terms set forth in this BAA.
- b. Survival. The respective rights and obligations of Business Associate under Section 7(c) of this BAA shall survive the termination of this BAA.
- c. Minimum Necessary. Covered Entity shall only provide a minimum amount of Protected Health Information necessary for the Business Associate to satisfy its obligations under the Agreement.
- d. Interpretation. Any ambiguity in this BAA shall be resolved to permit compliance with the Regulations.
- e. Incorporation. Except for Covered Entity, no third-party may rely on the terms, conditions, rights, remedies or obligations hereunder. The terms of this BAA are fully incorporated in and subject to the terms of the Agreement.

Governing Law. The choice of law and venue applicable to this BAA shall be the same as the choice of law and venue that are applicable to the Agreement.