

WELLSKY CORPORATION
MASTER LICENSE AND SERVICES AGREEMENT

July 21, 2023

This Master License and Services Agreement (the “Agreement”) applies to any Order Form or other document made by and between **WellSky Corporation** and its Affiliates, with offices at 11300 Switzer Road, Overland Park, Kansas 66210 (“WellSky”), and its client (“Client”) that incorporates this Agreement by reference. Each of WellSky and Client may be referred to herein individually as a “Party” and together as the “Parties.” The effective date of this Agreement shall be the “Effective Date” as defined in the initial Order Form executed between 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. **SERVICES.**
 - 2.1. 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 the applicable Order Form; and (b) Cloud Services support as set forth in Exhibit B or in the applicable Order Form. Client shall not have any physical access to the Cloud Services hardware.
 - 2.2. 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.
 - 2.3. 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; (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. 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
 - 2.4. 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.
3. **THIRD-PARTY SOLUTIONS AND HARDWARE.** Subject to the terms and conditions of this Agreement and any Order Form, WellSky shall grant the licenses to Third-Party Solutions as set forth in an Order Form. Client agrees to purchase any Hardware set forth in an Order Form.

4. **PROPRIETARY RIGHTS.**

4.1. Ownership. WellSky or its licensor retains all right, title, and interest, in the Third-Party Solutions, 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 Services.

4.2. Restricted Rights. 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 this Agreement, a standard software license agreement as stated in DFARS 227.7202.

5. **PAYMENTS BY CLIENT.**

5.1. Payment. Client shall pay all fees for the 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.

5.2. Scope of Use. The Third-Party Solutions 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 Third-Party Solutions 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.

5.3. 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%). 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 Services.

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

5.5. 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.

5.6. Audit. WellSky reserves the right to audit Client's use of the 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.

6. **LIMITED WARRANTIES AND COVENANTS.**

6.1. 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 Services in a professional manner in accordance with the applicable Documentation.

6.2. 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 repairing the Cloud Services and/or reperforming the Professional 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 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.

6.3. 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 SERVICES SHALL MEET CLIENT'S REQUIREMENTS. Client agrees that the manufacturers or licensors of Hardware and Third-Party Solutions may provide certain warranties and other terms and conditions with respect to the Hardware and Third-Party Solutions supplied to Client under this Agreement. WellSky makes no representations or warranties concerning the Hardware OR Third-Party Solutions.

6.4. Client Warranty. Client warrants that Client (a) has the power and authority to enter into this Agreement and bind each Client affiliate and Permitted User to the terms and conditions set forth herein, and Client shall be responsible for all acts and omissions of all Client affiliates and Permitted Users; and (b) shall use its best efforts to protect the security of the Cloud Services.

7. **LIMITATION OF LIABILITY.** WELLSKY'S MAXIMUM LIABILITY FOR DAMAGES TO CLIENT FOR ANY CAUSE WHATSOEVER ARISING UNDER OR RELATED TO THIS AGREEMENT, IS LIMITED TO 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 DISCLAIMS ANY AND ALL LIABILITY ARISING OUT OF OR RELATED TO CLIENT'S USE OF ANY VIDEO, EMAIL, TEXTING AND/OR RELATED TELEPHONY SERVICES, INCLUDING ANY LIABILITY RELATED TO CLIENT DATA PROCESSED THEREIN. 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, 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.

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 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 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 Agreement and refund to Client, as applicable, 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 this Agreement, Applicable Law, or not in conformance with the Documentation.

8.2. Client Indemnity. 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 Cloud Services or any claim by any party receiving services from Client in connection with the 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 right to access the Cloud Services is set forth in an Order Form. This Agreement remains in effect until all Services expire or are terminated in accordance with this Agreement.

9.2. Termination. This Agreement shall terminate when 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 Cloud Services and Upgrades 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 Third-Party Solutions 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 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 6.2 through 6.4, 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) 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, 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) 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 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. 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 C.

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. Client hereby grants to WellSky a non-exclusive, perpetual license (a) to use the Client Data in connection with the provision of the Services; and/or (b) to use the Client Data to create Deidentified Data. The license includes a right to sublicense. WellSky owns any Deidentified Data. Additionally, Client authorizes WellSky to aggregate Client Data with other WellSky client data in accordance with the Documentation.

12.3. Injunctive Relief. Client acknowledges that any breach by Client of Section 2.3 or 10 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. Professional Responsibility. Client acknowledges that the Licensed Software and/or Services, and the information supplied therein, are supplemental to (and not a substitute for) the knowledge, expertise, skill and judgment of physicians, clinicians, and/or other care providers. Client shall ensure that all care providers using the Licensed Software and/or Services are aware of the limitations of the use of the Licensed Software and/or Services. CLIENT SHALL ENSURE THAT ALL PROVIDERS USING THE LICENSED SOFTWARE AND/OR SERVICES ARE AWARE OF THE LIMITATIONS OF THE USE OF THE LICENSED SOFTWARE AND/OR SERVICES.

12.5. 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.

12.6. 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.

12.7. 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 Third-Party Solutions to a prohibited country or otherwise in violation of any such restrictions or regulations.

12.8. 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 the contact set forth in the applicable Order Form or other contract document.

12.9. 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.

12.10. 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.

12.11. 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 two years after the cause of action accrues.

12.12. 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).

12.13. 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 this Agreement.

12.14. Governing Law. This Agreement will be governed by, construed, and interpreted in accordance with the laws of the State of Kansas, excluding its rules of conflicts of law. Both parties hereby consent and submit to the courts located solely in the state of Kansas.

12.15. 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.

12.16. 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.

12.17. Counterparts. This 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. Execution may be effected by delivery of email or facsimile of signature pages, which shall be deemed originals in all respects.

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, or testing of any of the Cloud Services.
- c. **“Client Data”** means all electronic data or information submitted by Client to the Cloud Services but excluding Deidentified Data.
- d. **“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.
- e. **“Concurrent User”** means each Client workstation able to simultaneously access the System at any given moment, for purposes of updating the System.
- f. **“Confidential Information”** means (i) the Documentation, (ii) the design and architecture of the database, (iii) the terms and conditions of this Agreement, and (iv) 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.
- g. **“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.
- h. **“Deidentified Data”** means Client Data that is deidentified by WellSky and such deidentification is certified by a third-party as compliant with the deidentification standards under HIPAA or otherwise meets the deidentification requirements under HIPAA.
- i. **“Documentation”** means the most recent documentation of the functional operation and interoperability of the Cloud Services.
- j. **“FDA Clearance”** means the 510(k) clearance received by WellSky from the Food and Drug Administration that authorizes the commercialization of the Regulated Cloud Services and sets forth the specific parameters of use for the Regulated Cloud Services operating environment, as applicable.
- k. **“First Productive Use”** means the day Client begins using any part of the Cloud Services in a live production environment.
- l. **“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.

- 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 Third-Party Solutions and/or Cloud Services as described in the applicable Order Form.
- p. **“Professional Services”** means, collectively, the implementation, installation, data conversion, (including extraction), validation, or training services provided by WellSky under or in connection with this Agreement.
- q. **“Regulated Cloud Services”** means Cloud Services that are subject to the 510(k) clearance requirements as promulgated by the United States Food and Drug Administration.
- r. **“Services”** means the Cloud Services and the Professional Services set forth in an Order Form.
- s. **“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.
- t. **“Third-Party Solutions”** shall mean those licensed software programs or software-as-a-service offerings provided to WellSky by a third-party, which WellSky sublicenses or grants a right to access to Client hereunder, for use with the Licensed Software or Cloud Services, and any Updates or Upgrades thereto, provided to Client by WellSky under the terms of this Agreement or as identified in any Order Form.
- u. **“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.
- v. **“Validation”** means the procedure performed by Client to validate the Regulated Cloud Services pursuant to certain rules and regulations promulgated by the Food and Drug Administration.
- w. **“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.
- x. **“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.

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.

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

BUSINESS ASSOCIATE AGREEMENT

Background

A. Covered Entity and WellSky have entered into the Agreement, pursuant to which Covered Entity has licensed cloud services from Business Associate and Business Associate provides implementation, maintenance, support, and other services to Covered Entity.

B. 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.

C. 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.

D. The provisions of this BAA are intended in their totality to implement the HIPAA regulations as they concern Business Associate 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. Business Associate shall mean WellSky Corporation.

b. Covered Entity shall mean Client.

c. 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.

d. 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.

e. 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.

f. Required by Law shall have the same meaning as the term "required by law" in 45 CFR § 164.103 of the Regulations.

g. Secretary shall mean the Secretary of the Department of Health and Human Services or his/her designee.

h. Security Incident shall have the same meaning given to such term in 45 CFR § 164.304.

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.

d. 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.

e. 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.

f. 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.

g. 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.

h. 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.

i. 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.

j. 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.

k. 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.

l. 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.

m. Notwithstanding anything to the contrary in the Agreement, any reporting or notification obligations of Business Associate pursuant to this BAA shall be provided to Covered Entity's registered email address 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) and in accordance with the Documentation.

e. Business Associate may 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 at 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.

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).

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.

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, provided that this BAA shall constitute notice by Business Associate to Covered Entity of the ongoing existence and occurrence of attempted but unsuccessful Security Incidents including, but not be limited to, pings and other broadcast attacks on Business Associate's firewall, port scans, unsuccessful log-on attempts, denials of service and any combination of the foregoing, so long as any such incident does not result in unauthorized access, use or disclosure of PHI or material disruption of Business Associate's information systems.

6. 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:

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- 5. 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;
- 6. 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
- 7. 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.

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- 8. 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.
- 9. 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.

7. 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 6(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.

f. 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.