



BASIC CONTRACTING PRINCIPLES
Vendor Copy

This document is intended to provide guidelines for those vendors wishing to enter into an agreement with WellStar Health System. While this document is not all inclusive it does cover the major contracting provisions required by WellStar for different types of agreements (purchase, service, equipment, consignment, etc.). The expectation is the vendor will utilize this document to modify their agreement and present an agreement to WellStar which will minimize negotiations around contract language. The goal should be shared risk and shared liability with neither party being unfairly burdened. Any questions regarding the intent of this document or the contracting process can be directed to WellStar's Corporate Purchasing department.

- 1. Names of the Parties.** Verify that the full and correct legal names of the parties are found in the agreement. Also, verify the address, phone number and contact information for any notice provisions. By way of example (not an exhaustive list) this may be: WellStar Health System, Inc., Kennestone Hospital, Inc., Cobb Hospital, Inc., Douglas Hospital, Inc., Paulding Medical Center, Inc., Kennestone Hospital, Inc., d/b/a WellStar Windy Hill Hospital, or WellStar Health System, Inc., d/b/a WellStar Physicians Group. Examples of *incorrect* legal entities include: WellStar Home Health, WellStar Health Place, and Atherton Place. **See attached exhibit for list of correct legal names.**
- 2. Quantity and Acceptance.** Verify that the agreement adequately describes the products and quantities being purchased. For services, the agreement needs to describe the services that will be performed and acceptance criteria, if any. Avoid general, vague or overly broad descriptions.
- 3. Risk of Loss and Ownership.** WellStar is a healthcare organization and not in the shipping business. Therefore, products should be shipped FOB destination, with risk of loss and ownership passing to WellStar upon acceptance.
- 4. Term and Termination.** WellStar generally does not enter into agreements longer than three (3) years. WellStar requires the ability to terminate agreements without cause and without incurring any monetary penalty, usually with no more than 30, 60, 90 days prior written notice (depending on the type of transaction) to the other party.
- 5. Price and Payment.** WellStar will not enter into agreements with hidden or open-ended charges. Undisputed fees for products or services delivered to WellStar must be very specific and should be tied to completion of milestones if possible. WellStar will not agree to late fees or interest incurred on disputed charges. For lump sum advance payments, include language so that WellStar may receive a pro-rata refund for unsatisfactory products or non-performed services. WellStar is a tax-exempt entity and will agree to provide copies of its tax exemption certificates upon the other party's reasonable request. Price escalations should be capped for any given year.
- 6. Shipment.** WellStar prefers freight to be paid by the vendor (FOB Destination). If WellStar requires overnight or other special shipping then WellStar may pay for additional charges incurred due to these requests.
- 7. Indemnification.** WellStar will only agree to be liable for its own actions or omissions (or that of its employees) not for any patients, non-WellStar employees or third parties. Any indemnification language in the agreement must be mutual. WellStar insurance will not allow another party to control the defense of WellStar's claims. WellStar will agree to remain silent on indemnity as it does not preclude the parties from suing each other. WellStar will also consider a prevailing parties clause in lieu of an indemnification provision.
- 8. Limitation of Liability.** WellStar prefers to enter agreements that do not limit liability as it is WellStar's belief that a vendor should stand behind its product or service offerings. Strike limitations of liability whenever possible. WellStar *may* entertain entering into agreements with limitations of liability on the following conditions. WellStar will not agree to

be liable for a third party's property damage or bodily injury. The limitation of liability for direct damages must be mutual and third party claims and claims for damages due to a party's or its employees' or agents' negligence or willful misconduct must be carved out of any damage cap. WellStar *may* also entertain entering into agreements limiting consequential, indirect, and incidental damages but only if the provision is mutual and only between WellStar and the other party (third party claims carved out).

9. Warranties & Representations. At a minimum, services should be performed in a professional and workmanlike manner according to industry standards and products should be delivered on media free from defects in materials and workmanship. Other warranties may apply, depending on the type of transaction. WellStar prefers warranties to remain in effect for one (1) year.

10. Confidentiality. Most agreements need to contain a confidentiality provision. At a minimum, the confidentiality obligations must be mutual. To be valid in Georgia, the obligations of confidentiality should not last more than 3 – 5 years after termination of the agreement. The confidentiality obligations as they relate to trade secrets and protected health information may remain in effect for the period of time the relevant laws allow. WellStar is subject to Open Records, so WellStar must be allowed to release confidential information subject to law and such release must not constitute a breach of its confidentiality obligations. WellStar also reserves the right to share information in a blinded fashion to third party consultants.

11. Insurance. WellStar requires the other party to provide proof of liability insurance coverage in the amount equivalent to the exposure of risk under the given type of contract (i.e. Managed Care Errors and Omissions in the minimum amount of \$5,000,000 or Professional and General liability in the minimum amount of \$1,000,000 per occurrence and \$3,000,000 per aggregate). Deviations from these amounts will need the approval of WellStar's Risk Management Department.

12. Independent Contractor. Unless there is a true partnership or other joint venture relationship (rare), the agreement must contain a provision stating no other relationship is formed other than Independent Contractor.

13. Standard Boilerplate. The following standard provisions should appear in every agreement:

- a. **Entire Agreement and Modification.** The written agreement should represent the entire agreement between the parties regarding the product or service. Any modifications must be in writing and signed by authorized representatives of both parties. Ensure all other documents (proposals, quotes, letters) and exhibits are attached and referenced in the agreement. Only those documents included in the agreement are legally binding. If the agreement references another document that has not been provided, WellStar will need to receive a copy of the other document to determine whether it wants to or can comply with the other documents requirements.
- b. **Assignment.** For a one-time purchase, an assignment provision is not necessary. For master purchases or for service agreements, the assignment provision should be mutual and WellStar's ability to assign should not be unreasonably hindered.
- c. **Severability.** The agreement should include language that provides the rest of the agreement will remain valid if there are sections which are later determined to be invalid.
- d. **Waiver.** The agreement should also include language which provides that no waiver of either party to any breach shall be effective as to any other breach.
- e. **Governing Law.** WellStar prefers agreements not to contain arbitration provisions. Georgia law, without regard to its conflict of law principles, needs to govern the agreement. The appropriate venue and jurisdiction is the Superior Court in Cobb County, Georgia. As an alternative, WellStar will agree to remain silent on this provision. WellStar will not waive its rights to trial by jury.
- f. **Binding Effect.** The agreement should contain language that provides that the agreement is binding and inures to the benefit of the parties hereto and their respective successors and assigns.
- g. **Subcontractors (as applicable).** If the other party is subcontracting some of the work or services, the agreement needs to contain language that prohibits the other party from delegating the work or services to subcontractors without WellStar's prior permission, that any delegation will not relieve the other party of any performance responsibility under the agreement, and that all subcontractors must agree to perform to and abide by the same terms and conditions of the agreement.
- h. **Sanctioned Provider.** WellStar requires the other party to warrant and represent that it is not a sanctioned provider under any state or federal programs (i.e. CMS, OIG, DHR, GSA, OFAC, etc.) and that if the other party

becomes a sanctioned provider during the term of the agreement, WellStar must have the ability to terminate the agreement immediately without any liability.

- i. **Non-Exclusive Arrangement.** WellStar prefers agreements that are non-exclusive and do not limit the right of either party to contract with another party for the covered product or service.
- j. **Force Majeure.** WellStar prefers to include language protecting both parties from occurrences commonly known as Force Majeure.

14. Medicare/Medicaid Safe Harbor Provisions. The agreement should include language that states both parties will comply with all applicable federal, state and local Safe Harbor regulations.

15. New Technology. Where applicable, new technology and specialty products must be submitted for evaluation, with 30 days advance notice prior to first use, pursuant to WellStar's Value Analysis policies and procedures.

16. Other. The following provisions may need to be included in the agreement depending on the transaction:

- a. **HIPAA (Business Associates).** If the other party meets the definition of "business associate," they need to sign WellStar's standard Business Associates Agreement. Contact the Privacy Department if you do not have a copy.
- b. **Medical Screening (Agency Staffing).** WellStar requires these types of agreements to include language that provides that any and all contract or agency staff that provides direct patient care meet the minimum medical screening competencies per WellStar policies.
- c. **The Joint Commission (Patient Care Contracts).** WellStar requires these agreements to contain language that the other party agrees to provide services in compliance with applicable statutes, regulations and rules of federal, state and other governmental bodies having jurisdiction (including CMS, OSHA, rules and regulations of WellStar, DHR, ADA, EEOC, FLSA). The agreement should also state that the other party agrees to assist WellStar in complying with all standards of The Joint Commission (formerly, JCAHO) and currently accepted and approved methods and practices. The agreement must include monitoring and evaluation criteria to ensure the contracted services are provided safely and effectively. Examples of some relevant sources of information to use when evaluating the value of contracted services are as follows:
 - Review of information about the contractor's Joint Commission accreditation or certification status
 - Direct observation of the provision of care
 - Audit of documentation, including medical records
 - Review of incident reports
 - Review of periodic reports submitted by the individual or hospital providing services under contractual agreement
 - Collection of data that address the efficacy of the contracted service
 - Review of performance reports based on indicators required in the contractual agreement
 - Input from staff and patients
 - Review of patient satisfaction studies
 - Review of results of risk management activities
- d. **Proposed Sales Tax on Medical Devices.** Remove contract language allowing pass-through of *proposed* medical device excise tax (effective 1/1/2013). Manufacturer should be solely responsible for this excise tax. Contract language should state that WellStar is only responsible for sales tax (unless exempt).
- e. **Property Taxes.** Remove contract language stating WellStar Health System will be responsible for payment of property taxes. Contract language should state that WellStar is only responsible for sales tax (unless exempt).
- f. **Code of Ethics.** Include language requiring implant vendors to comply with the code of ethics of at least one of the following organizations: Medical Device Manufacturers Association (MDMA); or Advanced Medical Technology Association (AdvaMed).

17. Consignment. The following provisions need to be included.

- a. **Pricing.** Separate pricing agreements (GPO or local) will be negotiated outside of the consignment agreement. Any pricing included in consignment agreements will only be used to value the consignment.
- b. **Consignment Level.** WellStar and vendor will work together to maintain appropriate levels of consignment product based on current usage. If modifications to consignment levels are agreed upon by both parties then an amendment will be made and attached to the original agreement. At least annually, WellStar and vendor will reconcile the consignment products and negotiate in good faith any variances.

- c. **Title and Risk of Loss.** Title to consignment products remains with the vendor until the product is removed for use by WellStar. WellStar bears the risk of loss and costs to replace products that are damaged, lost or discarded during a procedure. Vendor bears the risk of loss and costs to replace products in the event they are not used by WellStar prior to the sterilization expiration date.

18. Equipment, Maintenance, Computer Hardware and Software. The following provisions need to be included.

- a. **Uptime Guarantee.** WellStar requires language guaranteeing 60 consecutive days of performance meeting manufacturer specifications with >98% uptime with appropriate penalties if this guarantee is not met.
- b. **Response Time.** WellStar prefers a response time for any service request of 30 minutes if over the phone and 2 hours if an on-site visit is required.
- c. **Service Hours.** WellStar prefers service be performed by the vendor between the hours of 8:00am – 5:00pm. Additional compensation (i.e. overtime) will only be paid if WellStar approves a service call outside of these hours.
- d. **Service Reports.** A service report is required for each service occurrence and should at a minimum include the date and time of service, a description of the problem, actions taken to resolve the problem, parts replace and the name of the person performing the service.
- e. **Manuals.** WellStar requires a minimum of 2 copies of clinical operating instructions and/or service manuals at no charge.
- f. **Training.** WellStar prefers training of clinicians and/or Biomedical Technicians to be performed by vendor at no charge. Where possible Biomedical Technicians should have access to training which will allow them to be “first responders” to service calls to minimize service/maintenance costs.
- g. **Additional Warranties & Representations.** In addition to the Warranties & Representations in #9, above, other warranties WellStar prefers are as follows:

For Hardware/Equipment:

- Any hardware or equipment purchased or leased by WellStar is delivered free of liens and encumbrances.
- If dealing with substitute or re-manufactured parts, those parts need to be substantially similar to and materially comply with the originals and the product specifications.

For ASP/Web-based Services:

- The service needs to be protected using current industry-standard technology, including appropriate security measures, firewalls and safeguards to protect WellStar information.
- WellStar requires that data centers housing WellStar information be located within continental North America and not be removed off-shore without prior notice to and consent of WellStar.

- h. **License Grant.** Ensure the license granted for the software is broad enough to cover the appropriate WellStar entities.
- i. **Acceptance Testing.** Warranty and/or maintenance periods should not begin until after WellStar has accepted the product in writing after appropriate acceptance testing.

19. Professional Services.

- a. **Expenses.** WellStar expects caps to be placed on travel, hotel and meal expenses. WellStar will not pay for postage and copying expenses and the like as they represent the cost of the vendor doing business.
- b. **Payment.** Payment for consulting services requires appropriate documentation to support hours worked by the consultant. Payment for customizations or specially-ordered products need to be spread out and paid at successful completion of previously agreed upon milestones.
- c. **Customizations.** WellStar owns the intellectual property rights to any and all customized or specially-ordered products as a work made-for-hire under applicable copyright and patent laws.
- d. **SOW's.** WellStar prefers to enter into Master Agreements if dealing with a vendor more than once. WellStar prefers additional engagements with the vendor to be undertaken using a Statement of Work (SOW). Each subsequent SOW must reference the Master Agreement and be subject to the terms and conditions of the Master Agreement.
- e. **Change Orders.** WellStar requires change orders to reflect changes in scope, particularly for custom-made software or products. Change Orders help ensure that there is no misunderstanding as to what is expected in terms of functionality for the purchase price.
- f. **Service Warranty.** Include Service warranty language to address security, data and other issues.
- g. **I.T. Insurance.** I.T. agreements require insurance for errors and omissions and network security/privacy.

EXHIBIT

WellStar Legal Names and Entities

<u>Corporate Facility</u>	<u>Address</u>
WellStar Health System, Inc.	793 Sawyer Road Marietta, GA 30062
<u>Acute Care Facilities</u>	
Cobb Hospital, Inc.	3950 Austell Road Austell, GA 30106
Douglas Hospital, Inc.	8954 Hospital Drive Douglasville, GA 30134
Kennestone Hospital, Inc.	677 Church Street Marietta, GA 30060
Kennestone Hospital, Inc. d/b/a WellStar Windy Hill Hospital	2540 Windy Hill Road Marietta, GA 30067
Paulding Medical Center, Inc.	2518 Jimmy Lee Smith Pkwy Hiram, GA 30141
WellStar AMC Off-Site Warehouse <i>(Effective 04/01/2016)</i>	3550 Southside Industrial Parkway Atlanta, Georgia 30354
WellStar Atlanta Medical Center, Inc. - Main Campus <i>(Effective 04/01/2016)</i>	303 Parkway Drive NE Atlanta, Georgia 30312-1212
WellStar Atlanta Medical Center, Inc. - South Campus <i>(Effective 04/01/2016)</i>	1170 Cleveland Avenue East Point, Georgia 30344
WellStar Health System, Inc. d/b/a WellStar Distribution Center	1045 Cobb Parkway N. Marietta, GA 30062
WellStar North Fulton Hospital, Inc. <i>(Effective 04/01/2016)</i>	3000 Hospital Boulevard Roswell, Georgia 30076-4915
WellStar Spalding Regional Hospital, Inc. <i>(Effective 04/01/2016)</i>	601 South 8th Street Griffin, Georgia 30224-4213
WellStar Sylvan Grove Hospital, Inc. <i>(Effective 04/01/2016)</i>	1050 McDonough Road Jackson, Georgia 30233-1524

Other Facilities**Address**

Kennestone Hospital, Inc. d/b/a Atherton Place	111 Tower Road NE Marietta, GA 30060
Kennestone Hospital, Inc. d/b/a WellStar Health Place	330 Kennestone Hospital Boulevard Marietta, GA 30060
Kennestone Hospital, Inc. d/b/a WellStar Windy Hill Apothecary	2540 Windy Hill Road Marietta, GA 30067
Paulding Medical Center, Inc. d/b/a Paulding Nursing Center	600 West Memorial Drive Dallas, GA 30132
WellStar Health System, Inc. d/b/a WellStar Homecare	805 Sandy Plains Road Marietta, GA 30066
WellStar Health System, Inc. d/b/a WellStar Hospice	4440 Hospital West Drive Austell, GA 30106
WellStar Health System, Inc. d/b/a WellStar Medical Group	793 Sawyer Road Marietta, GA 30062
WellStar Pediatric Imaging Center (Kennestone)	1180 Ernest Barrett Pkwy Kennesaw, GA 30144