

## BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (the "Agreement") is made and entered into effective as of \_\_\_\_\_, 2020, ("Effective Date") by and between **WELLSTAR HEALTH SYSTEM, INC.**, ("Covered Entity"), and \_\_\_\_\_ ("Business Associate").

### WITNESSETH:

**WHEREAS**, Sections 261 through 264 of the Federal Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, known as "the Administrative Simplification provisions," direct the Department of Health and Human Services to develop standards to protect the security, confidentiality and integrity of health information;

**WHEREAS**, the Secretary of Health and Human Services has issued regulations modifying the Privacy, Security, Breach Notification and Enforcement Rules at 45 C.F.R. Part 160 and Part 164, as may be amended from time to time (the "HIPAA Rules");

**WHEREAS**, Covered Entity and Business Associate have or will enter into certain agreement(s) whereby Business Associate will provide services to or on behalf of Covered Entity as specified therein (the "Services Agreement");

**WHEREAS**, pursuant to such Services Agreement, Business Associate is considered a "business associate" of Covered Entity as defined in the HIPAA Rules;

**WHEREAS**, Business Associate may have access to or receive Protected Health Information, as that term is defined herein, from Covered Entity as a result of providing such services; and

**WHEREAS**, to protect such Protected Health Information from inappropriate accesses, Uses and Disclosures, the parties wish to establish a business associate relationship;

**NOW THEREFORE**, in consideration of the mutual promises stated herein, compliance with the HIPAA Rules, for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties, intending to be legally bound, agree as follows:

## 1. DEFINITIONS.

The following terms used in this Agreement shall have the same meaning as those terms in the HIPAA Rules:

- Breach
- Data Aggregation
- Designated Record Set
- Disclosure
- Health Care Operations
- Individual
- Minimum Necessary
- Notice of Privacy Practices
- Protected Health Information
- Required by Law
- Secretary
- Security Incident
- Subcontractor
- Unsecured Protected Health Information
- Use

(a) Business Associate. "Business Associate" shall generally have the same meaning as the term "business associate" in 45 C.F.R. 160.103.

(b) Covered Entity. "Covered Entity" shall generally have the same meaning as the term "covered entity" at 45 C.F.R. 160.103.

(c) HIPAA Rules. "HIPAA Rules" shall mean the Privacy, Security, Breach Notification, HITECH, Omnibus Final Rule and Enforcement Rules at 45 C.F.R. Part 160 and Part 164.

## 2. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE

Business Associate agrees to:

- (a) Not use or disclose Protected Health Information other than as permitted or required by the Agreement or as Required by Law.
- (b) Use appropriate safeguards and comply with Subpart C of 45 C.F.R 164 with respect to electronic Protected Health Information, to prevent Use or Disclosure of Protected Health Information other than as provided for by the Agreement;
- (c) Report to Covered Entity within ten (10) business days any Use or Disclosure of Protected Health Information not provided for by the Services Agreement of which it becomes aware, including Breaches of Unsecured Protected Health

Information as required at 45 C.F.R. 164.410, and any Security Incident of which it becomes aware;

- (d) In accordance with 45 C.F.R. 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, ensure that any Subcontractors that create, receive, maintain, or transmit Protected Health Information on behalf of the Business Associate execute a HIPAA-compliant business associate agreement that is substantially consistent with the same restrictions, conditions, and requirements that apply to the Business Associate with respect to such information;
- (e) Make available Protected Health Information in a Designated Record Set to the Covered Entity, in a time and manner mutually agreed upon by the parties, as necessary to satisfy Covered Entity's obligations under 45 C.F.R. 164.524;
- (f) Make any amendment(s) to Protected Health Information in a Designated Record Set as directed or agreed to by the Covered Entity pursuant to 45 C.F.R. 164.526, or take other measures as necessary to satisfy Covered Entity's obligations under 45 C.F.R. 164.526;
- (g) Maintain and make available the information required to provide an accounting of disclosures to the covered entity as necessary to satisfy Covered Entity's obligations under 45 C.F.R. 164.528;
- (h) To the extent the Business Associate is to carry out one or more of Covered Entity's obligations under Subpart E of 45 C.F.R. Part 164, comply with the requirements of Subpart E that apply to the Covered Entity in the performance of such obligations; and
- (i) Make its internal practices, books, and records available to the Secretary for purposes of determining compliance with the HIPAA Rules.

### **3. PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE**

- (a) Business Associate may only use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of Covered Entity as specified in the Services Agreement.
- (b) Business Associate may use or disclose Protected Health Information as Required by Law.
- (c) Business Associate agrees not to make Uses and Disclosures and requests for Protected Health information in any manner that would exceed that which is minimally necessary or would violate this Agreement or the HIPAA Rules if done by either Covered Entity or Business Associate.

(d) Business Associate may not use or disclose Protected Health Information in a manner that would violate Subpart E of 45 C.F.R. 164 if done by Covered Entity except for the specific Uses and Disclosures set forth below:

(1) Business Associate may use Protected Health Information for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate, provided the Disclosures are Required by Law, or the Business Associate obtains reasonable assurances from the person to whom the information is disclosed that the information will remain confidential and be used or further disclosed only as Required by Law or for the purposes 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.

(2) Business Associate may provide Data Aggregation services relating to the Health Care Operations of the Covered Entity as permitted by 45 C.F.R. 164.504(e)(2)(i)(B).

#### **4. OBLIGATIONS OF THE COVERED ENTITY**

(a) Covered Entity shall notify Business Associate of any limitation(s) in the Notice of Privacy Practices of Covered Entity under 45 C.F.R. 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 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 C.F.R. 164.522, to the extent that such restriction may affect Business Associate's Use 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 C.F.R. 164, if done by Covered Entity.

## 5. TERM AND TERMINATION

- (a) Term. The term of this Agreement shall be effective as of the effective date and shall terminate upon the termination of the Services Agreement or on the date Covered Entity terminates for cause as authorized in paragraph (b) of this Section, whichever is sooner.
- (b) Termination for Cause. Business Associate authorizes termination of this Agreement by Covered Entity, if Covered Entity determines Business Associate has violated a material term of the Agreement and Business Associate has not cured the breach or ended the violation within the time specified by Covered Entity.
- (c) Obligations of Business Associate Upon Termination. Upon termination of this Agreement for any reason, Business Associate, with respect to Protected Health Information received from Covered Entity, or created, maintained or received by Business Associate on behalf of Covered Entity, shall:
1. Retain only that Protected Health Information which is necessary for Business Associate to continue its proper management and administration or to carry out its legal responsibilities;
  2. Return to Covered Entity, if feasible, the remaining Protected Health Information that the Business Associate still maintains in any form;
  3. Continue to use appropriate safeguards and comply with Subpart C of 45 C.F.R. Part 164 with respect to electronic Protected Health Information to prevent Use or Disclosure of Protected Health Information, other than as provided for in this Section, for as long as Business Associate retains the Protected Health Information;
  4. Not use or disclose the Protected Health Information maintained by Business Associate other than for the purposes for which such Protected Health Information was retained and subject to the same conditions set out under Section 3 of this Agreement, which applied prior to termination; and
  5. Return to Covered Entity, if feasible, the Protected Health Information retained by Business Associate when it is no longer needed by Business Associate for its proper management and administration or to carry out its legal responsibilities.
- (d) The obligations of Business Associate under this Section shall survive the termination of this Agreement.

## 6. MISCELLANEOUS

- (a) Regulatory References. A reference in this Agreement to a section in the HIPAA Rules means the section as in effect or as amended.

- (b) Amendment. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for compliance with the requirements of the HIPAA Rules and any other applicable law.
- (c) Interpretation. Any ambiguity in this Agreement shall be interpreted to permit compliance with the HIPAA Rules.
- (d) Scope. The Parties agree that the terms of this Agreement apply to any relationship or agreement, existing now or arising in the future, between Business Associate and Covered Entity related to the Use and/or Disclosure of Protected Health Information.
- (e) Entire Agreement. This Agreement is the complete and exclusive statement of the understanding of the parties with respect to the subject matter hereof and hereby supersedes any prior written or verbal proposals, agreements, understandings or discussions with respect to same. This Agreement shall not be limited in any way by any provisions in the Services Agreement. This Agreement may not be modified or amended except by written agreement executed by authorized representatives of both parties.
- (f) Survival. The respective rights and obligations of Business Associate under Section 6 of this Agreement shall survive the termination of this Agreement.

**IN WITNESS WHEREOF**, the parties have executed this Agreement by their duly authorized officers effective the date and year first above written.

**COVERED ENTITY:**  
**WELLSTAR HEALTH SYSTEM, INC.**

**BUSINESS ASSOCIATE:**  
 By: \_\_\_\_\_

Name: Beth A. Kost  
 Title: SVP & Chief Compliance Officer

Name: \_\_\_\_\_  
 Title: \_\_\_\_\_

Address: Wellstar Health System, Inc.  
 793 Sawyer Road  
 Marietta, GA 30062

Address: \_\_\_\_\_  
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