

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (the "Agreement") is made and entered into effective as of _____, 20__, ("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, pursuant to the Administrative Simplification provisions, the Secretary of Health and Human Services has issued regulations modifying 45 CFR Parts 160 and 164, as may be amended from time to time (the "HIPAA Privacy Rule");

WHEREAS, pursuant to the Health Information Technology for Economic and Clinical Health Act as may be amended from time to time (the "HITECH Act") additional standards to protect the security, confidentiality and integrity of health information have been enacted;

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 Privacy Rule;

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 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 Privacy Rule and Security Rule and the HITECH Act, and 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.

Terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in the Privacy Rule or Security Rule.

1.1 “Breach” shall have the same meaning as the term “breach” in 45 C.F.R. 164.402.

1.2 “Business Associate” shall have the same meaning as the term “business associate” in 45 C.F.R. 160.103.

1.3 “HITECH Act” shall mean the Health Information Technology for Economic and Clinical Health Act, Subtitle D.

1.4 “Individual” shall have the same meaning as the term “individual” in C.F.R. 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. 164.502(g).

1.5 “Privacy Rule” shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. part 160 and part 164, subparts A and E, as amended from time to time.

1.6 “Protected Health Information” or “PHI” shall have the same meaning as the term “protected health information” in 45 C.F.R. 160.103, limited to the information created or received by Business Associate from or on behalf of Covered Entity.

1.7 “Security Incident” shall have the same meaning as the term “security incident” in C.F.R. 164.304.

1.8 “Security Rule” shall mean the Health Insurance Reform Security Standards at 45 CFR parts 160, 162 and 164, as may be amended from time to time.

1.9 “Required By Law” shall have the same meaning as the term “required by law” in 45 C.F.R. 164.103.

1.10 “Secretary” shall mean the Secretary of the Department of Health and Human Service or his designee.

1.11 “Unsecured Protected Health Information” or “Unsecured PHI” shall have the same meaning as the term “unsecured protected health information” in 45 C.F.R. 164.402.

2. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE.

2.1 Nondisclosure. Business Associate agrees to not use or disclose PHI other than as permitted or required by the Agreement, the HITECH Act or as Required By Law.

2.2 Safeguards. Business Associate agrees to implement and use administrative, physical and technical safeguards to reasonably and appropriately protect the confidentiality, integrity and security of the PHI that it creates, receives, maintains, or transmits on behalf of Covered Entity as required by the Privacy Rule, Security Rule and HITECH Act; and to prevent use or disclosure of the PHI other than as provided for by this Agreement.

2.3 Security Rule Applicable. Business Associate understands and agrees that, as of February 18, 2010, the administrative, physical, and technical standards, and implementation specifications of the Security Rule (45 C.F.R. 164.308, 164.312, and 164.316), apply to the Business Associate in the same manner that it applies to the Covered Entity.

2.4 Civil and Criminal Penalties. Business Associate understands and agrees that, as of February 18, 2010, civil and criminal penalties for violation of the Security Rule shall apply to a Business Associate in the same manner as they apply to Covered Entity.

2.5 No Sale of PHI. Except as permitted in the Privacy Rule or the HITECH Act, Business Associate shall not directly or indirectly receive remuneration in exchange for an Individual's PHI unless Covered Entity has obtained a valid Authorization from the Individual including a specification of whether the PHI can be further exchanged for remuneration by the receiving entity.

2.6 Certain Communications. Except as permitted in the HITECH Act, including when Business Associate makes a communication on behalf of Covered Entity pursuant to the terms and conditions of the Services Agreement, Business Associate shall not directly or indirectly receive payment in exchange for making certain communications to Individuals about a healthcare related or third-party product or service that encourages the Individual to purchase or use the product or service unless (i) the communication describes only a drug or biologic that is currently being prescribed for the Individual of the communication; or (ii) Covered Entity obtained a valid authorization from the Individual.

2.7 Minimum Necessary. Except as otherwise permitted in the HITECH Act, Business Associate agrees to use, disclose, and request (i) to the extent practicable, only the limited data set of PHI excluding direct identifiers, as defined in 45 C.F.R 164.514(e)(2) of the Privacy Rule; or, if needed (ii) the minimum necessary PHI to accomplish the intended purpose of the use, disclosure or request. Business Associate

agrees that prior to a disclosure Business Associate shall determine what constitutes minimum necessary PHI to accomplish the intended purpose.

2.8 Mitigation. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI or Security Incident by Business Associate in violation of the requirements of this Agreement.

2.9 Report to Covered Entity. Business Associate shall, following the discovery of a privacy or security Breach of Unsecured PHI, notify Covered Entity of such Breach within ten (10) days. Such notice shall include the identification of each Individual whose Unsecured PHI has been, or is reasonably believed by the Business Associate to have been, accessed, acquired, or disclosed during such Breach.

2.10 Privacy and Security Incidents. Business Associate agrees to report to Covered Entity any Security Incident or use or disclosure of the PHI not provided for by this Agreement of which it becomes aware.

2.11 Subcontractors. Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides PHI received from, or created or received by Business Associate on behalf of Covered Entity agrees to substantially the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information and its security.

2.12 Access. To the extent applicable, Business Associate agrees to provide access, at the request of Covered Entity, and in the time and mutually agreed by the Parties, to PHI 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 C.F.R. 164.524.

2.13 Amendments. To the extent applicable, Business Associate agrees to make any amendments to PHI in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 C.F.R 164.526 at the request of Covered Entity, and in the time and manner in accordance with the terms of the Services Agreement.

2.14 Internal Records. Business Associate agrees to make internal practices, books, and records relating to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of, Covered Entity available to the Secretary, in a time and manner mutually agreed by the Parties or as designated by the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the Privacy Rule.

2.15 Document Disclosures. Business Associate agrees to document such disclosures of PHI 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 PHI in accordance with C.F.R. 164.528 and the HITECH Act.

2.16 Accounting of Disclosures. Business Associate agrees to provide to Covered Entity or an Individual, within ten (10) days, information collected in accordance with Section 3 of this Agreement, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. 164.528 and the HITECH Act.

2.17 Restrict Disclosures. Business Associate agrees to restrict disclosures of an Individual's PHI as would be required of or agreed to by Covered Entity at the request of an Individual.

2.18 Ownership. To the extent permitted by law, any and all PHI provided to or created by Business Associate shall remain the property of Covered Entity, and Business Associate's use, possession or knowledge of the PHI does not cause Business Associate to have any right, title, ownership or interest in the PHI, including de-identified information.

3. PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE.

3.1 General Uses and Disclosures. Except as otherwise limited in this Agreement, Business Associate may use or disclose PHI to perform functions, activities or services for, or on behalf of, Covered Entity as specified in the Services Agreement.

3.2 Specific Uses and Disclosures.

3.2.1 Except as otherwise limited in this Agreement, Business Associate may use PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.

3.2.2 Except as otherwise limited in this Agreement, Business Associate may disclose PHI for the proper management and administration, or to carry out the legal responsibilities, of the Business Associate, provided that disclosures are Required By Law, or 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 of 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.

3.2.3 Except as otherwise limited in this Agreement, Business Associate may use PHI to provide Data Aggregation services to Covered Entity as permitted by 45 C.F.R. 164.504(e)(2)(i)(B).

4. OBLIGATIONS OF COVERED ENTITY.

4.1 Inform Business Associate of Privacy Practices and Restrictions.

4.1.1 Covered Entity shall notify Business Associate of any limitation(s) in its notice of privacy practices of Covered Entity in accordance with 45 C.F.R. 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of PHI.

4.1.2 Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by Individual to use or disclose PHI, to the extent that such changes may affect Business Associate's use or disclosure of PHI.

4.1.3 Covered Entity shall notify Business Associate of any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 C.F.R 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.

4.1.4 Covered Entity shall obtain any consent, authorization or permission that may be required by the Privacy Rule or applicable state laws and/or regulations prior to furnishing Business Associate the PHI pertaining to an individual.

4.2 Permissible Requests by Covered Entity. Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by Covered Entity.

5. TERMINATION OF SERVICES AGREEMENT.

5.1 Termination of this Agreement for Cause. Upon Covered Entity's knowledge of a material breach by Business Associate, Covered Entity shall either:

(i) Provide an opportunity for Business Associate to cure the breach or end the violation and terminate the Services Agreement if Business Associate does not cure the breach or end the violation within the time specified by Covered Entity;

(ii) Immediately terminate the Services Agreement if Business Associate has breached a material term of this Agreement and cure is not possible;

(iii) If neither termination nor cure is feasible, Covered Entity shall report the violation to the Secretary.

5.2 Effect of Termination.

5.2.1 Except as provided in paragraph 5.2.2, upon termination of the Services Agreement, for any reason, Business Associate shall return or destroy all PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the PHI.

5.2.2 In the event that Business Associate determines that returning or destroying the PHI is infeasible, Business Associate shall provide to Covered Entity written notification of the conditions that make it infeasible. Upon receipt of written notification that return or destruction of PHI is infeasible, Business Associate shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI.

6. MISCELLANEOUS.

6.1 Regulatory References. A reference in this Agreement to a section in the Privacy Rule, Security Rule, or HITECH Act means the section as in effect or as amended.

6.2 Amendment. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Covered Entity to comply with the requirements of the Privacy Rule, Security Rule, HITECH Act and the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191.

6.3 Survival. The respective rights and obligations of Business Associate under Section 5 of this Agreement shall survive the termination of this Agreement.

6.4 Interpretation. Any ambiguity in this Agreement shall be resolved to permit Covered Entity to comply with the Privacy Rule, Security Rule or HITECH Act.

6.5 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 use and/or disclosure of PHI.

6.6 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.

6.7 Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

6.8 Severability. In the event that any provision of this Agreement is held to be invalid or unenforceable, the remaining provisions of this Agreement shall remain in full force and effect.

6.9 Choice of Law. This Agreement shall be governed by the laws of the State of Georgia.

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: _____

By: _____

Name: _____

Name: _____

Its: _____

Its: _____