Addendum E – EOHHS BAA

BUSINESS ASSOCIATE AGREEMENT ADDENDUM

Except as defined or otherwise provided in this Business Associate Agreement Addendum (this "Addendum"), **WellSky Corporation** ("Business Associate") may use, access, or disclose Protected Health Information to perform functions, activities or services for or on behalf of the State of Rhode Island, **Executive Office of Health and Human Services** ("Covered Entity"), as specified herein and in the Contract, which this Addendum supplements and is made part of, provided such use, access, or disclosure does not violate (A) the Health Insurance Portability and Accountability Act, 42 USC 1320d *et seq.*, and its implementing regulations including, but not limited to, 45 C.F.R. Parts 160, 162 and 164 (respectively, the "Privacy Rule," the "Security Rule," and patient confidentiality regulations, and collectively, "HIPAA"), (B) the requirements of the Health Information Technology for Economic and Clinical Health Act, as incorporated into the American Recovery and Reinvestment Act of 2009, Public Law 111-5, and any regulations adopted or to be adopted pursuant to the HITECH Act that relate to the obligations of business associates (the "HITECH Act"), (C) the Rhode Island Mental Health Law (R.I. Gen. Laws §§ 40.1-5-1 *et seq.*), and (D) the Confidentiality of Health Care Communications and Information Act, (R.I. Gen. Laws §§ 5-37.3-1 *et seq.*). Business Associate recognizes and agrees it is obligated by law to meet the applicable provisions of the HITECH Act.

1. Definitions.

A. Generally:

(i) Terms used, but not otherwise defined, in this Addendum shall have the same meaning as those terms in 45 C.F.R. §§ 160.103, 164.103, and 164.304, 134.402, 164.410, 164.501, and 164.502.

(ii) The following terms used in this Addendum shall have the same meanings as they have in HIPAA, the Privacy Rule, the Security Rule and the HITECH Act: 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 or Unsecured PHI, and Use.

B. Specific:

(i) "Addendum" means this Business Associate Agreement Addendum.

(ii) "Business Associate" generally has the same meaning as the term "business associate" at 45 C.F.R. § 160.103, and in reference to the party to this Addendum, shall mean [Insert Name of Business Associate].

(iii) "Contract" means the underlying contractual agreement by and between Covered Entity and Business Associate, awarded pursuant to State of Rhode Island's Purchasing Law (R.I. Gen. Laws §§ 37-2-1 *et seq.*) and Rhode

Island Department of Administration, Division of Purchases, Purchasing Rules, Regulations, and General Conditions of Purchasing.

(iv) "Covered Entity" generally has the same meaning as the term "covered entity" at 45 C.F.R. § 160.103, and in reference to the party to this Addendum, shall mean the Rhode Island Department of Health.

(v) "Electronic Protected Health Information" means PHI that is transmitted by or maintained in electronic media as defined in the Security Rule.

(vi) "Privacy Rule" means the regulations promulgated under HIPAA by the United States Department of Health and Human Services to protect the privacy of Protected Health Information, including 45 C.F.R. Part 160 and Part 164 (Subparts A and E).

(vii) "Secured PHI" means PHI that was rendered unusable, unreadable or indecipherable to unauthorized individuals through the use of technologies or methodologies specified under or pursuant to § 13402 (h)(2) of the HITECH Act.

(viii) "Security Rule" means the Standards for the security of Electronic Protected Health Information found at 45 C.F.R. Parts 160 and 164 (Subparts A and C). The application of 45 C.F.R. §§ 164.308, 164.310, 164.312, and 164.316 shall apply to Business Associate in the same manner that such sections apply to Covered Entity.

(ix) "Suspected breach" is a suspected acquisition, access, use, or disclosure of Protected Health Information (or "PHI") in violation of the Privacy Rule.

(x) "Unsecured PHI" means PHI that is not secured, as defined in this section, through the use of a technology or methodology specified by the Secretary of the U.S. Department of Health and Human Services.

(xi) "Unsuccessful Security Incident" shall mean a Security Incident that does not result in unauthorized access, use, disclosure, modification, or destruction of PHI (including, for example, and not for limitation, pings on Business Associate's firewall, port scans, attempts to log onto a system or enter a database with an invalid password or username, denial-of-service attacks that do not result in the system being taken off-line, or malware such as worms or viruses).

2. Obligations and Activities of Business Associate.

A. Business Associate agrees to not use or further disclose PHI other than as permitted or required by this Addendum or as Required By Law, provided such use or disclosure would also be permissible by law by Covered Entity.

B. Business Associate agrees to use reasonable and appropriate safeguards to prevent use or disclosure of the PHI other than as provided for by this Addendum. Business Associate agrees to implement Administrative Safeguards, Physical Safeguards and Technical Safeguards ("Safeguards") that reasonably and appropriately protect the confidentiality, integrity and availability of PHI as required by the Security Rule.

C. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate from a use or disclosure of PHI by Business Associate in violation of the requirements of this Addendum.

D. Business Associate agrees to notify Covered Entity of the discovery of any use or disclosure of PHI not provided for by this Addendum, including breaches of Unsecured PHI as required by 45 C.F.R. § 164.410, of which it becomes aware within twenty-four hours of the breach of which it becomes aware, and no less than five (5) business days, from the Security Incident of which it becomes aware.

E. Business Associate agrees to assist Covered Entity in its breach notifications to individuals, federal agencies, and potentially the media, if requested by Covered Entity, provided for the avoidance of doubt, 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 any information regarding the unintended use or disclosure.

F. Business Associate agrees to ensure that any agent, including a subcontractor or vendor, to whom it provides PHI received from, or created or received by Business Associate on behalf of Covered Entity agrees to the same or substantially similar restrictions and conditions that apply through this Addendum to Business Associate with respect to such information through a contractual arrangement that complies with 45 C.F.R. § 164.314.

G. Business Associate agrees to provide paper or electronic access, at the request of Covered Entity and in the time and manner designated by Covered Entity but in no event less than five (5) business days, 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. If the Individual requests an electronic copy of the information, Business Associate must provide Covered Entity with the information requested in the electronic form and format requested by the Individual and/or Covered Entity if it is readily producible in such form

and format; or, if not, in a readable electronic form and format as requested by Covered Entity.

H. Business Associate agrees to make any amendment(s) to PHI in a Designated Record Set that Covered Entity directs or agrees to pursuant to 45 C.F.R. § 164.526 at the request of Covered Entity or an Individual, and in the time and manner designated by Covered Entity but in no event less than five (5) business days. If Business Associate receives a request for amendment to PHI directly from an Individual, Business Associate shall notify Covered Entity upon receipt of such request.

I. Business Associate agrees to maintain reasonable written security procedures and practices, and shall make its internal written procedures, practices, books, and records relating to the use and disclosure of PHI received from, created or received by Business Associate on behalf of Covered Entity available to the Secretary, in a time and manner designated by the Secretary, for the purposes of the Secretary determining compliance with the Privacy Rule and Security Rule.

J. 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 45 C.F.R. § 164.528.

K. Business Associate agrees to provide to Covered Entity or an Individual, in a time and manner designated by Covered Entity but in no event less than five (5) business days, information collected in accordance with this Addendum, to permit Covered Entity to respond to a request by an individual for an accounting of disclosures for PHI in accordance with 45 C.F.R. § 164.528. If Business Associate accesses, maintains, retains, modifies, records, stores, destroys, or otherwise holds, uses, or discloses Unsecured Protected Health Information for Covered Entity, it shall notify Covered Entity of a Breach or Security Incident as set forth in Subsection D above. Within ten (10) days following such notification, Business Associate shall provide a report to Covered Entity of such Breach or Security Incident.. Such report shall include: (i) the identification of each individual whose Unsecured Protected Health Information has been, or is reasonably believed by Business Associate to have been accessed, acquired or disclosed during such breach; (ii) a brief description of what happened, including the date of the breach and discovery of the breach; (iii) a description of the type of Unsecured PHI that was involved in the breach; (iv) a description of the investigation into the breach, mitigation of harm to the individuals and protection against further breaches; (v) the results of any and all investigation performed by Business Associate related to the breach; and (vi) contact information of the most knowledgeable individual for Covered Entity to contact relating to the breach and its investigation into the breach. Upon learning new or additional information regarding the breach or Security Incident, Business Associate shall provide corrected supplemental information to Covered Entity.

L. To the extent Business Associate is carrying out an obligation of Covered Entity's under the Privacy Rule, Business Associate must comply with the requirements of the Privacy Rule that apply to Covered Entity in the performance of such obligation.

M. Business Associate agrees that it will not receive remuneration directly or indirectly in exchange for PHI without authorization unless an exception under 45 C.F.R. § 164.502(a)(5)(ii)(B)(2) applies.

N. Business Associate agrees that it will not receive remuneration for certain communications that fall within the exceptions to the definition of Marketing under 45 C.F.R. § 164.501, unless permitted by 45 C.F.R. § 164.508(a)(3)(A)-(B).

O. If applicable, Business Associate agrees that it will not use or disclose genetic information for underwriting purposes, as that term is defined in 45 C.F.R. § 164.502.

P. Business Associate hereby agrees to comply with state laws and rules and regulations applicable to PHI and personal information of individuals' information it receives from Covered Entity during the term of the Addendum.

(i) Business Associate agrees to: (a) implement and maintain appropriate physical, technical and administrative security measures for the protection of personal information as required by any state law and rules and regulations; including, but not limited to (i) encrypting all transmitted records and files containing personal information that will travel across public networks, and encryption of all data containing personal information to be transmitted wirelessly, (ii) prohibiting the transfer of personal information to any portable device unless such transfer has been approved in advance, and (iii) encrypting any personal information to be transferred to a portable device; and (b) implement and maintain written security procedures as required by any state law as applicable.

(ii) The Safeguards set forth in this Addendum shall apply equally to PHI, confidential and "personal information." Personal information means an individual's first name and last name or first initial and last name in combination with any one or more of the following data elements that relate to such resident: (a) Social Security number; (b) driver's license number or state-issued identification card number; or (c) financial account number, or credit or debit card number, with or without any required security code, access code, personal identification number or password, that would permit access to a resident's financial account; provided, however, that "personal information" shall not include information that is lawfully obtained from publicly available information, or from federal, state or local government records lawfully made available to the general public.

3. Permitted Uses and Disclosures by Business Associate.

   A. Except as otherwise limited to this Addendum, Business Associate may use or disclose PHI to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in the Contract, provided that such use or disclosure would not violate the Privacy Rule if done by Covered Entity or the Minimum Necessary policies and procedures of Covered Entity required by 45 C.F.R. § 164.514(d).

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

   C. Except as otherwise limited in this Addendum, Business Associate may disclose PHI for the proper management and administration of 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 for which it was disclosed to the person, and the person notifies Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

   D. Except as otherwise limited in this Addendum, 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).

   E. Business Associate may use PHI to report violations of law to appropriate Federal and State authorities, consistent with 45 C.F.R. § 164.502(j)(1).

   F. 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.

   G. Business Associate may access, use and disclose PHI for any purposes set forth herein, including patient matching and claims data sharing, to facilitate billing, payments or claims related activities by any insurance provider, payer or similar third party to Covered Entity. Business Associate may aggregate PHI with other covered entity data for the creation and maintenance of consumer or patient health records.

4. Obligations of Covered Entity.

   A. Covered Entity shall notify Business Associate of any limitation(s) in 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.

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

C. 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.

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

5. 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, provided that, to the extent permitted by the Contract, Business Associate may use or disclose PHI for Business Associate's Data Aggregation activities or proper management and administrative activities or as otherwise set forth in this Addendum or Agreement.

6. Term and Termination.

A. The term of this Addendum shall begin as of the effective date of the Contract and shall terminate when all of the PHI provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions of this Section.

B. 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 this Addendum and the Contract if Business Associate does not cure the breach or end the violation within the time specified by Covered Entity; or

(ii) Immediately terminate this Addendum and the Contract if Business Associate has breached a material term of this Addendum and cure is not possible.

C. Except as provided in Paragraph (D) of this Section, upon any termination or expiration of this Addendum, 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. Business Associate shall ensure that its subcontractors or vendors return or destroy any of Covered Entity's PHI received from Business Associate.

D. 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 return or destruction infeasible. Such written notice must be provided to Covered Entity no later than sixty (60) days prior to the expiration of this Addendum. Business Associate shall extend the protections of this Addendum 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. This provision regarding written notification shall also apply to PHI that is in the possession of subcontractors or agents of Business Associate.

7. Miscellaneous.

A. A reference in this Addendum to a section in the Privacy Rule or Security Rule means the section as in effect or as amended.

B. The Parties agree to take such action as is necessary to amend this Addendum from time to time as is necessary for Covered Entity to comply with the requirements of HIPAA, the Privacy Rule, the Security Rule, and the HITECH Act.

C. The respective rights and obligations of Business Associate under Sections 6(C) and 6(D) of this Addendum shall survive the termination of this Addendum.

D. Any ambiguity in this Addendum shall be resolved to permit Covered Entity to comply with HIPAA and the HITECH Act.

E. Business Associate is solely responsible for all decisions made by Business Associate regarding the safeguarding of PHI.

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F. Nothing express or implied in this Addendum is intended to confer, nor shall anything herein confer upon any person other than Covered Entity, Business Associate and their respective successors and assigns, any rights, remedies, obligations or liabilities whatsoever.

G. Modification of the terms of this Addendum shall not be effective or binding upon the parties unless and until such modification is committed to writing and executed by the parties hereto.

H. This Addendum shall be binding upon the parties hereto, and their respective legal representatives, trustees, receivers, successors and permitted assigns.

I. Should any provision of this Addendum be found unenforceable, it shall be deemed severable and the balance of the Addendum shall continue in full force and effect as if the unenforceable provision had never been made a part hereof.

J. This Addendum and the rights and obligations of the parties hereunder shall in all respects be governed by, and construed in accordance with, the laws of the State of Rhode Island, including all matters of construction, validity and performance.

K. All notices and communications required or permitted to be given hereunder shall be sent by certified or regular mail, addressed to the other part as its respective address as shown on the signature page, or at such other address as such party shall from time to time designate in writing to the other party, and shall be effective from the date of mailing.

L. This Addendum, including such portions as are incorporated by reference herein, constitutes the entire agreement by, between and among the parties with respect to the subject matter herein, and such parties acknowledge by their signature hereto that they do not rely upon any representations or undertakings by any person or party, past or future, not expressly set forth in writing herein.

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M. Business Associate shall maintain or cause to be maintained sufficient insurance coverage as shall be necessary to insure Business Associate and its employees, agents, representatives or subcontractors against any and all claims or claims for damages arising under this Addendum and such insurance coverage shall apply to all services provided by Business Associate pursuant to this Addendum. Subject to the limitations set forth in this Agreement and all agreements executed between the parties, Business Associate agrees to indemnify, hold harmless and defend (upon request) Covered Entity from and against any and all third party claims, losses, liabilities, costs and other expenses (including but not limited to, reasonable attorneys' fees and costs, administrative penalties and fines, costs expended to notify individuals and/or to prevent or remedy possible identity theft, financial harm, reputational harm, or any other claims of harm related to a breach) resulting solely from a breach of Unsecured PHI caused solely by the Business Associate, its employees, agents, representatives or subcontractors' negligence or intentional misconduct in material breach of this Agreement. This provision shall survive termination of this Addendum.

8. Acknowledgment.

The undersigned affirms that he/she is a duly authorized representative of Business Associate for which he/she is signing and has the authority to execute this Addendum on behalf of Business Associate.

[SIGNATURES ON NEXT PAGE]

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Acknowledged and agreed to by:

EXECUTIVE OFFICE OF HEALTH AND HUMAN SERVICES

Womazetta Jones Digitally signed by Womazetta Jones Date: 2022.03.02 16:28:35 -05'00'

AUTHORIZED AGENT

TITLE Secretary

Womazetta Jones
Printed Name

Date

WELLSKY CORPORATION:

Stephen Greenberg

AUTHORIZED AGENT

TITLE SVP Human and Social Services

Stephen Greenberg
Printed Name

2/28/2022 | 1:55 PM CST

Date