

Sherry Tucker  
CEO

## **BUSINESS ASSOCIATE AGREEMENT**

This Business Associate Agreement (the "Agreement") is effective as of \_\_\_\_\_ (the "Agreement Effective Date") by and between WellLife Network Inc. and its affiliates ("Covered Entity") and \_\_\_\_\_ ("Business Associate").

### **RECITALS**

WHEREAS, Covered Entity has engaged Business Associate to perform services or provide goods, or both;

WHEREAS, Covered Entity possesses Individually Identifiable Health Information that is protected under HIPAA (as hereinafter defined) and the HIPAA Regulations (as hereinafter defined), and is permitted to use or disclose such information only in accordance with HIPAA and the HIPAA Regulations;

WHEREAS, Business Associate may receive such information from Covered Entity, or create and receive such information on behalf of Covered Entity, in order to perform certain of the services or provide certain of the goods, or both; and

WHEREAS, Covered Entity wishes to ensure that Business Associate will appropriately safeguard Individually Identifiable Health Information.

NOW, THEREFORE, Covered Entity and Business Associate agree as follows:

1. **Definitions.** The parties agree that the following terms, when used in this Agreement, shall have the following meanings, provided that the terms set forth below shall be deemed to be modified to reflect any changes made to such terms from time to time as defined in HIPAA and the HIPAA Regulations.
  - a. "*HIPAA*" means the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191.
  - b. "*HIPAA Regulations*" means the regulations promulgated under HIPAA by the United States Department of Health and Human Services, including, but not limited to, 45 C.F.R. Part 160 and 45 C.F.R. Part 164.
  - c. "*Covered Entity*" means a health plan (as defined by HIPAA and the HIPAA Regulations), a health care clearinghouse (as defined by HIPAA and the HIPAA Regulations), or a health care provider (as defined by HIPAA and the HIPAA Regulations) who transmits any health information in electronic form in connection with a transaction covered by the HIPAA Regulations.
  - d. "*Business Associate*" The term "Business Associate" (abbreviated as ("BA")) means, with respect to a Covered Entity, a person who: 1.) On behalf of such Covered Entity or of an organized health care arrangement (as defined in this section) in which the Covered Entity participates, but other than in the capacity of a member of the

workforce of such Covered Entity or arrangement, creates, receives, maintains, or transmits protected health information for a function or activity regulated by this subchapter, including claims processing or administration, data analysis, processing or administration, utilization review, quality assurance, patient safety activities listed at 42 CFR 3.20, billing, benefit management, practice management, and repricing; or, 2.) Provides, other than in the capacity of a member of the workforce of such Covered Entity, legal, actuarial, accounting, consulting, data aggregation (as defined in § 164.501 of this subchapter), management, administrative, accreditation, or financial services to or for such Covered Entity, or to or for an organized health care arrangement in which the covered entity participates, where the provision of the service involves the disclosure of protected health information from such Covered Entity or arrangement, or from another Business Associate of such Covered Entity or arrangement, to the person.

Business Associates, under the 2013 HIPAA Final Rule amendments, include the following:

- Subcontractors.
  - Patient safety organizations.
  - HIOs - Health Information Organizations, including Health Information Exchanges (HIEs) and regional Health Information Organizations.
  - E-Prescribing gateways.
  - PHRs - Personal Health Record vendors that provide services on behalf of a covered entity. PHR vendors that do not offer PHRs on behalf of CEs are not BAs.
  - Other firms or persons who "facilitate data transmission" that requires routine access to PHI.
- e. "Secretary" refers to the Secretary of the U.S. Department of Health and Human Services
- f. "Individually Identifiable Health Information" means information that
1. is a subset of health information, including demographic information collected from an individual, and;
  2. is created or received by a health care provider, health plan, employer, or health care clearinghouse; and
  3. relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and
    - that identifies the individual; or
    - with respect to which there is a reasonable basis to believe the information can be used to identify the individual.

- g. "Protected Health Information" or "PHI" means Individually Identifiable Health Information that is transmitted by electronic media; maintained in any medium described in the definition of the term *electronic media* in the HIPAA Regulations; or transmitted or maintained in any other form or medium. Protected Health Information excludes Individually Identifiable Health Information in education records covered by the Family Educational Right and Privacy Act, as amended, 20 U.S.C. § 1232g, and records described at 20 U.S.C. § 1232g(a)(4)(B)(iv).
- h. "Data Aggregation" means, with respect to PHI created or received by a Business Associate in its capacity as the Business Associate of a Covered Entity, the combining of such PHI by the Business Associate with the PHI received by the Business Associate in its capacity as a Business Associate of another Covered Entity, to permit data analyses that relate to the health care operations of the respective Covered Entities.

**2. Status of Parties.** Business Associate hereby acknowledges and agrees that WellLife Network Inc. and its affiliates are a Covered Entity and that Business Associate is a business associate of Covered Entity.

**3. Permitted Uses and Disclosures.**

- a. [Performance of Services.] Business Associate may use and disclose PHI received from, or created or received on behalf of, Covered Entity only in connection with the performance of the services listed in **Exhibit A** annexed to this Agreement.
- b. [HIV-related Information.] Business Associate hereby acknowledges and agrees that Covered Entity has notified Business Associate that it is required to comply with the confidentiality, disclosure and re-disclosure requirements of 10 NYCRR Part 63.

Business Associate hereby acknowledges and agrees that Covered Entity has notified Business Associate that it is required to comply with the confidentiality and disclosure requirements of 14 NYCRR Part 309 and Part 1072. Business Associate further agrees to access HIV-related information only in accordance with Covered Entity's policies and participate in training and education consistent with the requirements of 14 NYCRR Part 309 and Part 1072.

- c. [Alcohol and Substance Abuse information.] Business Associate hereby agrees to maintain no information that contains patient-identifying data outside of the Covered Entity's alcohol and substance abuse program(s) premises and that it will make no further disclosure of patient-identifying data.
- d. [Proper Management and Administration.] Business Associate may use PHI received by Business Associate in its capacity as Business Associate of Covered

Entity for the proper management and administration of Business Associate in connection with the performance of services as permitted by this Agreement. Business Associate may disclose Covered Entity's PHI for the proper management and administration of Business Associate and only with the prior consent of Covered Entity. Any such disclosure of PHI shall only be made if Business Associate obtains reasonable assurances from the person to whom the PHI is disclosed that: (1) the PHI will be held confidentially and used or further disclosed only as required by law or for the purpose for which it was disclosed to the person; and (2) Business Associate will be notified by such person of any instances of which it becomes aware in which the confidentiality of the PHI has been compromised or breached.

#### **4. Obligations and Activities of Business Associate**

- a. Business Associate agrees that it is required under the amended HIPAA regulations to comply with, and shall comply with the HIPAA Security Rule, including the Security Rule's Administrative, Physical, and Technical safeguard requirements.
- b. Business Associate agrees that it is required under the amended HIPAA regulations to comply with, and shall comply with the use and disclosure provisions of the HIPAA Privacy Rule.
- c. Business Associate agrees to not use or disclose Protected Health Information other than as permitted or required by the Agreement or as required by law.
- d. Business Associate agrees that it may not use or disclose Protected Health Information in a manner that would violate Subpart E of 45 CFR Part 164 if done by Covered Entity.
- e. Business Associate agrees to use appropriate safeguards, and comply with Subpart C of 45 CFR Part 164 with respect to electronic protected health information, to prevent use or disclosure of Protected Health Information other than as provided for by this Agreement.
- f. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of any use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this Agreement
- g. Breach Disclosures to Covered Entity: Business Associate agrees to immediately report to Covered Entity any use or disclosure of Protected Health Information not provided for by this Agreement of which it becomes aware; and any security incident of which it becomes aware. Further, Business Associate agrees to notify the Covered Entity of any individual whose Protected Health Information has been inappropriately or unlawfully released, accessed, or obtained. Business Associate agrees that such notification will meet the requirements of 45 CFR 164.410 of the amended HIPAA regulations. Specifically, the following shall apply:

- i. A breach is considered discovered on the first day the Business Associate knows or should have known about it;
  - ii. In no case shall the Business Associate notify the Covered Entity of any breach later than 24 hours after a breach is discovered;
  - iii. Business Associate shall notify the Covered Entity of any and all breaches of Protected Health Information, and provide detailed information to the Covered Entity about the breach, along with the names and contact information of all individuals whose Protected Health Information was involved; and,
  - iv. For breaches determined to be caused by the Business Associate, where such breaches require notifications to patients or consumers, the cost of such breach notifications shall be borne by the Business Associate.
- h. Business Associate agrees, in accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, to ensure that any subcontractors that create, receive, maintain, or transmit Protected Health Information on behalf of the Business Associate agree to the same restrictions, conditions, and requirements that apply to the Business Associate with respect to such information.
- i. Business Associate agrees to apply HIPAA's Minimum Necessary Standard to all uses, disclosures, and requests for Protected Health Information, and to make reasonable efforts to limit the Protected Health Information to the minimum necessary to accomplish the intended purpose of the use, disclosure, or request.
- j. Business Associate agrees to provide access, at the request of Covered Entity, within one (1) business day, 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 of 45 CFR § 164.524.
- k. 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 at the request of Covered Entity or an Individual, within three (3) business days.
- l. Business Associate will make its 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 Covered Entity or, at the request of Covered Entity to the Secretary, in a time and manner designated by Covered Entity, or, the Secretary, for purposes of the Covered Entity or the Secretary determining Covered Entity's compliance with the HIPAA Privacy Rule and Security Rule.
- m. 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.

- n. Business Associate agrees to provide to Covered Entity or an Individual, in time and manner Insert Negotiated Terms, if any, information collected in accordance with Section Insert Section Number in Contract Where Provision (i) Appears of this Agreement, 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.
- o. Business Associates who are subject to the “Red Flags” Rule agree to comply with the requirements of the “Red Flags” Rule and implement a compliant identity theft prevention program by or before the required “Red Flags” Rule compliance date, and ongoing thereafter.

**5. Medicaid Confidential Data: Obligations Arising From the DEAA.** (Additional Obligations for Business Associates who receive, access, use, create or disclose Medicaid Confidential Data)

- a. Covered Entity is covered under a Data Exchange Application and Agreement (DEAA and addenda to the DEAA with DOH regarding storage and transmission of Medicaid Confidential Data “MCD”). The federal Center for Medicare and Medicaid Services (CMS) requires that all contracts and/or agreements executed between DOH and any second party that will receive MCD must include contract language that will bind such parties to ensure that all contractors and subcontractors abide by the regulations and laws that govern the protection of individual MCD.

MCD/PHI includes all information about a recipient or applicant, including enrollment information, eligibility data and protected health information. Subcontractor must comply with the following state and federal laws and regulations:

- Section 367-b(4) of the NY Social Services Law
- New York State Social Services Law Section 369 (4)
- Article 27-F of the New York Public Health Law and 18 NYCRR 360-8.1
- Social Security Act, 42 USC 1396a (a)(7)
- Federal regulations at 42 CFR 431.302, 42 CFR Part 2
- The Health Insurance Portability and Accountability Act (HIPAA), at 45 CFR Parts 160 and 164
- Section 33.13 of the New York State Mental Hygiene Law.



Please note that MCD may contain AIDS/HIV related confidential information as defined in Section 2780(7) of the New York Public Health Law. As required by New York Public Health Law Section 2782(5), the following notice is provided:

"This information has been disclosed to you from confidential records which are protected by state law. State law prohibits you from making any further disclosure of this information without the specific written consent of the person to whom it pertains, or as otherwise permitted by law. Any unauthorized further disclosure in violation of state law may result in a fine or jail sentence or both. A general authorization for the release of medical or other information is NOT sufficient authorization for the release for further disclosure."

Alcohol and Substance Abuse Related Confidentiality Restrictions:

Alcohol and substance abuse information is confidential pursuant to 42 CFR Part 2. General authorizations are ineffective to obtain the release of such data. The federal regulations provide for a specific release for such data.

- b. Business Associate agrees to ensure that any agent, including a subcontractor, to whom Business Associate provides MCD/PHI, agrees to the same restrictions and conditions that apply throughout this Agreement. Further, Business Associate agrees to state in any such agreement, contract or document that the party to whom Business Associate is providing the MCD/PHI may not further disclose it without the prior written approval of the New York State Department of Health. Business Associate agrees to include the notices preceding, as well as references to statutory and regulatory citations set forth above, in any agreement, contract or document that Business Associate enters into that involves MCD/PHI.
- c. Medicaid Confidential Data: Additional DEAA Obligations. Business Associate may not use or disclose MCD without the prior written approval of the New York State Department of Health. Business Associate shall comply with any and all applicable DOH requirements regarding MCD and the obligations imposed on subcontractors in the Business Associate-DOH Agreement.

## **6. Availability of PHI**

- a. Business Associate agrees to make available Protected Health Information to the extent and in the manner required by Section 164.524 of the HIPAA Privacy Rule.
- b. Business Associate agrees to make Protected Health Information available for amendment and incorporate any amendments to Protected Health Information in accordance with the requirements of Section 164.526 of the HIPAA Privacy Rule.

- c. In addition, Business Associate agrees to make Protected Health Information available for purposes of accounting for disclosures, as required by Section 164.528 of the HIPAA Privacy Rule.

## **7. Termination**

Notwithstanding anything in this Agreement to the contrary, Covered Entity shall have the right to terminate this Agreement immediately if Covered Entity determines that Business Associate has violated any material term of this Agreement. If Covered Entity reasonably believes that Business Associate will violate a material term of this Agreement and, where practicable, Covered Entity gives written notice to Business Associate of such belief within a reasonable time after forming such belief, and Business Associate fails to provide adequate written assurances to Covered Entity that it will not breach the cited term of this Agreement within a reasonable period of time given the specific circumstances, but in any event, before the threatened breach is to occur, then Covered Entity shall have the right to terminate this Agreement immediately.

Upon termination of this Agreement for any reason, Business Associate agrees to return to Covered Entity (or, if agreed to by Covered Entity, destroy) all Protected Health Information received from Covered Entity, or created, maintained, or received by Business Associate on behalf of Covered Entity, that the Business Associate still maintains in any form. Business associate shall retain no copies of the Protected Health Information in any form or medium.

## **8. Miscellaneous Terms**

Except as expressly stated herein or in the HIPAA Rules, the parties to this Agreement do not intend to create any rights in any third parties. The obligations of Business Associate under this Section shall survive the expiration, termination, or cancellation of this Agreement, and/or the business relationship of the parties, and shall continue to bind Business Associate, its agents, employees, contractors, successors, and assigns as set forth herein.

This Agreement may be amended or modified only in a writing signed by the Parties. No Party may assign its respective rights and obligations under this Agreement without the prior written consent of the other Party. None of the provisions of this Agreement are intended to create, nor will they be deemed to create any relationship between the Parties other than that of independent parties contracting with each other solely for the purposes of effecting the provisions of this Agreement and any other agreements between the Parties evidencing their business relationship. This Agreement shall be governed by the



laws of the State of New York. No change, waiver or discharge of any liability or obligation hereunder on any one or more occasions shall be deemed a waiver of performance of any continuing or other obligation, or shall prohibit enforcement of any obligation, on any other occasion. The parties agree that, in the event that any documentation of the arrangement pursuant to which Business Associate provides services to Covered Entity contains provisions relating to the use or disclosure of Protected Health Information which are more restrictive than the provisions of this Agreement, the provisions of the more restrictive documentation will control. The provisions of this Agreement are intended to establish the minimum requirements regarding Business Associate's use and disclosure of Protected Health Information.

In the event that any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of the provisions of this Agreement will remain in full force and effect. In addition, in the event a party believes in good faith that any provision of this Agreement fails to comply with the then-current requirements of the HIPAA Privacy Rule or Security Rule, such party shall notify the other party in writing. For a period of up to thirty days, the parties shall address in good faith such concern and amend the terms of this Agreement, if necessary to bring it into compliance. If, after such thirty-day period, the Agreement fails to comply with the requirements of the HIPAA Privacy Rule and Security Rule, then either party has the right to terminate upon written notice to the other party.

**Exhibit A**  
Description of Services

**or**

services set forth in the following contract:

Contract dated \_\_\_\_\_

Between \_\_\_\_\_ and \_\_\_\_\_

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the Agreement Effective Date.

WellLife Network Inc.

\_\_\_\_\_  
Name of Covered Entity

\_\_\_\_\_  
Name of Business Associate

By:

\_\_\_\_\_  
Signature of Authorized Representative

\_\_\_\_\_  
Signature of Authorized Representative

Melvin Masula

\_\_\_\_\_  
Name of Authorized Representative

\_\_\_\_\_  
Name of Authorized Representative

Director of Information Technology

\_\_\_\_\_  
Title of Authorized Representative

\_\_\_\_\_  
Title of Authorized Representative