

**#13331 AGREEMENT ON MEDICAL CARE CLAIMS
FOR ARRESTEES OR DETAINEES BETWEEN
ALACHUA COUNTY AND
WELLPATH LLC**

THIS AGREEMENT (the “Agreement”), made by and between Alachua County, a charter county and political subdivision of the State of Florida, by and through its Board of County Commissioners (the “County”), and WELLPATH LLC., a Foreign Limited Liability Company, (“WELLPATH”) with a principle business address of 1283 Murfreesboro Pike Suite 500 Nashville, TN 37217, is entered into as of the 16th day of February, 2022. The County and WELLPATH shall hereinafter be collectively referred to as the “Parties” or individually as “Party”.

WITNESSETH:

WHEREAS, WELLPATH has entered into an agreement with the Alachua County Sheriff’s Office (“Sheriff”), dated February 1, 2022, to provide health services to persons remanded to the Sheriff’s care, custody, and control (the “WELLPATH-Sheriff Health Services Agreement”); and

WHEREAS, as part of the WELLPATH-Sheriff Health Services Agreement, WELLPATH has also agreed to be responsible for the clinical management of individuals (hereinafter referred to as “Arrestees” or “Detainees”) who, during the arresting process by any state, county, or municipal law enforcement officer, sustain an injury at the time of a lawful arrest in Alachua County for a state or County violation, or are found to have a pre-existing illness, and are immediately transported by the arresting agency to a designated hospital or medical facility prior to normal processing of such detainee into the Alachua County Jail (the “Jail”); and

WHEREAS, the County is financially responsible for the costs of health care services rendered to such “Arrestees” or “Detainees” and desires to enter its own contract with WELLPATH for clinical management of “Arrestees” or “Detainees” medical care and to reimburse WELLPATH for its costs in accordance with the terms of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and promises hereinafter made, the parties hereto agree as follows:

1. **Definitions.**

A. “Detainee” and “Arrestee” refer to an individual who, during the arrest process by any state, county or municipal law enforcement officer in Alachua County for a violation of a state statute or County ordinance, sustains an injury at the time of a lawful arrest or is found to have a pre-existing condition or are found to subsequently have a pre-existing illness for which the individual may or may not be undergoing treatment, and such individual is immediately transported from the scene of the arrest to a medical facility or is transported immediately to the Jail but is subsequently transported to a medical

facility prior to the completion of booking into the Jail due to such injury or pre-existing illness.

B. "Clinical management" means the coordination of medical screening, admission, case management and progress of a particular "Arrestee" or "Detainee" to facilitate and complete the earliest medically appropriate transfer of the "Arrestee" or "Detainee" from the off-site provider to the Jail, and the processing and payment of claims related to this care, including the examination of claims to verify their appropriate nature, necessity and amount; the application of appropriate discounts from the provider; and investigating the "Arrestee's" or "Detainee's" own ability to pay, insurance coverage, and eligibility under government payment and reimbursement programs.

2. WELLPATH Responsibilities and Compensation

A. Clinical and Claims Management

1. In return for the compensation to be paid by the Alachua County Sheriff to WELLPATH as set forth in Provision B below, WELLPATH agrees to be responsible to the County for the clinical management of medical treatment for "Arrestees" and/or "Detainees" ill or injured at or during the time of arrest in Alachua County, as defined in Section 901.35, Florida Statutes. This includes medical transport and emergency, in-patient and out-patient off-site medical treatment and care for injuries suffered during the arresting process, until the "Arrestee" or "Detainee" is booked into the custody of the jail.
2. Additionally, WELLPATH agrees to process and pay all claims related to the clinical management of the off-site medical treatment provided to the "Arrestees" and/or "Detainees".
3. Furthermore, WELLPATH agrees to process and pay all claims related to the treatment of any and all HIV/AIDS patients at the Jail, which includes, but are not limited to, medications exclusively used to treat HIV/AIDS, viral load testing, CD4's, and genotyping for HIV/AIDS positive patients (hereinafter "HIV/AIDS Treatment Expenses"). WELLPATH also agrees to process and pay all claims related to the treatment of any and all Hepatitis patients, which includes medications exclusively used to treat Hepatitis (hereinafter "Hepatitis Treatment Expenses"). HIV/AIDS Treatment Expenses and Hepatitis Treatment Expenses are not limited to "Arrestees"/"Detainees" but rather extend to individuals who have been booked into the custody of the Jail. The obligations contained in this provision are further delineated in Exhibit B, below.

B. Pass-Through Costs & Reimbursement to WELLPATH

Pre-booking and pre-existing condition care are pass-throughs for which the COUNTY has a reimbursement obligation to include: (a) costs associated with events prior to booking, and (b) pre-existing disease/conditions, known or diagnosed prior to booking (by way of example to include, but not be limited to pregnancy, HIV, cancer and dialysis etc.).

1. Invoicing & Prompt Reimbursement.

The County agrees to promptly reimburse WELLPATH for its costs incurred for paying claims for detainee health care services in accordance with this Agreement.

WELLPATH will invoice the County on a monthly basis for all claims from off-site medical providers for detainee medical care paid by WELLPATH (“paid claims”) and the County will remit payment to WELLPATH for all paid claims within forty-five (45) days of receiving the invoice.. However, in the event off-site medical providers dispute or seek payment related to claims from any prior contract year, and WELLPATH is deemed liable to make payment and does make payment, the County will reimburse WELLPATH for such amounts paid. WELLPATH will inform the County of any invoices or demands received after the Agreement terminates; the parties agree to reconcile within one hundred and eighty (180) days following termination.. This Section shall survive the expiration or earlier termination of this Agreement.

WELLPATH and County acknowledge that claims will be received by WELLPATH during and after the expiration of this Agreement. WELLPATH shall ensure that all claims are paid in accordance with section 627.6131, F.S., but cannot ensure that all claims will be received from providers and submitted to the County before the termination date of this Agreement. Thus, WELLPATH and County agree that County shall pay WELLPATH for all claims received and paid in accordance with the Agreement, provided said claims are not barred by the applicable statute of limitations.

2. Third Party Reimbursement.

A. WELLPATH will seek and document detainee information concerning any health insurance the detainee might have that would cover services rendered by non-WELLPATH providers, and the County will cooperate fully with WELLPATH in its efforts to secure this information. WELLPATH will be responsible for the provision of personnel for the collection and coordination of information on all potential third party payment efforts made by outside medical providers. WELLPATH will not make payment for any offsite detainee health care until all known available third party payment efforts have been exhausted. WELLPATH will require that anyone acting on its behalf and request that any third party providing any medical service to a detainee will seek reimbursement for any such medical services, as allowed by federal and state law and in accordance with the provisions of F.S. 901.35 (2005).

B. The parties agree that Medicaid is not an available outside payment source for “Arrestees” or “Detainees”.

C. The parties agree that Medicare reimbursement is not available for healthcare services rendered to detainees otherwise qualified for Medicare unless the County holds such detainees responsible for the costs of their healthcare as contemplated by F.S. 901.35 (2005) and uniformly pursues collection of healthcare costs from detainees as vigorously as the County pursues collection of other debts to the County in accordance with 42 C.F.R. § 411.4(b). The County will have full operational responsibility for

collection efforts against detainees and for certifying to outside medical providers that collection efforts have been made in accordance with 42 C.F.R. § 411.4(b). WELLPATH will assist the County's program by coordinating the flow of reimbursement and collection information and documentation between the County and outside medical providers. If deemed necessary, the parties will enter into a written amendment to this Agreement to further clarify their respective duties and obligations prior to implementation of a program to pursue collection of healthcare costs from detainees.

5. **Late Payments.** The County shall pay WELLPATH interest on all payments hereunder that are not paid when due in accordance with the Florida Local Government Prompt Payment Act, section 218.70 et seq., Florida Statutes (2005).

6. **Effective Date, Term and Renewal.**

The initial term of this Agreement shall commence on February 1, 2022 (the "Commencement Date") and shall run through September 30, 2025 (the "Initial Period") unless earlier terminated in accordance with this Agreement. This Agreement may be renewed for two (2) additional one-year terms thereafter upon written mutual agreement of the parties. The aforementioned renewal periods, if approved, shall track as follows:

First Renewal Period: October 1, 2025, through September 30, 2026

Second Renewal Period: October 1, 2026, through September 30, 2027

7. **WELLPATH Financial Qualification.** WELLPATH agrees to provide notice to County within five business days of any of its Directors or Officers obtaining knowledge of any material deterioration in WELLPATH's financial conditions that could jeopardize its ability to perform under this Agreement.

8. **Amendments.** The parties may amend this Agreement only by mutual written agreement of the parties.

9. **Performance Standards.**

A. In the performance of required services, WELLPATH will utilize best industry practices to assure that the services are provided in a professional manner that is consistent with the same or similar type services being provided in the industry.

B. County reserves the right to have an independent consultant, at intervals determined by County's Office of Budget and Fiscal Services Management and Budget, review claims records for adherence to these service standards and WELLPATH shall have not less than thirty (30) days to take corrective action for any noted deficiencies. The parties agree that the duration provided for corrective action shall be reasonable in light of the circumstances; therefore, a cure period greater than thirty (30) days may be warranted and a request for such consideration will not be unreasonably withheld.

10. **Access to Relevant Non-Privileged and Non-Proprietary Records.**

A. WELLPATH shall maintain a record depository for storage of claims, including storage for hardcopy claims until imaging is completed. Standard record management and storage practices must be utilized. At a minimum the management and retention protocols of the State of Florida found at http://dlis.dos.state.fl.us/barm/rules/1B26_003FAC.cfm (Florida Administrative Code 1B-26-003) must be adhered to.

B. The County and its authorized agents will have the right to audit, inspect, and copy all such records and documentation in the custody of WELLPATH as is reasonably necessary during the period of this Agreement and during the period of six (6) years thereafter; provided, however, such activity will be conducted at County expense and during normal business hours.

C. The County, during the period of time expressed by the preceding section, will also have the right to obtain a copy of and otherwise inspect any audit made at the direction of WELLPATH as concerns the aforesaid records and documentation. Additionally, WELLPATH must provide the County, at WELLPATH's expense, a copy of any financial audit that includes the services provided under this Agreement within 180 days of the completion of each of WELLPATH's fiscal years covered by this Agreement.

D. Any medical records and other personal health information on "Arrestees" or "Detainees" who are later booked into the Alachua County Jail shall become the property of the Alachua County Sheriff and WELLPATH shall turn over such records to the Sheriff and maintain them according to its agreement with the Sheriff. At that time, such records cease to be the County's responsibility.

E. Medical Records and HIPAA. WELLPATH and the County shall comply with any prohibitions, restrictions, limitations, conditions, or other requirements to the extent applicable pursuant to the Health Insurance Portability and Accountability Act (HIPAA) and its implementing regulation concerning privacy of individual identifiable health information as set forth in 45 CFR, Parts 160-164, as amended from time to time, to detainee medical claims being managed by WELLPATH. As an addendum to this Agreement with the County, WELLPATH enters the HIPAA Business Associate Agreement, Exhibit A, attached hereto and incorporated into this Agreement.

11. **Indemnification.**

A. WELLPATH agrees to protect, defend, indemnify, and hold the County and its officers, employees and agents free and harmless from and against any and all losses, penalties, damages, settlements, costs, charges, professional fees or other expenses or liabilities of every kind and character arising out of or directly or indirectly relating to any and all claims, liens, demands, obligations, actions, proceedings or causes of action of every kind and character in connection with or arising directly or indirectly out of

WELLPATH's performance under this Agreement, except that neither WELLPATH nor any of its subcontractors shall be liable for any injury or damage caused by or resulting from the negligent acts or omissions of the County, its officers, agents and employees.

Without limiting the generality of the foregoing, any and all such claims, etc., including but not limited to personal injury, death, damage to property (including destruction) defects in materials or workmanship, actual or alleged infringement of any patent, trademark, copyright (or application for any thereof) or of any other tangible or intangible personal or property right, or any actual or alleged violation of any applicable statute, ordinance, administrative order, rule, or regulation or decree of any court, shall be included in the indemnity hereunder. WELLPATH further agrees to investigate, handle, respond to, provide defense (including payment of attorney fees up to and including any appeal) for and defend any such claim at its sole cost and expense and agrees to bear all other costs and expenses related thereto, even if they (claims, etc.) are groundless, false, or fraudulent. WELLPATH agrees that indemnification of the County shall extend to any and all work performed by WELLPATH (where there is no evidence of County negligence), its subcontractors, employees, agents, servants or assigns.

B. This obligation shall in no way be limited in any nature whatsoever by any limitation on the amount or type of WELLPATH's insurance coverage. This indemnification provision shall survive the termination of this Agreement between the County and WELLPATH.

C. Nothing contained herein shall constitute a waiver by the County of its sovereign immunity or the provisions or limitation of liability of §768.28, Florida Statutes.

12. Default and Termination

A. This Agreement will terminate automatically upon the termination of the WELLPATH-Sheriff Health Services Agreement. WELLPATH agrees to notify the County promptly of such a termination. Additionally, in the event that each of the parties mutually agrees in writing, this Agreement may be terminated on the terms and date stipulated therein.

B. The failure of either party to comply with any material provision of this Agreement shall place such party in default following the opportunity to cure. Prior to terminating this Agreement for default, the non-defaulting party shall notify the defaulting party in writing. Notification shall make specific reference to the provision which gave rise to the default.

C. The defaulting party shall have thirty (30) days in which to cure the default after receipt of written notice from the non-defaulting party. The County Manager is authorized to provide written notice of default on behalf of the County.

D. If the default situation is not corrected within the thirty (30) day cure period, the non-defaulting party is authorized to provide final termination notice. Notwithstanding the forgoing, the parties agree that based upon the facts and circumstances in real time, additional time may be agreed upon and added to the cure period (where warranted) which shall not be unreasonably withheld.

E. The County shall notify WELLPATH promptly in the event there is a reasonable likelihood that funds may not be available and the County may terminate this Agreement with no less than twenty-four hour notice in writing to WELLPATH. Notwithstanding the foregoing, the County shall endeavor to provide WELLPATH with at least 60 days prior written notice of unavailability of funds. The County shall be the final authority as to the availability of funds. The County will pay WELLPATH for all work completed, in compliance with the Agreement, prior to termination.

13. **WELLPATH Responsibility After Termination.** Upon termination of this Agreement, all of WELLPATH' responsibility for providing health care services to detainees will terminate, except that, upon termination of this Agreement, it shall be the responsibility and obligation of WELLPATH to continue to service all incurred claims as of the effective date of the termination of this Agreement until the conclusion of all such open claims, for a period not to exceed 365 days after termination, unless sooner released from the obligation by the County in writing. Claims remaining open after the effective date of termination will be handled in accordance with this Agreement, including payment by County to WELLPATH in accordance with Section 3. WELLPATH will cooperate with the County to ensure transition of services to the subsequent clinical and claims management entity.

14. **Mediation.** Any controversy or claim arising out of or relating to this contract, or the alleged breach thereof, shall be first sent to mediation for possible resolution if the parties are not able to resolve the controversy by informal negotiation. Mediation shall be in accordance with the applicable mediation provisions of the American Arbitration Association and shall consist of an informal, nonbinding conference between the parties and the mediator jointly, then in separate caucuses in which the mediator will seek to guide the parties to a resolution of the controversy. Mediation shall take place in Alachua County, Florida. Notice of the outcome of mediation shall be sent according to the Notice paragraph below. The parties agree to share equally the cost of a mediator.

15. **Notice.** Except as otherwise provided in this Agreement any notice or other communications, including any notice of default or termination from either party to the other party must be in writing and sent by certified mail, return receipt requested, or by personal delivery with receipt. Notices shall be effective upon receipt. For purposes of all notices, the representatives of the County and WELLPATH are:

County: Director
Office of Management and Budget
105 SE 1st Street, Suite 6
Gainesville, Florida 32641

WELLPATH:

WELLPATH LLC
Attention: Chief Legal Officer
1283 Murfreesboro Road
Ste. 500
Nashville, TN 37217
1-800-592-2974

And to
WELLPATH LLC
Attention: President, Local Government Division
Ste. 500
1283 Murfreesboro Road
Nashville, TN 37217

A copy of any notice, request or approval to the County must also be sent to:

J. K. (Jess) Irby Esq.
Clerk of the Court
Post Office Box 939
Gainesville, FL 32602
ATTN: Finance and Accounting

And to

Grants/Contracts Administrator
Administrative Services – Purchasing
12 SE 1st Street, 3rd Floor
Gainesville, FL 32607

16. **Non Waiver.** The failure of either party to exercise any right shall not be considered a waiver of such right in the event of any further default or non-compliance.

17. **Governing Law and Venue.** This Agreement and the rights and obligations of the parties hereto shall be governed by and construed according to the laws of the State of Florida. Venue shall be in Alachua County, Florida.

18. **Severability.** If any provision of this Agreement is declared void by a court of law, all other provisions will remain in full force and effect.

19. **Permits, Laws & Regulations.**

A. WELLPATH shall obtain and pay for all necessary permits, permit application fees, licenses or any fees required in association with the services that it is obligated to provide herein.

B. WELLPATH shall comply with all laws, ordinances, regulations and building code requirements applicable to the work contemplated in this contract. WELLPATH is presumed to be familiar with all State and local laws, ordinances, code rules and regulations that may in any way affect the work. Ignorance on the part of WELLPATH will in no way relieve it of responsibility.

20. **Disaster Recovery Plan.** WELLPATH must have and maintain a disaster recovery plan. The disaster recovery plan, at a minimum, must include a systematic process for the smooth and timely transition of all claims adjudication services, and quality assurance services, and electronic data interchange capabilities from WELLPATH's primary site to a secondary or backup site. The security and integrity of all records must be maintained. Full transition from the primary to secondary or backup site must occur within one working day. WELLPATH must provide a copy of its Disaster Recovery Plan to the County, if so requested.

22. **Assignment of Interest.** Neither party will assign or transfer any interest in this Agreement without prior written consent of the other party.

23. **Conflict of Interest.** WELLPATH warrants that neither it nor any of its employees has any financial or personal interest that conflicts with the execution of this Agreement. WELLPATH shall notify the County of any conflict of interest due to any other clients, contracts, or property interests.

24. **Time of the Essence.** It is understood and agreed upon by the parties that time is of the essence for the performance of work described herein. To the extent the time frames specified herein can be performed in a shorter time frame, WELLPATH will use its best efforts to do so.

25. **Independent Contractor.** In the performance of this Agreement, WELLPATH is acting in the capacity of an independent contractor and not as an agent, employee, partner, joint venturer, or associate of the County. WELLPATH is solely responsible for the means, method, technique, sequence, and procedure utilized by WELLPATH in the full performance of this Agreement.

26. **Attachments.** All exhibits attached to this Agreement are incorporated into and made part of this Agreement.

27. **Captions and Section Headings.** Captions and section headings used herein are for convenience only and shall not be used in construing this Agreement.

28. **Collusion.** By signing this Agreement, WELLPATH declares that this Agreement is made without any previous understanding, agreement, or connections with any persons, professionals or corporations and that this Agreement is fair, and made in good faith without any outside control, collusion, or fraud.

29. **Construction.** This Agreement shall not be construed more strictly against one party than against the other merely by virtue of the fact that it may have been prepared by one of the parties. It is recognized that both parties have substantially contributed to the preparation of this Agreement.

30. **Counterparts.** This Agreement may be executed by the parties in several counterparts, each of which shall be deemed to be an original copy.

31. **Successors and Assigns.** The County and WELLPATH each bind the other and their respective successors and assigns in all respects to all of the terms, conditions, covenants, and provisions of this Agreement, and any assignment or transfer by WELLPATH of its interest in this Agreement without the written consent of the County shall be void. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of the County or WELLPATH, nor shall it be construed as giving any right or benefit hereunder to anyone other than the County or WELLPATH.

32. **Third Party Beneficiaries.** This Agreement does not create any relationship with, or any rights in favor of, any third party.

33. **Prohibition Against Contingent Fees.** WELLPATH warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for WELLPATH, to solicit or secure this Agreement and that he or she has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for WELLPATH, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement.

34. **Survivability.** Any term, condition, covenant or obligation which requires performance by either party subsequent to termination of this Agreement shall remain enforceable against such party subsequent to such termination.

35. **Project Records.**

A. Except where superseded by federal law or applicable state or federal privilege or protection any document submitted to the County may be a public record and is open for inspection or copying by any person or entity. "Public records" are defined as all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency per Section 119.011, Florida

Statutes. Any document is subject to inspection and copying unless exempted under Chapter 119, Florida Statutes.

B. For a period of six (6) years, or fifteen (15) years if related to a capital improvement project, after the completion of all work to be performed, or as required by Chapter 119, Florida Statutes (Public Records Act) and schedules published by the Florida Bureau of Archives and Records Management, or federal requirements, whichever period is greater, the WELLPATH shall keep and make available to the County for inspection and copying, upon written request by the County, all records in WELLPATH's possession relating to this Agreement. Additionally, the WELLPATH shall make said records available, upon written request by the County, to any state, federal, or other regulatory authority, and any such authority may review, inspect and copy said records unless exempted under Chapter 119, Florida Statutes.

C. During the term of this Agreement or license, WELLPATH may claim that some or all of WELLPATH's information, including, but not limited to, software, documentation, manuals, written methodologies and processes, pricing, discounts, or other considerations (hereafter collectively referred to as "Confidential Information"), is, or has been treated as, confidential and proprietary by WELLPATH in accordance with Section 812.081, Florida Statutes, or other law, and is exempt from disclosure under the Public Records Act. WELLPATH shall clearly identify and mark Confidential Information as "Confidential Information" or "CI" and the County shall use its best efforts to maintain the confidentiality of the information properly identified by the WELLPATH as "Confidential Information" or "CI".

D. The County shall promptly notify the WELLPATH in writing of any request received by the County for disclosure of WELLPATH's Confidential Information and the WELLPATH may assert any exemption from disclosure available under applicable law or seek a protective order against disclosure from a court of competent jurisdiction. WELLPATH shall protect, defend, indemnify, and hold the County, its officers, employees and agents free and harmless from and against any claims or judgments arising out of a request for disclosure of Confidential Information. WELLPATH shall investigate, handle, respond to, and defend, using counsel chosen by the County, at WELLPATH's sole cost and expense, any such claim, even if any such claim is groundless, false, or fraudulent. WELLPATH shall pay for all costs and expenses related to such claim, including, but not limited to, payment of attorney fees, court costs, and expert witness fees and expenses. Upon completion of this Agreement or license, the provisions of this paragraph shall continue to survive. WELLPATH releases County from claims or damages related to disclosure by County.

E. If WELLPATH refuses to perform its duties under this section within 14 days of notification by County that a demand has been made to disclose WELLPATH's CI, then WELLPATH waives its claim that any of its information is CI, and releases County from claims or damages related to the subsequent disclosure by County.

36. **Electronic Signature.** The Parties agree that an electronic version of this Agreement shall have the same legal effect and enforceability as a paper version. The

Parties further agree that this Agreement, regardless of whether in electronic or paper form, may be executed by use of electronic signatures. Electronic signatures shall have the same legal effect and enforceability as manually written signatures. The County shall determine the means and methods by which electronic signatures may be used to execute this Agreement and shall provide the Contractor with instructions on how to use said method. Delivery of this Agreement or any other document contemplated hereby bearing an manually written or electronic signature by facsimile transmission (whether directly from one facsimile device to another by means of a dial-up connection or whether mediated by the worldwide web), by electronic mail in "portable document format" (".pdf") form, or by any other electronic means intended to preserve the original graphic and pictorial appearance of a document, will have the same effect as physical delivery of the paper document bearing an original or electronic signature.

37. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties and supersedes all prior written or oral agreements, understandings, or representations.

38. **Exhibits.** The Exhibits to this Agreement (enumerated below) are attached hereto and incorporated herein. Additionally, the parties agree that any conflict between the body of this Agreement and the exhibits shall be read in favor of the exhibits. The Agreement's exhibits are:

- (a) Exhibit A: Business Associate Agreement;
- (b) Exhibit B: Pass-through Costs: Medical, Dental and Mental Health Services

39. **Delineation of Services Provided by Wellpath Subject to Prompt Reimbursement:**

- (a) Pre-booking and pre-existing conditions;
- (b) Specialty Services;
- (c) Dialysis;
- (d) Emergent and non-emergent transport;
- (e) Specialty Services;
- (f) HIV/AIDS treatment and expenses;
- (g) HCV treatment and expenses;
- (h) Clinical management payments for medical treatment; and
- (i) Pharmaceuticals: HIV/AIDS, Hepatitis, Biologicals.

40. **No Withhold or Set-off.** The Parties agree that any services which are subject to pass-through shall not be subject to a withhold, set-off, counterclaim, recoupment, defense, duty to mitigate or other rights that COUNTY or SHERIFF may have against CONTRACTOR. Therefore, CONTRACTOR'S right to reimbursement is absolute.

41. **Confidential and Proprietary Information.** At WELLPATH'S sole discretion, it may elect to share certain relevant Confidential and or Proprietary information with

COUNTY. In which case, WELLPATH shall appropriately mark said materials and COUNTY agrees that they shall maintain the confidentiality of such documents. The scope of this information may include, but not be limited to:

- (a) WELLPATH's agreements with hospitals; and
- (b) WELLPATH's agreements with specialty services and/or providers.

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed for the uses and purposes herein expressed on the day and year first above written.

ALACHUA COUNTY, FLORIDA
BOARD OF COUNTY COMMISSIONERS

BY: Marihelen Wheeler
Marihelen Wheeler, Chair
DATE: _____

ATTEST:

J.K. Irby
J.K. "Jess" Irby, Esq. (Mar 10, 2022 13:08 CST)
J.K. (Jess) Irby Esq., Clerk
(SEAL)

APPROVED AS TO FORM:
DocuSigned by:
Robert C Swain
274E045D4F99416...

Alachua County Attorney's Office
WELLPATH HEALTH, INC.
Cindy P. Watson
Cindy Watson
President, Local Government Division
Date: February 16, 2022

Attest by: (Corporate Officer)
M.D.
Signature
Secretary
Title
Marc Goldstone
Print Name

Exhibit A

THIS **BUSINESS ASSOCIATE AGREEMENT** (this "Agreement") is entered into, and effective as of October 1, 2020 (the "Effective Date") by and between Alachua County ("Alachua County" or "Covered Entity") and WELLPATH Health, Inc. ("Business Associate"). The parties to this Agreement if not referred to as Covered Entity or Alachua County or WELLPATH or Business Associate may sometimes collectively be referred to "the Parties." The Parties mutually agree as follows:

INTRODUCTION

The purpose of this Agreement is to comply with the requirements of (i) the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and the associated regulations, as may be amended; (ii) the HIPAA Privacy Rule codified at 45 C.F.R. Parts 160 and 164, Subparts A and E, as may be amended; (iii) the HIPAA Security Rule codified at 45 C.F.R. Part 160 and 164, Subpart C, as may be amended; (iv) the Breach Notification Rule, codified at 45 C.F.R. Part 164, Subpart D, as may be amended; (v) the Enforcement Rule codified at 45 C.F.R. Part 160, Subparts C and D, as may be amended; (vi) the Health Information Technology for Economic and Clinical Health Act, Title XIII of the American Recovery and Reinvestment Act of 2009 (the "HITECH Act"); and (vii) the HIPAA Omnibus Final Rule published in the Federal Register at 78 Fed. Reg. 5,566 (Jan. 25, 2013), and effective on March 26, 2013. The HITECH Act provides further protection for the privacy and security of PHI used and disclosed through health information technology. The Privacy, Security, Breach Notification and Enforcement Rules are collectively referred to herein as the "HIPAA Rules." Unless otherwise defined in this Agreement, capitalized terms have the meanings given in the HIPAA Rules and the HITECH Act.

In consideration of the new and continuing obligations under the Services Agreement referenced below and other good and valuable consideration, the parties agree to comply with this Agreement and the requirements of the HIPAA Rules and the HITECH Act as follows:

1. **Services.** Alachua County and Business Associate have entered into an agreement under which Business Associate will perform certain services for Alachua County ("the Services Agreement") Under the Services Agreement, Business Associate may create, receive, use, maintain or transmit PHI from or on behalf of Covered Entity in the course of providing certain services (the "Services") for Covered Entity. The Services Agreement is incorporated herein by reference. In the event of a conflict between the terms of the Services Agreement and this Agreement, this Agreement shall control.

2. **Permitted Uses and Disclosures.** Business Associate may use and/or disclose PHI only as permitted or required by this Agreement, or as otherwise required by law. Business Associate may disclose PHI to, and permit the use of PHI by, its employees, contractors, agents, or other representatives only to the extent directly related to and necessary for the performance of Services under the Services Agreement. Business Associate shall make uses and disclosures, and requests for PHI from Covered Entity, only in a manner consistent with HIPAA's minimum necessary requirements, and no more than the minimum PHI necessary to perform under the Services Agreement. Business Associate shall not use or disclose PHI in a manner (i) inconsistent with Covered Entity's obligations under the HIPAA Rules or the HITECH Act, or (ii) that would violate the HIPAA Rules or the HITECH Act if disclosed or used in such a manner by Covered Entity. Business Associate may use PHI for the proper management and administration of Business Associate's business and to carry out its responsibilities in accordance with 45 C.F.R. § 164.504(e)(4). Business Associate may not de-identify PHI received from, or created on behalf of Covered Entity without the express written authorization of Covered Entity. Business Associate shall make no use or disclosure of PHI in any manner which is contrary to the interest of Alachua County or will cause WELLPATH harm.

3. **Safeguards for the Protection of PHI.** Business Associate shall conduct an accurate and thorough risk assessment of the potential risks and vulnerabilities to the confidentiality, integrity, and availability of Electronic PHI held by Covered Entity. Business Associate shall comply with the HIPAA Security Rule codified at 45 C.F.R. Part 160 and 164, Subpart C, as may be amended, and with the applicable provisions of the HIPAA Privacy Rule codified at 45 C.F.R. Parts 160 and 164, Subparts A and E, as may be amended, to the extent Business Associate is to carry out any of Covered Entity's obligations under the Privacy Rule.

4. **Reporting and Mitigating the Effect of Unauthorized Uses and Disclosures.** If Business Associate has knowledge of any use or disclosure of PHI not provided for by this Agreement, then Business Associate shall promptly notify Covered Entity in accordance with Section 12. Business Associate shall establish and implement procedures and other reasonable efforts for mitigating, to the extent possible, any harmful effects arising from any improper use and/or disclosure of PHI of which it becomes aware. Furthermore, in the event Business Associate becomes aware of a Security Incident involving PHI, by itself or any of its agents or subcontractors, Business Associate shall notify Covered Entity in writing within ten (10) calendar days, of such Security Incident. Business Associate shall identify the: (i) date of the Security Incident; (ii) scope of the Security Incident; (iii) Business Associate's response to the Security Incident; and (iv) identification of the party responsible for the Security Incident, if known. Covered Entity and Business Associate agree to act together in good faith to take reasonable steps to investigate and mitigate any harm caused by such unauthorized use or Security Incident. For these purposes, a "Security Incident" shall mean the successful unauthorized access, use, disclosure, modification or destruction of information or interference with system operations in an information system.

5. **Data Breach Notification and Mitigation.** Business Associate agrees to promptly notify Covered Entity of any "Breach" of "Unsecured PHI" as those terms are defined by 45 C.F.R. §164.402 (hereinafter a "Data Breach"). The Parties acknowledge and agree that 45 C.F.R. §164.404, as described below in this Section, governs the determination of the date of a Data Breach. Business Associate shall, following the discovery of a Data Breach, promptly notify Covered Entity and in no event later than five (5) calendar days after Business Associate discovers such Data Breach, unless Business Associate is prevented from doing so by 45 C.F.R. §164.412 concerning law enforcement investigations. For purposes of reporting a Data Breach to Covered Entity, the discovery of a Data Breach shall occur as of the first day on which such Data Breach is known to Business Associate or, by exercising reasonable diligence, would have been known to Business Associate. Business Associate shall be considered to have had knowledge of a Data Breach if the Data Breach is known, or by exercising reasonable diligence would have been known, to any person (other than the person committing the Data Breach) who is an employee, officer or other agent of Business Associate. No later than five (5) calendar days following a Data Breach, Business Associate shall provide Covered Entity with sufficient information to permit Covered Entity to comply with the Data Breach notification requirements set forth at 45 C.F.R. §164.400 et seq. Specifically, if the following information is known to (or can be reasonably obtained by) Business Associate, Business Associate shall provide Covered Entity with: (i) contact information for Individuals who were or who may have been impacted by the Data Breach (e.g., first and last name, mailing address, street address, phone number, email address); (ii) a brief description of the circumstances of the Data Breach, including the date of the Data Breach, date of discovery, and number of Individuals affected by the Data Breach; (iii) a description of the types of unsecured PHI involved in the Data Breach (e.g., names, social security number, date of birth, address(es), account numbers of any type, disability codes, diagnosis and/or billing codes and similar information); (iv) a brief description of what the Business Associate has done or is doing to investigate the Data Breach, mitigate harm to the Individual impacted by the Data Breach, and protect against future Data Breaches; and (v) appoint a liaison and provide contact information for same so that the

Covered Entity may ask questions and/or learn additional information concerning the Data Breach. Following a Data Breach, Business Associate shall have a continuing duty to inform Covered Entity of new information learned by Business Associate regarding the Data Breach, including but not limited to the information described in the items above.

6. **Use and Disclosure of PHI by Subcontractors, Agents, and Representatives.**

Business Associate shall require any subcontractor, agent, or other representative that is authorized to create, receive, maintain, or transmit PHI on behalf of Business Associate to execute a business associate agreement to agree in writing to the same terms set forth herein. Business Associate shall terminate its business associate agreement with any subcontractor, agent or other representative if such subcontractor, agent or representative fails to abide by any material term of such agreement. Such business associate agreement shall identify Covered Entity as a third-party beneficiary with rights of enforcement in the event of any HIPAA violations. Any Agreement with any subcontractor, agent or other representative shall specifically include all of the terms of Paragraph 2 of this Agreement.

7. **Individual Rights.** Business Associate shall comply with the following Individual rights requirements as applicable to PHI used or maintained by Business Associate:

7.1. **Right of Access.** Business Associate agrees to provide access to PHI maintained by Business Associate in a Designated Record Set, at the request of Covered Entity, 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. Such access shall be provided by Business Associate in the time and manner designated by Covered Entity, including, where applicable, access by electronic means pursuant to Section 13405(e) of the HITECH Act.

7.2. **Right of Amendment.** Business Associate agrees to make any amendment(s) to PHI maintained by Business Associate 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.

7.3. **Right to Accounting of Disclosures.** Business Associate agrees to document such disclosures of PHI 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. Business Associate agrees to provide to Covered Entity or an Individual, in the time and manner designated by Covered Entity, such information collected in order 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, as amended by Section 13405(c) of the HITECH Act and any related regulations or guidance issued by HHS in accordance with such provision.

7.4. **No Waiver of Privilege.** Notwithstanding 7.1, 7.2, and 7.3 above, Business Associate shall not permit access to any record if such access would violate Alachua County's or Business Associate's ethical responsibilities or any privileges which Business Associate or Alachua County may have under Florida or Federal law. To the maximum extent permitted by law, WELLPATH hereby reserves and retains any and all privileges which Alachua County may have under Florida or Federal law related to the confidentiality of all patient records of Alachua County or any attorney-client privilege or any attorney-work product privilege which Alachua County may have with respect to

Business Associate's performance of its obligations under this section. The parties acknowledge that Alachua County retains the right to waive its attorney-client privilege with regard to its own records and to expressly instruct Business Associate to provide access to those records as a result of that waiver. In the event Alachua County determines to waive any privilege which it may have, Alachua County shall provide Business Associate with written notice of that waiver before Business Associate may act on any such decision.

8. **Ownership of PHI.** Covered Entity holds all right, title and interest in and to any and all PHI received by Business Associate from, or created or received by Business Associate on behalf of, Covered Entity, and Business Associate does not hold, and shall not acquire by virtue of this Agreement or by virtue of providing any services or goods to Covered Entity in the course of fulfilling its obligations pursuant to this Agreement, any right, title or interest in or to such PHI. Except as specified in this Agreement, Business Associate shall have no right to compile, distribute, make any statistical analysis, or develop any report utilizing any PHI provided to Business Associate under this Agreement nor may Business Associate release any information about PHI or the PHI to any other governmental or private agency or entity without the express written consent of WELLPATH.

9. **Prohibition on Sale of PHI.** Business Associate shall not sell or receive any remuneration, direct or indirect, of any kind in exchange for PHI or in exchange for the disclosure of PHI to any public or private agency or entity, except as expressly permitted by this Agreement or by the Services Agreement or by written authorization of WELLPATH.

10. **Inspection of Books and Records.** If Business Associate receives a request, made by or on behalf of HHS requiring Business Associate to make available its internal practices, books, and records relating to the use and disclosure of PHI to HHS for the purpose of determining compliance of Covered Entity with the Privacy Standards or the Security Standards, then Business Associate shall promptly notify Covered Entity of such request. Except as otherwise set forth below, Business Associate shall make its books and records relating to the use and disclosure of PHI by Covered Entity available to HHS and its authorized representatives for purposes of determining compliance of Covered Entity with the Privacy Standards and Security Standards.

To the extent permitted by law, Covered Entity hereby reserves and retains any and all privileges in which it has an interest under Federal or Florida law including attorney-client privilege or attorney-work product privilege with respect to Business Associate's performance if its obligations under this Agreement and this Section 10. Business Associate, to the maximum extent permitted by law, hereby reserves and retains any and all privileges it may have including all work product or other privileges or rights. If the Services Agreement is for legal services, then this section shall not be construed to require Business Associate to disclose or produce communications subject to the attorney-client, work-product, or other privileges or rights with respect to materials that analyze, evaluate or discuss the legal implication of PHI. Notwithstanding the above, in no event shall Business Associate delay complying with a request of HHS or its authorized representatives if such delay appears reasonably likely to result in any penalty, fine or other liability being levied or imposed upon Covered Entity (such likelihood to be determined in the sole discretion of Covered Entity), and Covered Entity has instructed Business Associate in writing to disclose the information requested by HHS or its authorized representatives. The Parties acknowledge that Covered Entity retains the right to: (i) waive the attorney-client privilege with regard to books and records, and (ii) expressly instruct Business Associate to provide HHS and its authorized representatives with such books and records in the event of such waiver.

11. **Term and Termination.**

11.1. Term. This Agreement shall commence on the Effective Date and end with the termination of the Services Agreement unless terminated sooner pursuant to Section 11.2.

11.2. Termination for Breach by Covered Entity. As provided for under 45 C.F.R. § 164.504(e)(2)(iii), Covered Entity may immediately terminate this Agreement, all relevant Services Agreement(s) and any related agreements if Covered Entity determines that Business Associate has breached a material term of this Agreement. Alternatively, and in the sole discretion of Covered Entity, Covered Entity may choose to provide Business Associate with written notice of the existence of the breach and provide Business Associate with thirty (30) calendar days to cure said breach upon mutually agreeable terms.

11.3. Termination by Business Associate. If Business Associate determines that Covered Entity has breached a material term of this Agreement, then Business Associate shall provide Covered Entity with written notice of the existence of the breach and shall provide Covered Entity with thirty (30) calendar days to cure said breach upon mutually agreeable terms or end the violation within this thirty (30) day period. Failure by Covered Entity to cure said breach or violation in the manner set forth above shall be grounds for immediate termination of the Services Agreement by Business Associate.

11.4. Effect of Termination. Upon termination of this Agreement, Business Associate shall recover any PHI relating to this Agreement in possession of Business Associate and its subcontractors, agents, or representatives. Business Associate shall return to Covered Entity or destroy all such PHI plus all other PHI relating to this Agreement in its possession, and shall retain no copies. If Business Associate believes that it is not feasible to return or destroy the PHI as described above, Business Associate shall notify Covered Entity in writing. The notification shall include: (i) a written statement that Business Associate has determined that it is infeasible to return or destroy the PHI in its possession, and (ii) the specific reasons for such determination. If the Parties agree that Business Associate cannot feasibly return or destroy the PHI, Business Associate shall ensure that any and all protections, requirements and restrictions contained in this Agreement shall be extended to any PHI retained after the termination of this Agreement, and that any further uses and/or disclosures shall be limited to the purposes that make the return or destruction of the PHI infeasible. If the Parties do not agree that Business Associate cannot feasibly return or destroy the PHI, then Business Associate shall comply with this Paragraph 11.4. If Business Associate refuses to comply with this Paragraph 11.4, then Covered Entity shall treat the refusal as a material breach of this Agreement. In all events, Business Associate further agrees to comply with other applicable state or federal law, which may require a specific period of retention, redaction, or other treatment of such PHI. It is expressly understood that all limitations, restrictions or prohibitions on the use or disclosure of PHI by Business Associate shall continue to exist and shall survive termination of this Agreement for any reason.

12. Notices. Any and all notices and other communications required or permitted to be given under this Agreement shall be: (a) delivered by personal delivery, provided the person to whom delivered signs a receipt; (b) delivered by commercial courier such as Federal Express, provided the person to whom delivered signs a receipt or the commercial courier can verify delivery; (c) sent by overnight U.S. express mail, provided the postal service can verify delivery; (d) sent by registered or certified mail, postage prepaid, provided delivery is actually made; or (e) sent by facsimile, provided the person that sent the notice can verify delivery. All notices shall be

sent to the following addresses or to such other addresses as shall be furnished by notice to the other party in accordance with the provisions of this Section 12:

If to Alachua County:
Director, Office of Management and Budget
12 S.E. 1st Street
Gainesville, FL 32601

If to Business Associate:

WELLPATH LLC
Attn: Chief Legal Officer
1283 Murfreesboro Road
Ste. 500
Nashville, TN 37217

Attn: _____
Chairman

13. **Miscellaneous.**

13.1. **Survival.** The respective rights and obligations of the Parties under Section 10 (Inspection of Books and Records), Section 11.4 (Effect of Termination), and Section 13 (Miscellaneous) shall survive termination of this Agreement indefinitely, and those other provisions of this Agreement that apply to rights or obligations of a Party, which continue or arise upon or after the termination of this Agreement shall survive the termination of this Agreement to the extent necessary to enforce such rights and obligations and otherwise effectuate such provisions. It is expressly understood that all limitations, restrictions or prohibitions on the use or disclosure of PHI by Business Associate shall continue to exist and shall survive termination of this Agreement for any reason.

13.2. **State Law.** In addition to HIPAA and the HITECH Act, Business Associate shall comply with all applicable Florida law related to patient privacy or other privacy restrictions on records of WELLPATH and federal security and privacy laws.

13.3. **Regulatory References.** A citation in this Agreement to the Code of Federal Regulations shall mean the cited section as that section may be amended from time to time.

13.4. **Amendment.** This Agreement may be amended or modified only in a writing signed by the Parties. The Parties agree that they shall negotiate amendments to this Agreement to conform to any changes in the HIPAA Rules as are necessary for Covered Entity to comply with the current requirements of the HIPAA Rules. In addition, in the event that either Party believes in good faith that any provision of this Agreement fails to comply with the then-current requirements of the HIPAA Rules or any other applicable legislation, then such Party shall notify the other Party of its belief in writing. For a period of up to thirty (30) 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 HIPAA Rules or any other applicable legislation, then either Party has the right to terminate this Agreement and the Services Agreement upon written notice to the other Party.

13.5. **Interpretation.** Any ambiguity in this Agreement shall be interpreted to permit compliance with the HIPAA Rules and the HITECH Act and permit compliance with requirements of Florida patient confidentiality law to the extent they are more stringent than HIPAA Rules or the HITECH Act.

Governing Law; Venue. This Agreement shall be governed by and construed in all respects by the laws of the State of Florida. The state court forum for any action commenced under this Agreement shall be in the Circuit Court in and for the Eighth Judicial Circuit of Florida. In the event Federal Court jurisdiction is mandated by some state or federal law, then venue and jurisdiction shall be The United States District Court in the Northern District of Florida, Gainesville Division.

13.7 No Third Party Beneficiaries. Except as provided in Section 6, nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than the Parties and the respective successors and permitted assigns of the Parties, any rights, remedies, obligations, or liabilities whatsoever.

13.8 Severability. In the event any provision of this Agreement is held to be unenforceable for any reason, such unenforceability shall not affect the remainder of this Agreement, which shall remain in full force and effect.

13.9 Assignment. Neither Party may assign this Agreement without the prior written consent of the other.

13.10 Attorney's Fees and Costs. Should legal action be required to enforce the terms of this Agreement, the prevailing Party will be entitled to receive from the other Party all costs incurred in connection with such action, including reasonable attorney, legal assistant, investigator, and other paralegal and clerical fees and costs, including such costs and fees on appeal, if any.

13.11 Binding Effect. The provisions of this Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective heirs, executors, administrators, legal representatives, successors and assigns.

EXHIBIT B

PASS-THROUGH COSTS:
MEDICAL, DENTAL AND MENTAL HEALTH SERVICES

- (a) Professional On-site Services: Pre-booking and pre-existing conditions (medical, dental and mental);
- (b) Specialty Services;
- (c) Dialysis;
- (d) Emergent and non-emergent transport;
- (e) Specialty Services;
- (f) HIV treatment and expenses;
- (g) HCV treatment and expenses;
- (h) Clinical management payments for medical treatment;
- (i) Pharmaceuticals: HIV/AIDS, Hepatitis, Biologicals; and
- (j) Long-Acting Injectable Psychotropic Medications.









Item #10, 22-0094

Final Audit Report

2022-03-10

Created:	2022-03-09
By:	Steve Donahey (asd@alachuaclerk.org)
Status:	Signed
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