

# Standard Agreement Form for Professional Services

The parties' contract comprises this Standard Agreement Form, as well as its referenced Articles and their associated Appendices

1. Agency Contract Number 0619-131		2. Contract Title Hospital Administration Services	
3. Vendor Number VS007274		4. IRIS CT Number	5. Alaska Business License Number 1113050
This contract is between the State of Alaska,			
6. Department of Health & Social Services		Division Alaska Psychiatric Institute (API)	hereafter the State, and
7. Contractor Wellpath Recovery Solutions, LLC			
hereafter the contractor			
Mailing Address	Street or P.O. Box	City	State ZIP+4
1283 Murfreesboro Rd, Suite 500		Nashville	TN 37217
8.			
<b>ARTICLE 1. Appendices:</b> Appendices referred to in this contract and attached to it are considered part of it. <b>ARTICLE 2. Performance of Service:</b> 2.1 Appendix A governs the performance of services under this contract. 2.2 Appendix B sets forth the liability and insurance provisions of this contract. 2.3 Appendix C sets forth the services to be performed by the contractor. 2.4 Appendix D sets forth the provision for payment. 2.5 Appendix E governs the use of Protected Health Information under this contract. 2.6 Appendix F confirms the contractor is in good legal standing with the federal government. <b>ARTICLE 3. Period of Performance:</b> The period of performance for this contract begins for Phase 1 on <u>February 8, 2019</u> , and ends <u>June 30, 2019</u> ; Phase 2 begins on July 1, 2019 through June 30, 2024 <b>ARTICLE 4. Considerations:</b> 4.1 In full consideration of the contractor's performance under this contract with respect to the Startup Phase, the State shall pay the contractor a sum not to exceed \$ <u>5,000,000.00</u> for Phase 1 and the Per Diem rate for Phase 2 as described in Appendix D.			
9. Department of Health & Social Services		Attention: Division of Alaska Psychiatric Institute (API)	
Mailing Address PO Box 110650, Juneau, Alaska 99811-0650		Attention: Grants & Contracts Support Team	
10. <b>CONTRACTOR</b>		12. <b>CERTIFICATION:</b> I certify that the facts herein and on supporting documents are correct, that this voucher constitutes a legal charge against funds and appropriations cited, that sufficient funds are encumbered to pay this obligation, or that there is a sufficient balance in the appropriation cited to cover this obligation. I am aware that to knowingly make or allow false entries or alterations on a public record, or knowingly destroy, mutilate, suppress, conceal, remove or otherwise impair the verity, legibility or availability of a public record constitutes tampering with public records punishable under AS 11.56.815-.820. Other disciplinary action may be taken up to and including dismissal.	
Name of Firm Wellpath Recovery Solutions, LLC			
Signature of Authorized Representative	Date 2/8/2019		
Typed or Printed Name of Authorized Representative David Perry			
Title Executive Vice President			
11. <b>CONTRACTING AGENCY</b>		Signature of Head of Contracting Agency or Designee	
Department/Division Health & Social Services / API	Date 02/08/19	Date 2/8/19	
Signature of Project Director		Typed or Printed Name Adam Crum	
Typed or Printed Name of Project Director Albert E. Wall		Title Commissioner	
Title Deputy Commissioner, DHSS			

NOTICE: This contract has no effect until signed by the head of contracting agency or designee.

## Appendix A

### General Provisions

#### Article 1. Definitions.

- 1.1 In this contract and appendices, "Project Director" or "Agency Head" or "Procurement Officer" means the person who signs this contract on behalf of the Requesting Agency and includes a successor or authorized representative.
- 1.2 "State Contracting Agency" means the department for which this contract is to be performed and for which the Commissioner or Authorized Designee acted in signing this contract.

#### Article 2. Inspections and Reports.

- 2.1 The department may inspect, in the manner and at reasonable times it considers appropriate, all the contractor's facilities and activities under this contract.
- 2.2 The contractor shall make progress and other reports in the manner and at the times the department reasonably requires.

#### Article 3. Disputes.

If the contractor has a claim arising in connection with the contract that it cannot resolve with the State by mutual agreement, it shall pursue the claim, if at all, in accordance with the provisions of AS 36.30.620 – 632.

#### Article 4. Equal Employment Opportunity.

- 4.1 The contractor may not discriminate against any employee or applicant for employment because of race, religion, color, national origin, or because of age, disability, sex, marital status, changes in marital status, pregnancy or parenthood when the reasonable demands of the position(s) do not require distinction on the basis of age, disability, sex, marital status, changes in marital status, pregnancy, or parenthood. The contractor shall take affirmative action to insure that the applicants are considered for employment and that employees are treated during employment without unlawful regard to their race, color, religion, national origin, ancestry, disability, age, sex, marital status, changes in marital status, pregnancy or parenthood. This action must include, but need not be limited to, the following: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training including apprenticeship. The contractor shall post in conspicuous places, available to employees and applicants for employment, notices setting out the provisions of this paragraph.
- 4.2 The contractor shall state, in all solicitations or advertisements for employees to work on State of Alaska contract jobs, that it is an equal opportunity employer and that all qualified applicants will receive consideration for employment without regard to race, religion, color, national origin, age, disability, sex, marital status, changes in marital status, pregnancy or parenthood.
- 4.3 The contractor shall send to each labor union or representative of workers with which the contractor has a collective bargaining agreement or other contract or understanding a notice advising the labor union or workers' compensation representative of the contractor's commitments under this article and post copies of the notice in conspicuous places available to all employees and applicants for employment.
- 4.4 The contractor shall include the provisions of this article in every contract, and shall require the inclusion of these provisions in every contract entered into by any of its subcontractors, so that those provisions will be binding upon each subcontractor. For the purpose of including those provisions in any contract or subcontract, as required by this contract, "contractor" and "subcontractor" may be changed to reflect appropriately the name or designation of the parties of the contract or subcontract.
- 4.5 The contractor shall cooperate fully with State efforts which seek to enforce State and Federal laws prohibiting discrimination, and with all other State efforts to enforce State and Federal laws related to fair employment practices under this contract, and promptly comply with all requests and directions from the State Commission for Human Rights or any of its officers or agents relating to prevention of discriminatory employment practices.
- 4.6 Full cooperation in paragraph 4.5 includes, but is not limited to, being a witness in any proceeding involving questions of unlawful discrimination if that is requested by any official or agency of the State of Alaska; permitting employees of the contractor to be witnesses or complainants in any proceeding involving questions of unlawful discrimination, if that is requested by any official or agency of the State of Alaska; participating in meetings; submitting periodic reports on the equal employment aspects of present and future employment; assisting inspection of the contractor's facilities; and promptly complying with all State directives considered essential by any office or agency of the State of Alaska to insure compliance with all federal and State laws, regulations, and policies pertaining to the prevention of discriminatory employment practices.
- 4.7 Failure to perform under this article constitutes a material breach of contract.

**Article 5. Termination.**

The Project Director, by written notice, may terminate this contract, in whole or in part, for good cause, provided it first gives the contractor written notice of the facts alleged to constitute good cause and affords the contractor a reasonable opportunity to cure, which shall not be less than 30 days in any event.

Each party shall have the right to terminate this contract upon 180 days' advance written notice to the other. In the absence of a breach of contract by the contractor, the State shall be liable only for payment in accordance with the payment provisions of this contract for services rendered before the effective date of termination.

**Article 6. No Assignment or Delegation.**

The contractor may not assign or delegate this contract, or any part of it, or any right to any of the money to be paid under it, except with the written consent of the Project Director and the Agency Head.

**Article 7. No Additional Work or Material.**

No claim for additional services, not specifically provided in this contract, performed or furnished by the contractor, will be allowed, nor may the contractor do any work or furnish any material not covered by the contract unless the work or material is ordered in writing by the Project Director and approved by the Agency Head.

**Article 8. Independent Contractor.**

The contractor and any agents and employees of the contractor act in an independent capacity and are not officers or employees or agents of the State in the performance of this contract.

**Article 9. Payment of Taxes.**

As a condition of performance of this contract, the contractor shall pay all federal, State, and local taxes incurred by the contractor and shall require their payment by any Subcontractor or any other persons in the performance of this contract. Satisfactory performance of this paragraph is a condition precedent to payment by the State under this contract.

**Article 10. Ownership of Documents.**

Except as may be subject to legal privilege or otherwise protected by applicable law, all designs, drawings, specifications, notes, artwork, and other work developed by the contractor specifically and exclusively for use in the performance of this agreement are produced for hire and remain the sole property of the State of Alaska and may be used by the State for any other purpose without additional compensation to the contractor. The contractor agrees not to assert any rights and not to establish any claim under the design patent or copyright laws. Nevertheless, if the contractor does mark such documents with a statement suggesting they are trademarked, copyrighted, or otherwise protected against the State's unencumbered use or distribution, the contractor agrees that this paragraph supersedes any such statement and renders it void. The contractor, for a period of three years after final payment under this contract, agrees to furnish and provide access to all retained materials at the request of the Project Director. Unless otherwise directed by the Project Director, the contractor may retain copies of all the materials.

**Article 11. Governing Law; Forum Selection.**

This contract is governed by the laws of the State of Alaska. To the extent not otherwise governed by Article 3 of this Appendix, any claim concerning this contract shall be brought only in the Superior Court of the State of Alaska and not elsewhere.

**Article 12. Conflicting Provisions.**

Unless specifically amended and approved by the Department of Law, the terms of this contract supersede any provisions the contractor may seek to add. The contractor may not add additional or different terms to this contract; AS 45.02.207(b)(1). The contractor specifically acknowledges and agrees that, among other things, provisions in any documents it seeks to append hereto that purport to (1) waive the State of Alaska's sovereign immunity, (2) impose indemnification obligations on the State of Alaska, or (3) limit liability of the contractor for acts of contractor negligence, are expressly superseded by this contract and are void.

**Article 13. Officials Not to Benefit.**

Contractor must comply with all applicable federal or State laws regulating ethical conduct of public officers and employees.

**Article 14. Covenant Against Contingent Fees.**

The contractor warrants that no person or agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee except employees or agencies maintained

by the contractor for the purpose of securing business. For the breach or violation of this warranty, the State may terminate this contract without liability or in its discretion deduct from the contract price or consideration the full amount of the commission, percentage, brokerage or contingent fee.

**Article 15. Compliance.**

In the performance of this contract, the contractor must comply with all applicable federal, state, and borough regulations, codes, and laws, and be liable for all required insurance, licenses, permits and bonds.

**Article 16. Force Majeure.**

The parties to this contract are not liable for the consequences of any failure to perform, or default in performing, any obligations under this Agreement, if that failure or default is caused by any unforeseeable Force Majeure, beyond the control of, and without the fault or negligence of, the respective party. For the purposes of this Agreement, Force Majeure will mean war (whether declared or not); revolution; invasion; insurrection; riot; civil commotion; sabotage; military or usurped power; lightning; explosion; fire; storm; drought; flood; earthquake; epidemic; quarantine; strikes; acts or restraints of governmental authorities affecting the project or directly or indirectly prohibiting or restricting the furnishing or use of materials or labor required; inability to secure materials, machinery, equipment or labor because of priority, allocation or other regulations of any governmental authorities.

## Appendix B2

### Indemnity and Insurance

#### Article 1. Indemnification

The Contractor shall indemnify, hold harmless, and defend the contracting agency from and against any claim of, or liability for error, omission or negligent act of the Contractor under this agreement. The Contractor shall not be required to indemnify the contracting agency for a claim of, or liability for, the independent negligence of the contracting agency. If there is a claim of, or liability for, the joint negligent error or omission of the Contractor and the independent negligence of the Contracting agency, the indemnification and hold harmless obligation shall be apportioned on a comparative fault basis. "Contractor" and "Contracting agency", as used within this and the following article, include the employees, agents and other contractors who are directly responsible, respectively, to each. The term "independent negligence" is negligence other than in the Contracting agency's selection, administration, monitoring, or controlling of the Contractor and in approving or accepting the Contractor's work.

#### Article 2. Insurance

Without limiting contractor's indemnification, it is agreed that contractor shall purchase at its own expense and maintain in force at all times during the performance of services under this agreement the following policies of insurance. Where specific limits are shown, it is understood that they shall be the minimum acceptable limits. If the contractor's policy contains higher limits, the state shall be entitled to coverage to the extent of such higher limits. Certificates of Insurance must be furnished to the contracting officer prior to beginning work and must provide for a notice of cancellation or non-renewal in accordance with policy provisions. Failure to furnish satisfactory evidence of insurance or lapse of the policy is a material breach of this contract and shall be grounds for termination of the contractor's services. All insurance policies shall comply with and be issued by insurers licensed to transact the business of insurance under AS 21.

**2.1 Workers' Compensation Insurance:** The Contractor shall provide and maintain, for all employees engaged in work under this contract, coverage as required by AS 23.30.045, and; where applicable, any other statutory obligations including but not limited to Federal U.S.L. & H. and Jones Act requirements. The policy must waive subrogation against the State.

**2.2 Commercial General Liability Insurance:** covering all business premises and operations used by the Contractor in the performance of services under this agreement with minimum coverage limits of \$1,000,000 combined single limit per claim.

**2.3 Commercial Automobile Liability Insurance:** covering all vehicles used by the Contractor in the performance of services under this agreement with minimum coverage limits of \$1,000,000 combined single limit per claim.

**2.4 Professional Liability Insurance:** covering all errors, omissions or negligent acts in the performance of professional services under this Agreement with minimum coverage limits of \$1,000,000 combined single limit per claim during the Phase 1: Startup, and with minimum coverage limits of \$5,000,000 combined single limit per claim during the Phase 2: Ongoing Operations & Sustainability Plan Development of this Agreement, if invoked.

## Appendix C

### Description of Services

#### **The Alaska Psychiatric Institute (API):**

The Alaska Psychiatric Institute (API) is licensed to operate an 80-bed acute care psychiatric inpatient hospital serving a population of approximately 735,000 people across the State of Alaska. API requires compliance under Conditions of Participation (CoP) by accrediting bodies to include CMS, the Joint Commission, health facilities, and licensing. API provides direct patient care in the most restrictive setting, as well as psychiatric services, forensic psychology services (including court ordered evaluations, court testimony, and competency restoration), and psychology services (includes active treatment, individual counseling, treatment planning, rehabilitation, neuropsychological screening, and psycho-educational assessments). The institute also provides medication support including an inpatient pharmacy, testimony at court proceedings on medication management, and support of the Division of Juvenile Justice's pharmaceutical needs. API also works with many partners from various health care providers and nonprofit agencies and is a member of the Joint Medical Emergency Preparedness Group. This group supplies mutual aid and support between area hospitals and local treatment centers in the event of a natural disaster or mass casualty situation.

#### **Scope of Work**

This agreement contemplates two phases, to be implemented sequentially as follows:

Phase	Description	Term	Contract
1	Startup	February 8, 2019 (the "Effective Date") through June 30, 2019	The initial phase of the contract
2	Ongoing Operations	July 1, 2019 (the "Operation Date") through June 30, 2024	Certain terms and conditions of this phase shall be negotiated and reflected in an amendment prior to June 30, 2019.

#### **Phase 1 - Startup**

During the Startup Phase, the contractor shall take all actions reasonably necessary for API to be in full operation and capable of serving patients by June 30, 2019, including:

1. Causing API to be in compliance, as of the Operation Date, with all regulatory authority (as evidenced by maintaining licensing, certification and/or accreditation) or if, required, re-establishing licensing certification and/or accreditations; this specifically includes certification or re-certification under the Medicaid program;
2. All 80 beds being fully available for utilization; staffed by the necessary clinical and support staff.
3. Implementation of the Transition Plan set forth in the document entitled 'API Transition Plan 02.06.19'. Any changes to the document version at time of contract execution must be agreed upon by both parties.
4. Hiring of the staff and personnel set forth on Exhibit 1 to this Appendix C (the "Staffing Plan"). Any changes to the Staffing Plan must be agreed upon by both parties. All personnel will be trained by Wellpath according to approved policies and procedures to ensure safe and secure facility.

#### **Additional Terms & Conditions of Phase 1:**

1. On and following the Effective Date, Wellpath shall have sufficient staff present at API to perform the services to be provided by Wellpath during the Startup Phase. Wellpath shall provide sufficient staff to effect a transition of existing staff and all services to assume complete operation of API no later than July 1, 2019. Said staff may be Wellpath employees or other contracted staff (contracted by Wellpath) with experience in areas including, but

not limited to medical services, psychiatry, psychology, nursing, performance improvement, risk management, evidence-based programs, trauma-informed care, safety, finance, accounting, billing, information technology, compliance, general administration, and CMS certification.

2. Within 30 days of the Effective Date, Wellpath shall submit to the Project Director a written plan outlining the actions to be taken in furtherance of the objectives of Phase One, identified above. This report shall be updated every month through the startup phase, and must identify benchmarks and progress towards them, whether met or not met, and provide a detailed analysis of the challenges and opportunities to meet those challenges.
3. The parties acknowledge that during the Startup Phase, Wellpath is not responsible for the operations of API, and that this Agreement contemplates Wellpath being prepared to assume such responsibility as of the commencement of the Operation Date, on July 1, 2019.
4. Wellpath shall engage/hire those persons, including any contractors hired under Paragraph 1 above, necessary to operate API in accordance with the Staffing Plan. Wellpath shall be financially responsible to pay wages, benefits, and fees of the personnel listed on the Staffing Plan, as required by applicable law and shall comply with any responsibilities related to tax withholdings required by applicable law with respect to such personnel on the Staffing Plan.
5. All employees currently engaged at API will remain the financial responsibility of the State. Transition team members and new employees, including contractors hired by Wellpath in anticipation of the Operations Date will be the financial responsibility of Wellpath. Effective on the Operations Date, existing State employees at API shall be eligible to apply for rehire with Wellpath and have preference in that process.
6. Wellpath shall provide collaboration, cooperation, and participation in any state proceeding including court proceedings or legislative hearings related to the services of this contract.
7. Through June 30, 2019, Wellpath shall honor terms & conditions of existing contracts that API is currently engaged in. Requests for termination or adjustment to any contract must be presented to the State, in writing, for approval, along with a proposal for the amendment/termination that exhibits adherence to the terms & conditions of these contracts. The State will remain financially responsible for the costs of services provided under these contracts during Phase 1.
8. Pharmacy services will remain the responsibility of the State during Phase 1; the State shall be financially responsible for the cost of all clinically-indicated medications and pharmacy services.

### **Completion of Phase 1**

On or before April 15, 2019, the project manager shall conduct an evaluation of the services performed in Phase 1. If at that time, the services are adequately met, the parties will engage in negotiations to amend this agreement and outline the terms described in Phase 2: Ongoing Operations.

### **Phase 2 - Ongoing Operations**

Commencement of Phase 2 will begin on the Operations Date, upon acceptance of completion of Phase 1. Upon commencement of Phase 2, Wellpath shall be authorized to manage and operate all aspects of API. Wellpath shall manage and operate API in compliance with all applicable federal, state, and local laws. Wellpath shall promulgate and implement operating policies and procedures for API within thirty (30) days after the Operation Date. This includes all ancillary services required to operate the hospital in compliance with all federal and state standards and to meet the health safety and welfare of all staff and patients.

### **Pharmacy**

As of the Operations Date, Wellpath shall arrange for and be financially responsible for the cost of all clinically-indicated medications and pharmacy services. All prescribing, dispensing, and administering of medication inside of API shall comply with all state and federal laws and regulations.

### **Pass-through Services and Costs**

As of the Operations Date, excepting staffing compensation and pharmacy costs, all other costs related to the operation and management of API of any nature whatsoever shall be the financial responsibility of the Department.

Wellpath shall arrange for and ensure the provision of all services necessary to manage and operate API, in Wellpath's discretion, but Wellpath shall invoice the cost for such services (except for staffing and pharmacy) to the Department as a pass-through cost in accordance with Appendix D below. For avoidance of doubt, and only for illustrative purposes and not as an exhaustive list, Wellpath shall arrange for the following services, supplies, and items and shall bill the Department for such expenses as pass-through costs for which the Department shall be ultimately financially responsible:

1. Operational services such as food, janitorial, housekeeping, trash removal, transportation (including vehicle maintenance), landscaping, any health care services performed outside of API (including, but not limited to, outpatient services, inpatient hospitalizations, and medication costs associated therewith).
2. All supplies and equipment necessary to operate API, including without limitation food, employee uniforms, patient clothing, cleaning supplies, office supplies, medical consumables, program supplies, medical equipment, recreational and educational supplies, and all similar items.
3. All costs related to the maintenance and repair of the interior and exterior of API. Notwithstanding the foregoing, if the cost to repair, maintain, or replace an item or system exceeds Five Thousand Dollars (\$5,000), Wellpath shall consult with the Department prior to arranging for the repair, maintenance, or replacement.
4. All utilities and communication services for API, including any pay phones, cable, and internet.

Phase 2 services and terms of payment shall be negotiated in accordance with Appendix D and outlined via amendment prior to the Operations Date. These terms shall include, but are not limited to:

1. Pharmacy
2. Pass through costs
3. Budget and staff in reconciliations
4. Taxes
5. Existing contracts, as applicable
6. IT costs
7. Funding sources and terms of payment. Including but not limited to:
  - a. DSH Funding
  - b. ProShare Funding
  - c. Medicare, Medicaid, private insurance, self-pay

### **IT and Security Requirements**

Wellpath shall coordinate and agree to all privacy and security protocols related to this agreement with respect to accessing the current data systems and electronic health records system. However, this provision does not preclude Wellpath from installing and operating a new, updated or different electronic health records system during this agreement. In coordination with Wellpath, the DHSS Chief Security Officer and Privacy Officer shall review any proposed new, updated or different electronic health record systems and data systems to ensure legal compliance with information security and privacy best practices; especially 45 C.F.R. §§ 164.302 – 318. Wellpath shall expeditiously provide documentation and access requested by the DHSS Chief Security Officer and Privacy Officer for the review. Wellpath shall not install or operate new, updated or different electronic health record systems or data systems until they receive written approval from the DHSS Chief Security Officer and Privacy Officer.

## Appendix C - Exhibit 1 Staffing Plan

Administration	
Hospital Administrator	1.00
Assistant Hospital Administrator	1.00
Risk Manager	1.00
Paralegal	2.00
Administrative Assistant	9.00
PI/Quality Manager	1.00
Compliance Manager	1.00
Patient Advocate	1.00
<b>Sub Total</b>	<b>17.00</b>
Business / Support	
Business Manager	1.00
Accountant	1.00
Account Clerk	8.00
Training Coordinator	1.00
HR Manager	1.00
HR Generalist	1.00
Recruiter	1.00
<b>Sub Total</b>	<b>14.00</b>
Health Information Services	
IT Delivery Manager	1.00
MIS Specialist	1.00
<b>Sub-Total</b>	<b>2.00</b>
Maintenance	
Facility Maintenance Manager	1.00
Maintenance Generalist/Specialist	4.00
<b>Sub Total</b>	<b>5.00</b>

Healthcare	
Medical Director	1.00
Medical Provider	2.00
Pharmacist	2.00
Pharmacy Technician	1.00
Medical Records Personnel	2.00
Psychiatric Provider	4.50
<b>Sub Total</b>	<b>12.50</b>
Nursing	
Director of Nursing	1.00
Assistant Director of Nursing	1.00
Nursing Supervisor	5.00
Nurse Educator	1.00
Infection Control	1.00
Registered Nurse	38.00
Mental Health Technician	81.00
Staff Scheduler	1.00
Utilization Nurse	1.00
<b>Sub Total</b>	<b>130.00</b>
Treatment / Mental Health	
Director of Social Work	1.00
Clinical Director	1.00
Rehab Manager	1.00
Psychologist	5.50
Social Worker/Case Manager	9.00
Admissions/Discharge Coordinator	3.00
Recreational Specialist/Assistant	9.00
Rehabilitation Counselor	10.00
Recovery Plan Coordinator	4.00
Psychology Intern	2.00
Peer Support Specialist	2.00
Forensic Liaison	1.00
<b>Sub Total</b>	<b>48.50</b>

Food Service	
Food Services Manager	1.00
Food Service Supervisor	1.00
Cooks	4.00
Food Service Assistants	6.00
Dietician	1.00
Sub-Total	
	13.00
Safety	
Safety Director	1.00
TST Shift Supervisor	5.00
Therapeutic Safety Technician	28.00
Sub-Total	
	34.00
SUMMARY	
Administration	17.0
Business / Support	14.0
Health Information Services	2.0
Maintenance	5.0
Healthcare	12.5
Nursing	130.0
Treatment / Mental Health	48.5
Food Service	13.0
Safety	34.0
TOTAL STAFF	
	276.0
Staffing plan may be modified based on changes in patient acuity and commitment types. Additionally, Psychiatric ARNP hours may be substituted for psychiatrist hours on a 2:1 ratio as clinically appropriate.	

## Appendix D

### Payment for Services

For all phases of the contract, the following applies:

#### **Subject to Appropriations**

All payments by the Department to Wellpath under this Agreement are subject to appropriations sufficient to fund the payment requirements of this Agreement in accordance with state law. In the event the State of Alaska fails to appropriate an amount sufficient to fund the payments due under this Agreement, the Department shall provide immediate written notice to Wellpath, and Wellpath shall thereupon have the right to cease performing services hereunder.

The parties acknowledge that funding for this Agreement will include a mix of state general funds, interagency receipts from claims related to Medicaid beneficiaries/DSH (Disproportionate Share Hospitals), and Statutory Designated Program Receipts from claims related to Medicare and other insurances.

#### **Financial Records**

Wellpath shall maintain financial records necessary for the Department to verify the expenditures for API claimed under the Budget. Such records shall be made available to the Project Director within 30 days of written request.

#### **Invoicing**

The Contractor will submit the invoices described for each phase (below) as follows:

Email invoices to:

[hss.fms.contracts.invoicing@alaska.gov](mailto:hss.fms.contracts.invoicing@alaska.gov)

(please reference the contract 0619-131 in the subject line)

Each invoice must:

- reference the Contractor's name, address and phone number
- reference the contract number: 0619-131
- include an invoice number
- identify the period which is being invoiced, and any prorated amount
- Reference DHSS – API, for whom the services are being provided

The parties shall use good faith efforts to negotiate an amendment, not later than February 28, 2019, to provide a dispute resolution mechanism related to the withholding of payment for Contractor's failure to perform services as required under this Agreement.

#### **Phase 1: Startup - Billing Information**

For the performance of the services of Phase 1: Startup, the State shall be billed monthly, in the amount of \$1,000,000 per month, prorated for the initial and any subsequent partial month of service.

Wellpath shall submit the first invoice to the Department on the Effective Date, with payment due to Wellpath within thirty (30) days thereafter. The final invoice to the Department for services rendered during the Startup Phase shall be submitted on or around June 15, 2019.

**Phase 2: Ongoing Operations – Billing Information**

Beginning upon the Operation Date, the Department shall pay to Wellpath, as compensation for its services to be provided hereunder, an amount to be agreed by the Parties which shall be expressed as a per diem amount, multiplied by 80 (the “Operating Fee”). All other operational costs shall be passed through to the Department. The anticipated costs to the Department for managing and operating API for the first year of the Initial Term (the “Budget”) shall be as set forth in Exhibit 1 to this Appendix D. The parties recognize that the Budget shall be an estimate and may vary subject to the actual costs needed to operate and manage API. Beginning on the Operation Date and on the first day of each month thereafter, Wellpath will submit an invoice to the Department for the Operating Fee for the month, plus 1/12th of the annual Budget. The Department shall pay such invoice within thirty (30) days of the invoice date. The Operating Fee and Budget (using the actual or forecasted full year Budget amount after taking into account the adjustments made pursuant to the following paragraph) shall be increased upon each anniversary of the Operation Date by the then applicable annual percentage increase in the Consumer Price Index, All Urban Consumers, Medical Care Component, Anchorage Area, published by the United States Department of Labor, Bureau of Labor Statistics. Wellpath and the Department acknowledge their mutual intention to explore the feasibility of replacing the foregoing compensation arrangement with a fully-capitated approach at a time to be determined following the first anniversary of the Operation Date.

**Budget Reconciliation**

After the Operation Date, on a quarterly basis, Wellpath will true up invoices against actual costs incurred for that quarter and submit an adjusted invoice to the Department. If actual costs exceed payments, the Department shall pay any balance to Wellpath within fifteen (15) days of the date of invoice. If payments exceed actual costs, Wellpath shall issue a credit to the Department on the next monthly invoice in an amount equal to such excess.

**Staffing Reconciliation**

(i) After the Operation Date, if the hours actually worked by each Non-Supervisory Position in any month are less than the hours required according to the Staffing Plan, then Wellpath shall deduct from the following month's invoice an amount equal to the difference between (a) the hourly rate of such position(s) multiplied by the number of hours required to be provided by such position in such month pursuant to the Staffing Plan, less (b) the hourly rate of such position multiplied the number of hours actually served by such position in such month. For purposes of this paragraph, “Non-Supervisory Position” shall be defined in a subsequent amendment to this Agreement.

(ii) After the Operation Date, if any Supervisory Position remains vacant for sixty (60) consecutive days or more, Wellpath shall deduct from the following month's invoice an amount equal to the difference between (a) the hourly rate of such position(s) multiplied by the number of hours required to be provided by such position in such month pursuant to the Staffing Plan, less (b) the hourly rate of such position multiplied the number of hours actually served by such position in such month. For purposes of this paragraph, “Supervisory Position” shall be defined in a subsequent amendment to this Agreement.

For purposes of calculating any vacancies, any time served in any position by personnel with higher qualifications or licensure shall count toward required hours for a position with less qualifications; by way of example, a Registered Nurse may serve the required contracted hours of a Licensed Practical Nurse. Hours related to training, orientation, continuing education, personal time off (vacation or sick time), and holidays shall not be considered vacant hours for purposes herein.

**Taxes**

The parties agree that Wellpath shall not be responsible for the payment of any property, ad valorem, or other taxes that may now or hereafter be due on or with respect to API or related to the operation or management of API, including any personal or business property taxes. Wellpath shall only be responsible for any taxes associated with its personnel, vendors, and pharmacy.

**IT/Security Expenses**

During the operation phase of this Agreement, Wellpath will be solely responsible for any and all EHR and IT changes, upgrades or expenditures.

## Appendix D - Exhibit 1

### Phase 2: Operations Budget

**Phase 2 Operating Fee:** \$1,383.82 per diem, payable for 80 available beds, for staffing as outlined in Appendix C, which will be reconciled as necessary under this Agreement, and pharmacy services.

**Phase 2 Estimated Annual Pass-Through Expenses:** \$3,266,525.00.

Passthrough Expenses Estimate		
	<b>Year 1</b>	<b>Summary Description</b>
Services	\$2,508,700	Education Services; Financial Services; Legal and Judicial Services; Information Technology; Telecommunications; Delivery Services; Advertising/Promotions; Utilities; Structure/Infrastructure/Land; Equipment/Machinery; Housekeeping national accreditation support, contracts to support hospital; Legal; Vehicle repairs and maintenance.
Commodities	\$525,800	Business supplies including paper, office products, books, and other business items needed for operations; Agriculture items such as fertilizer and plant supplies; Household / Institutional items such as cleaning, non-food supplies, and other household type items supporting operations; safety supplies such as first aid, body protection, and other items required for safety and compliance; parking lot gravel and other maintenance, plumbing supplies and items, lube oils/grease/solvents for building and maintenance; paint and preservatives used for interior and exterior maintenance; and small tools and other minor equipment.
Other	\$232,025	Patient related travel and transportation; individual assistance for patients deemed indigent per hospital policy, along with other benefits for indigent patient care as indicated per hospital policy
<b>Estimated Total</b>	<b>\$3,266,525</b>	

## Appendix E

### State of Alaska, Department of Health & Social Services

### Health Insurance Portability and Accountability Act of 1996 (HIPAA)

### Business Associate Agreement

This HIPAA Business Associate Agreement is between the State of Alaska, Department of Health and Social Services ("Covered Entity" or "CE") and WellPath Recovery Solutions, LLC ("Business Associate" or "BA").

#### RECITALS

Whereas,

- A. CE wishes to disclose certain information to BA, some of which may constitute Protected Health Information owned by CE ("PHI");
- B. It is the goal of CE and BA to protect the privacy and provide for the security of PHI owned by CE that is disclosed to BA or accessed, received, stored, maintained, modified or retained by BA in compliance with HIPAA (42 U.S.C. 1320d – 3120d-8) and its implementing regulations at 45 C.F.R. 160 and 45 C.F.R. 164 (the "Privacy and Security Rule"), the Health Information Technology for Economic and Clinical Health Act of 2009 (P.L. 111-5) (the "HITECH Act"), and with other applicable laws;
- C. The purpose and goal of the HIPAA Business Associate Agreement ("BAA") is to satisfy certain standards and requirements of HIPAA, HITECH Act, and the Privacy and Security Rule, including but not limited to 45 C.F.R. 164.502(e) and 45 C.F.R. 164.504(e), as may be amended from time to time;
- D. CE may operate a drug and alcohol treatment program that must comply with the Federal Confidentiality of Alcohol and Drug Abuse Patient Records law and regulations, 42 U.S.C. 290dd-2 and 42 C.F.R. Part 2 (collectively "Part 2"); and
- E. BA may be a Qualified Service Organization ("QSO") under Part 2 and therefore must agree to certain mandatory provisions regarding the use and disclosure of substance abuse treatment information.

Therefore, in consideration of mutual promises below and the exchange of information pursuant to the BAA, CE and BA agree as follows:

1. Definitions.
  - a. General: As used in this BAA, the terms "Protected Health Information," "Health Care Operations," and other capitalized terms have the same meaning given to those terms by HIPAA, the HITECH Act and the Privacy and Security Rule. In the event of any conflict between the mandatory provisions of HIPAA, the HITECH Act or the Privacy and Security Rule, and the provisions of this BAA, HIPAA, the HITECH Act or the Privacy and Security Rule shall control. Where the provisions of this BAA differ from those mandated by HIPAA, the HITECH Act or the Privacy and Security Rule but are nonetheless permitted by HIPAA, the HITECH Act or the Privacy and Security Rule, the provisions of the BAA shall control.
  - b. Specific:
    - 1) Business Associate: "Business Associate" or "BA" shall generally have the same meaning as the term "business associate" at 45 C.F.R. 160.103.
    - 2) Covered Entity: "Covered Entity" or "CE" shall have the same meaning as the term "covered entity" at 45 C.F.R. 160.103.
    - 3) Privacy and Security Rule: "Privacy and Security Rule" shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 C.F.R. Part 160 and Part 164.
2. Permitted Uses and Disclosures by Business Associate.
  - a. BA may only use or disclose PHI for the following purposes:
    - b. BA may use or disclose PHI as permitted by law.
    - c. BA agrees to make uses and disclosures and requests for PHI consistent with HIPAA, the HITECH Act and the Privacy and Security Rule.
    - d. BA may not use or disclose PHI in a manner that would violate Subpart E of 45 C.F.R. Part 164 if done by CE, except for the specific uses and disclosures set out below.
    - e. BA may disclose PHI for the proper management and administration of BA or to carry out the legal responsibilities of BA, provided the disclosures are permitted by law, or BA obtains reasonable assurances from the person to whom the information is disclosed that the information will remain confidential and used or further disclosed only as required by law or

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for the purposes for which it was disclosed to the person, and the person notified BA of any instances of which it is aware in which the confidentiality of the information has been breached.

- f. BA may provide data aggregation services related to the health care operations of CE.

3. Obligations of Business Associate.

- a. Permitted uses and disclosures: BA may only use and disclose PHI owned by the CE that it creates, receives, maintains, or transmits if the use or disclosure is in compliance with each applicable requirement of 45 C.F.R. 164.504(e) of the Privacy Rule or this BAA. The additional requirements of Subtitle D of the HITECH Act contained in Public Law 111-5 that relate to privacy and that are made applicable with respect to Covered Entities shall also be applicable to BA and are incorporated into this BAA.

To the extent that BA discloses CE's PHI to a subcontractor, BA must obtain, prior to making any such disclosure: (1) reasonable assurances from the subcontractor that it will agree to the same restrictions, conditions, and requirements that apply to the BA with respect to such information; and (2) an agreement from the subcontractor to notify BA of any Breach of confidentiality, or security incident, within two business days of when it becomes aware of such Breach or incident.

- b. Safeguards: 45 C.F.R. 164.308 (administrative safeguards), 164.310 (physical safeguards), 164.312 (technical safeguards), and 164.316 (policies, procedures and documentation requirements) shall apply to BA in the same manner that such sections apply to CE, and shall be implemented in accordance with HIPAA, the HITECH Act, and the Privacy and Security Rule. The additional requirements of Title XIII of the HITECH Act contained in Public Law 111-5 that relate to security and that are made applicable to Covered Entities shall also apply to BA and are incorporated into this BAA.

Unless CE agrees in writing that this requirement is infeasible with respect to certain data, BA shall secure all paper and electronic PHI by encryption or destruction such that the PHI is rendered unusable, unreadable or indecipherable to unauthorized individuals; or secure paper, film and electronic PHI in a manner that is consistent with guidance issued by the Secretary of the United States Department of Health and Human Services specifying the technologies and methodologies that render PHI unusable, unreadable or indecipherable to unauthorized individuals, including the use of standards developed under Section 3002(b)(2)(B)(vi) of the Public Health Service Act, as added by Section 13101 of the HITECH Act contained in Public Law 111-5.

BA shall not use personally owned devices to create, receive, maintain or transmit PHI owned by CE. Devices the BA uses to create, receive, maintain or transmit CE's electronic PHI shall be owned and managed by BA or CE.

BA shall patch its operating system and all applications that receive, maintain or transmit PHI owned by CE within 90 days of the release of any patch.

BA shall keep its antivirus and antimalware installed and active. BA shall limit its use of administrative accounts for IT operations only.

- c. Reporting Unauthorized Disclosures and Breaches: During the term of this BAA, BA shall notify CE within 24 hours of discovering a Breach of security; intrusion; or unauthorized acquisition, access, use or disclosure of CE's PHI in violation of any applicable federal or state law, including security incidents.

BA shall identify for the CE the individuals whose unsecured PHI has been, or is reasonably believed to have been, Breached so that CE can comply with any notification requirements if necessary. BA shall also indicate whether the PHI subject to the Breach; intrusion; or unauthorized acquisition, access, use or disclosure was encrypted or destroyed at the time. BA shall take prompt corrective action to cure any deficiencies that result in Breaches of security; intrusion; or unauthorized acquisition, access, use, and disclosure. BA shall fulfill all breach notice requirements unless CE notifies BA that CE will take over the notice requirements. BA shall reimburse CE for all reasonable costs incurred by CE that are associated with any mitigation, investigation and notice of Breach CE undertakes or provides under HIPAA, HITECH Act, and the Privacy and Security Rule as a result of a Breach of CE's PHI caused by BA or BA's subcontractor or agent.

If the unauthorized acquisition, access, use or disclosure of CE's PHI involves only Secured PHI, BA shall notify CE within 10 days of discovering the Breach but is not required to notify CE of the names of the individuals affected.

- d. BA is not an agent of CE.
- e. BA's Agents: If BA uses a subcontractor or agent to provide services under this BAA, and the subcontractor or agent creates, receives, maintains, or transmits CE's PHI, the subcontractor or agent shall sign an agreement with BA containing

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substantially the same provisions as this BAA and further identifying CE as a third-party beneficiary with rights of enforcement and indemnification from the subcontractor or agent in the event of any violation of the subcontractor or agent agreement. BA shall mitigate the effects of any violation of that agreement.

- f. Availability of Information to CE: Within 15 days after the date of a written request by CE, BA shall provide any information necessary to fulfill CE's obligations to provide access to PHI under HIPAA, the HITECH Act, or the Privacy and Security Rule.
- g. Accountability of Disclosures: If BA is required by HIPAA, the HITECH Act, or the Privacy or Security Rule to document a disclosure of PHI, BA shall make that documentation. If CE is required to document a disclosure of PHI made by BA, BA shall assist CE in documenting disclosures of PHI made by BA so that CE may respond to a request for an accounting in accordance with HIPAA, the HITECH Act, and the Privacy and Security Rule. Accounting records shall include the date of the disclosure, the name and if known, the address of the recipient of the PHI, the name of the individual who is subject of the PHI, a brief description of the PHI disclosed and the purpose of the disclosure. Within 15 days of a written request by CE, BA shall make the accounting record available to CE.
- h. Amendment of PHI: Within 30 days of a written request by CE or an individual, BA shall amend PHI maintained, transmitted, created or received by BA on behalf of CE as directed by CE or the individual when required by HIPAA, the HITECH Act or the Privacy and Security Rule, or take other measures as necessary to satisfy CE's obligations under 45 C.F.R. 164.526.
- i. Internal Practices: BA shall make its internal practices, books and records relating to the use and disclosure of CE's PHI available to CE and all appropriate federal agencies to determine CE's and BA's compliance with HIPAA, the HITECH Act and the Privacy and Security Rule.
- j. Risk Assessment: BA shall biennially conduct a thorough assessment of the potential risks to and vulnerabilities of the confidentiality, integrity, and availability of CE's PHI that BA receives, stores, transmits, or has access to. BA shall provide CE, upon request, with a written report detailing the results of the risk assessment within 5 days.
- k. To the extent BA is to carry out one or more of CE's obligations under Subpart E of 45 C.F.R. Part 164, BA must comply with the requirements of that Subpart that apply to CE in the performance of such obligations.
- l. Audits, Inspection and Enforcement: CE may, after providing reasonable notice to the BA, conduct an inspection of the facilities, systems, books, logs and records of BA that relate to BA's use of CE's PHI, including inspecting logs showing the creation, modification, viewing, and deleting of PHI at BA's level to determine BA's compliance with HIPAA, the HITECH Act and the Privacy and Security Rule. Failure by CE to inspect does not waive any rights of the CE or relieve BA of its responsibility to comply with this BAA. CE's failure to detect or failure to require remediation does not constitute acceptance of any practice or waive any rights of CE to enforce this BAA.

Notwithstanding BA's obligation to report under paragraph 3.c of this BAA, BA shall provide a monthly report to CE detailing the unauthorized, or reasonable belief of unauthorized, acquisition, access, use, or disclosure of CE's PHI, including any unauthorized creation, modification, or destruction of PHI and unauthorized login attempts. BA shall include privileged and nonprivileged accounts in its audit and report, indicating the unique individual using the privileged account. BA shall also indicate whether CE's PHI subject to unauthorized activity was encrypted or destroyed at the time of the unauthorized activity.

BA shall provide a yearly report to CE that lists the names of all individuals with technical or physical access to CE's PHI and the scope of that access.

- m. Restrictions and Confidential Communications: Within 10 business days of notice by CE of a restriction upon use or disclosure or request for confidential communications pursuant to 45 C.F.R.164.522, BA shall restrict the use or disclosure of an individual's PHI. BA may not respond directly to an individual's request to restrict the use or disclosure of PHI or to send all communication of PHI to an alternate address. BA shall refer such requests to the CE so that the CE can coordinate and prepare a timely response to the requesting individual and provide direction to the BA.
  - n. Indemnification: BA shall indemnify and hold harmless CE for any civil or criminal monetary penalty or fine imposed on CE for acts or omissions in violation of HIPAA, the HITECH Act, or the Privacy or Security Rule that are committed by BA, a member of its workforce, its agent, or its subcontractor.
4. Obligations of CE. CE will be responsible for using legally appropriate safeguards to maintain and ensure the confidentiality, privacy and security of PHI transmitted to BA under the BAA until the PHI is received by BA. CE will not request BA to use or

disclose PHI in any manner that would not be permissible under HIPAA, the HITECH Act or the Privacy and Security Rule if done by CE.

5. Termination.

- a. Breach: A breach of a material term of the BAA by BA that is not cured within a reasonable period of time will provide grounds for the immediate termination of the contract.
  - b. Reasonable Steps to Cure: In accordance with 45 C.F.R. 164.504(e)(1)(ii), CE and BA agree that, if it knows of a pattern of activity or practice of the other party that constitutes a material breach or violation of the other party's obligation under the BAA, the nonbreaching party will take reasonable steps to get the breaching party to cure the breach or end the violation and, if the steps taken are unsuccessful, terminate the BAA if feasible, and if not feasible, report the problem to the Secretary of the U.S. Department of Health and Human Services.
  - c. Effect of Termination: Upon termination of the contract, BA will, at the direction of the CE, either return or destroy all PHI received from CE or created, maintained, or transmitted on CE's behalf by BA in any form. Unless otherwise directed or required by law, BA is prohibited from retaining any copies of PHI received from CE or created, maintained, or transmitted by BA on behalf of CE. If destruction or return of PHI is not feasible, BA must continue to extend the protections of this BAA to PHI and limit the further use and disclosure of the PHI. The obligations in this BAA shall continue until all of the PHI provided by CE to BA is either destroyed or returned to CE.
6. Amendment. The parties acknowledge that state and federal laws relating to electronic data security and privacy are evolving, and that the parties may be required to further amend this BAA to ensure compliance with applicable changes in law. Upon receipt of a notification from CE that an applicable change in law affecting this BAA has occurred, BA will promptly agree to enter into negotiations with CE to amend this BAA to ensure compliance with changes in law.
7. Ownership of PHI. For purposes of this BAA, CE owns the PHI it transmits to BA or that BA receives, creates, maintains or transmits on behalf of CE.
8. Litigation Assistance. Except when it would constitute a direct conflict of interest or when advised otherwise by its legal counsel, each party will make itself available to assist the other in any administrative or judicial proceeding by testifying as witness as to an alleged violation of HIPAA, the HITECH Act, the Privacy or Security Rule, or other law relating to security or privacy.
9. Regulatory References. Any reference in this BAA to federal or state law means the section that is in effect or as amended.
10. Interpretation. This BAA shall be interpreted as broadly as necessary to implement and comply with HIPAA, the HITECH Act, the Privacy and Security Rule and applicable state and federal laws. The parties agree that any ambiguity in BAA will be resolved in favor of a meaning that permits the CE to comply with and be consistent with HIPAA, the HITECH Act, and the Privacy and Security Rule. The parties further agree that where this BAA conflicts with a contemporaneously executed confidentiality agreement between the parties, this BAA controls.
11. No Private Right of Action Created. This BAA does not create any right of action or benefits for individuals whose PHI is disclosed in violation of HIPAA, the HITECH Act, the Privacy and Security Rule or other law relating to security or privacy.
12. Privacy and Security Point of Contact. All communications occurring because of this BAA shall be sent to [HSS-Security@alaska.gov](mailto:HSS-Security@alaska.gov) in addition to the CE.

**In witness thereof,** the parties hereto have duly executed this BAA as of the effective date.

**Appendix F**  
**Certification Regarding Debarment, Suspension, Ineligibility**  
**and Voluntary Exclusion Lower Tier Covered Transactions**

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 2 CFR Part 2998.

**Before completing certification, read the instructions on the following page,  
which are an integral part of the certification**

1. The prospective recipient of Federal assistance funds certifies, by the signature below, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
2. Where the prospective recipient of Federal assistance funds is unable to certify to any of the Statements in this certification, such prospective participant shall attach an explanation to this Proposal.

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Name and Title of Authorized Representative

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Signature

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Date

**Instructions for Certification**

1. By signing and submitting this Agreement, the prospective recipient of Federal assistance funds is providing the certification as set out below.
2. The certification in this class is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective recipient of Federal assistance funds knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the Department of Labor (DOL) may pursue available remedies, including suspension and/or debarment.
3. The prospective recipient of Federal assistance funds shall provide immediate written notice to the person to whom this Agreement is delivered if at any time the prospective recipient of Federal assistance funds learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this Agreement is delivered for assistance in obtaining a copy of those regulations.
5. The prospective recipient of Federal assistance funds agrees by signing this Agreement that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the DOL.
6. The prospective recipient of Federal assistance funds further agrees by signing this Agreement that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous.  
A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may but is not required to check the List of Parties Excluded from Procurement or Non-procurement Programs.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the DOL may pursue available remedies, including suspension and/or debarment.